

When recorded, return to:

City Clerk  
City of Goodyear  
190 North Litchfield Road  
Goodyear, Arizona 85338

#### **FOURTH AMENDMENT TO NORTHERN SOLUTION WATER FACILITIES AGREEMENT**

THIS FOURTH AMENDMENT TO NORTHERN SOLUTION WATER FACILITIES AGREEMENT (this “Fourth Amendment”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between the CITY OF GOODYEAR, an Arizona municipal corporation (the “City”), and NNP III – ESTRELLA MOUNTAIN RANCH, LLC, a Delaware limited liability company, NNP III-EMR 3, LLC, a Delaware limited liability company, and NNP III – EMR 4, LLC, a Delaware limited liability company (collectively “NNP”).

#### **RECITALS**

A. NNP and the City entered into that certain Northern Solution Water Facilities Agreement dated as of March 2, 2012 recorded, in the official records of Maricopa County as instrument 2012 0179581 (“Northern Solution Agreement”), as amended by the First Amendment to Northern Solution Water Facilities Agreement dated as of November 4, 2013 (the “First Amendment”), recorded in the official records of Maricopa County, Arizona as instrument 2013-0980086, and as amended by the Second Amendment to Northern Solution Water Facilities Agreement dated as of July 14, 2014 (the “Second Amendment”) recorded in the official records of Maricopa County as instrument 2014 0479287 as amended by the Third Amendment to Northern Solution Water Facilities Agreement dated December 15, 2014 (the “Third Amendment”), recorded in the official records of Maricopa County, Arizona as instrument 20140831424 relating to the construction of and payment for various water facilities and the allocation of potable water for development at NNP’s Project at the master-planned community known as Estrella.

B. Capitalized terms defined in the Northern Solution Agreement shall have the same meaning as capitalized terms in this Fourth Amendment, except as expressly provided otherwise.

C. NNP has fully paid and the City has received the City Common Facilities Reimbursement of \$4,017,043.06 and NNP has fully paid and the City has received the payment of \$2,313,465.04, as provided in Paragraph 8.4.1 of the Northern Solution Agreement.

D. The designs have been completed, improvement plans have been approved, all required easements have been granted to the City for all of the NNP Common Facilities (except for the NNP Well 2 Facilities), permits have been issued for construction of all of the NNP Common Facilities (except the NNP Well 2 Facilities), NNP has entered into construction

contracts for the completion of the NNP Common Facilities (except for the NNP Well 2 Facilities) and NNP has provided the City financial security, in a form acceptable to the City Engineer, insuring completion of such facilities.

E. Under the terms of the Northern Solution Agreement, the NNP Common Facilities (except the NNP Well 2 Facilities) were to be substantially completed within the later of eighteen months after the date the Northern Solution Agreement became effective or twelve months after the date the City issued the permits for the NNP Common Facilities (except the NNP Well 2 Facilities).

F. Because the NNP Common Facilities would not be substantially completed within the later of eighteen months after the date the Northern Solution Agreement became effective or twelve months after the date the City issued the permits for the NNP Common Facilities, the Parties entered into the First Amendment to extend the deadlines for completion of the NNP Common Facilities (except the NNP Well 2 Facilities).

G. The First Amendment extended the deadline for substantially completing the NNP Common Facilities (except the NNP Well 2 Facilities) until the later of June 30, 2014 or twelve months after the date the City issues the last permit for the NNP Common Facilities (except the NNP Well 2 Facilities).

H. The NNP Common Facilities were not substantially completed within the time frames set forth in the First Amendment and the Parties entered into the Second Amendment extending the deadline for substantially completing the NNP Common Facilities (except the NNP Well 2 Facilities) until November 30, 2014.

I. The NNP Common Facilities were not substantially completed within the time frames set forth in the Second Amendment and the Parties entered into the Third Amendment extending the deadline for substantially completing the NNP Common Facilities (except the NNP Well 2 Facilities) until September 30, 2015.

J. Since the Parties entered the Third Amendment, all components of the system have been completed, but when the system was put on line, it failed to operate without malfunction while on full automatic mode; the City has issued a preliminary punch-list for the system and NNP continues to address items on the preliminary punch-list.

