City of Benson
City Council Communication

Regular Meeting **September 26, 2016**

To: Mayor and Council Agenda Item # 3

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

Subject:

Discussion and possible action regarding the Water Facilities Development Agreement between Mark Kartchner and the City of Benson

Discussion:

This Water Facilities Development Agreement for Los Ranchitos would extend city water to the north of the current city limits to serve the lots in this subdivision. This has several advantages to the City including looping our current system in the area to increase fire flow, adding more customers to the City system and gifting the City a well that we currently are using.

Staff Recommendation:

Approval of the Water Facilities Development Agreement between Mark Kartchner and the City of Benson

WATER FACILITIES DEVELOPMENT AGREEMENT

This Water Facilities Development Agreement is executed by and between Mark Kartchner ("Kartchner") and the City of Benson, a body politic and corporate (the "City").

RECITALS

A. Kartchner owns that certain real property described in Exhibit A (the "Property").

B. The Property is subdivided into separate parcels, which separate parcels Kartchner seeks to improve and to sell to third parties.

C. Water service has not been extended to the Property, but as a part of the development of the Property's parcels, Kartchner seeks to extend water service to each parcel. The City has current water capacity to extend water service to the Property and each of its parcels.

D. Kartchner and the City do hereby enter into this Agreement pursuant to the authority and restrictions of Arizona law, including without limitation, A.R.S. § 9-500.05, and this Agreement shall constitute a "Development Agreement" thereunder.

AGREEMENT

1. Facilities Engineering and Design. Kartchner shall, with City approval, retain a qualified engineering firm to provide engineering and design services (the "Engineering") for the extension of the City's potable water system to each parcel on the Property. The Engineering shall call for, without limitation, appropriate Facilities to extend the City's potable water delivery system to each parcel on the Property (the "Facilities"). The location and means of tapping into the system are subject to approval by the City's engineer, which approval shall not be unreasonably withheld. Kartchner shall be required to install a separate water meter for each user on the Property, which shall be provided for in the Facilities design.

2. Design and Construction Standards. Each component of the Facilities shall be designed for and compatible with the delivery of potable water to members of the Benson community and the public in general. Engineering and construction of the Facilities required under this Agreement additionally shall comport with the following standards:

(a) City Code Article 13-4;

(b) Department Standards. Design criteria, engineering and construction shall meet all standard specifications and details for public facility improvement set forth in [PAG] and all applicable standards of the City of Benson.

3. Plans and Specifications. Kartchner shall construct the Facilities in accordance with final construction plans and specifications prepared, sealed, and signed by the engineer retained by Kartchner and as approved by the City. Kartchner shall be responsible for providing all data required to plan for and design the Facilities, including engineering studies, technical data, and constructions plans, whether through his engineer or otherwise. Kartchner shall make his project engineer reasonably available to meet with the City concerning all submittals. Following construction of the system Facilities, Kartchner shall provide the City a set of "as-built" plans.

4. Construction. Kartchner shall contract with a qualified registered contractor to construct the Facilities. The City will be named as a third party beneficiary in the contract between Kartchner and the contractor. Kartchner shall be responsible for providing all aspects of construction for the project, including such components as any required SWPP and traffic control if any portion of the Facilities lie under City streets. Kartchner shall provide assurances for the performance of construction of the Facilities in a form and amount customarily accepted by the City, which may include but is not limited to a performance bond, letter of credit, or cash deposit. Kartchner acknowledged that the City's water system will not be shut down to accomplish the tap for these Facilities.

5. Connection. Physical connection of portion of the Property to any City-owned utility facility shall not be made until the Facilities specified in this Agreement have been constructed, inspected, and released for service.

6. Permitting. City and Kartchner shall work cooperatively and in good faith to obtain all permits and approvals from all governmental agencies necessary to begin and complete construction of the Facilities.

7. Acceptance. The Facilities shall be accepted by the City at such time as: (i) the Facilities have been fully tested in accordance with all applicable standards; (ii) the Facilities are operable and in service; (iii) all warranties of the equipment manufacturers and contractor have been furnished or assigned to the City; and (iv) thirty days have passed following Kartchner's engineer's submittal of any required application to ADEQ for completion of construction. Until acceptance, Kartchner shall be responsible for any system flushing required to maintain the water quality of any water in the Facilities.

