CITY OF SURPRISE
Special City Council Meeting Agenda
16000 N. Civic Center Plaza
Surprise, AZ 85374

Tuesday, June 26, 2018 @ 4:00 PM
Council Chambers

Back Print

A. Call To Order

B. Roll Call

C. Pledge of Allegiance

D. PROCLAMATION AND COMMUNITY ACKNOWLEDGEMENTS

E. City Manager Report:

F. City Attorney Report:

G. City Clerk Report:

H. Call To The Public:

INSTRUCTIONS: In order to address the City Council, you will need to fill out a Call to the Public Form available at the front counter, and then turn it in to the City Clerk before the meeting begins.
Download the Call to the Public form *(PDF download requires Adobe Acrobat Reader)*
Fill out the Call to the Public form online If submitting form electronically, please submit to City Clerk at least one hour before the meeting start time.
The Call to the Public form is also available at the front counter.

Note: A.R.S. 38-431.01(H)- During this time members of the public may address City Council only on issues within the jurisdiction of the City Council which are not an item on the agenda. At the conclusion of the open call, City Council may respond to criticism, may ask staff to review the matter or may ask that the matter be put on a future agenda. No discussion or action shall take place on any item raised.

Approval of items on the Consent Agenda – all items with an asterisk (*) are considered to be routine matters and will be enacted by one motion and one roll call vote to the City Council. There will be no separate discussion on these items unless a Councilmember requests, in which event the item will be removed from the consent agenda and considered in its normal sequence on the agenda.

I. Special City Council Meeting Agenda:

Consent Agenda:

Regular Agenda Item - Public Hearing:

1.	District 3	Discussion and possible action pertaining to approval of a Development Agreement for Delivery of Effluent (“Agreement”) with Suburban Land Reserve (“SLR”); Resolution # 2018-108.	Approve Ellen Van Riper, Terry Lowe

2.	District 3	Discussion and possible action to approve Resolution No. 2018-109 for an "Agreement Between Surprise, Arizona and Suburban Land Reserve for Development of a Portion of Prasada Lake Village".	Approve Ellen Van Riper, Terry Lowe

Regular Agenda Item - Non-Public Hearing:

3.	District Citywide	Consideration and action pertaining to approval of the Settlement Agreement between the City of Surprise and the Home Builders Association of Central Arizona; reducing grandfathered General Government Development Fee for single family residential; and declaring an emergency; Resolution # 2018-105.	None Robert Wingo

J. Other Business and Future Agenda Items:

K. Mayor/Council Reports:

L. Executive Session:

4.	District Citywide	Consideration and action to enter into executive session for legal advice and discussion or consultation with the City Attorney pertaining to settlement of the Homebuilders Association of Central Arizona v. City of Surprise litigation pursuant to A.R.S. 38-431.03(A)(3).	None Robert Wingo

For information Purposes; Upon a public majority vote of a quorum of the City Council, the Council may hold an executive session, which will not be open to the public, but for only the following purposes:

- discussion or consideration of personnel matters (A.R.S. §38-431.03 (A)(1));
- discussion or consideration of records exempt by law from public inspection (A.R.S. §38-401.03 (A)(2));
- discussion or consultation for legal advice with the city's attorneys (A.R.S. §38-431.03 (A)(3));
- discussion or consultation with the city's attorneys regarding the city's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation, or in settlement discussions conducted in order to avoid or resolve litigation (A.R.S.§38-431.03 (a)(4));
- discussion or consultation with designated representatives of the city in order to consider its position and instruct its representatives regarding negotiations with employee organizations (A.R.S. §38-431.03 (A)(5)); or
- discussion, consultation or consideration for international and interstate negotiations or for negotiations by a city or town, or its designated representatives, with members of a tribal council, or its designated representatives, of an Indian reservation located within or adjacent to the city or town. A.R.S. §38-401.03 (A)(6)).
- discussing or consulting with designated representatives of the city in order to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property (A.R.S. §38-431.03 (A)(7)).

Confidentiality Requirements Pursuant to A.R.S. §38-431.03(C)(D): Any person receiving executive session information pursuant to A.R.S. §38-431.02 shall not disclose that information except to the Attorney General or County Attorney by agreement of the City Council, or as otherwise ordered by a court of competent jurisdiction.

The council may vote to hold an executive session for the purpose of obtaining legal advice from the Board's attorney on any matter listed on the agenda pursuant to A.R.S. § 38-431.03(A)(3).

M. Adjournment:

SHERRY ANN AGUILAR, CITY CLERK, MMC

POSTED: Posted on Friday, June 22, 2018 @ 1:15 p.m. .

SPECIAL NOTE: PERSONS WITH SPECIAL ACCESSIBILITY NEEDS, INCLUDING LARGE PRINT MATERIALS OR INTERPRETER, SHOULD CONTACT THE CITY CLERK'S OFFICE @ 623.222.1200 OR TTY 623.222.1002, BY NO LATER THAN 24 HOURS IN ADVANCE OF THE REGULAR SCHEDULED MEETING TIME.

CITY OF SURPRISE
Special City Council Meeting

June 26, 2018 @ 4:00:00 PM

Back Print

Council Meeting Date:	June 26, 2018	Contact Person:	Ellen Van Riper, Terry Lowe
Submitting Department:		District:	3
Staff Recommendations:	Approve		

Consent	Regular	Public Hearing	x	Report/Discussion

Agenda Wording:

Discussion and possible action pertaining to approval of a Development Agreement for Delivery of Effluent (“Agreement”) with Suburban Land Reserve (“SLR”); Resolution # 2018-108.

Motion:

I move to approve Resolution No. 2018-108 for the Development Agreement for Delivery of Effluent between the City and SLR for Prasada Lake Village.

Background:

SLR currently owns the entire approximately 1600 acres that is Prasada Lake Village. Prasada Lake Village is subject to the Pre-Annexation Development Agreement (“PADA”) entered into by the City with SLR, Westcor/Surprise, and Fulton Homes in 2006. SLR has entered into a Land Purchase Agreement with Toll Prasada, LLC (“Toll”) to sell approximately 781 acres of Prasada Lake Village. SLR and Toll have advised that the sale is scheduled to close on August 1, 2018. Toll is already in the process of having its preliminary and final plats for the project approved by the City. Mass grading has already commenced The purpose of the Agreement with SLR is to have the City deliver effluent to the property to be retained by SLR (approximately 841 acres) after the sale to Toll on terms similar to those agreed upon with Fulton Homes under the PADA. Pursuant to the PADA, Fulton was to finance and construct (and did construct) an effluent line to Prasada Lake Village for delivery of effluent that would be (and was) dedicated to the City. To reimburse Fulton, the City agreed to provide up to 1500 acre feet of effluent per year at no charge for the first ten (10) years of development starting when Fulton began to fill the lake in phase one. The effluent provisions in the PADA (Section B(2)) were specific to Fulton and the City; they did not apply to the other parties to the Agreement (SLR or Westcor/Surprise, specifically SLR). Fulton constructed the effluent line, but did not complete its purchase of Prasada Lake Village and eventually filed for Chapter 11 bankruptcy protection during the economic downturn. The resulting default and failure to perform by Fulton rendered the entire PADA null and void as to Fulton, including Section B(2), such that the City no longer bore any obligation to provide the 1500 acre feet of effluent for Prasada Lake Village at no charge to Fulton or any other party to the PADA. SLR and Toll approached City staff in July 2017 and advised that they had entered into the sale agreement and requested the City to provide 1500 acre feet of effluent over several years at no charge on terms similar to those found in Section B(2) of the PADA. This temporary delivery of effluent is needed for development of Toll's project and any future residential project developed after SLR sells the remaining property, because Prasada Lake Village will not generate sufficient wastewater to serve the effluent needs until much of the property has been built. City staff thereafter negotiated the attached Agreement with SLR and a separate Development Agreement for Delivery of Effluent with Toll, which is a companion item on this agenda.

Objective Analysis:

Development of the Toll residential community at Prasada Lake Village will generate considerable application, permit, and other development fees and may promote future development of the commercial properties in the area.

Policy Compliant:

Financial Impact:

There is no financial impact as a result of the Effluent Agreement.

Budget Impact:

There is no budget impact as a result of the Effluent Agreement.

FTE Impact:

None

ATTACHMENTS:

Click to download

- Staff report
- Resolution 2018-108 SLR Effluent
- SLR Effluent Development Agreement

CITY ATTORNEY'S OFFICE
MEMORANDUM

TO: Mayor Wolcott and City Council Members

FROM: Ellen Van Riper and Terry Lowe

RE: June 26, 2018 Special City Council Meeting

Resolution No. 2018-108 Effluent Agreement with Suburban Land Reserve ("SLR") for Prasada Lake Village

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Agenda Item: Discussion and possible action to approve Resolution No.2018-108 for a Development Agreement for Delivery of Effluent ("Agreement") with Suburban Land Reserve ("SLR").

Recommended Motion: I move to approve Resolution No. 2018-108 for the Development Agreement for Delivery of Effluent between the City and SLR for Prasada Lake Village and to authorize the Mayor to execute the Agreement on behalf of the City.

