

Novus



CITY OF SURPRISE
Main Agenda

October 23, 2007 @ 6:00:00 PM

Back Print

Council Meeting Date:	October 23, 2007	Contact Person:	Sintra Hoffman, City Office
Submitting Department:	City Mgr	District:	1
Staff Recommendations:	Approve		
Consent	Regular	Public Hearing	<input checked="" type="checkbox"/> Report/Dis

Agenda Wording:

Consideration and action on Resolution 07-186, a resolution approving the Rio Rancho Second Amendment to the Development Agreement between the City of Surprise and Maracay Homes a approximately 233 acre project located on Happy Valley Road and Grand Ave

Motion:

I move to approve Resolution #07-186

Background:

The Rio Rancho Estates project is a 233 acre development located South and West of 187th Ave, East of 187th Ave, and the larger portion North of Happy Valley Road. This second amendment addresses the issue of Maracay Rio Rancho LLC, the new owner of the project monetarily participating in the construction of the SPA 3 Wastewater Treatment Facility than constructing a temporary facility isolated to their project. This amendment identifies public infrastructure Maracay will be constructing and participating in and the reimbursement methods of buy-ins and development fees that will be used.

Rio Rancho Estates is a 233 acre mostly residential development in the City's Special Area 3. The plan is for approximately 926 residential dwelling units and 300,000 square feet

RESOLUTION # 07-186

**A RESOLUTION OF THE MAYOR AND COUNCIL OF
THE CITY OF SURPRISE, ARIZONA, APPROVING
THE SECOND AMENDMENT TO THE PRE-
ANNEXATION DEVELOPMENT AGREEMENT FOR
RIO RANCHO ESTATES, AN ESTIMATED 233 ACRE
DEVELOPMENT LOCATED SOUTH AND WEST OF
GRAND AVENUE AND EAST OF 187TH AVENUE WITH
THE LARGER PORTION NORTH OF HAPPY VALLEY
ROAD AND.**

WHEREAS, the City entered into the Pre-Annexation Development Agreement with Summer Winds, L.L.C., April 24, 2001 and recorded with the Maricopa County Recorder in Instrument No. 2001-0342767 ("Agreement"), covering certain real property known as Rio Rancho Estates consisting of approximately one hundred ninety-four (194) acres located generally at the northwest corner of Grand Avenue and Happy Valley Road, and;

WHEREAS, the City approved a first amendment modification of the Agreement on March 22, 2001 which was recorded with the Maricopa County Recorder in Instrument No. 2003-1321231 and;

WHEREAS, the City and now owner, Maracay Rio Rancho, L.L.C. desire to modify, amend and clarify the Agreement on the terms and conditions as set forth in the Second Amendment to the Pre-Annexation Development Agreement (Rio Rancho Estates).

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Surprise, Arizona, as follows.

Section 1. The City hereby agrees to enter into the Second Amendment to the Pre-Annexation Development Agreement (Rio Rancho Estates), which is attached hereto.

Section 2. The Mayor is hereby authorized and directed to sign the Second Amendment to the Pre-Annexation Development Agreement (Rio Rancho Estates) on behalf of the City of Surprise.

Section 3. The City Clerk is hereby directed to forward the second amendment to the Rio Rancho Estates Pre-Annexation Development Agreement for recording to the Maricopa County Recorder's Office within ten (10) days of the execution thereof.

APPROVED AND ADOPTED this _____ day of _____, 2007.

Joan H. Shafer, Mayor

Attest:

Approved as to form:

Sherry Aguilar, City Clerk

Michael D. Bailey, City Attorney

Yeas: _____

Nays: _____



To: Mayor Shafer
Vice Mayor Sullivan
Council Member Arismendez
Council Member Bails
Council Member Longabaugh
Council Member Foro
Councilman Johnson

From: Sintra Hoffman, Deputy City Manager

Date: October 11, 2007

RE: Rio Rancho Estates Development Agreement

STAFF REPORT

The purpose of this agenda item is for Council consideration and action on the Second Amendment of Infrastructure Reimbursement Development Agreement between the City of Surprise and Maracay Rio Rancho LLC.

Project Overview:

The Rio Rancho Estates project is a 233-acre development located South and West of Grand Ave, East of 187th Ave, and the larger portion North of Happy Valley Road. Following the original development agreement, the property was purchased by Maracay Rio Rancho LLC. Maracay Rio Rancho LLC is seeking an amendment to the development agreement to address changes in infrastructure that Maracay will construct. The second amendment addresses the issue of Maracay Rio Rancho LLC monetarily participating in the construction of the SPA 3 Wastewater Treatment Facility rather than constructing a temporary facility isolated to accommodating just their project. This amendment identifies the public infrastructure Maracay Rio Rancho LLC will be participating in and the reimbursement methods of buy-ins and development fees that will be used.

Rio Rancho Estates is largely a residential development in the City's Special Planning Area 3. The plan is for approximately 926 residential dwelling units and 300,000 square feet of commercial space. The land use is consistent with the City of Surprise General Plan.

Performance Measures:

1. The Development Agreement is an infrastructure reimbursement deal where all reimbursements to the developer are for the actual cost of public improvements. Infrastructure must be constructed and dedicated to the City before any reimbursement occurs.

2. Reimbursement will only occur upon dedication to and acceptance by the City.
3. The developer will construct water, sewer and roads to support the project.

Summary of public improvements:

Water infrastructure

The property is in the Beardsley Water Company service area.

Sewer infrastructure

1. The property owners will participate in the SPA 3 Wastewater Treatment Facility.
2. Owner shall finance, construct and install the off-site sewer lines.