8. Connection Charges. Kartchner's obligation to pay the connection fees established by City ordinance and contained in City code shall be satisfied by its performance under this agreement, including the following:

(a) Kartchner's completion of construction of the Facilities in accordance with all applicable standards and specifications as verified through the process set forth in this agreement together with Kartchner's dedication of the Facilities to the City as evidence by its execution of a bill of sale in the City's favor;

(b) Transfer of the well located on the following property:

Ranchitos Los Alamos Unit One, Lot No. 16, a subdivision of Cochise County, Arizona, according to the Plat of record therefor in the office of the Cochise County Recorder, Arizona, in Book 123 of maps and plats in. 09-016B thereof.

(c) Transfer of any and all Water Rights Kartchner has pursuant to ADWR Certificate No. _____; and

(d) Installation in accord with City standards and specifications of a water meter for each dwelling or commercial unit developed on the Property.

The parties' intent under this section is to recognize that Kartchner is providing all infrastructure required to connect its Property to the public water system, in exchange for which the City recognizes that it is appropriate to recognize that the connection fees otherwise chargeable are satisfied.

9. Assurances. Prior to commencement of the Facilities' construction, Kartchner shall furnish the City security that guaranties Kartchner's performance of all Facilities construction described in this agreement. The security shall remain posted until completion of all Facilities except for any water meters required prior to the provision of water service to any portion of the Property. The security may be in the form of a

performance bond executed by a company authorized and licensed to do business in the State of Arizona or other security acceptable to the City Attorney.

10. Warranty. Kartchner's contractor and materials suppliers shall be required to warrant the work for a period of two years from the earlier of the date ADEQ issues any certificate of completion or the date the Facilities are first placed into service.

11. Insurance. Kartchner shall require its contractor to provide the City certificates of insurance endorsed to ensure that the City is a additional insured reflecting that the contractor has obtained and will maintain throughout construction of the Facilities not less than the minimum insurance coverage listed below:

(a) Commercial General Liability insurance with a combined single limit of not less than $1,000,000 per occurrence and $2,000,000 annual aggregate. The policy shall be at least as broad as the current version of the ISO CG 00 01 form and shall include coverage for bodily injury, property damage, personal injury, contractual liability, products and complete operations and explosion, collapse, and underground. The products and completed operations coverage shall extend for not less than one year after acceptance or termination of the Facilities and their construction contract.

(b) Commercial or Business Automobile Liability insurance with a combined single limit of not less than $1,000,000 per occurrence. The policy shall be at least as broad as the current version of the ISO CG 00 01 form and shall include coverage for owned, non-owned, and hired vehicles assigned to or used in the performance of the Facilities construction and or maintenance required under this Agreement.

(c) Worker's Compensation insurance covering contractor's statutory obligations for employees engaged in the construction of the Facilities.

The insurance limits specified in this agreement are the minimum coverage that Kartchner's contractor must provide. Should the contractor decide to satisfy these requirements by obtaining coverage in an amount higher than the minimum limits specified in this agreement, the City shall be entitled to coverage up to and including the higher-specified limits.

Kartchner shall have the authority to adjust any loss with the insurers subject to City approval. Kartchner shall be the loss payee under the policies for any loss that affects the completion of construction of the Facilities and shall deposit all insurance

payments so received into a separate account. Kartchner shall disburse such funds to its contractor pursuant to the terms of this Agreement unless Kartchner, the City, and the contractor agree upon an alternative method for disbursement.

The insurance policies supplied by the contractor shall stipulate that the insurance afforded contractor shall be primary to any insurance or self-insurance of Kartchner, whose insurance policies shall stipulate that the insurance afforded Kartchner shall be primary to any insurance or self-insurance of the City. Contractor shall be solely responsible for any deductible or self-insured retention required by its insurance coverage. Contractor and its insurers shall waive all rights of subrogation or recovery against the City, and contractor shall require its subcontractors to waive all rights of subrogation or recovery against the City.

All insurance policies shall be endorsed to require no less than thirty (30) days prior written notice to Kartchner and the City of any cancellation or reduction of coverage.

