

MEMO

To: TOWN COUNCIL

From: Joanna Gutierrez, Town Clerk 

Subject: Additional Agenda Material regarding Agenda Item 7(g) for the meeting of November 10, 2009

Date: November 9, 2009

Attached is the staff report regarding agenda item 7(g). The following actions are presented for Council's consideration:

Agenda Item 7g. Consider (1) Approving an amendment to the agreement between the Town of Paradise and Wal-Mart Real Estate Business Trust relating to the processing of Wal-Mart's application for development of certain real property located adjacent to the Town of Paradise within the County of Butte, California; and, (2) Authorizing the Mayor and Town Manager to execute the amendment. (Amendment is to change the date of the second installment of \$125,000 from November 12, 2009 to April 19, 2010.) **(ROLL CALL VOTE)**

jmg/attachment(s)

cc: Chuck Rough
Dwight Moore
Enterprise Record
Paradise Post
Public View Packet

TOWN OF PARADISE
Council Agenda Summary
Date: November 10, 2009

Agenda No. 7[g]

ORIGINATED BY:

Dwight L. Moore, Town Attorney



REVIEWED BY:

Al McGreehan, Community Development Director



Charles L. Rough, Jr., Town Manager



SUBJECT:

Amendment to Agreement between Town of Paradise
and Wal-Mart Real Estate Business Trust

COUNCIL ACTION REQUESTED: Authorize the Mayor and Town Manager to execute an amendment to the agreement between the Town of Paradise and Wal-Mart Real Estate Business Trust.

BACKGROUND: On May 19, 2009, the Town entered into an agreement with Wal-Mart Real Estate Business Trust concerning the processing of Wal-Mart's application for a proposed supercenter.

DISCUSSION: Based on the agreement, Wal-Mart is required to deposit \$529,686 with the Town of Paradise relating to the costs associated with the consultants and attorneys who will be providing services for the Town in respect to Wal-Mart's application for a proposed supercenter located on the Skyway. The agreement requires Wal-Mart to make two payments to the Town for the above services. The first payment of \$404,686 has been deposited. The second payment of \$125,000 is due November 12, 2009. Since the Town staff has deemed Wal-Mart's application to be incomplete, the environmental review has not commenced. As of November 9, 2009, \$398,466 of the initial deposit has not been expended. Therefore, Wal-Mart has requested the Town to amend the agreement so that the second payment of \$125,000 is not due until sometime in the future. Town staff is recommending that the agreement be amended to change the date for the second installment of \$125,000 from November 12, 2009 to April 19, 2010.

FINANCIAL IMPACT: There is no financial impact associated with the approval of this amendment.

Attachment

AMENDMENT TO AGREEMENT

This Amendment dated November 10, 2009, is between the Town of Paradise ("Town") and Wal-Mart Real Estate Business Trust, a Delaware statutory trust (the "Applicant").

WHEREAS, on May 19, 2009, the Town and the Applicant entered into an Agreement relating to the processing of Applicant's proposed retail shopping center ("Agreement"). A copy of the Agreement is attached as Exhibit "A"; and

WHEREAS, the Town and the Applicant wish to amend the Agreement relating to the date for the payment of the second installment of \$125,000 from the Applicant to the Town.

NOW, THEREFORE, the Town and the Applicant hereby agree that the Agreement shall be amended as follows:

1. Section 5 of the Agreement shall be amended to read:

Deposit for Consultant Costs and Expenditures.

The Applicant shall deposit with the Town two (2) cash amounts equal to one hundred percent (100%) of the costs and expenditures to be incurred by the Town relative to the Consultants Contracts ("Consultants' Costs"). The Town has preliminarily reviewed the scope of work required of each Consultant and has estimated the aggregate Consultants' Costs to be \$529,686 ("Estimated Consultants' Costs"). Within thirty (30) days after the Effective Date of the Agreement, the Applicant shall deposit with the Town \$404,686 of the Estimated Consultants' Costs, which costs are more particularly described in Exhibits A, B, C, and D. On April 19, 2010, the Applicant shall deposit with the Town the remaining \$125,000 of the Estimated Consultants' Costs. The Town shall not be required to advance its own funds to pay Consultants Costs. The Town agrees that, in the event that expenditure of the full deposit is not necessary to complete the environmental analysis and review, planning process and legal services addressed by this Agreement, the Town shall return to the Applicant any unspent funds within thirty (30) calendar days following final action on the Project by the Town Council.

2. Any conflicts between the Agreement and this Amendment shall be controlled by this Amendment.

3. All the other provisions of the Agreement shall remain in full force and effect.

Dated _____

TOWN OF PARADISE
A Municipal Corporation (the "Town")

ATTEST:

By: _____
Frankie Rutledge, Mayor

By: _____
Joanna Gutierrez, Town Clerk

By: _____
Charles L. Rough, Jr., Town Manager

APPROVED AS TO FORM:

APPLICANT WAL-MART REAL ESTATE
BUSINESS TRUST:

By: _____
Dwight L. Moore, Town Attorney

By: _____

Dated: _____

APPROVED AS TO FORM:

By: _____
Legal Counsel for Applicant
Wal-Mart Real Estate Business Trust

EXHIBIT A

(Will be attached to executed copy)