Fire

Fire service will be covered by the fire station on 163rd Ave fire station in Asante.

Parks

The developer is providing 23.8 acres of parks and open/retention space to be maintained by the HOA. The pocket parks are linked by greenbelt system to provide pedestrian connection throughout the project.

Financial Impact Statement:

All Activity related to the ongoing development of the City of Surprise has an economic and fiscal impact on the City and on the Region. All reimbursements of development fees contained within this agreement are consistent with the methodology used to determine the fee amount.

After Recording Return to:

City Clerk
City of Surprise
12425 W. Bell Road, Suite D100
Surprise, AZ 85374-9002

DEVELOPMENT AGREEMENT

(Rio Rancho Estates)

THIS DEVELOPMENT AGREEMENT (this "Agreement") is entered into by and between the City of Surprise, an Arizona municipal corporation ("City"), and Maracay Rio Rancho L.L.C., an Arizona limited liability company ("Developer") as of the date this Agreement is signed by the parties and recorded in the records of Maricopa County, Arizona. Developer and the City are referred to herein collectively as the "Parties."

RECITALS:

A. WHEREAS, Developer owns all of the Property described in Exhibit "A" attached hereto, a portion of which was acquired from SummerWinds LLC, an Arizona limited liability company ("SummerWinds") (the "SummerWinds Parcel"), and a portion of which was acquired from Surprise 40, L.L.C., a Nevada limited liability company (the "Surprise 40 Parcel") (collectively, the "Property").

B. WHEREAS, the Property is within the Beardsley Water Company's certified water service area.

C. WHEREAS, City and Developer's predecessor in interest, SummerWinds, entered into a certain Pre-Annexation Development Agreement as of the 22nd day of March, 2001, and recorded in the Official Records of the Maricopa County, Arizona Recorder on the 26th day of April, 2001, document number 2001-0342767 (the "Original Agreement") as to the SummerWinds Parcel.

D. WHEREAS, City and Developer's predecessor-in-interest, SummerWinds, entered into the First Amendment to the Pre-Annexation Development Agreement as of the 15th day of September, 2003, and recorded in the Official Records of the Maricopa County, Arizona Recorder on the 19th day of September, 2003, document number 2003-1321231 (the "First Amendment") as to the SummerWinds Parcel.

E. WHEREAS, City has approved a PAD Plan for the project known as Rio Rancho Estates (the "PAD Plan" of which the Property is a part, on January 27, 2005 evidenced by PAD 04-201 and Ordinance 05-04.

F. WHEREAS, Courtland Capital, LLC and Austin Ranch, LLC have entered into a separate Development Agreement with the City signed October 7, 2005 and recorded in the Official Records of the Maricopa County, Arizona Recorder on the 11th day of November, 2005, document number 2005-1667137, to construct the developer phase of a permanent regional waste water facility plant in the vicinity of Deer Valley Road and the 183rd Avenue alignment (the "Austin Ranch Development Agreement").

G. WHEREAS, the Developer has entered into a Joint Development Agreement ("JDA") with Austin Ranch, LLC, Courtland Capital, LLC, MMK Deer Valley Citrus Investors, LLC, PS Makus Family Limited Partnership, West Surprise Landowners Group, LLC, and First American Title Insurance Company, signed November 4, 2005, to fund the developer phase of the permanent regional waste water facility plant.

H. WHEREAS, City and Developer entered into a Memorandum of Understanding dated March 9, 2005 ("MOU") as to the entire Property.

I. WHEREAS, City and Developer desire to enter into a Development Agreement for the entire Property wherein the City shall provide certain municipal services to the Property.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing premises and mutual promises contained herein, and other good and valuable consideration, the Parties confirm and agree as follows:

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

2. **Sewer Service.**

(a) **Temporary WWTP.** The parties agree that the Developer shall have no obligation or right to design, permit construct, pay for, operate, maintain and repair the "Temporary WWTP" referred to in the Original Agreement. This provision shall not annul or abrogate rights or responsibilities as it relates to property not owned or controlled by the Developer, which is subject to Original Agreement and the First Amendment.

(b) **Sewer Service.** The Austin Ranch Development Agreement provides for a permanent regional waste water facility ("Regional WWTP") plant in the vicinity of Deer Valley Road and the 183rd Avenue alignment upon property to be dedicated to the City to provide municipal sewer service to an area that includes the Property. City acknowledges the Austin Ranch Development Agreement sets forth the requirements to construct the Regional WWTP. The Regional WWTP shall provide approximately 1,800,000 GPD of

wastewater capacity, allocable to the various parties who participated in its financing. Developer, through its participation in the JDA, is one of the parties financially responsible for the construction of the developer phase of the Regional WWTP. The parties, including Developer, who participated in the Regional WWTP, and their respective capacity allocation from the Regional WWTP are listed in Exhibit O of the JDA. In accordance with the previously approved Austin Ranch Development Agreement and the JDA entered into by Developer, City shall not collect sewer system development fees from Developer for the residential or commercial units receiving wastewater capacity from the Regional WWTP. City agrees that the Project shall have first rights to the treatment capacity at the Regional WWTP in proportion to the amounts paid and the correlative available capacity.

(c) Onsite Sewer Improvements. Developer shall finance, design, construct and install the onsite sewer collection system serving the Property and shall have the right to connect the onsite sewer collection system to the offsite City's sewer system.

