

**CITY OF GOODYEAR
COUNCIL ACTION REPORT**

SUBJECT: Development Agreement for Lucero	STAFF PRESENTER: Steve Scinto, Plan Review Manager
	CASE NUMBER: None
	OTHER PRESENTER: None

PROPOSED ACTION:

ADOPT RESOLUTION NO. 2018-1855 APPROVING A DEVELOPMENT AGREEMENT REGARDING THE CONSTRUCTION OF CERTAIN INFRASTRUCTURE IMPROVEMENTS WITHIN LUCERO AND FUTURE MAINTENANCE RESPONSIBILITY FOR CERTAIN INFRASTRUCTURE; PROVIDING AUTHORIZATION AND DIRECTION TO TAKE ACTIONS AND EXECUTE DOCUMENTS NECESSARY TO CARRY OUT INTENT OF THE RESOLUTION AND DEVELOPMENT AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

BACKGROUND AND PREVIOUS ACTIONS:

On June 27, 2016, the Council adopted Ordinance No. 16-1333 conditionally rezoning the Property by adopting the Lucero Planned Area Development (PAD) dated March 18, 2016. Since then, Owner has been moving forward with platting the property. On March 27, 2017, Council approved 6 preliminary plats for 6 different parcels within Lucero (Parcels 11-A1, 11- A2, 11-B, 11-C, 11-F2, 11-G) consisting of a total of approximately 150 acres.

STAFF ANALYSIS:

NNP III – EMR 3 LLC, a Delaware limited liability company (“NNP III – EMR 3”) and NNP III – EMR 4 LLC, a Delaware limited liability company (“NNP III – EMR 4”) are the master developers of approximately 617 acre within Estrella (the “Property”), commonly known as the Lucero Planned Area Development (“Lucero”). NNP III-EMR 3 owns approximately 565 acres with Lucero and NNP III – EMR 4 owns the remainder of approximately 52 acres. The Property, is generally located on the west side of Estrella Parkway, south of the Estrella Star Tower to the intersection of Estrella Parkway and Cotton Lane.

The proposed development agreement addresses four major development related issues. The following is a summary of the issues and how they are addressed in the agreement.

Pursuant to the applicable Development Regulations, Owner is responsible for constructing and maintaining infrastructure improvements necessary to dispose of storm water from the Property and adjacent roadways (“Storm Water Improvements”). The Owner in this case is the developer, and the Owner intends to convey the storm water improvements to The Villages at Estrella Mountain Ranch Community Association (the “Villages”). In the normal course, the final plat provides for dedications of tracts, including those with storm water improvements to a homeowner association. The plat includes restrictive covenants imposing maintenance obligations on the

homeowner's association, and an authorized representative of the homeowner's association consents to the ownership of the tracts subject to the restrictive covenant.

Because of the topography and geographic limitations of the Property, certain Storm Water Improvements needed to dispose of storm water from parcels and roadways within the Property will be located outside the boundaries of any final plat subdividing all or part of the Property, the normal practice will not work. Although staff attempted to address this in the preliminary plats that were presented to council, by requiring the property outside the boundary of platted property be conveyed to the Villages with a restrictive covenant prior to recordation of the final plat, the Villages was not a signatory to the preliminary plat and any final plat in Lucero to which the Villages will be a signatory will not include the property where the Storm Water Improvements are to be constructed.

Staff sought a development agreement that would legally obligate the Villages to accept the conveyance of the portions of Lucero in which Storm Water Improvements will be constructed subject to a restrictive covenant requiring that the Villages maintain the Storm Water Improvements. The proposed development agreement accomplishes this objective.

In addition, staff wanted to address responsibility for the construction of two traffic signals and the city's obligations regarding reimbursements from development impact fees for two traffic signals at the north end and south end of Hillside Drive and Estrella Parkway. The preliminary plats requires the developer to construct the two traffic signals at the time of development if they are warranted and, if not warranted, make an in lieu payment prior to the recordation of the final plat unless this obligation is modified by separate agreement. In this case, because the two signals are not likely to be warranted for quite some time, collecting an in-lieu payment at the time of final plat recordation could result in the amount collected being too little because of increased construction costs.