Item Background: SLR currently owns the entire approximately 1600 acres that is Prasada Lake Village. Prasada Lake Village is subject to the Pre-Annexation Development Agreement ("PADA") entered into by the City with SLR, Westcor/Surprise, and Fulton Homes in 2006. Development of Prasada Lake Village is also subject to the provisions of the Prasada Planned Area Development, application no. PAD05-0465 approved by the City Council on June 22, 2006, as amended by that Minor Administrative PAD Amendment approved by the City on December 26, 2016 (collectively, the "PAD").

SLR has entered into a Land Purchase Agreement with Toll Prasada, LLC ("Toll") to sell approximately 781 acres of Prasada Lake Village. SLR and Toll have advised that the sale is scheduled to close on August 1, 2018. Toll is already in the process of having its preliminary and final plats for the project approved by the City. Mass grading has already commenced

The purpose of the Agreement with SLR is to have the City deliver effluent to the property to be retained by SLR (approximately 841 acres) after the sale to Toll on terms similar to those agreed upon with Fulton Homes under the PADA. Pursuant to the PADA, Fulton was to finance and construct (and did construct) an effluent line to Prasada Lake Village for delivery of effluent that would be (and was) dedicated to the City. To reimburse Fulton, the City agreed to provide up to 1500 acre feet of effluent per year at no charge for the first ten (10) years of development starting when Fulton began to fill the lake in phase one. The effluent provisions in the PADA (Section B(2)) were specific to Fulton and the City; they did not apply to the other parties to the Agreement (SLR or Westcor/Surprise, specifically SLR).

Fulton constructed the effluent line, but did not complete its purchase of Prasada Lake Village and eventually filed for Chapter 11 bankruptcy protection during the economic downturn. The resulting default and failure to perform by Fulton rendered the entire PADA null and void as to Fulton, including Section B(2), such that the City no longer bore any obligation to provide the 1500 acre feet of effluent for Prasada Lake Village at no charge to Fulton or any other party to the PADA.

SLR and Toll approached City staff in July 2017 and advised that they had entered into the sale agreement and requested the City to provide 1500 acre feet of effluent over several years at no charge on terms similar to those found in Section B(2) of the PADA. This temporary delivery of effluent is needed for development of Toll's project and any future residential project developed after SLR sells the remaining property, because Prasada Lake Village will not generate sufficient wastewater to serve the effluent needs until much of the property has been built. City staff thereafter negotiated the attached Agreement with SLR and a separate "Agreement Between Surprise, Arizona and Toll Prasada, LLC for Development of a Portion of Prasada Lake Village," which is a companion item on this agenda.

The key points in the SLR Agreement are as follows:

- The City will provide to SLR up to 5,115 acre feet of effluent at a maximum of 765 acre feet per year at no charge. This figure is the proportionate share of the 1500 total acre feet for the property to be retained by SLR.
- The effluent will be delivered to a single metered delivery point on the SLR property, which will be used to account for the no charge effluent.
- Any effluent delivered to the first meter in excess of 765 acre feet per year will be charged at then-current City rates.
- The meter and all necessary infrastructure will be constructed by SLR, at its cost, to City standards subject to City approval.
- SLR (or its successor) may construct, at its own cost, additional meters for delivery of effluent, but effluent delivered to these meters will be charged at then-current City rates.

- The City will commence delivery of the no charge effluent upon request by SLR, but only after SLR has completed the necessary infrastructure (including installation of the first meter) and the work has been approved by the City.
- The SLR property will continue to be subject to the PADA, except that Section B(2) will be superseded by this Development Agreement for Delivery of Effluent with SLR.

Development of the Toll residential community at Prasada Lake Village will generate considerable application, permit, and other development fees and may promote future development of the commercial properties in the area.

Staff recommends that the City Council approve the Agreement with SLR by adopting Resolution No. 2018-108

Attachments:

Development Agreement for Delivery of Effluent with SLR

Resolution No. 2018-108

RESOLUTION # 2018-108

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SURPRISE, ARIZONA, APPROVING THE DEVELOPMENT AGREEMENT FOR DELIVERY OF EFFLUENT WITH SUBURBAN LAND RESERVE, INC. PERTAINING TO THE PROPERTY KNOWN AS PRASADA LAKE VILLAGE GENERALLY LOCATED ON THE SOUTHWEST CORNER OF CACTUS ROAD AND COTTON LANE IN THE CITY OF SURPRISE.

WHEREAS, the City is authorized to enter into development agreements pursuant to Arizona Revised Statutes §9-500.05;

WHEREAS, Suburban Land Reserve, Inc. ("SLR") owns approximately 1600 acres of vacant real property known as Prasada Lake Village (the "Property") within the larger development known as Prasada located in the City of Surprise;

WHEREAS, Prasada Lake Village is subject to the Pre-Annexation Development Agreement recorded on September 19, 2006, MCR# 2006-1238109, by and between the City, SLR, and Westcor/Surprise (the "PADA"); and

WHEREAS, the City and SLR desire to terminate Section B2 of the PADA and replace it with the Development Agreement for Delivery of Effluent attached hereto as Exhibit A.

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

Section 1. The Mayor and Council hereby approve the "Development Agreement for Delivery of Effluent" between the City of Surprise and Suburban Land Reserve, Inc., attached hereto as Exhibit A, which is incorporated by reference.

Section 2. Section B(2) of the Pre-Annexation Development Agreement recorded on September 19, 2006, MCR# 2006-1238109, is hereby declared null and void as to Prasada Lake Village only.

Section 3. The Mayor is hereby directed to execute the agreement and any other documents necessary to effectuate the intent of this Resolution.

SIGNATURES ON THE FOLLOWING PAGE

APPROVED AND ADOPTED this _____day of ____________, 2018.

Sharon R. Wolcott, Mayor

Attest:

Approved as to form:

Sherry Aguilar, City Clerk

Robert Wingo, City Attorney

When recorded return to:

City Clerk
City of Surprise
16000 N. Civic Center Plaza
Surprise, Arizona 85374-7470

With a copy to:

Jessica Rancie, Esq.
Kirton McConkie
50 E. So. Temple, 4th Floor
Salt Lake City, Utah 84111

<u>Note to Recorder</u>: This document
is <u>only</u> to be recorded against the
real property described in Exhibit A

DEVELOPMENT AGREEMENT FOR DELIVERY OF EFFLUENT

[Prasada Lake Village]

THIS DEVELOPMENT AGREEMENT (this "**Agreement**") is made this ___ day of ________________, 2018 (the "**Effective Date**"), by and between the City of Surprise, an Arizona municipal corporation (the "**City**"), and Suburban Land Reserve, Inc., a Utah corporation ("**Developer**"). City and Developer are each referred to individually as a "**Party**" and collectively as the "**Parties**."

<u>RECITALS</u>

A. Developer owns approximately sixteen hundred (1600) acres of real property located in Surprise, Arizona, known as Prasada Lake Village, as such term is used and defined in the **PAD** and **PADA** (as defined below) (the "**Property**").

B. The Property is, as of the execution of this Agreement, subject to that certain Pre-Annexation Development Agreement recorded on September 19, 2006 as Instrument No. 2006-1238109 in the Official Records of the Maricopa County Recorder (the "**PADA**"). .

C. Developer and Toll Prasada, LLC, an Arizona limited liability company ("**Toll**"), are party to that certain Purchase and Sale Agreement dated April 8, 2016, as amended (the "**Land Purchase Agreement**"), pursuant to which Toll has the right to purchase approximately 781 acres of the Property from Developer (the "**Toll Property**"). The portion of the Property, comprising approximately 819 acres, that does not include the Toll

Property, is more particularly described in Exhibit A attached hereto and incorporated into this Agreement by reference (the "**SLR Property**").

D. The City and Developer desire to terminate Section B2 of the PADA as to the SLR Property, and replace it with the agreements set forth in this Agreement.

E. The Parties understand and acknowledge that this Agreement is a "Development Agreement" within the meaning of and entered into pursuant to the terms of A.R.S. § 9-500.05. The terms of this Agreement shall constitute covenants running with the SLR Property, as more fully described in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Developer agree as follows:

1. Incorporation of Recitals. The foregoing recitals are true and correct and incorporated by this reference into this Agreement as if fully set forth herein.

2. Effluent. The City and Developer agree that the City will deliver treated wastewater ("Effluent") to Developer for beneficial use within the SLR Property in accordance with the terms and conditions of this Agreement, as follows:

    A. Delivery of Effluent Generated From Within the SLR Property. The City will provide Effluent to the SLR Property, as a municipal service, in an amount up to the amount of Effluent generated from the SLR Property.

