

AGENDA ITEM # _____

DATE: June 24, 2013

COAC NUMBER: 13-5058

**CITY OF GOODYEAR
CITY COUNCIL ACTION FORM**

SUBJECT: Adopt Resolution 13-1555
Approving Amended & Restated
Development Agreement for Amber
Meadows

STAFF PRESENTER: Robert Beckley,
Deputy City Manager
COMPANY:
CONTACT:

RECOMMENDATION:

Council adopt Resolution 13-1555 approving and authorizing and directing execution of an Amended and Restated Development Agreement regarding the development of a 108.5 acre parcel generally located at the Northeast corner of Perryville Road and West Harrison Street within the City of Goodyear (Amber Meadows); providing authorization and direction to take actions and execute documents necessary to carry out intent of Resolution and Agreement; and providing for an effective date.

PURPOSE:

The purpose of this item is to review and approve an Amended & Restated Development Agreement related to the development of Amber Meadows, which is to replace and supersede an existing development agreement that was entered pursuant to the terms of a Memorandum of Understanding between the City and owners of sixteen properties located within the West Goodyear Central Planning Area, including the former owner of Amber Meadows. This is one of the agreements that Council was told would be forthcoming during the update that was provided Council on May 13, 2013 regarding the development within the West Goodyear Central Planning Area.

BACKGROUND AND COMMUNITY BENEFIT:

In early 2005, owners of sixteen properties located in the West Goodyear Central Planning Area (the "West Goodyear Properties"), were looking to develop their properties, which at build-out were projected to result in the development of 6,099 new residential units. At the time, the West Goodyear Central Planning Area was not being served by City wastewater, water or fire/EMT facilities and there were no plans on the part of the City to provide the infrastructure needed to serve this area. Of concern to City staff was: the lack of wastewater treatment capacity; the lack of the regional lines needed to provide wastewater services; the lack of facilities to provide water service; the lack of lines needed to provide water service; and the lack of facilities to provide fire services to the area.

The West Goodyear Property Owners and the City developed a contractual framework that would allow for the construction of the municipal facilities needed for the City to provide water, wastewater and fire/EMT services to the West Goodyear Properties and that served for the basis for the City to support the annexation and/or rezoning of the West Goodyear Properties. This framework was set forth in a Memorandum of

Understanding (“MOU”), which the City Council adopted on May 23, 2005 pursuant to Resolution 2005-981.

Pursuant to the MOU, the then owner of Amber Meadows entered into a Pre-Annexation Development Agreement with the City under which the owner agreed to make a series of pre-paid financial contributions that would allow the City to expand its wastewater treatment plant to develop the wastewater treatment capacity needed to serve the West Goodyear Properties; to develop water facilities that would allow the City to provide wet water to the West Goodyear Properties; to construct, equip, and operate a fire/EMT station that would serve the West Goodyear Properties; and to administer the Cost Recovery Resolutions of Intentions that were to be adopted. The pre-paid financial contributions were to be paid prior to recordation of the first final plat for the subdivision, and were to be credited toward applicable development impact fees as building permits were pulled. In addition, owner agreed complete the water and wastewater master studies that identified the regional water and wastewater lines needed to serve the area, and to prepare the information needed for the adoption of Cost Recovery Resolution to provide a reimbursement mechanism for the developers that constructed regional water and/or wastewater lines identified in the master utility studies. Owner also agreed to construct all of the regional water and wastewater lines identified in the master utility studies as being needed to serve Amber Meadows.

In exchange for the foregoing, the City agreed to undertake a 2.0 MGD expansion of the wastewater treatment plant; to construct the water facilities (wells, storage, etc.) needed to provide water service to the West Goodyear Properties; construct and equip the fire/EMT stations needed to serve the West Goodyear Central Planning Area; to grant a .85 dwelling unit per acre density bonus above the base General Plan designation for each of the West Goodyear Properties, to process and administer any Cost Recovery Resolutions adopted; to provide water, wastewater and fire/EMT services to the West Goodyear; and to follow certain procedures when processing development applications for the West Goodyear Properties.

The former owner of Amber Meadows obtained final plat approval subdividing the property into 293 single family residential lots, an number of tracts and one parcel for a future school site. Because of the downturn in the economy, none of the final plats for the Property have been recorded and none of the financial contributions contemplated in the Pre-Annexation Development Agreement have been made.

Following the virtual collapse of the residential real estate market, residential development ground to a halt. The City has been experiencing a gradual upturn in the real estate market, and certain of the West Goodyear Property Owners have been receiving expression of interest from homebuilders interested in developing in West Goodyear. The upturn, however, is not of the magnitude that would allow the West Goodyear Property Owners to move forward with development subject to the approximate \$40,000,000 in prepaid financial contributions identified in the various agreements between the City and the West Goodyear Property Owners. Accordingly, earlier this year, representatives of certain of the West Goodyear Property Owners, including the current owner of Amber Meadows, Pacific Capital Meadows, LLC, approached the City about entering into new agreements that relieved them of the pre-

paid financial contribution obligations and instead allowed them to pay development impact fees at the time building permits were issued.

