City of Benson
City Council Communication

Regular Meeting **November 10, 2014**

To: Mayor and Council Agenda Item # 3

From: Bradley J. Hamilton, P.E., Public Works Director / City Engineer

Subject:

Discussion and possible action regarding a Jennella Drive Pre-Annexation Water Extension Agreement between Fannie Mae, property owner of 804 W. Jennella Drive, Benson and the City of Benson

Discussion:

Fannie Mae has requested water service for 804 W. Jennella Drive, which would be off the Jennella Drive water line. Following past procedure, they have submitted a Jennella Drive Pre-Annexation agreement for the Mayor and Council's consideration.

Staff Recommendation:

Approval of the Jennella Drive Pre-Annexation Water Extension Agreement between Fannie Mae, property owner of 804 W. Jennella Drive, Benson and the City of Benson

"JENNELLA DRIVE" PRE-ANNEXATION
WATER EXTENSION AGREEMENTPRIVATE

DATED: 10-23-14

PROPERTY OWNER: Fannie Mae

PROPERTY ADDRESS: 804 W. Jennella Dr., Benson AZ. 85602

The City of Benson, an Arizona body politic, hereinafter referred to as "CITY" and the undersigned property owner(s), hereinafter referred to as "OWNER", in reliance upon their mutual promises, hereby agree as follows:

1. CITY has constructed a water transmission mainline in the areas designated as the rights-of-way for S. Wild Jackrabbit Road, W. Via Javelina Road and Jennella Drive;

2. Said area is adjacent to the City limits of the City of Benson and is more generally known as "Jennella Drive" which is adjacent to OWNER'S real property;

3. In addition to the foregoing mainline, CITY has constructed a water storage tank with a capacity of approximately 500,000 gallons and a water well of sufficient size which has been outfitted with the necessary pumping equipment to be capable of supplying adequate water to OWNER for reasonable domestic use;

4. The cost of the above-described water project was approximately $400,000.00 when completed for labor, materials and necessary engineering expense;

5. CITY is recovering a portion of the costs of said water project by permitting non-resident property owners located within five hundred (500) feet of the "Jennella Drive" area or those willing to loop the lateral water line to hook-up to the CITY'S water system;

6. The perimeter conditions set forth for hook-up in paragraph five above necessary to provide the required fire flow water pressure to the area in the event of annexation and CITY will not deviate from said perimeters;

7. The undersigned OWNER, as partial consideration for the right to connect to CITY'S water transmission mainline, does hereby agree to immediately pay to CITY the cash sum of TEN THOUSAND DOLLARS ($10,000.00), which is being assessed as a hook-up charge by CITY against all non-resident property owner's connecting to the CITY'S mainline for the

purpose of recapturing a portion of CITY'S construction costs of the described "Jennella Drive" water facilities;

8. OWNER agrees that the payment described is an alternative to OWNER drilling a private well and outfitting and maintaining said well at a substantially higher out-of-pocket cost and OWNER further agrees that the required hook-up charge, as set forth in Paragraph seven, is fair and reasonable;

9. OWNER will be limited to one (1) single domestic water service connection and a standard residential 3/4"x 5/8" water meter for each $10,000.00 hook-up charge paid to CITY. In the event OWNER desires a meter larger than CITY'S minimum domestic meter, OWNER shall pay such additional costs as provided in the Benson City Code;

10. In consideration of OWNER'S immediate payment of the hook-up charge, CITY agrees to place in service one (1) standard residential water service connection and meter, which shall be installed by CITY at no charge to OWNER and thereafter OWNER shall be billed a monthly service availability charge and for all water used, as measured by the CITY owned meter in units of one hundred (100) cubic feet, at rates then in effect for water actually used, as from time to time set by the Benson City Council;

11. OWNER understands and agrees that payment of the hook-up fee, as described herein, shall not entitle OWNER to future additional water service connections without additional payment of the then established area wide hook-up fee. Use of the water being supplied through the single meter to be installed at OWNER'S line property shall not be permitted at any locations other than OWNER'S personal residence and accessory non-commercial buildings, such as a guest house, barn, stable, swimming pool or related facilities used by OWNER and OWNER'S family and guests. For purposes of this Agreement, a church shall be considered a non-commercial building or facility eligible for service hereunder;

12. OWNER shall not divide, split, lease or otherwise affect any real property adjacent to and served by the subject water mainline or OWNER'S domestic service line without complying with City of Benson water service requirements and fire protection regulations unless OWNER has first obtained the formal consent of the Benson City Council accepting an alternative water service agreement by a majority vote at a regular Council Meeting. Any attempt to defeat this provision, which is intended to prohibit multiple users from a single meter, shall be grounds for immediate termination or suspension of water service and in said event, OWNER does agree as a condition of CITY having installed the water meter initially, that no portion of the ten thousand dollar ($10,000.00) hook-up fee shall be refundable;