12. Indemnification. Kartchner shall indemnify, defend, and hold harmless City, its elected officials, officers, employees and agents from and against any and all suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto arising out of any act, omission, fault or negligence by Kartchner, its agents, employees or anyone under its direction or control or on its behalf arising out of or resulting from the performance of this Contract or the construction of the Facilities.

Separately, and to the fullest extent permitted by law, Kartchner shall indemnify, defend, and hold harmless City, its elected officials, officers, employees and agents from and against any and all suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto arising out of any act, omission, fault or negligence by Kartchner, its agents, employees or anyone under its direction or control or on its behalf arising out of or resulting from the existence of any substance, material or waste regulated pursuant to federal, state or local environmental laws, regulations or ordinances present on, in or below or originating from property owned or controlled by Kartchner.

The amount and type of insurance requirements separately set forth in this agreement will in no way be construed as limiting the scope of indemnity in this Section. Kartchner's duty to defend shall be a separate and distinct obligation from the duty to indemnify the City and is enforceable regardless of fault or negligence. Kartchner's indemnification and defense duties shall survive the termination of this agreement.

13. Term and Termination. Kartchner shall complete construction of the Facilities within six years of the date this agreement is executed. Should Kartchner fail to complete construction of the Facilities within this time period, the Agreement shall terminate except as otherwise provided herein.

This Agreement is subject to cancellation pursuant to the provisions of A.R.S. § 38-511.

14. Entire Agreement. This instrument constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements, representation, and understandings, whether oral or written, are hereby superseded and merged herein.

15. Cooperation. Various actions required under this agreement by the parties will require submittals to or otherwise interacting with various third parties. The parties agree that, if any third party requires either party to submit documents in connection with any such application, the parties will cooperate to ensure that the document is timely submitted in furtherance of the underlying purpose of this development agreement.

16. Amendment. Kartchner acknowledges that he is contracting with a public entity that is authorized with respect to the subject matter of this agreement to act only through the Mayor and Council. This agreement shall not be modified, amended, altered or changed except by written agreement signed by both parties.

17. Governing Law; Choice of Forum. This agreement is entered into pursuant to and shall be governed by the laws of the State of Arizona. Any action arising out of or to enforce this agreement shall be filed in a State Court in Cochise County.

18. Waiver. Waiver by either party of any breach of any term, covenant, or condition herein shall not be deemed a waiver of any other term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition contained herein.

19. Successors. Kartchner may not assign this agreement without the City's prior written approval, but once provided this agreement including both the benefit and the burdens imposed herein shall be binding on and inure to the benefit of the successors and assigns of the parties. No such assignment shall release Kartchner's liability under this agreement unless stated expressly therein.

20. Notice. All notices, demands, and instructions required or permitted to be given pursuant to this agreement shall be delivered in writing and become effective 24

hours after hand delivery to the other party or depositing the notice in the United States mail, registered, postage prepaid and addressed as follows:

CITY: KARTCHNER:

City of Benson
P.O. Box 2223
Benson AZ 85602
(520) 586-2245
www.cityofbenson.com

21. Books and Records. Kartchner shall keep and maintain proper and complete books, records and accounts, which shall be open at all reason able times for inspection and audit by duly authorized representatives of City.

In addition, Kartchner shall retain all records relating to this contract at least5 years after termination or cancellation or, if later, until any related pending proceeding or litigation has been closed.

22. Entire Agreement. This document constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous understandings or agreements, whether oral or written, are hereby superseded and merged herein. This Contract may be modified, amended, altered, or extended only by a written amendment executed by the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the date of the City's execution below.

[SIGNATURE PAGE FOLLOWS.]

EXHIBIT A

Description of the Kartchner Property

KARTCHNER

Mark Kartchner DATE: 8/26/16

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

SUBSCRIBED AND SWORN TO before me this 26 day of August, 2016 by Mark Kartchner.