K. NNP and the City have recently completed testing in an effort to identify the cause of the malfunction described above; this effort has included identification of certain equipment that needs to be replaced and/or modified and NNP has requested approval from the City to make the modifications believed to be necessary to correct the malfunction.

L. Sufficient potable water and the infrastructure needed to convey such water is available to serve the portions of the Project that are to be served by the City Common Facilities and the NNP Common Facilities (except the NNP Well 2 Facilities), based upon the pace of construction and the number of building permits that have been issued at the Project, for homes

that are anticipated to be built at the Project pending completion of the NNP Common Facilities (except for the NNP Well 2 Facilities).

M. The Parties have determined that it is beneficial to both Parties to encourage sales of subdivided lots and construction at Estrella pending the completion of the NNP Common Facilities and to provide certain assurances with respect to certain provisions of the Northern Solution Agreement.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual obligations contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, NNP and the City agree as follows:

1. Incorporation of Recitals. The Recitals stated above are true and correct and are incorporated herein by this reference.

2. Time for Completion. Paragraph 6.10 of the Northern Solution Agreement as amended by the First Amendment, the Second Amendment and the Third Amendment is amended to read in its entirety as follows:

The construction of the NNP Common Facilities (except the NNP Well 2 Facilities) shall be substantially completed by June 30, 2016. The NNP Common Facilities shall be considered substantially completed if all of the field work on the NNP Common Facilities in relation to the construction of the NNP Common Facilities, including the construction field work required pursuant to any punch lists, has been completed and the NNP Common Facilities are of beneficial use to the City in that the NNP Common Facilities are fully operational and work as designed, which is to be established by the improvements running in full automatic mode for a period of thirty calendar days without any malfunctions that prevent the system from working in full automatic mode. Full automatic mode exists when all of the system's automated components are interfaced and working together as part of the City's integrated water distribution system. During such thirty calendar day period, the City and NNP agree to cooperate and work together to assure that, if the City makes any modifications to the NNP Facilities, the City shall first notify NNP to assure that any such modifications do not adversely impact the operation of the system in automatic mode. Also, during such thirty day calendar period, normal minor adjustments to the NNP Common Facilities may occur that result in minor outages of the system's automatic mode but such minor outages will not be considered a failure of the system operating for the thirty day period without malfunction. In addition, any failure in the City's existing communication system that causes an outage in the system's automatic mode will not be considered a failure of the system to operate in full automatic mode for the thirty day calendar period.

3. Approved Plats and Site Plans; Building Permits. Notwithstanding the terms of the Northern Solution Agreement, the First Amendment, the Second Amendment, this Third Amendment or any stipulations that were included in final plats or site plans that were approved

prior to November 30, 2014, the City will not (a) terminate any final plats or site plans for any of the Project that were approved or recorded prior to November 30, 2014 or (b) withhold any permits for construction (including any vertical, i.e., ground up construction) in such approved plats, on the basis of the conditions set forth in the Northern Solution Agreement.

4. Future Plats and Site Plans. Except as expressly provided in this Fourth Amendment, the City will process final plats and site plans for properties within the Project before the NNP Common Facilities (except the NNP Well 2 Facilities) have been completed subject to the following:

4.1 NNP agrees that the approval of any final plats and site plans prior to the completion of the NNP Common Facilities (except the NNP Well 2 Facilities) shall be a conditional approval and subject to the following provisions of this paragraph. NNP shall be allowed to record such approved final plats but NNP agrees that no building permits for vertical construction (i.e. ground up construction) shall be issued until NNP has substantially completed the construction of the NNP Common Facilities (except for the NNP Well 2 Facilities). The approval of site plans shall also be conditional and NNP agrees that no building permits for vertical construction (i.e. ground up construction) within the area of such site plans shall be permitted until NNP has completed construction of the NNP Common Facilities (except the NNP Well 2 Facilities). Notwithstanding the foregoing, the Director of Engineering or designee, at his/her sole discretion, shall, be entitled to waive the prohibition against the issuance of permits for vertical construction prior to the substantial completion of the NNP Common Facilities (except for the NNP Well 2 Facilities) to allow for the construction of: (i) model homes; (ii) the resident club known as the Presidio, which is located in the section of Estrella known as Montecito; (iii) limited commercial buildings; and/or (iv) up to 140 production homes if the Director of Engineering or designee is satisfied with the progress towards the completion of the NNP Common Facilities. Stipulations consistent with the terms and conditions set forth in this Paragraph 4.1 shall be included on all plats that are recorded before the NNP Common Facilities (except for the NNP Well 2 Facilities) have been completed. The City agrees that it will not terminate final plats that have been approved hereunder, even if the NNP Common Facilities have not been completed with the timeframes set forth herein.

