

AGENDA ITEM # _____

DATE: September 28, 2015

COAC NUMBER: 15-5672

**CITY OF GOODYEAR
CITY COUNCIL ACTION FORM**

SUBJECT: Resolution No. 15-1723 approving and authorizing City Manager to Execute Fourth Amendment to Northern Solution Water Facilities Agreement relating to the development of water resources and infrastructure to provide water service to Estrella; providing authority; and providing for an effective date.

STAFF PRESENTER: Rebecca Zook

COMPANY CONTACT: Pete Teiche

RECOMMENDATION:

ADOPT RESOLUTION NO. 15-1723 APPROVING AND AUTHORIZING CITY MANAGER TO EXECUTE THE FOURTH AMENDMENT TO NORTHERN SOLUTION WATER FACILITIES AGREEMENT RELATING TO THE DEVELOPMENT OF WATER RESOURCES AND INFRASTRUCTURE TO PROVIDE WATER SERVICE TO ESTRELLA; AUTHORIZING CITY MANAGER TO TAKE ALL ACTIONS AND EXECUTE ALL DOCUMENTS NECESSARY TO CARRY OUT INTENT OF RESOLUTION AND TERMS OF THE AMENDMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

PURPOSE:

Under the terms of the Master Development Agreement for Estrella, the developer is required to design and construct water facilities needed to serve Estrella. Pursuant to this obligation, various entities with ownership interests in Estrella ("NNP Entities") entered in to the Northern Solution Water Facilities Agreement ("Northern Solution Agreement") that provided for the development of additional potable water resources needed to serve new development. The proposed amendment extends the deadline for the completion of certain improvements that are in the process of being constructed. The proposed amendment will encourage development in Estrella while providing adequate protections that the City's ability to serve new development will not be impaired and that the improvements will be completed.

BACKGROUND AND COMMUNITY BENEFIT:

This Fourth Amendment to Northern Solution Water Facilities Agreement ("Third Amendment") will allow additional commercial and residential development in Estrella to occur while the improvements contemplated by the Northern Solution Agreement are being constructed.

Pursuant to a Master Development Agreement governing the development of Estrella, formerly known as Estrella Mountain Ranch, the developer is required to design and construct water facilities as needed to serve Estrella. On February 27, 2012, the City Council approved the Northern Solution Water Facilities Agreement between the City and NNP III – Estrella Mountain Ranch LLC, NNP III-EMR 3, LLC, NNP III-EMR 4 LLC (collectively “NNP Entities”) that provided for the development of infrastructure and water resources needed to serve new development within Estrella.

Under the terms of the Northern Solution Agreement, the NNP entities were to pay for costs incurred by the City in developing a well under the Adaman Bulk Water Agreement (“Well 1”) and were to design and construct various infrastructure improvements needed for the transmission, delivery, and distribution of the water from this well to development within Estrella. These improvements were referred to in the Northern Solution Agreement as the NNP Common Facilities (except for the NNP Well 2 Facilities), but are referred to herein as the “Well 1 Facilities”).

For a variety of reasons, there were substantial delays in finalizing the design of the infrastructure improvements, and the contracts for the construction of the approved infrastructure improvements were not entered within the time frame specified in the development agreement. Because of the delays in finalizing the design of the infrastructure improvements, the Well 1 Facilities were not going to be completed within the time frames specified in the agreement and the Parties entered into the First Amendment to Northern Solution Water Facilities Agreement recorded in the official records of Maricopa County as instrument 2013 0980086 (“First Amendment”) to extend the deadlines for substantially completing the Well 1 Facilities until the later of June 30, 2014 or twelve months after the date the City issues the last permit for the Well 1 Facilities.

Because of a dispute between NNP and its contractor over work that had been performed on the Well 1 Facilities, the Well 1 Facilities were not going to be substantially completed within the time frames set forth in the First Amendment and the Parties entered into the Second Amendment to Northern Solution Water Facilities Agreement dated as of July 14, 2014 recorded in the official records of Maricopa County as instrument 2014 0479287 (the “Second Amendment”) to extend the deadlines for substantially completing the Well 1 Facilities until November 30, 2014.

Because of the sequencing required for the completion of the Well 1 Facilities, NNP was unable to move forward with any of the other components of the Well 1 Facilities until the work in dispute had been corrected. The dispute between NNP and its contractor was not resolved until around the time of the deadline established in the Second Amendment, November 30, 2014. Accordingly the City and NNP entered into a Third Amendment extending the deadline for substantial completion until September 30, 2015.