Alain Hartmann
Notary Public

ALAIN HARTMANN
Notary Public - Arizona
Pima County
My Commission Expires
August 10, 2018

CITY OF BENSON

CONRACTOR DATE: _____

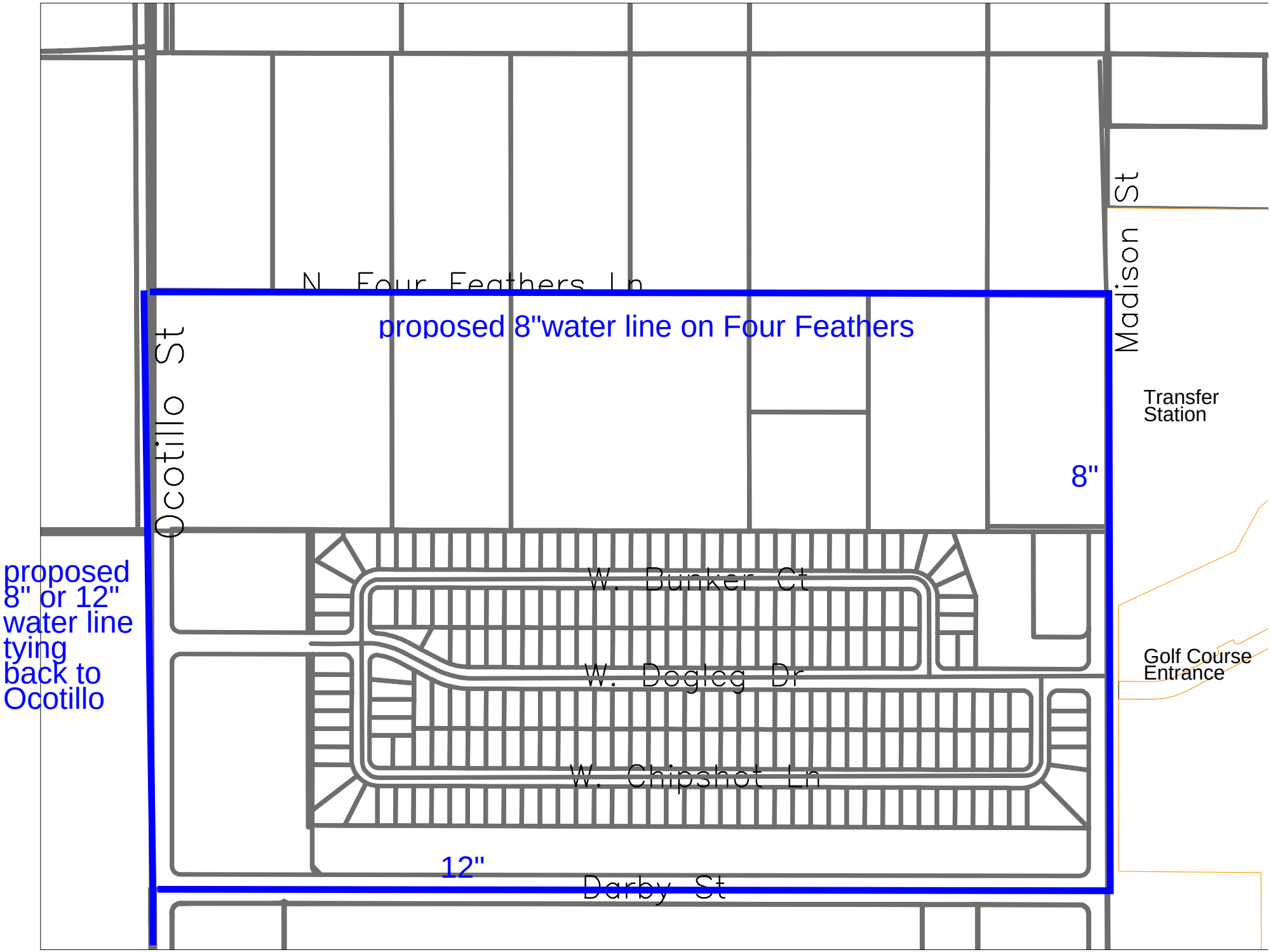
_____
TONEY D. KING, SR., Mayor

ATTEST:

APPROVED AS TO FORM:

_____
VICKI L. VIVIAN, CMC, City Clerk

_____
Mesch, Clark & Rothschild, P.C.,
City Attorney, by GARY COHEN


N. Four Feathers Ln
proposed 8"water line on Four Feathers
Ocotillo St
Madison St
Transfer Station
8"
proposed 8" or 12" water line tying back to Ocotillo
W. Bunker Ct
W. Dogleg Dr
W. Chipshot Ln
Golf Course Entrance
12"
Darby St