4.2 Once the EDUs from the water supply generated by the City Common Facilities have been allocated to serve final plats and site plans for properties within the Project and/or to account for actual water use by Disproportionate Water Users, the City shall not be required to process additional final plats and/or site plans until NNP develops additional water resources to serve additional development.

5. Remedies. If the NNP Common Facilities (except the NNP Well 2 Facilities) are not completed within the timeframe set forth in the Northern Solution Agreement as amended, the City shall have, in addition to any other remedies available to the Parties under the Northern Solution Agreement as amended and/or as provided by law or equity, the right in its sole discretion to withhold final approval of plats or site plans for properties that will be served by the NNP Common Facilities (except the NNP Well 2 Facilities) In addition, the City shall continue

to have its rights and remedies in connection with the bonds posted in connection with the construction of the NNP Common Facilities (except the NNP Well 2 Facilities).

6. Indemnity. NNP will indemnify and defend the City for and from any damage, loss, expense, and/or judgment arising from any claims by Salt River Project (SRP) related to any of the potable water pipelines that are in the NNP Common Facilities that cross the easement referred to in the Grant of Easement for Electric Power Transmission Line Right-of-Way, BLM No. A-10350. This provision shall survive the expiration or the early termination of the Northern Solution Agreement.

7. NP Well 2 Facilities. Nothing in this Fourth Amendment is intended to amend, modify or otherwise affect the provisions in the Northern Solution Agreement with respect to the City Well 2 Common Facilities, including, but not limited to the provisions of paragraphs 8.4 and 8.5.

8. Ratification as Amended. In the event of any inconsistencies between this Fourth Amendment, the Northern Solution Agreement, the First Amendment, the Second Amendment, and/or the Third Amendment, the terms of this Fourth Amendment shall govern. Except as provided for herein, all other terms and conditions of the Northern Solution Agreement, as amended, shall remain unchanged and the parties hereto reaffirm the terms and conditions of the Northern Solution Agreement, as amended. This Fourth Amendment may only be varied by a document, in writing, of even or subsequent date hereof, executed by the parties hereto.

9. Representations and Warranties of Owner. As of the date of the execution of this Fourth Amendment, NNP represents and warrants the following:

9.1 Ownership. NNP collectively is the owner of the Project and each entity comprising NNP has the full right and authority to submit its interest in the Project to the obligations hereunder.

9.2 NP III – Estrella Mountain Ranch, LLC Authorization. NP III – Estrella Mountain Ranch, LLC is a Delaware limited liability company authorized to do business in Arizona and NP III – Estrella Mountain Ranch LLC (including the person signing for NP III – Estrella Mountain Ranch, LLC) has the authority and right to enter into this Fourth Amendment as authorized by the sole member of NP III – Estrella Mountain Ranch LLC and NP III – Estrella Mountain Ranch LLC is not prohibited from executing this Fourth Amendment by any law, rule, regulation, instrument, agreement, order of judgment.

9.3 NP III – EMR 3, LLC Authorization. NP III – EMR 3, LLC is a Delaware limited liability company authorized to do business in Arizona and NP III – EMR 3, LLC (including the person signing for NP III – EMR 3, LLC) has the authority and right to enter into this Fourth Amendment as authorized by the sole member of NP III – EMR 3, LLC and NP III – EMR 3, LLC is not prohibited from executing this Fourth Amendment by any law, rule, regulation, instrument, agreement, order of judgment.

9.4 NNP III – EMR 4, LLC Authorization. NNP III – EMR 4, LLC is a Delaware limited liability company authorized to do business in Arizona and NNP III – EMR 4, LLC (including the person signing for NNP III – EMR 4, LLC) has the authority and right to enter into this Fourth Amendment as authorized by the sole member of NNP III – EMR 4, LLC and NNP III – EMR 4, LLC is not prohibited from executing this Fourth Amendment by any law, rule, regulation, instrument, agreement, order of judgment.