(d) Offsite Sewer Lines and Oversizing. Developer shall finance, design, construct and install the off-site sewer lines up to 15" ("Reimbursable Sewer Infrastructure") that shall connect the Property onsite sewer improvements to the Regional WWTP. If City requires the Developer to oversize the Reimbursable Sewer Infrastructure, the Developer shall be entitled to reimbursement. For purposes hereof, "Oversizing" shall mean a sewer line in excess of 15".

(e) Reimbursable Sewer Amount. The amount expended by Developer to design, construct and install the Reimbursable Sewer Infrastructure shall be the Reimbursable Sewer Amount. Developer agrees to provide City with written evidence of the amount expended by Developer to design, construct and install the Reimbursable Sewer Infrastructure and the Reimbursable Sewer Amount is subject to validation by City. Developer will receive a reimbursement against City's wastewater development fee otherwise due from persons developing property and connecting to the Reimbursable Sewer Infrastructure in an amount equal to the Reimbursable Sewer Amount. The wastewater development fees shall be retained by City and disbursed to Developer every three (3) months; City shall not begin disbursing the wastewater development fee reimbursements for a particular phase until (i) all monies to be expended by Developer on the Reimbursable Sewer Infrastructure required for a particular phase have been expended by Developer and (ii) the Sewer Infrastructure has been accepted by City for a particular phase, which acceptance shall not be unreasonably withheld or delayed.

(f) Sewer Line Buy-In Fee. While the Sewer Lines are not sized to serve property other than the Property, other property may incidentally receive a benefit from one or more of such Sewer Lines. In such instance, City shall establish a Line Buy-In Fee. The Sewer Line Buy-In Fee is not included in the Reimbursable Sewer Amount, but is a separate method of repayment. The portion of the Base 15" Sewer Line costs allocable to other properties shall be eligible for repayment through a buy-in fee. Owner shall submit to City evidence of the Sewer Line's design and construction costs for City's verification. Any owner or developer utilizing the Sewer Lines within the service area as delineated on Exhibit B, attached hereto, shall be responsible for repaying Owner such

owner's or developer's Proportionate Share of the Base 15" Sewer Line Costs. City shall collect the Sewer Line Buy-in Fee, prior to approval of, and as a condition to recording, the first final subdivision plat within such property or, prior to approval of, and as a condition to approving, a site plan within such property or, prior to issuing the first building permit within such property, whichever occurs first. City shall account for the Sewer Line Buy-in Fees separately and make payments to Owner on a semi-annual basis (i.e., May 31 and November 30) within thirty (30) days after the end of each six (6) month period, or within thirty (30) days after the accumulation of Fifty Thousand and No/100 Dollars (\$50,000.00).

(g) Accounting Procedures. The parties agree that once the Reimbursable Sewer Infrastructure and Oversizing has been installed by Developer and approved by the City, an addendum to this Agreement will be administratively executed that specifies the reimbursable amount due Developer, as evidenced by actual invoices. An addendum to this agreement will be administratively executed that specifies the portion of the Reimbursement amount that is represented by such invoices. Developer shall submit the addendum on the form attached hereto as Exhibit C and when such addendum has been accepted and countersigned by the Water Services Director and the City Manager on behalf of the City shall be incorporated into and become a part of this Agreement.

(h) Ownership of Wastewater. City shall own all wastewater generated from the Property treated at City-owned facilities.

3. Water Service. The Property will be served by the Beardsley Water Company. Therefore, any water-related impact fees, including but not limited to, water resource, water development, water re-use, water transmission, etc., shall not be allocable to the Property.

4. Construction and Dedication.

(a) Review and Design. All design, construction, and installation of the improvements to be constructed by Developer under the terms of this Agreement ("Improvements") shall be pursuant to City's review and approval. City shall review and approve all plans and specifications prior to the work being put to bid and, if there are any revisions to those plans and specifications after the work is put to bid, City shall review and approve changes to the revised plans and specifications prior to the award of the contract, and any significant change orders thereafter. The City shall have the right and authority to inspect the ongoing construction and installation in order to ensure that such is being performed in accordance with the final approved plans, specifications and applicable City standards; however, Developer is ultimately responsible for ensuring that all Improvements are constructed in accordance with the final approved plans. Developer shall provide the City with a videotape of the completed Reimbursable Sewer Infrastructure.

(b) Public Bidding. All construction contracts for improvements that require or anticipate a contribution of City funds or a reimbursement of development fees shall be publicly bid by Developer pursuant to applicable Arizona Revised Statutes, as if the projects were being performed by City. This public bidding requirement shall not apply

to the procurement of architects, engineers, assayers and other professional services statutorily exempted from the public bidding requirements.

(c) Design Plans. All design, construction and installation plans for the Reimbursable Sewer Infrastructure shall be the property of City upon its dedication and acceptance by the City of the Reimbursable Sewer Infrastructure and City shall have the right to use such plans elsewhere in the City. Notwithstanding the foregoing, City hereby agrees that Developer may use said plans for similar improvements in other developments within or without the City.

(d) Conveyance of Property. On the final plats Developer shall dedicate to the City all parcels, rights of way, and easements on the Property needed for the Improvements, or as required pursuant to this Agreement, free and clear of all encumbrances which could affect marketability of title. The Developer will use its best efforts to secure the necessary easements for the Reimbursable Sewer Infrastructure within one (1) year of the execution of this Agreement. Developer shall have no obligation to obtain and/or dedicate any rights of way or parcels that are not part of the Property. Until the necessary easements are secured, the Developer and City shall have no obligations under this Agreement.

(e) Conveyance of Improvements. Developer shall convey to City all Improvements free and clear of all liens and encumbrances that could affect marketability of title. Developer shall warrant all improvements constructed by Developer and conveyed to City pursuant to this Agreement for two years after conditional acceptance by City's engineering department. Developer may convey the improvements to City in phases as they are completed.