    B. Temporary Delivery of Effluent not Generated from Within the SLR Property. Prior to completed development, build-out and occupancy of the project or projects ultimately constructed on the SLR Property, Developer will likely need more Effluent than is being generated from within the SLR Property. Therefore, the City agrees to provide Effluent to the owner of the SLR Property, at no charge up to a total of five thousand one hundred fifteen (5,115) acre feet of Effluent (the "Initial Effluent"), at a maximum delivery obligation of 765 acre feet per year as a municipal service. However, the City will not guarantee nor be responsible to ensure physical delivery of the precise amount of Initial Effluent to the SLR Property, but will use its best efforts to account for and deliver the amount. Pursuant to a separate agreement, the City has agreed to provide the Toll Property at no charge up to a total of four thousand eight hundred eighty-five (4,885) acre feet of Effluent (the "Toll Initial Effluent") at a maximum of 735 acre feet per year as a municipal service. In any year in which Toll or another owner of the Toll Property does not need or utilize all of its allotted 735 acre feet, such unused portion of said 735 acre feet may be used for the SLR Property, by the owner of the SLR Property, provided however, that such usage will apply against the Developer's 5,115 acre feet of no charge Initial Effluent and not to the 4,885 acre feet of no charge Toll Initial Effluent rights held by the owner of the Toll Property.

C. Payment Obligations for Initial Effluent. The City will deliver to the owner of the SLR Property, as a customer, the Initial Effluent at a one hundred percent (100%) reduction from the City's then-current rate for Effluent. However, any amount delivered in excess of the Initial Effluent will be charged at the City's then-current rates. After the City has provided the Initial Effluent, Developer will pay the City at the City's then-current rate for Effluent.

D. Effluent Delivery and Meters. The City will deliver the Initial Effluent to a single metered delivery point at the SLR Property (the "**First Meter**") to be constructed and installed at the Developer's sole cost and expense. The Parties agree that the City's delivery of the Initial Effluent to the SLR Property will be accounted for by the First Meter only. The Parties further agree that Developer may construct and install, at its sole cost and expense, the infrastructure necessary to deliver Effluent other than the Initial Effluent to the SLR Property through additional City-approved meters (the "**Additional Meters**"). Effluent delivered by the City to the Additional Meters will not be considered or accounted for as part of the Initial Effluent and will be charged at the City's then-current rates.

E. Commencement of Delivery of Initial Effluent. Delivery by the City of the Initial Effluent may commence, upon request by the Developer, after the Developer has completed the necessary infrastructure and installed the First Meter, and the infrastructure and First Meter have been approved by the City.

3. PADA Section B2 Termination. Effective upon the execution and recordation of this Agreement, Section B2 of the PADA is terminated as to the SLR Property.

4. Amendments. Minor amendments, which are amendments that do not change the terms or conditions of this Agreement, sought by the Developer may be reviewed and approved by the City's Community Development Director. All other amendments sought by the Developer shall be reviewed by the Community Development Director and approved by the City Council action prior to becoming effective. Amendments shall be recorded in the Official Records of Maricopa County within ten (10) days after execution.

5. Fees. The Developer shall pay all development, impact, infrastructure, permit, review and other fees assessed by the City that are necessary to implement and give effect to this Agreement.

6. Term. This Agreement shall become effective on the date the last Party executes this Agreement and shall automatically terminate after the City has completed delivery of the Initial Effluent to the SLR Property; provided however, that the provisions of Sections 2A, 2C, 2D and 2E shall survive the termination of this Agreement.

7. Recordation. This Agreement shall be recorded in its entirety in the Official Records of Maricopa County, Arizona.

8. Notice and Filings. All notices, filings, 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 pre-paid, return receipt requested if to:

City:	City of Surprise 16000 N. Civic Center Plaza Surprise, AZ 85374 Attn: Water Resources Director
With Copy to:	City of Surprise 16000 N. Civic Center Plaza Surprise, AZ 85374 Attn: City Attorney
Developer:	Suburban Land Reserve, Inc. 51 S. Main Street, Suite 301 Salt Lake City, Utah 84111 Attn: Danny Owen
With Copy to:	Jessica Rancie, Esq. Kirton McConkie 50 E. So. Temple, 4th Floor Salt Lake City, Utah 84111

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 either Party shall become effective upon the earliest of the following: (a) actual receipt by that Party; or (b) two (2) business days after deposit with the United States Postal Service, addressed to the Party.

9. Choice of Law, Venue, Remedies, and Attorneys' Fees. Any dispute, controversy, claim or cause of action arising out of or related to this Agreement shall be governed by Arizona law. The venue for any such dispute shall be Maricopa County, Arizona, and each Party

waives the right to object to venue in Maricopa County for any reason. No Party shall be entitled to recover any of its attorneys' fees nor other costs from the other Party incurred in any such dispute, controversy, claim or cause of action, but each Party shall bear its own attorneys' fees and costs, whether the same is resolved through arbitration, litigation in a court, or otherwise. The only remedies available under this Section 9 and this Agreement are specific performance and injunction. No claim for money damages may be asserted against the City.

10. Good Standing and Authority. Each Party represents and warrants that it is duly formed, validly existing, and authorized to transact business under Arizona laws, with respect to Developer, or is a municipal corporation within Arizona, with respect to the City, and that each individual executing this Agreement on behalf of a Party is authorized and empowered to bind the Party on whose behalf each such individual is signing.

11. Assignment. 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 Developer's rights and obligations hereunder will not benefit or burden those persons or entities purchasing homes and/or individual lots within the SLR Property, and may only be assigned to a person or entity that has acquired an interest in the SLR Property or a portion thereof, including a homeowners' association, and only by a written instrument recorded in the Official Records of Maricopa County, Arizona, expressly assigning such rights and obligations.

12. 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 Parties. 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 except assignees pursuant to Section 11, and no such other person or entity shall have any right or cause of action hereunder. No term or provision of this Agreement is intended to or shall be for the benefit of any Party hereto with respect to property other than the SLR Property.

13. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof; and no waiver of any breach 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.

14. Further Documentation. The Parties agree 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.

15. Fair Interpretation. The 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.

16. Headings. 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.

17. Counterparts. 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.

18. 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. (Arizona time) on the last day of the applicable time period provided herein.

19. Conflict of Interest. This Agreement is subject to the terms of ARS § 38-511.

20. Developer's Representations. Nothing contained herein shall be deemed to obligate Developer to develop any portion of the SLR Property.

21. Entire Agreement. This Agreement, together with the following Exhibits attached hereto (which are incorporated herein by this reference), constitutes the entire agreement between the Parties.

    Exhibit A: The SLR Property

    This Agreement shall be recorded only against the SLR Property described in Exhibit A, and shall not constitute a lien upon any property other than the SLR Property.

    All prior and contemporaneous agreements, representations and understandings of the Parties with respect to the SLR Property, oral or written are superseded by and merged in this Agreement.

22. Time. Time is of the essence of this Agreement and with respect to the performance required by each Party.

[SIGNATURES ON FOLLOWING PAGES]

CITY:

CITY OF SURPRISE, an Arizona municipal corporation

By: ___________________________

Sharon Wolcott, Mayor

Date: ________________________________

APPROVED AS TO FORM:
By:______________________________
____________________, City Attorney

ATTESTED:
By:______________________________
____________________, City Clerk

DEVELOPER:

SUBURBAN LAND RESERVE, INC, a Utah corporation

By: ______________________________

Its: ______________________________

Date:___________________________

State of Utah)
) ss.
County of Salt Lake)

On __________________, 2018, before me, __________________________________, a notary public in and for the State of Utah, personally appeared _____________________, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the foregoing DEVELOPMENT AGREEMENT FOR DELIVERY OF EFFLUENT and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Utah that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

____

Notary Public

My Commission Expires:

____

Exhibit A

The SLR Property

CITY OF SURPRISE
Special City Council Meeting

June 26, 2018 @ 4:00:00 PM

Back Print

Council Meeting Date:	June 26, 2018	Contact Person:	Ellen Van Riper, Terry Lowe
Submitting Department:		District:	3
Staff Recommendations:	Approve		

Consent	Regular	Public Hearing	x	Report/Discussion

Agenda Wording:

Discussion and possible action to approve Resolution No. 2018-109 for an “Agreement Between Surprise, Arizona and Suburban Land Reserve for Development of a Portion of Prasada Lake Village”.

Motion:

I move to approve Resolution No. 2018-109 for the Agreement Between Surprise, Arizona and Suburban Land Reserve.

Background:

SLR is under contract to sell approximately 781 of the 1600 acres of Prasada Lake Village to Toll Prasada, LLC (“Toll”). All of Prasada Lake Village currently is subject to the Pre-Annexation Development Agreement (“PADA”) entered into by the City with SLR, Westcor/Surprise, and Fulton Homes in 2006.

SLR and Toll have advised that the sale is scheduled to close on August 1, 2018. Toll is already in the process of having its preliminary and final plats for the project approved by the City. Mass grading has already commenced. SLR and Toll would like to have both of SLR's agreements with the City finalized and in place before the closing, which is why staff requested that these items be included on this Special Meeting agenda.

SLR and Toll approached City staff in July 2017 and advised that they had entered into the sale agreement and requested the City to provide 1500 acre feet of effluent over several years at no charge on terms similar to those found in Section B(2) of the PADA. This temporary delivery of effluent is needed for development of Toll's project and any future residential project developed after SLR sells the remaining property, because Prasada Lake Village will not generate sufficient wastewater to serve the effluent needs until much of the property has been developed. City staff thereafter negotiated the attached Agreement with SLR that also removes the 781 acres from the PADA, but retains some of the PADA provisions, and a second separate Development Agreement for Delivery of Effluent with SLR.