9.5 Due Diligence. NNP has reviewed this Fourth Amendment and reached its own conclusions as to the binding and enforceable nature thereof and all of the provisions contained therein, and has not relied on any representations or warranties of the City other than those expressly provided in this Fourth Amendment.

10. Representations and Warranties of City. As of the date of the execution of this Fourth Amendment, the City represents and warrants the following:

10.1 Approval. The City has approved this Fourth Amendment at a duly held and noticed public meeting by its Mayor and City Council, at which a quorum was duly present, and has authorized the execution hereof.

10.2 Authorization. The City's execution of this Fourth Amendment and the performance of its obligations hereunder do not violate the terms of its charter or any City ordinance and all hearings, ordinances, and approvals required for the execution and delivery of this Fourth Amendment and all hearing requirements under applicable laws, if any, have been fully complied with, and the person(s) executing this Fourth Amendment on behalf of the City have been duly authorized to do so.

11. Fair Interpretation. The terms and provisions of this Fourth Amendment represent the result of negotiations between the Parties, each of which has been represented by counsel of their own choosing, and none of whom has acted under any duress or compulsion, whether economic or otherwise. Consequently, the Parties agree the terms and provisions of this Fourth Amendment shall be construed according to their usual and customary meanings, and the Parties each hereby waive the application of any rule of law (common law or otherwise) that ambiguous or conflicting terms be resolved against the Party who prepared or whose attorney prepared the executed Fourth Amendment or any earlier draft of same.

12. Counterparts. This Fourth Amendment may be executed in two or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one agreement, binding on the Parties.

13. Effective Date. This Fourth Amendment shall become effective the date the Resolution approving this Fourth Amendment is effective.

*Signatures and Acknowledgements Continued on Following Pages*

IN WITNESS WHEREOF, the Parties have executed this Fourth Amendment as of the date first above written.

**City:**

**CITY OF GOODYEAR**, an Arizona  
municipal corporation

**NNP:**

**NNP III – ESTRELLA MOUNTAIN  
RANCH, LLC**, a Delaware limited  
liability company

By: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**NNP III – EMR 3, LLC**, a Delaware  
limited liability company

By: \_\_\_\_\_

Its: \_\_\_\_\_

**NNP III – EMR 4, LLC**, a Delaware  
limited liability company

By: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST:

Approved as to Form

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Attorney

*Acknowledgements Continued on Following Pages*

STATE OF ARIZONA       )  
  ) ss.  
COUNTY OF MARICOPA   )

The foregoing document entitled Fourth Amendment to Northern Solution Water Facilities Agreement (pages 1 through 9) was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by \_\_\_\_\_, the \_\_\_\_\_ of NNP III – Estrella Mountain Ranch, LLC, a Delaware limited liability company, on behalf of said company.

\_\_\_\_\_  
Notary Public

My Commission Expires:

STATE OF ARIZONA       )  
  ) ss.  
COUNTY OF MARICOPA   )

The foregoing document entitled Fourth Amendment to Northern Solution Water Facilities Agreement (pages 1 through 9) was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by \_\_\_\_\_, the \_\_\_\_\_ of NNP III – EMR 3, LLC, a Delaware limited liability company, on behalf of said company.

\_\_\_\_\_  
Notary Public

My Commission Expires:

STATE OF ARIZONA       )  
  ) ss.  
COUNTY OF MARICOPA   )

The foregoing document entitled Fourth Amendment to Northern Solution Water Facilities Agreement (pages 1 through 9) was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by \_\_\_\_\_, the \_\_\_\_\_ of NNP III – EMR 4, LLC, a Delaware limited liability company, on behalf of said company.

\_\_\_\_\_  
Notary Public

My Commission Expires:

*Acknowledgements Continued on Following Pages*



STATE OF ARIZONA       )  
  ) ss.  
COUNTY OF MARICOPA   )

The foregoing document entitled Fourth Amendment to Northern Solution Water Facilities Agreement (pages 1 through 9) was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by Brian Dalke, the City Manager of the City of Goodyear, an Arizona municipal corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires: