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To: Lemoore City Council Item # 8
From: Jeff Briltz, City Manager
Date: May 13, 2011
Subject: Walmart Environmental Impact Report Processing

Discussion:

As the City Council is aware, Walmart made an initial application to locate a new store at the NW corner of Bush St. and Bell Haven Dr. in 2003. Since that time, the City has been in various stages of processing an Environmental Impact Report (EIR) for Walmart, primarily utilizing Urban Futures as the lead consultant for the EIR. The last iteration of the administrative draft EIR dates back to 2008. Since 2003, several significant changes have occurred that have delayed the project and that also render much of the existing administrative draft EIR out of date and/or unusable, including:

- Walmart modified its application several times to propose differing sized stores (including adding a adding a grocery component) as the company's designs and prototype stores evolved
- Walmart modified its application to remove a gas station on site and replace it with a quick service restaurant and/or on-site storm water retention basin
- The anticipated pace of growth in West Lemoore slowed considerably following the Real Estate Decline beginning in 2007
- Cal-trans and the City General Plan require Bell Haven Dr. to be relocated westward at Bush St. approximately 125 feet.
- The City adopted the 2030 Lemoore General Plan
- The City adopted new Development Impact Fee programs
- West Hills College Lemoore, Lemoore Middle College High School, and University Charter School have all grown, as has the traffic to and from the College site in general
- Numerous laws have been adopted by the State of California, changing environmental regulations

For these reasons, much of the previously conducted environmental analysis has become outdated. The Walmart team has requested that the City retain an EIR consultant experienced with the preparation of EIRs for Walmart projects, as each project is challenged in court and the EIR must be prepared to meet stringent legal requirements. After three drafts prepared over a five-year time span, the existing Administrative draft EIR provides little information and analysis that is current enough to be used in the EIR for the Walmart project.

The City consulted with Michael Brandman Associates (MBA), a firm well known for preparing EIRs for complex projects Statewide, including several recent Walmart projects, about the

Lemoore project. After reviewing MBA's credentials, City Staff requested that MBA submit a proposal to complete the EIR for the Walmart project. The City's contract procedures (Lemoore Municipal Code § 1-8-6) generally requires that contracts for services with an estimated value of \$50,000 or more be subject to a bid process. There is an exception where the purchasing administrator determines that sole source purchasing is necessary or will result in cost savings to the City. In this matter, staff determined that the selection of MBA to complete the Walmart EIR falls within these exceptions. MBA has extensive recent experience with Walmart projects, including several in the Central Valley.

MBA would bring a level of expertise no other firm has and would likely save a significant amount of City Staff time and City Attorney expense to review and edit documents. Included as Attachment A is a copy of MBA's Statement of Qualifications which further demonstrates their expertise for these types of projects.

The MBA Proposed Scope of Work, which includes a timeline to complete the EIR (approximately one year start to finish), as well as the budget (\$328,230), is included as Attachment B. City Staff and the City Attorney's Office have fully reviewed the Proposal and have worked with MBA to make several modifications to the scope. Jason Brandman of MBA is expected to be in attendance on Tuesday evening to answer any questions that you may have about the Proposal.

On extraordinary projects like the proposed Walmart project, the City typically has the developer deposit funds into a trust account for the purpose of paying for the expenses associated with processing the development entitlements, including EIRs. In the case of Walmart, an initial deposit was made several years ago which the City used to pay Urban Futures, City Attorney bills, and City Engineer bills. City Staff time to date on the project has not been reimbursed by Walmart. Since project inception, Walmart has paid the City a total of \$529,587.35 for City expenses, with the last reimbursement payment date of December 13, 2010.

Walmart and the City Staff are in agreement that the prior work, while helpful in understanding the impacts, has become too outdated to rely on, and further agree that retaining an experienced, qualified EIR consultant familiar with Walmart projects and the recent California laws and regulations that complicate the preparation of EIRs to essentially start over is the best course of action at this time.

To provide a source of funds for future City expenses, City Staff requested that Walmart enter into an Agreement for paying the processing costs associated with the Walmart Development. Assistant City Attorney David Wolfe has negotiated an agreement with the Walmart legal team that not only ensures the City will be reimbursed for direct costs, such as MBA, City Engineer, and City Attorney for time spent directly working on the Walmart project, but also for up to \$50,000 in actual City Staff time spent on processing the EIR through Council action on the Project.

The Agreement calls for a deposit in the amount \$50,000 prior to beginning the processing of the application. The proposed agreement is included as Attachment C. Separate and apart from this agreement, the City will also bill Walmart for costs associated with processing this development (not including staff time) that have been incurred since the last reimbursement payment was made.

On your Agenda Tuesday evening are two items. Item A is the approval of the Agreement for processing the development application. Item B awards the preparation of the EIR to MBA, under the proposed scope of work and budget.

Your City Staff, City Engineer, and City Attorney's Office, together with Michael Brandman Associates are prepared to complete the processing of the Walmart project EIR.

Budget Impact:

Item A - The Agreement for Payment of Processing costs ensures that all of the costs associated with processing the Walmart EIR will be paid by Walmart, including expenses associated with MBA's preparation of the EIR, direct expenses incurred in the processing of the EIR by the City Attorney's Office and the City Engineer, as well as City Staff time spent working on the Walmart project from the date of agreement forward, up to a total of \$50,000.

Item B – The Proposal by MBA to produce an EIR for the Lemoore Walmart Project has a budget of \$328,230. While the proposal is between the City and MBA, Walmart will be required to reimburse the City the actual amounts billed by the consultant, per Item A.

Recommendation:

That the City Council, by motion:

A – Authorize the City Manager to Execute the Agreement for Payment of Processing Costs between the City of Lemoore and Walmart Stores, Inc.

B – Authorize the City Manager, subject to Walmart Stores, Inc. execution of the Agreement for Payment of Processing Costs, to enter into agreement with Michael Brandman Associates to conduct the services outlined in their proposal to Prepare an Environmental Impact Report for the Lemoore Walmart Project in the amount of \$328,230.