Objective Analysis:

Development of the Toll residential community at Prasada Lake Village will generate considerable application, permit, and other development fees and may promote future development of the commercial properties in the area.

Policy Compliant:

This agreement is consistent with City and Council Policy.

Financial Impact:

There is no new financial impact as a result of this agreement.

Budget Impact:

There is no budget impact as a result of this agreement.

FTE Impact:

N/A

ATTACHMENTS:

Click to download

- Staff Report
- Res 2018-109-SLR DA
- Suburban Land Reserve Development Agreement

TO: Mayor Wolcott and City Council Members

FROM: Ellen Van Riper and Terry Lowe

RE: June 26, 2018 Special City Council Meeting

Resolution No. 2018-109 Agreement with Suburban Land Reserve, Inc. ("SLR") for Development of a Portion of Prasada Lake Village

Agenda Item: Discussion and possible action to approve Resolution No. 2018-109 for an "Agreement Between Surprise, Arizona and Suburban Land Reserve, Inc. for Development of a Portion of Prasada Lake Village" (the "Agreement").

Recommended Motion: I move to approve Resolution No. 2018-109 for the Agreement Between Surprise, Arizona and Suburban Land Reserve, Inc. for Development of a Portion of Prasada Lake Village and to authorize the Mayor to execute the Agreement on behalf of the City.

Item Background: SLR is under contract to sell approximately 781 of the 1600 acres of Prasada Lake Village to Toll Prasada, LLC ("Toll"). All of Prasada Lake Village currently is subject to the Pre-Annexation Development Agreement ("PADA") entered into by the City with SLR, Westcor/Surprise, and Fulton Homes in 2006.

SLR and Toll have advised that the sale is scheduled to close on August 1, 2018. Toll is already in the process of having its preliminary and final plats for the project approved by the City. Mass grading has already commenced. SLR and Toll would like to have both of SLR's agreements with the City finalized and in place before the closing, which is why staff requested that these items be included on this Special Meeting agenda.

SLR and Toll approached City staff in July 2017 and advised that they had entered into the sale agreement and requested the City to provide 1500 acre feet of effluent over several years at no charge on terms similar to those found in Section B(2) of the PADA. This temporary delivery of effluent is needed for development of Toll's project and any future residential project developed after SLR sells the remaining property, because Prasada Lake Village will not generate sufficient wastewater to serve the effluent needs until much of the property has been developed. City staff thereafter negotiated the attached Agreement with SLR that also removes the 781 acres from the PADA, but retains some of the PADA provisions, and a second separate Development Agreement for Delivery of Effluent with SLR.

This Agreement will accomplish several things:

Delivery of Effluent

The City will deliver effluent to the 781 acres to be acquired by Toll after the sale has closed, on terms similar to those agreed upon with Fulton Homes under the PADA. The Agreement will not become effective until it has been fully executed and recorded by the City and SLR/Toll has recorded the deed conveying the 781 acres from SLR to Toll. This sequence is necessary to ensure that Toll has acquired title to the 781 acres before the new Agreement becomes effective.

Pursuant to the PADA, Fulton was to finance and construct (and did construct) an effluent line to Prasada Lake Village for delivery of effluent that would be (and was) dedicated to the City. To reimburse Fulton, the City agreed to provide up to 1500 acre feet of effluent per year at no charge for the first ten (10) years of development starting when Fulton began to fill the lake in phase one. The effluent provisions in the PADA (Section B(2)) were specific to Fulton and the City; they did not apply to the other parties to the PADA (SLR, Westcor/Surprise, or any successor to either).

Fulton constructed the effluent line, but did not complete its purchase of Prasada Lake Village and eventually filed for Chapter 11 bankruptcy protection during the economic downturn. The resulting default and failure to perform by Fulton rendered the entire PADA null and void as to Fulton, including Section B(2), such that the City no longer bore any obligation to provide the 1500 acre feet of effluent for Prasada Lake Village at no charge to Fulton or any other party to the PADA.

After the Agreement has become effective:

- The City will provide to Toll up to 4,885 acre feet of effluent at a maximum of 735 acre feet per year at no charge. This figure is the proportionate share of the 1500 total acre feet for the property to be purchased by Toll from SLR.
- The effluent will be delivered to a single metered delivery point on the Toll property, which will be used to account for the no charge effluent.
- Any effluent delivered to the first meter in excess of 735 acre feet per year will be charged at then-current City rates.
- The meter and all necessary infrastructure will be constructed by Toll, at its cost, to City standards subject to City approval.

- Toll may construct, at its own cost, additional meters for delivery of effluent, but effluent delivered to these meters will be charged at then-current City rates.
- The City will commence delivery of the no charge effluent upon request by Toll, but only after Toll has completed the necessary infrastructure (including installation of the first meter) and the work has been approved by the City.

Removal of the 781 Acres from the PADA

Section 2 of the Agreement would operate to remove the 781 acres purchased by Toll from the PADA, which means that development of this property would no longer be subject to the terms and conditions of the PADA. The property retained by SLR will continue to be subject to the PADA.

Separate Development Agreement

Staff and Toll (with the concurrence of SLR) have agreed that some of the provisions of the PADA should be retained, some should be revised and updated, and some new provisions should be added. This is what is accomplished by this Agreement, which includes all provisions necessary for development of the Toll project to proceed.

Per this Agreement, development of the Toll property will be governed by the original PAD and the Preliminary Plat entitled "Toll At Prasada" approved by the City Council on April 17, 2018 by Resolution 2018-61. Development will also be regulated by all City laws, ordinances, regulations, and policies in place as of January 23, 2018, the date when Toll submitted its Preliminary Phasing Plan. Other controlling documents are the Prasada Design Guidelines, the updated Toll at Prasada Traffic Impact Analysis, the updated Toll Water Report, the Prasada Master Wastewater Study, and the Toll Master Drainage Report.

Staff recommends that the City Council approve the Agreement with SLR by adopting Resolution No. 2018-109

Attachments:

Agreement with Suburban Land Reserve Development of a Portion of Prasada Lake Village

Resolution No. 2018-109

RESOLUTION # 2018-109

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SURPRISE, ARIZONA, APPROVING THE AGREEMENT BETWEEN SURPRISE, ARIZONA AND SUBURBAN LAND RESERVE, INC., FOR DEVELOPMENT OF A PORTION OF PRASADA LAKE VILLAGE GENERALLY LOCATED ON THE SOUTHWEST CORNER OF CACTUS ROAD AND COTTON LANE WITHIN THE CITY OF SURPRISE.

WHEREAS, the City is authorized to enter into development agreements pursuant to Arizona Revised Statutes §9-500.05;

WHEREAS, Suburban Land Reserve, Inc. ("SLR") owns approximately 1600 acres of vacant real property known as Prasada Lake Village within the larger development known as Prasada located within the City of Surprise;

WHEREAS, Toll Prasada, LLC ("Toll") has contracted with SLR to purchase approximately 781 acres of Prasada Lake Village to develop a planned residential community known as "Toll At Prasada" (the "Project");

WHEREAS, Prasada Lake Village is subject to the Pre-Annexation Development Agreement recorded on September 19, 2006, MCR# 2006-1238109, by and between the City, SLR, and Westcor/Surprise (the "PADA");

WHEREAS, the City and SLR desire to enter into the "Agreement Between Surprise, Arizona and Suburban Land Reserve, Inc. for Development of a Portion of Prasada Lake Village" to: (1) provide for the delivery of effluent by the City to the Project; (2) terminate the PADA as to the approximately 781 acres to be purchased by Toll; and (3) retain and/or amend certain provisions of the PADA and add additional provisions that would govern development of the Project; and

WHEREAS, a copy of the to be executed and recorded "Agreement Between Surprise, Arizona and Suburban Land Reserve, Inc. for Development of a Portion of Prasada Lake Village" is attached hereto as Exhibit A.

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

Section 1. The Mayor and Council hereby approve the "Agreement Between Surprise, Arizona and Suburban Land Reserve, Inc. for Development of a Portion of Prasada Lake Village," attached hereto as Exhibit A, which is incorporated by reference.

Section 2. Upon full execution and recordation of the "Agreement Between Surprise, Arizona and Suburban Land Reserve, Inc. for Development of a Portion of

Prasada Lake Village" and recordation of the deed conveying the approximately 781 acres of Prasada Lake Village from SLR to Toll, the Pre-Annexation Development Agreement recorded on September 19, 2006, MCR# 2006-1238109, will be null and void as to that property and the "Agreement Between Surprise, Arizona and Suburban Land Reserve, Inc. for Development of a Portion of Prasada Lake Village" shall become effective.

Section 3. The Mayor is hereby directed to execute the agreement and any other documents necessary to effectuate the intent of this Resolution

APPROVED AND ADOPTED this _____day of ___________, 2018.