Following the execution of the Third Amendment, NNP, through its contractors, completed, with the exception of various punch list items, the installation and construction of the various components of the system, and testing of the system improvements has been initiated. The system failed the initial testing because it is incapable of operating in a fully automatic mode and thus the Well 1 Facilities are not going to be substantially completed within the time frames set forth in the Third Amendment and the deadlines for substantial completion need to be extended.

Although the Well 1 Facilities are capable of being operated on a manual mode, they were designed to operate in a fully automatic mode, as part of an integrated system. NNP and City staff have been working together to identify the source of the problem. This will require additional testing. Once the source of the problem is discovered, the engineering firm that engineered the system will need to evaluate the testing results and revise the design as needed. Because of the timing of the discovery of the problem, neither NNP staff nor City staff can say, with any certainty, when the Well 1 Facilities will be capable of running in a fully automatic mode. NNP and City staff are recommending that the deadline for the substantial completion of the Well 1 Facilities be extended until June 30, 2016. This deadline contemplates the “worst case scenario” in terms of changes required in the Well 1 Facilities – the replacement of existing pumps, which, if necessary, will involve long lead times for the acquisition of the pumps.

Based on the pace of construction, sufficient potable water and the means, albeit by manual operation, to serve the portions of the Project that are to be served by the Well 1 Facilities exists pending the completion of the Well 1 Facilities. Although the City has an interest in ensuring the completion of the Well 1 Facilities, the City also has an interest in seeing new development occur in Estrella when the City has the ability to serve the property, albeit in a manual mode. The Fourth Amendment to Northern Solution Water Facilities Agreement (“Fourth Amendment”) satisfies both interests. Under the terms of the Fourth Amendment:

- The deadline for the substantial completion of the Well 1 Facilities is extended to June 30, 2016, and a detailed description of substantial completion is included.
- The Fourth Amendment includes a provision that the City will not withhold building permits or terminate final plats and/or site plans approved prior to November 30, 2014 based on failure to complete the infrastructure improvements within the time frame contemplated by the Northern Solution Agreement as amended.
- The Fourth Amendment also includes a provision that will make all future approvals of final plats and/or site plans conditional subject to the completion of the Well 1 Facilities and provides that no building permits for vertical construction (buildings) will be issued until the Well 1 Facilities are substantially completed, except, if the Director of Engineering is satisfied with the progress being made towards the completion of the improvements, the Director of Engineering has the discretion, prior to the substantial completion of the Well 1 Facilities, to allow building permits for the following:
 - Model Homes
 - Commercial Development
 - The Club House at
 - Up to 140 Production Homes
- The Fourth Amendment expressly allows the City, in addition to pursuing any other remedies it may have, to withhold approvals of future final plats if the infrastructure improvements are not completed within the time frame provided in the Fourth Amendment.

- Finally, the Fourth Amendment, like the Third Amendment, includes a provision under which NNP is to indemnify the City for claims by the Salt River Project against the City related to any of the water lines being constructed pursuant to the Northern Solution Water Facilities Agreement that will cross SRP's easements. This was one of the issues that arose in connection with the design of the infrastructure improvements, and which resulted in the approval of the design being delayed.

PREVIOUS ACTIONS AND DISCUSSION:

On February 27, 2012 the City Council approved Resolution No. 12-1479 authorizing the City Manager to execute the Northern Solution Water Facilities Agreement between the City and NNP III – Estrella Mountain Ranch LLC, NNP III-EMR 3, LLC, NNP III-EMR 4 LLC. On November 4, 2013 the City Council approved Resolution No. 13-1583 authorizing the City Manager to amend the Northern Solution Water Facilities Agreement. On July 14, 2014 the City Council approved Resolution No. 14-1655 authorizing the City Manager to make a second amendment to the Northern Solution Water Facilities Agreement. On December 15, 2014, the City Council approved Resolution No. 14-1691 authorizing the City Manager to execute the Third Amendment to the Northern Solution Water Facilities Agreement.

FISCAL IMPACT:

This Fourth Amendment does not include a direct monetary obligation on the part of the City.

ATTACHMENTS:

1. Resolution No. 15-1723
 - Exhibit 1 – Fourth Amendment to Northern Solution Water Facilities Agreement