13. In the event OWNER violates the prohibitions of this Agreement by permitting water use by anyone other than OWNER, OWNER'S family and guests residing with OWNER, CITY, acting through its Public Works Department, may elect to terminate all water service to the premises and in the event of such a termination, CITY

shall not repay any portion of OWNER'S funds advanced as a contribution in aid of construction under this Agreement;

14. OWNER, as part of the consideration for CITY entering into this Agreement, hereby forever waives any argument or claim, whether based on law or equity, that the amount paid is not a fair and reasonable hook-up fee based upon OWNER'S proportionate share of the capital costs expended by CITY and further agrees that no portion of said amount shall be refundable under any circumstances;

15. OWNER understands that the City of Benson is in the process of establishing a water conservation policy which shall serve as guiding principals for the consumption and use of the City of Benson's water resources and, as such, when such conservation policy is enacted, OWNER hereby agrees to follow and practice the water conservation principals as set forth and adopted by the City Council;

16. So long as the affected real property remains outside CITY'S corporate limits, this Agreement shall be binding and run with the lands served by the water extension, said lands being described on the attached Exhibit "A", incorporated by reference as if here fully set forth;

17. Any entitlements created as a result of this Agreement shall be limited to water service by means of a CITY installed tap and water meter. OWNER understands and agrees that subsequent to installation of the water meter to serve OWNER, OWNER shall be liable for regular monthly service availability and water usage charges and OWNER shall install and maintain the water supply line from the CITY owned meter to his or her residence or point of use and further understands that state law may mandate installation of an approved back flow prevention device in conjunction with certain uses and as to such uses, OWNER agrees, at OWNER'S expense, to install and maintain an appropriate device as a condition of continued service;

18. The undersigned OWNER, as further consideration for the right to connect to CITY'S water transmission mainline, does hereby agree that in the event that the CITY wishes to annex OWNER'S property to provide additional CITY revenues and effectuate cohesive development of the

property in and adjacent to the CITY, OWNER agrees to participate in the proposed annexation process favorably to the CITY'S position;

19. This Agreement shall not obligate CITY to provide OWNER any city services other than domestic water. Unless annexed into the CITY, CITY shall not provide usual city services, such as fire protection, refuse collection, sewer, natural gas, police protection, animal control, or paved streets, so long as the subject real property is located outside the city limits.

20. Within three years of execution of this Agreement, pursuant to A.R.S. § 38-511, at the City's sole option the City may cancel the contract and declare this Agreement null and void without any further obligation if any City employee or person acting on behalf of the City who was significantly involved in the initiating, negotiating, drafting, creating or securing this Agreement becomes an employee or agent or consultant to OWNER with respect to the subject matter of this Agreement.

DATED this 23rd day of October, 2014

OWNERS: (Joint Owners, both must sign)

Pamela Temple

FANNIE MAE, AVP

CITY OF BENSON:

ATTEST:

BY:_____
Tony D. King, Sr., Mayor

BY:_____
Vicki L. Vivian, City Clerk

STATE OF ARIZONA)
ss:
County of Cochise)

See attached

The foregoing Agreement was acknowledged before me this ____ day of _____, 20__, by _____, and _____ OWNER(S).

_____
Notary Public

My Commission Expires:

_____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT
CIVIL CODE § 1189

State of California
County of Orange

On 10/23/14 (Date) before me, Kathryn Flynn Gonzalez Notary Public (Name and Title of the Officer)

personally appeared Pamela Temple (Name(s) of Signer(s))

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

KATHRYN FLYNN GONZALEZ
Commission # 1926009
Notary Public - California
Orange County
My Comm. Expires Mar 18, 2015

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

WITNESS my hand and official seal.

Place Notary Seal Above

Signature: _____
Signature of Notary Public

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Water Extension Agreement Document Date: 10/23/14

Number of Pages: 7 Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Pamela Temple	Signer's Name: _____
☑ Corporate Officer — Title(s): AVP	☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General	☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact	☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator	☐ Trustee ☐ Guardian or Conservator
☐ Other: _____	☐ Other: _____
Signer Is Representing: _____	Signer Is Representing: _____

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STATE OF ARIZONA)
ss:
County of Cochise)

The foregoing Agreement was acknowledged before me this _____ day of _____, 20__, by _____, on behalf of the City of Benson.

_____
Notary Public

My Commission Expires: _____

LONG MOUNTAIN VIEW REALTY LLC
DBA LONG REALTY BENSON AFFILIATE
642 W 4TH ST.
BENSON, AZ 85602
520-586-2300

1281

19-7098/3250
207

DATE 10/30/14

PAY TO THE ORDER OF City of Benson $ 10,000.00

Ten Thousand and No/100 DOLLARS

Security Features Details on Back

Washington Federal. invested here.
Benson Office
149 W 4th St
Benson, AZ 85602

FOR 804 N. Jennella
water hookup

Margaret MacLeod MP

⑈001281⑈ ⑆325070980⑆ 207 7004451⑈