(f) Phasing of Improvements. Developer may construct the Reimbursable Sewer Infrastructure in phases as the Reimbursable Sewer Infrastructure become necessary for each phase of development of the Property, subject to the, terms of this Agreement and the review and approval of the City.

(g) Building Permits. Upon Developer making application for building permits and having made proper payment of any fees due at that time, building permits shall not be issued by City until all of the following have occurred within the phase for which building permits are being sought: (i) two (2) City approved points of emergency vehicle access are in place, and (ii) adequate fire flow pursuant to City standards exists.

(h) Certificates of Occupancy. In addition to the requirements contained in Paragraph 3.7 hereof, certificates of occupancy shall not be issued by City until all of the following have occurred within the phase for which certificates of occupancy are being sought: (A) all arterials and collectors necessary for that phase have been installed, constructed and conditionally accepted by the City, (B) all street improvements and all related Non-Reimbursable Infrastructure necessary for that phase have been installed, constructed and conditionally accepted by the City, (C) two sources of water of adequate quantity and quality have been established, (D) sewer service has been established, (E) the Sewer and Water Infrastructure serving the phase has been constructed, installed,

dedicated, tested, As-Built plans approved and conditionally accepted by the City, and (F) all other code compliance issues of the City have been met. Notwithstanding items (C), (D) and (E) above, the City may issue certificates of occupancy for model homes used for sales purposes only. The City shall issue Certificates of Occupancy for model homes and not more than 100 production units prior to final certification of the Regional WWTP.

(i) Construction Access. Developer and their agents shall have the right to enter, remain upon and cross over any City easement or right-of-way to the extent reasonably necessary to design, construct or install the improvements, provided that Developer's use does not impede or adversely affect City's use and enjoyment of the, subject property; and provided also that Developer shall restore such easement or right-of-way to substantially the same condition as existed prior to Developer's entry. Developer agrees to indemnify City from claims relating to use of said easements or right-of-way.

5. Fees.

Except as provided in this Agreement, Developer shall pay all development, impact, infrastructure, permit, review and other fees assessed by City that are in effect at the time each plan, plat, or permit application is submitted. Any increase in the development or administrative fees or an imposition of new development or administrative fees by City following the execution of this Agreement for infrastructure provided by Developer shall in no way reduce any reimbursement or offset owed Developer as set forth in this Agreement.

6. PAD Plan.

(a) The City, in recognition of the valuable considerations being provided by the Developer pursuant to this Agreement and the financial investment of the Developer in developing the Property, hereby agrees that Developer and its successors shall have a right to develop the Property in accordance with this Agreement and the PAD Plan, and that the Property may be developed in phases. The City will permit the Developer to make the determination of the phases in which the Property will be developed and the order in which the phases will be completed, subject to City review and input.

(b) The Developer shall organize and form a property owners' association for the Property (the "Association"). All common areas and facilities and all open areas in the Property shall be dedicated to the Association, whereafter they will be maintained by the Association. The Association will maintain all landscaped medians in the Property. In the event such Association fails, City shall have the right to pursue arrangement for long-term maintenance of common areas and facilities with homeowners.

(c) The Developer acknowledges and agrees that City's approval of the PAD Plan does not include approval of roadway design for construction. Construction plans for all roadways, intersections and traffic signalization shall be reviewed and approved by the City's Engineering Department and the intersections and traffic signalization standards set forth in the City Transportation Master Plan shall apply.

The Parties further acknowledge that the current City of Surprise Transportation Master Plan does not support the multiple access points set forth in the commercial portion of the approved PAD. The parties acknowledge that the commercial portion of the PAD is not subject to this Agreement and Developer may build in conformance with the PAD. Developer will not oppose future alternate access points which may be required to provide access to the commercial portion of the PAD from areas outside the residential portion of the PAD. Furthermore, Developer acknowledges that any access to an ADOT facility, including Grand Avenue, requires ADOT approval and the Engineering Department cannot review plans unless ADOT approval has been provided.

(d) The Association or a Street Light Improvement District ("SLID"), organized by the Developer, shall provide and maintain streetlights for the Property. At the election of the Association or Developer, as applicable, a single SLID may be formed for the entire Property or a separate SLID may be formed for each development phase of the Property. The power poles and streetlights will initially be paid for by the Association or Developer, but not by the SLID. Until such time as the SLID generates sufficient tax revenues from real properties included within the SLID to cover costs required by the SLID, the Association or the Developer, as applicable, shall pay any shortfall in such tax revenues, if any.

(e) The Developer's commencement of the Reimbursable Sewer Infrastructure or any other part of the PAD Plan shall vest the entire PAD Plan. The City agrees that issuance of the construction permits, sewer permits, occupancy permits, and other permits and approvals required from the City to develop the Property pursuant to this Agreement and the PAD Plan shall not be unreasonably delayed or withheld, provided that Developer complies with all applicable permit requirements and pays all required fees.

(f) The City and the Developer acknowledge and agree that amendments to the PAD Plan may be necessary from time to time to reflect changes in market conditions and development financing and/or to meet the new requirements of one or more of the potential users or builders of any part of the Property. If and when the City and Developer find that changes or adjustments are necessary or appropriate, without reducing the densities approved in the PAD Plan, they shall effectuate minor changes or adjustments through administrative amendments approved by the City Planning and Zoning Director with the approval of the City Manager, which, after execution, shall be attached to the PAD Plan as an addendum and become a part thereof, and may be further changed and amended from time to time as necessary with the approval of the City and Developer. No such minor amendment shall require prior notice or hearing. All major changes or amendments, which shall include any change in use from an approved use to a more intense use, shall be reviewed by the Planning and Zoning Commission and approved by the City Council. The parties shall cooperate in good faith to agree upon, and use reasonable best efforts to process, any minor or major amendments to the PAD Plan. Developer and the City agree that such amendments shall be incorporated by this reference into this Agreement with the same force and effect as if set forth herein and shall not require corresponding amendment to this Agreement.