____
Sharon R. Wolcott, Mayor

Attest: Approved as to form:

_______________________________ _______________________________
Sherry Aguilar, City Clerk Robert Wingo, City Attorney

When recorded return to:

City Clerk
City of Surprise
16000 N. Civic Center Plaza
Surprise, Arizona 85374-7470

With a copy to:

Wendy R. Riddell, Esq.
Berry Riddell, LLC
6750 E. Camelback Road, Suite 100
Scottsdale, Arizona 85251

Note to Recorder: This document is only to be recorded against the real property described in Exhibit A

AGREEMENT BETWEEN SURPRISE, ARIZONA AND SUBURBAN LAND RESERVE, INC. FOR DEVELOPMENT OF A PORTION OF PRASADA LAKE VILLAGE

THIS DEVELOPMENT AGREEMENT (this "**Agreement**") is made this ___ day of ________________, 2018 (the "**Effective Date**"), by and between the City of Surprise, an Arizona municipal corporation (the "**City**"), and Suburban Land Reserve, Inc., a Utah corporation ("**SLR**"). City and Developer are each referred to individually as a "**Party**" and collectively as the "**Parties**."

RECITALS

A. SLR and Toll Prasada, LLC, an Arizona limited liability company ("**Developer**"), are parties to that certain Purchase and Sale Agreement dated April 8, 2016, as amended (the "**Land Purchase Agreement**"), pursuant to which Developer has the right to purchase approximately 781 acres of the approximately 1600-acre parcel within Surprise, Arizona, generally located at the southwest corner of Cactus Road and Cotton Lane, known as Prasada Lake Village, which 781 acres is more particularly described on the attached Exhibit A (the "**Property**"). Developer plans to develop and construct a master-planned residential community on the Property known as "Toll At Prasada" (the "**Project**").

B. Development of the Property currently is subject to the Prasada Planned Area Development, application no. PAD05-0465 approved by the Surprise City Council on June 22, 2006, as amended by that Minor Administrative PAD Amendment approved by the City on December 23, 2016 (collectively, the "**PAD**").

C. Development of the Property is also subject to that certain Pre-Annexation Development Agreement recorded on September 19, 2006, as Instrument No. 2006-1238109 in the Official Records of the Maricopa County Recorder, approved by the City on June 22, 2006, as amended by that Minor Administrative PAD Amendment approved by the City on December 23, 2016 (collectively, the "**PADA**").

D. The City, SLR, and Developer desire to terminate the PADA as to the Property, and have this Agreement govern future development of the Property, including providing for delivery of effluent by the City to Developer for beneficial use within the Project.

E. It is the intent of the Parties that the Property be developed in accordance with the PAD and the Preliminary Plat entitled "Toll At Prasada," as approved by the Surprise City Council on April 17, 2018, by Resolution 2018-61 (the "**Approved Plat**").

F. The Parties understand and acknowledge that this Agreement is a "Development Agreement" within the meaning of and entered into pursuant to the terms of A.R.S. § 9-500.05. The terms of this Agreement shall constitute covenants running with the Property, as more fully described in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Developer agree as follows:

1. Incorporation of Recitals. The foregoing recitals are true and correct and incorporated by this reference into this Agreement as if fully set forth herein.

2. Termination of the PADA. Effective upon the execution and recordation of this Agreement and the deed conveying the Property from SLR to Toll pursuant to Sections 16 and 17 of this Agreement, the PADA is terminated as to the Property, and the provisions thereof are superseded by the agreements and provisions of this Agreement.

3. Governing Development Codes and Regulations. The development of the Property shall be in accordance with those City codes and regulations in effect when the Developer submitted its application for approval of the Approved Plat, including, but not limited to, the Surprise Unified Development Code ("**Zoning Code**") and the Surprise Engineering Development Standards ("**Engineering Standards**"), (collectively, the "**Surprise Regulations**"), except for as otherwise provided herein. The development of the Property shall also be in accordance with this Agreement, the PAD, the Approved Plat, the Preliminary Phasing Plan submitted on January 23, 2018, the Prasada Design Guidelines, the Toll at Prasada Traffic

Impact Analysis ("**Toll TIA**") (defined herein), the Toll Water Report (defined herein), the Prasada Master Wastewater Study (defined herein), and the Toll Master Drainage Report (defined herein) (collectively, the "**Prasada Regulations**"). The Prasada Regulations shall supersede conflicting Surprise Regulations. Notwithstanding the foregoing, in the event an item or issue is not specifically addressed in, or reasonably inferred from, the Prasada Regulations, then the Surprise Regulations in effect as of the Effective Date shall govern such item or issue. No future ordinance, rule, regulation, standard or policy adopted by the City shall apply to the development of the Property unless: (1) The future rule or regulation has been enacted by the City to comply with state or federal laws and regulations, provided that in the event the new rule or regulation prevents or precludes compliance with this Agreement, such provision of this Agreement shall be modified as necessary in order to comply with the new rule or regulation; or (2) The future rule or regulation has been enacted by the City to address a legitimate health or safety issue and the implementation of such rule or regulation will not adversely affect the development and use of the Property. If the owner of the Property is delayed with respect to its infrastructure obligations hereunder while the City fulfills its obligations (e.g. condemnation of necessary land,), the City will nevertheless permit the owner of the Property to continue its development process unabated and will issue building permits while the owner of the Property diligently pursues completion of its infrastructure obligations.

4. Effluent. The City will deliver treated wastewater ("**Effluent**") to Developer for beneficial use within the Property in accordance with the terms and conditions of this Agreement, as follows:

A. Delivery of Effluent Generated From Within the Property. The City will provide Effluent to the Project, as a municipal service, in an amount up to the amount of Effluent generated from the Property.

B. Temporary Delivery of Effluent not Generated from Within the Property. Prior to completed development, build-out and occupancy of the Project ultimately constructed on the Property, Developer will likely need more Effluent than is being generated from within the Property. Therefore, the City agrees to provide Effluent to Developer, at no charge up to a total of four thousand eight hundred eighty-five (4,885) acre feet of Effluent (the "**Toll Initial Effluent**") at a maximum delivery obligation of 735 acre feet per year as a municipal service. However, the City will not guarantee nor be responsible to ensure physical delivery of the precise amount of Toll Initial Effluent to the Property, but will use its best efforts to account for and deliver the amount. Pursuant to a separate agreement, the City has agreed to provide to the portion of Prasada Lake Village retained by SLR (the "**SLR Property**"), also at no charge, up to a total of five thousand one hundred fifteen (5,115) acre feet of Effluent (the "**SLR Initial Effluent**") at a maximum of 765 acre feet per year as a municipal service. In any year in which SLR or a successor owner of the SLR Property does not need or utilize all of its allotted 765 acre feet, such unused portion of the SLR Initial Effluent may be used for the Property, with such usage applying to the

Developer's 4,885 feet of no charge Toll Initial Effluent and not to the 5,115 of no charge SLR Initial Effluent rights held by SLR or a successor.

C. Payment Obligations for Initial Effluent. The City will deliver to Developer, as a customer, the Toll Initial Effluent at a one hundred percent (100%) reduction from the City's then-current rate for Effluent. However, any amount delivered in excess of the Toll Initial Effluent will be charged at the City's then-current rates. After the City has provided the Toll Initial Effluent, Developer will pay the City at the City's then-current rate for Effluent.

D. Effluent Delivery and Meters. The City will deliver the Toll Initial Effluent to a single metered delivery point at the Property (the "**First Meter**") to be constructed and installed at Developer's sole cost and expense. The Parties agree that the City's delivery of the Toll Initial Effluent to the Property will be accounted for by the First Meter only. The Parties further agree that the Developer may construct and install, at its sole cost and expense, the infrastructure necessary to deliver Effluent other than the Toll Initial Effluent to the Property through additional City-approved meters (the "**Additional Meters**"). Effluent delivered by the City to the Additional Meters will not be considered or accounted for as part of the Toll Initial Effluent and will be charged at the City's then-current rates. The anticipated delivery points to the Property through the First Meter and Additional Meters are depicted on Exhibit B.

E. Commencement of Delivery of Toll Initial Effluent. Delivery by the City of the Toll Initial Effluent may commence, upon request by the Developer, but only after the Developer has completed the necessary infrastructure and installed the First Meter, and the infrastructure and First Meter have been approved by the City.

5. Toll At Prasada Traffic Impact Analysis. The City has reviewed and approved and hereby accepts the traffic impact analysis for the Project dated January 2018 in conjunction with the Preliminary Phasing Plan submitted on January 23, 2018 (the "**Toll TIA**").

6. Purchase of Additional Property. Developer will use commercially reasonable efforts to acquire the strip of land currently owned by JM AT CCL, LLC along the Cotton Lane alignment from Peoria Avenue to Cactus Road as shown on the Pre-Plat (the "Additional Property"). If, despite its commercially reasonable efforts, Developer is unable to acquire the Additional Property, the City will acquire the Additional Property through its power of condemnation, and Developer will reimburse the City for the costs thereof, including, but not limited to, the money ultimately paid for the Additional Property, attorneys' fees, costs, and expert witness fees.

7. Toll Water Report. The City has reviewed, approved, and accepts the Toll Master Water Report for the Property that was submitted by the Developer with the application for the Approved Plat (the "**Toll Water Report**").

8. Prasada Master Wastewater Study. Development of the Property currently is subject to the Master Wastewater study for Prasada Lake Village dated January 17, 2006 (the "**Prasada Wastewater Study**"), which delineates both the wastewater demands and capacities necessary for the entirety of the approximately 3350 acres of Prasada. The Parties agree that the City has the right to request the Developer to provide updates to the Prasada Wastewater Study for each phase of the Project to ensure that wastewater infrastructure is properly sized, placed, and in accordance with the City's Integrated Water Master Plan.

9. Wastewater Facilities and Service. The Developer will have no obligation to expand, design, construct, pay for, operate, maintain, or repair a treatment facility for wastewater generated on the Property, except for the payment of wastewater development fees. Upon completion of wastewater improvements and the City's conditional acceptance of them by letter, the City commits to provide municipal wastewater service to the portions of the Property served by the completed wastewater improvements, with service-related fees imposed in accordance with the City's adopted rate structure, as amended from time to time.

10. Wastewater Improvements. The Developer shall finance, design, construct, and install wastewater improvements based on the current or updated Prasada Wastewater Study for the type of development being proposed. The Developer will provide an updated wastewater study before the commencement of construction of any building on the Property.

11. Ownership of Wastewater. The City shall own all wastewater generated from the Property.

12. Drainage Report. The City has reviewed, approved, and accepts the Toll At Prasada Master Drainage Report dated June 12, 2018 (the "**Toll Master Drainage Report**"). The City acknowledges and agrees that the Toll Master Drainage Report identifies the drainage and retention issues within the Property and the drainage and retention improvements necessary to address the drainage and retention issues, and that the Developer may utilize any drainage and/or retention methodology identified in the Toll Master Drainage Report.

13. Drainage Improvements and Reimbursement. The Developer will design and construct drainage improvements along the north side of Cactus Road from 175th Avenue to Cotton Lane and a culvert at the intersection of Cotton Lane and Cactus Road to convey drainage which impacts the Project ("**Cactus Road Drainage Improvements**"). The City will acquire any necessary property and drainage easements for this purpose not owned by the Developer. The Developer and the City will enter into a Supplemental Development Agreement to address the design and construction of the Cactus Road Drainage Improvements necessary to facilitate a permanent drainage solution for the Project, identify a benefited area, and a reimbursement mechanism based on a proportionate share methodology agreed upon by the City and Developer. The City's duties and obligations in the Supplemental Development Agreement will be limited to the following: (1) Notifying the Developer each time an application is received by the City within the benefited area for zoning, platting, site

planning, or a building permit, as applicable; (2) The notification shall include the name, address, phone number, and email address of the applicant, as well as a general description of the project, including but not limited to its location and size; and (3) The notification shall also include as a condition of approval for any site plan, subdivision, zoning application, or building permit within the benefited area a stipulation that requires the applicant to show evidence of payment of all applicable buy-in fees to the Developer.

14. Amendments. Minor amendments, which are amendments that do not change the terms or conditions of this Agreement, sought by the Developer may be reviewed and approved by the City's Community Development Director. All other amendments sought by the Developer shall be reviewed by the Community Development Director and approved by the City Council action prior to becoming effective. Amendments shall be recorded in the Official Records of Maricopa County within ten (10) days after execution.

15. Fees. The Developer shall pay all development, impact, infrastructure, permit, review and other fees assessed by the City that are necessary to implement and give effect to this Agreement.

16. Term and Effective Date. This Agreement shall not become effective until it has been fully executed by the City and Developer and has been recorded by the City in its entirety with the Office of the Maricopa County, Arizona Recorder and the deed conveying the Property from SLR to Toll has also been recorded. The "**Effective Date**" shall be the date of recordation of the Deed. This Agreement shall automatically terminate after the City has completed delivery of the Toll Initial Effluent to the Property; provided however, that the provisions of Sections 4A, 4C, 4D and 4E shall survive the termination of this Agreement.

17. Recordation. Developer and/or SLR will notify the City at least five (5) business days in advance of the date on which SLR expects to convey the Property to Developer. The City will record this Agreement prior to such conveyance. This Agreement shall be recorded only against the Property described in Exhibit A, and shall not constitute a lien upon any property other than the Property.

18. Notice and Filings. All notices, filings, 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 pre-paid, return receipt requested if to:

City: City of Surprise
16000 N. Civic Center Plaza
Surprise, AZ 85374
Attn: Water Resources Director

With Copy to:	City of Surprise 16000 N. Civic Center Plaza Surprise, AZ 85374 Attn: City Attorney
Developer:	Toll Prasada, LLC c/o Toll Brothers, Inc. 8767 E. Via de Ventura Suite 390 Scottsdale, Arizona 85258 Attn: Oscar Dominguez
With Copy to:	Wendy R. Riddell, Esq. Berry Riddell, LLC 6750 E. Camelback Road, Suite 100 Scottsdale, Arizona 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 either Party shall become effective upon the earliest of the following: (a) actual receipt by that Party; or (b) two (2) business days after deposit with the United States Postal Service, addressed to the Party.

19. Choice of Law, Venue, Remedies, and Attorneys' Fees. Any dispute, controversy, claim or cause of action arising out of or related to this Agreement shall be governed by Arizona law. The venue for any such dispute shall be Maricopa County, Arizona, and each Party waives the right to object to venue in Maricopa County for any reason. No Party shall be entitled to recover any of its attorneys' fees nor other costs from the other Party incurred in any such dispute, controversy, claim or cause of action, but each Party shall bear its own attorneys' fees and costs, whether the same is resolved through arbitration, litigation in a court, or otherwise. The only remedies available under this Section 19 and this Agreement are specific performance and injunction. No claim for money damages may be asserted against the City.

20. Dispute Resolution. In the event that there is a dispute hereunder that the Parties cannot resolve between themselves, the Parties agree that there shall be a forty-five (45) day moratorium on litigation during which time the Parties agree to attempt to settle the dispute by nonbinding mediation before commencement of litigation. The mediation shall be held under the commercial mediation rules of the American Arbitration Association. The matter in dispute shall be submitted to a mediator mutually selected by the Parties. In the event that the Parties cannot agree upon the selection of a mediator within seven (7) days, then within three (3) days thereafter, the Parties shall request the presiding judge of the Superior Court in and for the County of Maricopa, Arizona, to appoint an independent mediator. The mediator

selected shall have at least five (5) years' experience in mediating or arbitrating disputes relating to development. The cost of any such mediation shall be divided equally between the Parties. The results of the mediation shall be nonbinding on the Parties, and either Party shall be free to initiate litigation subsequent to the moratorium.

21. Good Standing and Authority. Each Party represents and warrants that it is duly formed, validly existing, and authorized to transact business under Arizona laws, with respect to Developer, or is a municipal corporation within Arizona, with respect to the City, and that each individual executing this Agreement on behalf of a Party is authorized and empowered to bind the Party on whose behalf each such individual is signing.

22. Assignment. 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 Developer's rights and obligations hereunder will not benefit or burden those persons or entities purchasing homes and/or individual lots within the Property, and may only be assigned to a person or entity that has acquired an interest in the Property or a portion thereof, including a homeowners' association, and only by a written instrument recorded in the Official Records of Maricopa County, Arizona, expressly assigning such rights and obligations.

23. 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 Parties. Except as expressly set forth herein, 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 except assignees pursuant to Section 22, and no such other person or entity shall have any right or cause of action hereunder. Developer is an express third-party beneficiary of this Agreement; provided, however, Developer's rights and obligations hereunder shall arise only upon its acquisition of the Property. No term or provision of this Agreement is intended to or shall be for the benefit of any Party hereto with respect to property other than the Property.

24. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof; and no waiver of any breach 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.

25. Further Documentation. The Parties agree 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.

26. Fair Interpretation. The 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.

27. Headings. 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.

28. Counterparts. 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.

29. 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. (Arizona time) on the last day of the applicable time period provided herein.

30. Conflict of Interest. This Agreement is subject to the terms of ARS § 38-511.

31. Developer's Representations. Nothing contained herein shall be deemed to obligate Developer to develop any portion of the Property.

32. Entire Agreement. This Agreement, together with the following Exhibits attached hereto (which are incorporated herein by this reference), constitutes the entire agreement between the Parties.

    Exhibit A: The Property

    Exhibit B: Locations of First and Additional Meters

    All prior and contemporaneous agreements, representations and understandings of the Parties with respect to the Property, oral or written are superseded by and merged in this Agreement.

33. Time. Time is of the essence of this Agreement and with respect to the performance required by each Party.

[SIGNATURES ON FOLLOWING PAGES]

CITY:

CITY OF SURPRISE, an Arizona municipal corporation

By: ______________________________

Sharon Wolcott, Mayor

Date: ______________________________

APPROVED AS TO FORM:
By:______________________________
Robert Wingo, City Attorney

ATTESTED:
By:______________________________
Sherry Aguilar, City Clerk

SLR:

SUBURBAN LAND RESERVE, INC., a Utah corporation

By: ______________________________

Its: ______________________________

Date:______________________________

State of Arizona)
) ss.
County of Maricopa)

On ________________, 2018, before me, ______________________________, a notary public in and for the State of Arizona, personally appeared ___________________, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the foregoing AGREEMENT BETWEEN SURPRISE, ARIZONA AND SUBURBAN LAND RESERVE, INC. FOR DEVELOPMENT OF A PORTION OF PRASADA LAKE VILLAGE, and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Arizona that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

____

Notary Public

My Commission Expires:

____

Exhibit A

The Property

Exhibit B

Locations of First and Additional Meters

CITY OF SURPRISE
Special City Council Meeting

June 26, 2018 @ 4:00:00 PM

Back Print

Council Meeting Date:	June 26, 2018	Contact Person:	Robert Wingo
Submitting Department:		District:	Citywide
Staff Recommendations:	None		

Consent	Regular	Public Hearing	Report/Discussion

Agenda Wording:

Consideration and action pertaining to approval of the Settlement Agreement between the City of Surprise and the Home Builders Association of Central Arizona; reducing grandfathered General Government Development Fee for single family residential; and declaring an emergency; Resolution # 2018-105.