The reason the City required the pre-paid financial contributions in the first place was the City's lack of water, sewer and public safety infrastructure needed to serve the area. Based on anticipated absorption schedules, staff is confident that the City's existing or planned water and wastewater facilities is sufficient to serve the West Goodyear Properties that currently have final plat approval and that want to record their plats without having to make the pre-paid financial contributions. Staff further concluded that Fire and EMT services can be provided to the West Goodyear Properties from an existing station until such time as the station(s) intended to serve this area are constructed.

Having concluded the City has the ability to serve the West Goodyear Properties that have approved final plats, staff developed a framework for Amended and Restated Development Agreements that would replace the existing West Goodyear development agreements. The proposed terms for the Amended and Restated Development Agreements were presented to Council during the May 13, 2013 update. The terms of the Amended and Restated Development Agreement with Pacific Capital Meadows, LLC regarding the development of Amber Meadows are consistent with what was presented during the May 13, 2013 update. In addition, to resolve potential inconsistencies created during the platting process, the agreement includes certain obligations regarding infrastructure. A summary of the major terms of the Amended & Restated Development Agreement are set forth below:

- The Amber Meadows final Plat approved on September 25, 2006 must be recorded by May 31, 2014 the date specifically identified in the agreement or the plat and the preliminary plat that was previously approved will automatically expire without further action on the part of the City.
- Construction of all public infrastructure and the improvements for open space areas, trails and other community amenities is to commence within 180 days of the date the final plat is recorded and construction is to be completed within a commercially reasonable timeframe.
- Owner is responsible for constructing all regional water and sewer lines identified in the Master Utility Studies as being needed to serve the Property or identified in any adopted Cost Recovery Resolution of Intention as benefitting the Property and construction of these improvements shall commence within 180 days of the date the first final plat is recorded.
- Owner is responsible for acquiring and dedicating to the City, lien free and at no cost, all easements and/or rights of way needed for the construction of regional water delivery mains, the regional wastewater trunk lines, and/or regional reclaimed water lines reflected in the Master Utility Studies and for dedicating easements and rights of ways needed for the construction of any of the regional water, wastewater and/or reclaimed water lines identified in the master utility studies.
- Development of the Property is governed by the Development Regulations in effect as of the effective date of the Amended & Restated Development Agreement or in effect when a specific development application, whichever is later.

- Prior to recordation of the first final plat, Owner is to remit the payment owed under the Cost Recovery Resolutions of Intention for regional infrastructure improvements that have been constructed as of the date of recordation. Owner's current obligation is \$702,119.00.
- Owner is required to extinguish and convey to the City any irrigation grandfathered water rights attached to the Property.
- Infrastructure Obligations Unique to Amber Meadows
 - Prior to recording the first final plat for the Property, Owner is to form a homeowner's association for the Property and record restrictive covenants that include restrictive covenants specifically itemized in the agreement.
- Owner is relieved of making any pre-paid financial contributions identified in the Pre-Annexation Development Agreement except for any pre-paid contributions made prior to the effective date of the Amended & Restated Development Agreement.
- The agreement specifically provides that the City is not committing to any future legislative or administrative approvals related to the development of the West Goodyear Properties. This specifically includes the right to deny future applications for final plats.
- The City agrees it will not undertake any effort to revoke the residential density bonus of 0.85 dwelling units per acre over and above the base density of the General Plan Land Use Designation for the Property.
- The agreement provides a reimbursement mechanism for the construction of the regional water and wastewater lines and for the payment of an obligation under a Cost Recovery Resolution of Intention. The reimbursement mechanism for the construction of the regional lines includes cost recovery and development impact fee credits. The reimbursement mechanism for the payment of an obligation under a Cost Recovery Resolution of Intention is impact fee credits. The impact fee credits are limited to the portion of the impact fees attributable to line costs.
 - Owner is to provide information needed to adopt Cost Recovery Resolutions of Intention to provide cost recovery for the construction of regional water and wastewater lines reflected in the updated Master Utility Studies.
 - As a condition of tying into the City's utility systems, Owner is required to pay a percentage of the costs of the improvements included in an adopted Cost Recovery Resolution based on the proportional benefit their respective properties received from such improvements as reflected in the adopted Cost Recovery Resolution.
 - Reimbursements are subject to an administration charge of one half of one percent (.50%)
- The agreement includes provisions that allow for recordation of a final plat in the event the property ownership and/or lienholders/mortgagees have changed since the approval of the final plat:
 - New Property owner must execute a Ratification of and Consent to Approved Final Plat and Waiver of Claims
 - The approved final plat can be amended without further Council approval as needed to reflect new ownership and/or lienholders/mortgagees.
- City agrees to try and collect from other West Goodyear property owners whose properties benefit from the updated Master Utility Studies prepared on behalf of

certain of the West Goodyear property owners a proportionate share of the costs of the studies.

Relieving the owner from the pre-paid financial contribution obligations will allow development of Amber Meadows to move forward, something that will not happen in the absence of such relief. In addition, it will result in the construction of regional water, wastewater and/or reclaimed water lines that will support development of the Property but of other properties within the West Goodyear Central Planning Area.

FISCAL ANALYSIS:

The Finance Director has looked at the funding sources for the facilities that would need to be constructed (i.e. impact fees) and has concluded, based on the information that staff provided, that the funding needed for the construction of the water and wastewater facilities needed to serve the West Goodyear Properties with final plat approval will be available.

Attachments:

Resolution 13-1555 w/

- Exhibit A – Legal Description
- Exhibit B – Amended and Restated Development Agreement w/Exhibits A-D