(g) The City agrees that no City moratorium (except as permitted by ARS § 9463.06(B)) and no City ordinance, resolution or other land use rule or regulation enacted in the future imposing a limitation on the conditioning, rate, timing or sequencing of the development of the Property that would materially impair the Developer's ability to develop the Property in accordance with the PAD Plan shall apply to or govern the development of the Property or any portion thereof, whether affecting parcel or subdivision maps, building permits, occupancy permits or other entitlements to be issued or granted by the City, for a period of ten (10) years from the date this Agreement is recorded in the official records of Maricopa County ("Moratorium Period"); provided, however, that if the Developer has not constructed the Reimbursable Sewer Infrastructure within five (5) years after the date of this Agreement is recorded in the official records of Maricopa County, then the City may (but shall not be obligated to) commence hearings as permitted by ARS § 9462.01 (E), as amended from time to time, to revert zoning for the Property to such zoning as existed prior to Council approval of the PAD Plan. Notwithstanding the foregoing, the City reserves the right to increase and impose new development fees and/or to increase administrative fees and/or impose new administrative fees (including, but not limited to, plans review or building permit fees) during the Moratorium Period, so long as the same are done in accordance with all applicable laws and such new or additional fees are generally and uniformly applicable to developers in the City, except as may be provided in a development agreement executed prior to the date of this Agreement. Additionally, the City may impose and maintain new or additional development or impact fees in the future.

7. **Infrastructure: Assurance No Restrictions on Building Permits.**

(a) The parties acknowledge and agree that the City, prior to recording the final plat for the Property or any portion thereof, may require the Developer or homebuilder to provide assurances which are appropriate and necessary to assure that the installation of required street, sewer, electric and water utilities, drainage, flood control, and other similar infrastructure improvements will be completed ("Infrastructure Assurance"). In satisfaction of such Infrastructure Assurance, the City shall hold certificates of occupancy or equivalent building permit approval for the Property or any portion thereof to be improved until financial assurances for such infrastructure improvements, in a form satisfactory to the City, are provided in accordance with the City's subdivision ordinances.

(b) In the event the City adopts a citywide Ordinance requiring all residential units have a hot water recirculation system installed, the Developer shall install a hot water recirculation system in residential units not already permitted as of the effective date of such Ordinance. The developer shall not be required to install such hot water recirculation system in any residential unit, unless a citywide Ordinance has been adopted.

8. **Cooperation and Dispute Resolution.**

(a) To further the cooperation of the parties in implementing this Agreement, the City and Developer each shall designate and appoint a representative to act as a

liaison between the City and its various departments and the Developer. The initial representative for the City (the "City Representative") shall be the Deputy City Manager and the initial representative for the Developer shall be the Project Manager, as identified by the Developer from time to time (the "Developer Representative"). The representatives shall be available at all reasonable times to discuss and review the performance of the parties to this Agreement and the development of the Property.

(b) The City acknowledges and agrees that it is desirable for the Developer to proceed rapidly with the implementation of this Agreement and the development of the Property and that, accordingly, an expedited review and construction inspection process is necessary. Accordingly, the parties agree that if at anytime the Developer believes an impasse has been reached with the City staff on any issue affecting the Property, the Developer shall have the right to immediately appeal to the Deputy City Manager for an expedited decision pursuant to this Section.

(c) If the issue on which an impasse is reached is an issue where a final decision can be reached by the City staff, the Deputy City Manager shall give the Developer a final decision within thirty (30) days after the Developer's request for an expedited decision. If the issue on which an impasse has been reached is one where a final decision requires action by the City Council, the City shall hear the issue within thirty (30) days after the Deputy City Manager's decision; provided, however, that if the issue is appropriate for review by the City's Planning and Zoning Commission, the matter shall be submitted to the Commission first, and then to the City Council. Both the City and Developer agree to continue to use reasonable good faith effort to resolve any impasse pending any such expedited decision. Notwithstanding anything contained herein to the contrary, in the event the City does not have a sufficient number of personnel to implement the expedited development review process or the expedited construction inspection process, the Developer may elect to pay the cost incurred by the City for private independent consultants and advisors which may be retained by the City, as necessary, to assist the City in the review and/or inspection process; provided, however, that such consultants shall take instruction from, be controlled by, and be responsible to, the City and not Developer.

(d) Failure or unreasonable delay by either party to perform or otherwise act in accordance with any term or provision hereof shall constitute a breach of this Agreement and, if the breach is not cured within thirty (30) days after written notice thereof from the other party (the "Cure Period"), shall constitute a default under this Agreement; provided, however, that if the failure is such that more than thirty (30) days would reasonably be required to perform such action or comply with any term or provision hereof, then the party shall have such additional time as may be necessary to perform or comply so long as the party commences performance or compliance within said thirty (30) day period and diligently proceeds to complete such performance or fulfill such obligation. Any notice of a breach shall specify the nature of the alleged breach and the manner in which said breach may be satisfactorily cured, if possible. In the event a breach is not cured within the Cure Period, the nondefaulting party shall have all rights and remedies which may be available under law or equity including, without limitation,

the right to specifically enforce any term or provision of this Agreement and/or the right to institute an action for damages.