Motion:

I move to approve Resolution # 2018-105.

Background:

On January 14, 2013, the Home Builders Association of Central Arizona filed a complaint in Maricopa County Superior Court challenging the City's continued assessment of its general government development fee under the then newly enacted Senate Bill 1525. The litigation has been ongoing since that time. The parties have reached a settlement that will amicably resolve the lawsuit.

Objective Analysis:

The proposed settlement will allow the City of Surprise to continue to collect, albeit at a reduced rate, the single family residential general government development fee. This will maintain a continued revenue for the repayment of outstanding bond debt, general fund subsidies, and the sewer fund loan made to the general government development fee fund. Once these debts are repaid, the City will cease to assess and collect said development fee. The lawsuit will be dismissed via stipulation of the parties which will be filed with the court within 10 days of approval of this Resolution.

Policy Compliant:

The proposed settlement brings certainty to the resolution of the matter and is consistent and compliant with Arizona state law and city laws and policy.

Financial Impact:

The proposed settlement maintains collection of revenue necessary to meet the financial obligations of the general government development fee fund.

Budget Impact:

The proposed settlement maintains revenue necessary to meet the financial obligations of the general government development fee fund.

FTE Impact:

N/A.

ATTACHMENTS:

Click to download

- Resolution 2018-105 HBACA Settlement
- HBACA - GKdocs

RESOLUTION NO. 2018-105

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF SURPRISE, ARIZONA, AMENDING RESOLUTION #2011-149 RELATING TO THE CONTINUATION OF DEVELOPMENT IMPACT FEES BY REDUCING THE GENERAL GOVERNMENT DEVELOPMENT IMPACT FEE FOR SINGLE FAMILY HOUSING; AUTHORIZING THE SETTLEMENT OF LITIGATION RELATING TO SUCH FEES PROVIDING FOR REPEAL OF CONFLICTING RESOLUTIONS, PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, by Ordinance #07-24 the City of Surprise adopted a development fee pursuant to A.R.S. § 9-463.05 for the purpose of offsetting the costs to the City of Surprise associated with providing necessary general government public services to new development; and

WHEREAS, the Fiftieth Legislature of the First Regular Session of 2011 adopted Chapter 243 (Senate Bill 1525) which was effective on January 1, 2012 and amends the assessment of certain development fees that were previously permitted; and

WHEREAS, general government development impact fees that the City of Surprise assessed would not be allowed after December 31, 2011, unless permitted by A.R.S. § 9-463.05 (R) to support continued financing of pledged debt obligations; and

WHEREAS, the City Council previously adopted Resolution # 2011-71, memorializing prior pledges and allocations of development fee revenue to debt service repayment for, among other types of development fees, a fee for the development of general government; and

WHEREAS, on January 14, 2013, the Home Builders Association of Central Arizona filed a complaint in Maricopa County Superior Court (Civil Case Number CV2013-00383) claiming that the general government development impact fee violated state statutes; and

WHEREAS, the parties desire to settle the lawsuit by reducing the general government development impact fee as applied to single family residential homes.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SURPRISE:

1. The recitals above are hereby incorporated as if fully set forth herein.

2. The general government development impact fee relating to single family residential housing provided for in Resolution # 2011-149 is hereby amended as set forth in Exhibit "A" attached hereto and made a part hereof.

3. The settlement agreement attached hereto as Exhibit B is hereby approved.

4. The adoption of this Resolution is an administrative act and its contents are required by A.R.S. § 9-463.05 (R).

5. All resolutions and parts of resolutions in conflict with this Resolution are hereby repealed.

6. If any section, subsection, sentence, clause, phrase or portion of this Resolution is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

7. The immediate operation of the provisions of this Resolution is necessary for the preservation of the public peace, health and safety of the City of Surprise, and an emergency is hereby declared to exist. This Resolution shall be in full force and effect either from the date of adoption or July 1, 2018, whichever occurs latter.

8. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps necessary to carry out the purpose and intent of this Resolution.

PASSED AND ADOPTED by the Council of the City of Surprise, June____, 2018.

____
Sharon Wolcott, Mayor

Attest: Approved as to form:

____
Sherry Ann Aguilar, City Clerk

____
Robert Wingo, City Attorney

EXHIBIT A

GOVERNMENT FACILITIES DEVELOPMENT IMPACT FEES

RESIDENTIAL - PER UNIT

Single Family - Detached

General Government

A. $235 until such time the outstanding bond debt service attributable to the General Government Development Fee Fund (approximately $2,522,001) and any and all general fund subsidies (currently approximately $438,000) paid to the General Government Development Fee Fund to make bond payments are repaid in full. Thereafter, $208 until such time as the outstanding interfund loans from the sewer fund ($5,993,321) to the General Government Development Fee Fund are paid in full. Thereafter, $0 after the payments referred to above have been paid in full.

EXHIBIT B

Settlement Agreement And Release

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is made and entered into this ______day of June 2018, by and between the Home Builders Association of Central Arizona ("HBACA"), an Arizona trade association representing home builders in central Arizona, and the City of Surprise ("City"), an Arizona municipal corporation, sometimes collectively referred to as the "Parties."

RECITALS

A. There is currently pending a law suit filed by HBACA against City in Maricopa County Superior Court, cause number CV2013-000383. The Complaint and amendments thereto are incorporated herein by reference.

B. The dispute concerns the validity of City's General Government Development Fee imposed upon single family residential housing by the City pursuant to A.R.S. § 9 – 463.05 et. seq. HBACA contends that development impact fees for general governmental facilities are not allowed under state statute after January 1, 2012. City contends that the fees are legal under the grandfathering provision contained in A.R.S. § 9-463.05 (R).

C. Through this Agreement, the Parties desire to settle their dispute, including full mutual releases, regarding the issues raised in the Complaint and the amendments thereto.

AGREEMENT

NOW THEREFORE, in consideration of their mutual promises, undertakings, agreements and releases provided for in this Agreement, the sufficiency of which consideration are hereby acknowledged, the Parties agree as follows:

1. **Recitals and Exhibits.** The Recitals and all Exhibits to this Agreement are fully incorporated herein by reference.

2. **Condition Precedent.** As a condition precedent to this Agreement taking effect, the City shall adopt a resolution amending its General Government Development Fee for single family housing. The resolution will be in the form attached hereto as Exhibit "A.". This Agreement shall not take effect until such time as the Resolution attached hereto as Exhibit "A" is adopted by the City.

3. **Settlement Terms.** Upon adoption of the Resolution attached hereto as Exhibit "A," City agrees, beginning on July 1, 2018, or upon adoption of the Resolution, whichever may occur latter, to reduce its General Government Development Fee for single family residential housing to $235 per unit. This fee shall remain in effect until such time bond debt of the City attributable to the General Government Development Fee Fund ("GGDFF") is paid in

full (Current indebtedness is estimated as $2,522,001). In addition, the $235 per unit fee shall remain in full force and effect until such time as any general fund subsidies to the GGDFF for the repayment of the bond indebtedness attributable to this fund are paid in full. Currently, the subsidy is estimated at $438,000. The current balance in the GGDFF is approximately $1,176,637. The current balance in the GGDFF and any future collection of the General Government Development Fee that occurs in any given fiscal year shall first be applied to the bond repayment obligation of the GGDFF and any amount that exceeds the annual bond repayment obligation of the GGDFF shall be applied first to the repayment of any subsidy due and owing to the City's General Fund, and then reserved for future bond repayment.

After the revenues received by the GGDFF pay off the GGDFF's bond debt obligation, and any general fund subsidies made thereto to make bond payments, or the City has collected sufficient GGDFF Funds to pay off the bond debt, and any general fund subsidies thereto, the General Government Development Fee shall be reduced to $208 per unit until such time as the interfund loans from the City's sewer fund to the GGDFF are paid in full. The current amount due and owing the sewer fund is approximately $5,993,321. After the interfund loans from the City's sewer fund are paid in full, the single family residential General Government Development Fee shall be $0. Pursuant to A.R.S. § 9-463.05(B)(13), if City agrees to waive the General Government Development Fee assessed on a development, City shall reimburse the appropriate development fee accounts from a City account other than an account holding development fees for the amount that was waived.

