

RESOLUTION NO. 15-1723

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, 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.

WHEREAS, on February 27, 2012, NNP III – Estrella Mountain Ranch, LLC, NNP III-EMR 3, LLC, and NNP III – EMR 4, LLC (collectively “NNP”) and the City of Goodyear 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”) that provided for the development of infrastructure and water resources needed to serve potable water to new development within Estrella; and

WHEREAS, under the terms of the Northern Solution Agreement, NNP was required, among other things, to pay for costs incurred by the City developing a well under the Adaman Bulk Water Agreement (“Well 1”) and to design and construct infrastructure improvements needed for the transmission, delivery, and distribution of the water from this well to development within Estrella (referred to herein as the “Well 1 Facilities” but referred to in the Northern Solution Agreement as the “NNP Common Facilities (except for NNP Well 2 Facilities)"); and

WHEREAS, the Northern Solution Agreement included deadlines for NNP to enter into contracts for the substantial completion of the Well 1 Facilities; and

WHEREAS, the City has been fully paid for the costs of Well 1, the design of the infrastructure improvements needed for the transmission, delivery, and distribution of water from Well 1 has been approved, contracts have been entered for the construction of the improvements, the City has been provided financial sureties in an amount sufficient to ensure the completion of the improvements if the NNP Entities fail to complete the improvements, and construction has commenced on the Well 1 Facilities; and

WHEREAS, for a variety of reasons, the Well 1 Facilities were not substantially completed within the contractual deadline and NNP and the City have entered into three amendments extending the completion deadlines; and

WHEREAS, under the most recent amendment (the “Third Amendment to the Northern Solution Agreement”), the Well 1 Facilities are to be substantially completed by September 30, 2015,

WHEREAS, since the execution of the Third Amendment to the Northern Solution Agreement, 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; and

WHEREAS, 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 by September 30, 2015, the deadline set forth in the Third Amendment for the substantial completion of the Well 1 Facilities and the deadline for substantial completion needs to be extended; and

WHEREAS, 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; and

WHEREAS, the City continues to have an interest in seeing development occur within Estrella; and

WHEREAS, the financial sureties provided to the City ensuring the completion of the Well 1 Facilities, the ability of the City to withhold building permits for vertical construction, and the ability of the City to withhold approvals of future plats as provided in the proposed Fourth Amendment to Northern Solution Water Facilities Agreement adequately addresses the City's interest in ensuring the completion of the Well 1 Facilities.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Goodyear, Maricopa County, Arizona, as follows:

- Section 1.** The Mayor and Council of the City of Goodyear hereby approve the Fourth Amendment to Northern Solution Water Facilities Agreement between the City of Goodyear, an Arizona municipal corporation and NNP III – Estrella Mountain Ranch, LLC, NNP III-EMR 3, LLC, and NNP III – EMR 4, LLC, attached hereto as Exhibit 1 (the “Fourth Amendment”); and
- Section 2.** The City Manager is hereby authorized to execute the Fourth Amendment, attached hereto as Exhibit 1; and
- Section 3.** The Fourth Amendment is intended to be a development agreement pursuant to A.R.S. § 9-500.05.
- Section 4.** The City Manager or his designee is hereby authorized and directed to take any and all actions and to execute all documents necessary to carry out the intent of this Resolution and the terms of the Fourth Amendment.
- Section 5.** That this Resolution shall become effective as provided by law.

PASSED AND ADOPTED by the Mayor and Council of the City of Goodyear, Maricopa County, Arizona this ____ day of September 2015.

Georgia Lord, Mayor

ATTEST:

Maureen Scott, City Clerk

APPROVED AS TO FORM:

Roric Massey, City Attorney

CERTIFICATION OF RECORDING OFFICER

STATE OF ARIZONA)
) ss.
County of Maricopa)

I, the undersigned Maureen Scott, being the duly appointed, qualified and acting City Clerk of the City of Goodyear, Maricopa County, Arizona, certify that the foregoing Resolution No. 15-1723, is a true, correct and accurate copy of Resolution No. 15-1723, passed and adopted at a Regular Meeting of the Council of the City of Goodyear, Maricopa County, Arizona, held on the 28th day of September, 2015, at which a quorum was present and, by a _____ vote _____ members voted in favor of said Resolution.

Given under my hand and sealed this ____ day of September, 2015.

Maureen Scott, City Clerk

Seal

EXHIBIT 1

FOURTH AMENDMENT TO NORTHERN SOLUTION WATER FACILITIES AGREEMENT