9. **Mediation; Arbitration.**

Any dispute, claim or cause of action arising out of or relating to this Agreement may be settled by either party submitting the matter to mediation or either party submitting the matter to binding arbitration in accordance with the rules of the American Arbitration Association and the Arizona Uniform Arbitration Act, ARS § 12 1501, et seq. The judgment rendered by the arbitrator(s) shall be final, conclusive and binding upon the parties and may be entered in any court of competent jurisdiction. Notwithstanding any other provision of this Agreement, however, a dispute concerning an action, decision or omission of the City Council shall not be submitted to mediation or arbitration, but instead shall be resolved through a civil action filed in a court of competent jurisdiction.

10. **Notices and Filings.**

All notices, flags, consents, approvals and other communications provided for herein or given in connection herewith shall be validly given, filed, made, delivered or served if in writing and delivered personally or sent by certified United States Mail, postage prepaid, return receipt requested if to:

The City: CITY OF SURPRISE
12425 W. Bell Road
Surprise, AZ 85374
Attn: City Manager

With copy to. CITY OF SURPRISE
12425 W. Bell Road
Surprise, AZ 85374
Attn: City Attorney

Developer Maracay Rio Rancho, L.L.C.
15160 North Hayden Road
Suite 200
Scottsdale, Arizona 85260

With copy to: Paul E. Gilbert, Esq.
Beus Gilbert PLLC
4800 North Scottsdale Road
Suite 6000
Scottsdale, AZ 85251

Or to such other address or addresses as may hereafter be specified by notice given by any of the above for itself to the others. Any notice or other communication directed to a party to this Agreement shall become effective upon the earliest of the following: (a) actual receipt by that party; (b) delivery to the address of the party, addressed to the party; or (c) if given by

certified or registered U.S. Mail, return receipt requested, 72 hours after deposit with the United States Postal Service, addressed to the party.

11. **General Provisions.**

(a) **Good Standing: Authority.** Each of the parties represents and warrants to the other: (a) that it is duly formed and validly existing under the laws of Arizona; and (b) that the individuals executing this Agreement on behalf of their respective parties are authorized and empowered to bind the party on whose behalf each such individual is signing.

(b) **Recording.** This Agreement shall be recorded in its entirety in the Official Records of Maricopa County, Arizona, not later than 10 days after its fall execution.

(c) **Future Effect.** The provisions of this Agreement are binding upon and shall inure to the benefit of the parties, and all of their successors in interest and assigns; provided, however, that the Developer's rights and obligations hereunder may be assigned, in whole or in part, only to a person or entity that has acquired title to the Property or a portion thereof and only by a written instrument recorded in the Official Records of Maricopa County, Arizona, expressly assigning such rights and obligations. Notwithstanding the foregoing, Developer may assign all or part of its rights and obligations under this Agreement to a property owners' association to be established by the Developer or to any financial lender from which Developer has borrowed funds for use in developing the Property. Additionally, the Developer may assign its rights and duties under this Agreement to a wholly owned subsidiary of, or to an affiliated entity controlled by, the Developer. In the event of a complete assignment by Developer, all of Developer's obligations hereunder shall terminate effective upon the assumption by Developer's assignee of such obligations.

(d) **Term.** This Agreement shall be effective on the date of execution by both parties hereto and shall automatically terminate ten (10) years after the date this Agreement is recorded in the official records of Maricopa County, provided, however, that the City's obligation to provide municipal services to the Property, once commenced, shall survive termination of this Agreement.

(e) **Termination Upon Sale of Public Lots.** Except for the provisions concerning sewer fine extension fees, and as otherwise provided herein, the City and Developer hereby acknowledge and agree that this Agreement is not intended to and shall not create conditions or exceptions to title or covenants running with the Property when sold to the end purchaser or user. Therefore, in order to alleviate any concern as to the effect of this Agreement on the status of title to any of the Property, so long as not prohibited by law, this Agreement shall terminate without the execution or recordation of any further document or instrument as to any lot (a "Public Lot") which has been finally subdivided and individually (and not in "bulk") leased (for a period of longer than one year) or sold to the end purchaser or user thereof, and thereupon such Public Lot shall be released from and no longer be subject to or burdened by the provisions of this Agreement.

(f) No Partnership: Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other agreement between the Developer and the City. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person or entity not a party hereto, and no such other person or entity shall have any right or cause of action hereunder.

(g) Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the City or the Developer of the breach of any covenant or condition of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

(h) Severability. If any provision of this Agreement is declared void or unenforceable by a court of competent jurisdiction, such provision shall be severed from this Agreement, which the remaining provisions shall otherwise remain in full force and effect if the remaining provisions permit the parties to achieve the practical benefits of the arrangements contemplated by this Agreement. Otherwise, either party might terminate this Agreement; provided however, that under no circumstances shall the City discontinue municipal services to the Property, once commenced, except as permitted by applicable law. If any applicable law or court of competent jurisdiction prohibits or excuses the City or Developer, as applicable, from undertaking any contractual commitment to perform any act hereunder, this Agreement shall remain in full force and effect but the provisions requiring such action shall be deemed to permit the City or Developer, as applicable, to take such action at its discretion, if such a construction is permitted by law.

(i) Further Documentation. Each party agrees in good faith to execute such further or additional instruments and documents and to take such further acts as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

(j) Fair Interpretation. All parties have been represented by counsel in the negotiation and drafting of this Agreement, and this Agreement shall be construed according to the fair meaning of its language. The rule of construction that ambiguities shall be resolved against the party who drafted a provision shall not be employed in interpreting this Agreement.

