



Meeting Date: 9/06/2017
Agenda Item: # _____

Mission Statement

To provide our growing dynamic community excellent municipal services to make Fernley a great place to live, work, and play.

Together, we enhance the desirability, safety, friendliness, aesthetics and quality of life in our city.

FERNLEY CITY COUNCIL MEETING - STAFF REPORT

REPORT TO: Mayor & City Council

REPORT FROM: Paul Taggart, Special City Water Attorney

REPORT THRU: Daphne Hooper, City Manager

REVIEWED BY: Paul Taggart, Special City Water Attorney

REVIEWED BY: Denise Lewis, Finance Director

AGENDA ITEM: Possible action to authorize the Mayor to execute a Second Amendment to a 1994 Agreement between the Town of Fernley and Wade/Fernley, L.P. with respect to the provision of water service to certain property owned by Sonterra Development Company, LLC (the successor-in-interest to Wade/Fernley, L.P.).

ACTION REQUESTED: X Consent __Ordinance __Resolution __Motion __Receive/File

RECOMMENDED ACTION BY CITY COUNCIL

Staff recommends the following action:

“I move to authorize the Mayor to execute the Second Amendment of Agreement between the City of Fernley and Sonterra Development Company, LLC, extending the 1994 Agreement for an additional 15 years and providing other matters properly related thereto.”

Key Points:

1. On February 17, 1994, Wade/Fernley, L.P. (“Wade”) and the Town of Fernley executed an agreement whereby Wade agreed to transfer certain property worth \$1,385,000 to the Town in exchange for future water will-serves. The term of the agreement was 25 years.
2. On October 30, 2006, Sonterra Development Company, LLC (“Sonterra”), the successor to Wade, and Fernley executed a First Amendment to the 1994 Agreement. The First Amendment did not extend the term of the 1994 Agreement.
3. To date, Sonterra has used only a small fraction of the water will-serves allowed under the 1994 Agreement and is requesting that Fernley extend the agreement for an additional 15 years. The parties have negotiated a tentative agreement and are seeking City Council approval of that agreement.

POLICY REFERENCE

<i>Nevada Statutes:</i>	N/A
<i>Fernley Municipal Code:</i>	FMC 9.07
<i>Policies & Procedure Manual:</i>	N/A
<i>Community Assessment:</i>	N/A
<i>Other:</i>	N/A

SUPPORTING INFORMATION

On February 17, 1994, Fernley and Wade entered into an agreement wherein Wade agreed to transfer certain real and personal property, including eight hundred thirty seven (837) acre-feet of groundwater rights, to the Town in exchange for the Town providing future municipal water service to property owned by Wade. Specifically, Fernley agreed to credit Wade with the prepayment of one million, three hundred and eighty-five thousand dollars (\$1,385,000.00) of fees in lieu of dedicating water rights pursuant to Fernley Town Ordinance # 4. Under the terms of the 1994 Agreement, the pre-paid fees will be applied to future will-serve commitments at a rate of five hundred dollars (\$500.00) per acre-foot of water. The 1994 Agreement further provides that Wade's right to use the credits expires twenty-five years after the effective date of the 1994 Agreement (February 17, 2019). The 1994 Agreement also provided that Wade may only use the pre-paid credits to receive will-serve commitments for non-residential development.

On October 30, 2006, Fernley and Sonterra (the successor-in-interest to Wade) agreed to amend the 1994 Agreement. The parties agreed and acknowledged that there remained an outstanding balance of two thousand, four hundred and ninety-four and forty-seven one hundredths (2,494.47) acre-feet of water that could be requested for will-serves under the terms of the 1994 Agreement. The parties further agreed that the City would reserve a certain portion of both its uncommitted groundwater rights and uncommitted surface water rights to meet its obligations under the 1994 Agreement. The First Amendment also provided that the City's obligation to reserve the water and provide will-serve commitments expires twenty-five years after the effective date of the 1994 Agreement (February 17, 2019). The 2006 Amendment also removed certain parcel of land from the description of parcels that are eligible for the use of the credits and added other parcels.

Currently, a substantial quantity of the will-serve credits have not been used. Accordingly, in November of 2016, Sonterra approached the City and requested that Fernley consider extending the term of the 1994 Agreement. Sonterra owns the majority of land zoned for future industrial and commercial use in Fernley and the development of this land is a vital component of Fernley's economic development plans. Since November, City staff, assisted by Taggart & Taggart, Ltd. has been negotiating the terms of an extension agreement with Sonterra. As a result of these negotiations the parties have reached a tentative agreement with the following terms:

- 1) The 1994 Agreement will be extended for a period of 15 years beginning on the date of execution of the Second Amendment to the 1994 Agreement.
- 2) The fee for the use of the will serve credits will be increased from \$500 to \$1,336. The total amount of the increased fee will be capped at \$2,000,000.
- 3) The City will continue to reserve groundwater and surface water as provided in the First Amendment to the 1994 Agreement.
- 4) As Sonterra sells property within the development, it will prepay the increased portion of the fee for the quantity of groundwater the City has reserved under the First Amendment at the time of the property sale.

- 5) The increased fee, and any pre-payments of the fee, will be used only for the purposes allowed under FMC 9.07.06(C)(3).
- 6) Sonterra will be able to use the will-serve credits solely for industrial and commercial development on property identified in the 1994 Agreement, the First Amendment, or located in Section 4, Section 6, and the NE ¼ of the NW ¼ of Section 8 of T20N, R25E, M.D.B.&M.

Sonterra has represented to Taggart & Taggart, Ltd. that it has received all necessary authorizations and approvals to execute the Second Amendment to the 1994 Agreement. The City Manager seeks authorization from the City Council to have the Mayor execute the Second Amendment on behalf of the City of Fernley.

FINANCIAL INFORMATION

FISCAL IMPACT:

- 1. Is There A Fiscal Impact? Yes
 - 2. Is it Currently Budgeted? No
- If Budgeted, Which Line Item/Account?

FISCAL SYNOPSIS:

Under the terms of the Second Amendment the City will receive additional revenue as Sonterra develops the property and either requests will-serve commitments or sells eligible property. Given the uncertain nature of the timing of the additional revenue, the City has not included it within its budget projections.

ATTACHED INFORMATION

Draft Second Amendment to the 1994 Agreement