Moreover, the two traffic signals are included in an adopted Infrastructure Improvements Plan ("IIP") and Fee Report as a Necessary Public Service or Facility Expansion for which a development fee is assessed ("DIF Study"). The City reimburses Newland all development impact fees collected within Estrella as reimbursement for the improvements that are in an adopted IIP and DIF Study. The collection of in-lieu payments is inconsistent with this concept. Further, because of changes to the state's impact fee laws, infrastructure improvements included in a DIF Study must be constructed within a specified time frame or refunds of previously collected impact fees could be required.

Having concluded a development agreement was needed, the Owner asked that the development agreement also address financial assurance requirements and at risk grading.

The Owner asked that a building permit hold be used as a means of ensuring completion of public infrastructure, other than non-local streets, that will be located within the boundaries of a final plat (commonly referred to as "Internal Infrastructure". Under a building permit hold, the city will not issue building permits for vertical construction, except for model homes, until all of the Internal Public Infrastructure required to be constructed within the platted property has been completed. If the development of the property is being developed pursuant to an approved phasing plan, building

permits will be withheld until the Internal Infrastructure needed to serve the portion of the property that is being developed under the phasing plan is completed. If the developer or owner want to begin pulling building permits before the completion of the required Internal Infrastructure, a bond in an amount sufficient to cover the estimated costs of completing the Internal Infrastructure can be provided and building permits will be issued. Financial assurances in a form required in the Engineering Design Standards and Policies Manual will be provided to ensure the completion of public infrastructure that is outside the boundaries of a final plat and for non-local streets that are within the boundaries of a final plat.

Council has approved this alternative form of financial assurance in other development agreements, and there have been no problems to date with the use of this alternative method of financial assurance.

Owner has been working on finalizing construction drawings needed for final plats for the portions of the Property for which preliminary plats were approved. Normally, grading cannot occur until construction plans for all relevant internal and external infrastructure have been approved. Although Owner has been diligent in pursuit of the required plans approval, there have been delays for a variety of reasons, including the need for approvals from Tucson Electric Power, which has easement rights in an area in which certain of the infrastructure improvements needed to support Lucero are to be constructed. Owner is anxious to move forward with development and asked that the development agreement include terms that would allow Owner to proceed with mass grading and final grading on an at risk basis and that it not be required to provide financial assurances for the final grading until such time as final plats are recorded.

The proposed development agreement includes the terms requested by Owner, other than the relief from providing financial assurances for the final grading, but it also includes safe guards for the city. For instance, no mass grading or final grading can occur until all plans relevant to such grading (i.e. mass grading plans, storm water pollution prevent plans and drainage plan) have been approved and final grading cannot occur until required financial assurance have been provided. The agreement provides that the mass grading and final grading are at risk and includes an indemnification clause in which the Owner is required to indemnify the city for any claims that might be asserted against the city as a result of the mass grading and final grading being commenced before the construction plans for all required Internal Infrastructure and External Infrastructure have been completed and approved by the city.

Staff is supportive of this agreement because it ensures that Storm Water Improvements will be adequately maintained in the future, addresses responsibility for traffic signals and development impact fee reimbursements in a way that minimizes risk to the city, and provides terms that will encourage development in Lucero by minimizing financial outlays for financial assurances and allowing development work to proceed out of sequence while providing adequate protections for the city.

FISCAL ANALYSIS:

There is no immediate budget impact to approving this item. This Development Agreement requires the developer to fund the construction of two traffic signals and requires the HOA to maintain the Storm Water Improvements that developer will be installing. The Development Agreement provides for reimbursements of development impact fees for the costs of the signals if the signals are included in an adopted Infrastructure Improvements Plan and Fee Report in effect with the improvements are constructed and are identified as a Necessary Public Service or Facility Expansion for which a development fee is assessed. The amount of the reimbursements shall be the actual costs incurred in constructing the infrastructure improvements or the estimated costs of the infrastructure improvements included in the development impact fee study, whichever is less.

RECOMMENDATION:

Staff supports the Council approval of the proposed Development Agreement for Lucero for the reasons discussed above.

ATTACHMENTS:

- 1) Resolution No. 2018-1855 w/attached Exhibits 1 and 2
 - Exhibit 1 – Legal Description of NNP III – EMR 3 property
 - Exhibit 2 – Legal Description of NNP III – EMR 4 property
- 2) Exhibit 3 – Development Agreement for Lucero w/attached exhibits