(k) Headings; Counterparts. The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of any provision of this Agreement. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.

(l) Computation of Time. In computing any period of time under this Agreement, the date of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so completed shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday. The time for

performance of any obligation or taking any action under this Agreement shall be deemed to expire at 5:00 p.m. (Phoenix time) on the last day of the applicable time period provided herein.

(m) Amendment. No change or addition is to be made to this Agreement except by a written amendment executed by the parties hereto. Within thirty (30) days after any amendment to this Agreement, such amendment shall be recorded in the Official Records of Maricopa County.

(n) Governing Law. This Agreement shall be interpreted and governed according to the laws of the State of Arizona. The venue for any dispute hereunder shall be Maricopa County, Arizona, and the parties hereby irrevocably waive any right to object to such venue.

(o) No Developer Representations. Nothing contained herein or in the PAD Plan shall be deemed to obligate the Developer to commence or complete any part of the development of the Property in accordance with the PAD Plan or any other plan; provided, however, that any development of the Property undertaken by Developer shall be done in accordance with this Agreement and the PAD Plan, as each may be amended from time to time.

(p) Entire Agreement. This Agreement, together with all Exhibits attached hereto (which are incorporated herein by this reference), constitutes the entire agreement between the parties pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are superseded by and merged in this Agreement.

(q) Time is of the essence of this Agreement and with respect to the performance required by each party hereunder.

(r) Waiver of Claims Pursuant to A.R.S. § 12-1134 et seq. Owner agrees and understands that the City is entering into this Agreement in good faith and with the understanding that, if it acts consistently with the terms and conditions herein, it will not be subject to a claim for diminished value of the Property from Owner or other parties having an interest in the Property. Owner, on behalf of itself and all other parties having an interest in the Property, intends to encumber the Property with the following agreements and waivers. Owner agrees and consents to all the conditions imposed by this Agreement, the PAD Plan, and by signing this Agreement waives any and all claims, suits, damages, compensation and causes of action Owner may have now or in the future under the provisions of A.R.S. Sections 12-1134 through and including 12-1136 (but specifically excluding any provisions included therein relating to eminent domain) and resulting from the development of the Property consistent with this Agreement or the PAD Plan. Owner acknowledges and agrees the terms and conditions set forth in this Agreement and the PAD Plan cause an increase in the fair market value of the Property.

12. Conflicting Provisions.

The Original Agreement and the First Amendment shall remain and continue in full force and effect. However, in the event any term, condition or provision of this Agreement conflicts with or contradicts a term, condition or provision within either the Original Agreement or the First Amendment, the term, condition or provision within this Agreement shall take precedence over the term, condition or provision of the Original Agreement and the First Amendment with regard to development of the Property. Absent any conflict between the terms, conditions and provisions of the Original Agreement and this Agreement, the Original Agreement shall control the development of the Property. The City and Developer agree that, as between Developer and City, the terms, conditions and provisions of the First Amendment are no longer binding on either Developer and City.

IN WITNESS WHEREOF, the Parties have executed this Second Amendment date(s) written below.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

CITY:

CITY OF SURPRISE, an Arizona municipal corporation

By: _____
Joan Shafer, Mayor

Date: _____

Attested to:

Sherry Aguilar, City Clerk

Approved as to form:

Michael D. Bailey, City Attorney

STATE OF ARIZONA)
) ss.
County of Maricopa)

Subscribed and sworn to before me this _____ day of _____, 200_,
by Joan Shafer, Mayor of the City of Surprise, an Arizona municipal corporation, for and on
behalf of said corporation.

Notary Public

My commission expires:

DEVELOPER:

MARACAY RIO RANCHO, L.L.C. an Arizona limited liability company

By: Maracay Homes Arizona 1, L.L.C., its Manager

By: _____
Jeffrey J. Andersen
Its Vice President and Controller

STATE OF ARIZONA)
) ss.
County of Maricopa)

Subscribed and sworn to before me this _____ day of _____, 200_,
by Jeffrey J. Andersen, Manager of Maracay Homes of Arizona 1, L.L.C., an Arizona limited
liability company, the Manager of Maracay Rio Rancho, L.L.C., an Arizona limited liability
company, for and on behalf of said company.

Notary Public

My commission expires:

ADDENDUM NO.

This Addendum No. _____ dated _____, 2005 ("Addendum") is made and entered into by and between City and Developer with respect to the Agreement between City and Developer dated August 11, 2005 ("Agreement") and, when countersigned below by the Water Services Director on behalf of City, it shall become an addendum to the Agreement for all purposes, and shall thereafter be construed to be integrated into such document.

By its signature set forth below, Developer hereby represent and warrant to City that since its last submittal of an Addendum to City to be incorporated into the Agreement, Developer have incurred and paid the costs, charges and expenses itemized below for the development of the improvements (eligible for reimbursement) in accordance with the terms of the Agreement and that they are entitled to reimbursement with respect to game as contemplated by and agreed to in the Agreement.

1. _____	\$ _____
2. _____	\$ _____
3. _____	\$ _____
4. _____	\$ _____
Subtotal	\$ _____

Copies of paid bills or invoices, cancelled checks, or other written evidence reasonably evidencing these sums are attached to the copy of this Addendum being delivered to City and incorporated therein. When added to the costs, charges, fees and other expenses previously submitted to and approved by the Water Services Director for improvement, this amount brings the total submitted by Developer to City for reimbursement to \$ _____.