4. **Procedural Compliance With Future Impact Fees.** City is in the process of reviewing and revising all of its impact fees and anticipates that new impact fees and a new plan will be adopted in the year 2019. City agrees to incorporate the material terms of this Agreement into such fees and plan and make the terms of this Agreement a part of any future development fees. City agrees to provide an annual accounting to HBACA at the end of each fiscal year until the General Governmental Development Fee is reduced to $0. The accounting shall delineate all revenue collected by GGDFF, all payments by GGDFF and the remaining balances of (1) the Bond Debt, (2) the general fund subsidies to the GGDFF, (3) the interfund loan from the City Sewer Fund to GGDFF, and (4) any General Government Development Fee waivers.

5. **Stipulation for Dismissal.** Within ten days after the City's adoption of the Resolution attached hereto as Exhibit "A," the Parties agree to enter into a stipulation to dismiss the above referenced Complaint with prejudice, in a form to be approved by counsel, each party to bear its own costs and fees.

6. **Release of the City by Home Builders.** On the Effective Date, HBACA together with any and all predecessors in interest and successors in interest and their present and former, officers, directors, employees and attorneys, in those capacities for HBACA, hereby fully, finally

and forever release and discharge the City, together with any and all predecessors in interest and successors in interest and any and all parent, subsidiary or affiliated corporations, partnerships, trusts, limited liability companies, limited liability limited partnerships, and other business entities, owned or affiliated with them and their present and former members, officers, directors, employees, and attorneys of and from any and all manner of action or actions, cause or causes of action, liabilities, suits, debts, accounts, bonds, covenants, contracts, controversies, torts, agreements, promises, judgments, claims and demands whatsoever in law or in equity which HBACA may have had, now has or which it may have for or by reason of any manner, cause or thing whatsoever, relating to the Pending Litigation and the allegations therein up to the Effective Date. HBACA acknowledges and agrees that the releases given herein cover any and all claims, whether or not known at the time this Agreement is executed. This Release does not apply to the trade association members of HBACA. This Release shall not apply to rights, obligations, and duties set forth in this Agreement.

7. **Release of Home Builders by the City**. On the Effective Date, the City together with any and all predecessors in interest and successors in interest and any and all parent, subsidiary or affiliated corporation, partnership, trust, limited liability companies, limited liability limited partnerships, and other business entities owned or affiliated with it, and their present and former members, officers, directors, employees and attorneys, hereby fully, finally and forever release and discharge HBACA, together with any and all predecessors in interest and successors in interest and any and all parent subsidiary or affiliated corporations, partnerships, trust, limited liability companies, limited liability limited partnerships, and other business entities, owned, or affiliated with them and their present and former members, officers, directors, employees, and attorneys of and from any and all manner of action or actions, cause or causes of action, liabilities, suits, debts, accounts, bonds, covenants, contracts, controversies, torts, agreements, promises, judgments, claims and demands whatsoever in law or in equity which the City may have had, now have or which they may have for or by reason or any manner, cause or thing whatsoever, relating to the Pending Litigation and the allegations therein up to the Effective Date. The City acknowledges and agrees that the releases given herein covers any and all claims, whether or not known at the time this Agreement is executed. This Release shall not apply to rights, obligations, and duties set forth in this Agreement.

8. General Provisions.

A. **No Admission of Liability**. Each Party acknowledges and agrees that the matters set forth in this Agreement constitute the settlement and compromise of disputed claims and that this Agreement is not an admission or evidence of liability of any kind by any Party regarding any claim or matter.

B. **Governing Law**. This Agreement shall be governed by, and construed, interpreted and enforced in accordance with, the internal laws of the State of Arizona, without regard to conflict of law principles.

C. **Attorney's Fees and Expenses**. Each Party shall bear his, her or its own attorney's fees, costs and expenses incurred in connection with the Litigation, this Agreement or implementation or this Agreement.

D. **Counterparts**. This Agreement may be executed in one or more counterparts and delivered by facsimile or email, and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding the party subscribed thereto upon execution and delivery. On and after the Effective Date, such counterparts when so executed by all Parties shall together constitute the final Agreement. Photocopies and/or facsimile and/or email transmissions of original signatures shall be considered in all respects equivalent to original signatures.

E. **Entire Agreement / Amendments**. This Agreement constitutes the entire agreement and understanding between the Parties concerning the matters set forth herein. This Agreement may not be amended or modified, except by written instrument that has been signed by all Parties (or their respective authorized attorney(s) or other representative(s)).

F. **Reasonable Cooperation**. The Parties agree to cooperate in good faith to effectuate all the terms and conditions of this Agreement, including doing or causing their agents and attorneys to do whatever is reasonably necessary to effectuate the signing, delivery, execution, filing, recording, and entry of any documents necessary to perform the terms of this Agreement. The Parties further agree to enter into and execute such other and further agreements, as may be reasonably necessary to effectuate the terms and intentions of this Agreement.

I. **Successors and Assigns**. This Agreement shall be binding upon and enforceable against the Parties' successors and assigns.

SIGNATURES ON FOLLOWING PAGE

Attest:

Sherry Ann Aguilar, City Clerk

Robert Wingenroth, City Manager

Approved as to form:

Robert Wingo, City Attorney

Home Builders Association of Central Arizona

By:

Its:

EXHIBIT A

RESOLUTION NO. #____-___

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF SURPRISE, ARIZONA, AMENDING RESOLUTION #2011-149 RELATING TO THE CONTINUATION OF DEVELOPMENT IMPACT FEES BY REDUCING THE GENERAL GOVERNMENT DEVELOPMENT IMPACT FEE FOR SINGLE FAMILY HOUSING; AUTHORIZING THE SETTLEMENT OF LITIGATION RELATING TO SUCH FEES PROVIDING FOR REPEAL OF CONFLICTING RESOLUTIONS, PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY AND ESTABLISHING AN EFFECTIVE DATE.

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WHEREAS, the Fiftieth Legislature of the First Regular Session of 2011 adopted Chapter 243 (Senate Bill 1525) which was effective on January 1, 2012 and amends the assessment of certain development fees that were previously permitted; and

WHEREAS, general government development impact fees that the City of Surprise assessed would not be allowed after December 31, 2011, unless permitted by A.R.S. § 9-463.05 (R) to support continued financing of pledged debt obligations; and

WHEREAS, the City Council previously adopted Resolutions #2011-71, memorializing prior pledges and allocations of development fee revenue to debt service repayment for, among other types of development fees, a fee for the development of general government; and

WHEREAS, on January 14, 2013, the Home Builders Association of Central Arizona filed a complaint in Maricopa County Superior Court (Civil Case Number CV2013-00383) claiming that the general government development impact fee violated state statutes; and

WHEREAS, the parties desire to settle the lawsuit by reducing the general government development impact fee as applied to single family residential homes.

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2. The general government development impact fee relating to single family residential housing provided for in Resolution # 2011-149 is hereby amended as set forth in Exhibit “A” attached hereto and made a part hereof.

3. The settlement agreement attached hereto as Exhibit B is hereby approved.

4. The adoption of this Resolution is an administrative act and its contents are required by A.R.S. 9-463.05 (R).

5. All resolutions and parts of resolutions in conflict with this Resolution are hereby repealed.

6. If any section, subsection, sentence, clause, phrase or portion of this Resolution is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

7. The immediate operation of the provisions of this Resolution is necessary for the preservation of the public peace, health and safety of the City of Surprise, and an emergency is hereby declared to exist. This Resolution shall be in full force and effect either from the date of adoption or July 1, 2018, whichever occurs latter.

8. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps necessary to carry out the purpose and intent of this Resolution.

PASSED AND ADOPTED by the Council of the City of Surprise, June____, 2018.

____
Sharon Wolcott, Mayor

Attest: Approved as to form:

____
Sherry Ann Aguilar, City Clerk

____
Robert Wingo, City Attorney

GJV:rrd 3282229.2 6/19/2018

EXHIBIT A

GOVERNMENT FACILITIES DEVELOPMENT IMPACT FEES

RESIDENTIAL - PER UNIT

Single Family - Detached

General Government

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Attest:

Sherry Ann Aguilar, City Clerk

Robert Wingenroth, City Manager

Approved as to form:

Robert Wingo, City Attorney

Home Builders Association of Central Arizona

By: Connie Wilhelm

Its: Chief Executive Officer

GJV:rrd 3273902.1 6/7/2018

6667839v1/7194-0008

CITY OF SURPRISE
Special City Council Meeting

June 26, 2018 @ 4:00:00 PM

Back Print

Council Meeting Date:	June 26, 2018	Contact Person:	Robert Wingo
Submitting Department:		District:	Citywide
Staff Recommendations:	None		

Consent	Regular	Public Hearing	Report/Discussion

Agenda Wording:

Consideration and action to enter into executive session for legal advice and discussion or consultation with the City Attorney pertaining to settlement of the Homebuilders Association of Central Arizona v. City of Surprise litigation pursuant to A.R.S. 38-431.03(A)(3).

Motion:

I move to recess into executive session for the purpose noticed.

Background:

Objective Analysis:

Policy Compliant:

Financial Impact:

None; discussion only.

Budget Impact:

None; discussion only.

FTE Impact:

None; discussion only.

ATTACHMENTS:

Click to download

No Attachments Available