By its signature below, Developer hereby represent and warrant to City that all costs, fees, charges and expenses set forth above have been paid in full by Developers incident to the development of improvements as contemplated by the Agreement, that no such amounts or sums are duplicative of amounts previously reported and submitted on prior Addenda, and that Developer in good faith believes that all such costs, fees, charges and expenses are eligible for reimbursement under the Agreement.

Unless otherwise separately defined in this Addendum, all capitalized terms contained herein shall be given the meaning set forth for such terms in the Agreement. All of the terms, provisions and conditions of the Agreement which are not expressly modified, amended or clarified by this Addendum (or which, in context must be deemed modified, amended or clarified hereby) shall remain in full force and effect.

DEVELOPERS:

MARACAY RIO RANCHO, L.L.C.

By: _____
Its: _____
Name: _____
Date: _____

The undersigned hereby acknowledge the information set forth above and accept such costs for addition to the amount for which Owner is entitled to receive reimbursement pursuant to the Agreement, and by its signature set forth below, authorizes that this Addendum No. _____ be attached to and hereafter be deemed a part of the Agreement for all purposes set forth therein.

CITY:

CITY OF SURPRISE, an Arizona municipal corporation

By: _____
Water Services Director
Name: _____
Date: _____

By: _____
City Manager
Name: _____
Date: _____

EXHIBIT "A"

NORTH PORTION

A portion of the Southwest quarter of Section 3, Township 4 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County Arizona, more particularly described as follows:

BEGINNING at the Southwest corner of said Section 3;

Thence North 00 degrees 09 minutes 13 seconds West, along the West line of said Section 3, a distance of 2631.27 feet (recorded) 2631.45 feet (measured);

Thence South 89 degrees 46 minutes 34 seconds East, along the North line of the Southwest quarter of said Section 3, a distance of 2137.51 feet;

Thence South 01 degrees 01 minutes 15 seconds West, a distance of 545.88 feet;

Thence South 43 degrees 22 minutes 29 seconds West, a distance of 49.90 feet;

Thence South 46 degrees 37 minutes 58 seconds East, a distance of 403.84 feet to a point of curvature, the center of which bears North 43 degrees 22 minutes 02 seconds East, a distance of 70.00 feet;

Thence Southeasterly along the arc of said curve to the left, concave to the Northeast, through a central angle of 44 degrees 29 minutes 07 seconds, a distance of 54.35 feet;

Thence North 88 degrees 52 minutes 55 seconds East, a distance of 193.41 feet (recorded) 193.80 feet (measured);

Thence South 00 degrees 12 minutes 49 seconds West, a distance of 1760.35 feet (recorded), South 00 degrees 13 minutes 41 seconds West 1760.30 feet (measured) to a point being the South quarter corner of said Section 3;

Thence North 89 degrees 44 minutes 04 seconds West, a distance of 2616.31 feet (recorded), North 89 degrees 44 minutes 22 West, 2616.21 feet (measured) to the POINT OF BEGINNING

SOUTH PORTION

The Northeast quarter of the Northwest quarter of Section 10, Township 4 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

Except the South 30.00 thereof.

DEVELOPERS:

MARACAY RIO RANCHO, L.L.C.

By: _____
Its: _____
Name: _____
Date: _____

The undersigned hereby acknowledge the information set forth above and accept such costs for addition to the amount for which Owner is entitled to receive reimbursement pursuant to the Agreement, and by its signature set forth below, authorizes that this Addendum No. _____ be attached to and hereafter be deemed a part of the Agreement for all purposes set forth therein.

CITY:

CITY OF SURPRISE, an Arizona municipal corporation

By: _____
Water Services Director
Name: _____
Date: _____

By: _____
City Manager
Name: _____
Date: _____

ADDENDUM NO.

This Addendum No. _____ dated _____, 2005 ("Addendum") is made and entered into by and between City and Developer with respect to the Agreement between City and Developer dated August 11, 2005 ("Agreement") and, when countersigned below by the Water Services Director on behalf of City, it shall become an addendum to the Agreement for all purposes, and shall thereafter be construed to be integrated into such document.

By its signature set forth below, Developer hereby represent and warrant to City that since its last submittal of an Addendum to City to be incorporated into the Agreement, Developer have incurred and paid the costs, charges and expenses itemized below for the development of the improvements (eligible for reimbursement) in accordance with the terms of the Agreement and that they are entitled to reimbursement with respect to game as contemplated by and agreed to in the Agreement.

1. _____	\$ _____
2. _____	\$ _____
3. _____	\$ _____
4. _____	\$ _____
Subtotal	\$ _____

Copies of paid bills or invoices, cancelled checks, or other written evidence reasonably evidencing these sums are attached to the copy of this Addendum being delivered to City and incorporated therein. When added to the costs, charges, fees and other expenses previously submitted to and approved by the Water Services Director for improvement, this amount brings the total submitted by Developer to City for reimbursement to \$ _____.

By its signature below, Developer hereby represent and warrant to City that all costs, fees, charges and expenses set forth above have been paid in full by Developers incident to the development of improvements as contemplated by the Agreement, that no such amounts or sums are duplicative of amounts previously reported and submitted on prior Addenda, and that Developer in good faith believes that all such costs, fees, charges and expenses are eligible for reimbursement under the Agreement.

Unless otherwise separately defined in this Addendum, all capitalized terms contained herein shall be given the meaning set forth for such terms in the Agreement. All of the terms, provisions and conditions of the Agreement which are not expressly modified, amended or clarified by this Addendum (or which, in context must be deemed modified, amended or clarified hereby) shall remain in full force and effect.