

TOWN OF GRANBY

Board of Trustees

MEETING DATE: JANUARY 12, 2021

- Consent Agenda
- Resolution or Ordinance
- Citizen Requests
- Public Hearing
- Committee/Staff Reports
- TOWN CLERK
- FINANCE DIRECTOR
- BUILDINGS AND STREETS
- ECONOMIC DEVELOPMENT
- PUBLIC SAFETY
- RECREATION
- WATER DEPARTMENTS
- MAYOR
- TOWN MANAGER
- TOWN ATTORNEY
- Other
- Executive Session
- Workshop

TIME OF AGENDA ITEM: 6:55 PM

Agenda Request No. 4

**MEETING TO BE HELD AT:
Town Hall, Zero Jasper Avenue
Granby, CO 80446**

**(4) DISCUSSION AND POSSIBLE APPROVAL OF THE FOURTH AMENDMENT TO WATER SERVICE AGREEMENT FOR SUN RIVER RUN RANCH RV, LLC AND THE TOWN OF GRANBY, COLORADO / TOWN MANAGER
6:55 PM**

MEMO



To: Mayor and Board of Trustees
From: Ted Cherry, Town Manager
Cc: Deb Hess, Town Clerk
Date: 1.12.21
Re: WSA Water Agreement Amendment 4

Summary: As discussed at the last Board meeting there were some concerns with the amendment to the water agreement with Sun in regards to an extension of the agreement and making sure costs are properly covered.

Currently the agreement with SUN is there is payment for water that is used through the North Service Area and sent to the West Service Area through the interconnect. The current payment schedule is \$10 per 1,000 gallons of water that is sent. The current construction rate for water is \$16.50 per 1,000. Additional expenses for labor/wages, legal, engineering, and other items is billed back to SUN at the actual rates. An example is that each hour of staff time expended would be reimbursed fully.

The proposed amendment is similar in set up, but the rate is changed from \$10/1,000 gallons to \$18.22/1,000 gallons. This rate would be in place until April 30th. The amendment also sets a hard date for SUN to apply for initial acceptance which is February 28th. If this date is not met a \$500 per day fee is imposed on SUN for every day they do not apply for the acceptance. This starts the process of initial acceptance which will allow for the Town to go through the information needed to start the completion of the project. Additionally, the agreement allows for staff to procure equipment needed on site, but if there is a more expensive item this would need to go through approval with SUN.

For the initial acceptance phase the previous 3rd amendment lays out a timeline of 20 business days for the Town to work through the documents and facilities that will be provided to us.

Financial Impact: None

Recommendation: Manager would recommend approval of this 4th amendment to the SUN water agreement.

FOURTH AMENDMENT TO WATER SERVICE AGREEMENT

SUN RIVER RUN RANCH RV, LLC AND TOWN OF GRANBY, COLORADO

THIS FOURTH AMENDMENT TO WATER SERVICE AGREEMENT (“Fourth Amendment”) is effective the 31st day of December, 2020 (the “Effective Date”), by and between **SUN RIVER RUN RANCH RV, LLC**, (“Developer”), and the **TOWN OF GRANBY, COLORADO** (“Granby”), a Colorado municipal corporation. Developer and Granby are collectively referred to herein as the “Parties.”

1. RECITALS.

WHEREAS, Developer and Granby entered into that certain Development Agreement dated May 23, 2018 recorded in Grand County, Colorado at Reception No. 2018003878 on May 25, 2018.

WHEREAS, Developer and Granby entered into that certain Water Service Agreement (“Water Agreement”) dated May 23, 2018 recorded in Grand County, Colorado at Reception No. 2018003877 on May 25, 2018.

WHEREAS, Developer and Granby entered into that certain First Amendment to Water Service Agreement (“First Amendment”) dated April 23, 2019 recorded in Grand County, Colorado at Reception No. 2019004099 on June 6, 2019.

WHEREAS, Developer and Granby entered into that certain Second Amendment to Water Service Agreement (“Second Amendment”) dated May 26, 2020, recorded in Grand County, Colorado at Reception No. 2020004071 on June 2, 2020.

WHEREAS, Developer and Granby entered into that certain Third Amendment to Water Service Agreement (“Third Amendment”) dated September 8, 2020, recorded in Grand County, Colorado at Reception No. 2020008280 on September 15, 2020.

WHEREAS, the Water Agreement, the First Amendment, Second Amendment, Third Amendment and the Development Agreement define Developer’s and Granby’s rights and obligations related to water and water infrastructure for the Developer’s property, which is legally described by those agreements.

WHEREAS, the First Amendment, among other items, provided for construction of a permanent interconnect (“Interconnect”) to serve Developer’s Parcels and Sun SCC’s Additional Parcels, as well as, Granby’s other municipal customers.

WHEREAS, the First Amendment, authorized use of the Interconnect to serve potable water to Developer’s Parcels and Sun SCC’s Additional Parcels from April 23, 2019 until October 1, 2020 at a rate of ten dollars (\$10.00) per one thousand (1000) gallons and was based on Developer’s representation that it would complete construction of the Public Potable and Raw Water Facilities to serve Developer’s Parcels and Sun SCC’s additional parcels prior to October 1, 2020.

WHEREAS, the Third Amendment, extended Developer’s use of the Interconnect on the same terms as the First Amendment until December 31, 2020, because Sun requested additional time to complete the water facilities.

WHEREAS, Developer has requested and Granby is amenable to an additional extension of the time period for use of the Interconnect to serve potable water to Developer’s Parcels and Sun SCC’s Additional Parcels pursuant to the additional terms as described below, to enable Developer to complete construction of the water facilities to provide water to service its properties.

WHEREAS, Developer and Granby wish to revise the Water Agreement as necessary to provide for continued use of the Interconnect to serve Developer’s property until the earlier of April 30, 2021, or the date of issuance of the Certificate of Initial Acceptance of the Public Potable Facilities and Public Raw Water Facilities necessary to serve potable water to Developer’s Parcels and Sun SCC’s Additional Parcels, pursuant to the terms described below.

NOW, THEREFORE, in consideration of the recitals set forth above, which are fully incorporated herein by reference, and the mutual covenants, agreements and provisions contained in the Water Agreement, the First Amendment, the Second Amendment, the Third Amendment, and this Fourth Amendment, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

2. AMENDMENTS.

A. Paragraph 8.4.1 of the First Amendment is amended and restated below in its entirety.

8.4.1. Term of Temporary Use. Granby shall serve potable water to Developer’s Parcels and Sun SCC’s Additional Parcels from the Effective Date of this Fourth Amendment to the earlier of either April 30, 2021, or the date of issuance of the Certificate of Initial Acceptance of the Public Potable Facilities and Public Raw Facilities necessary to serve potable water to Developer’s Parcels and Sun SCC’s Additional Parcels. In any event, Granby will have no obligation to use or allow the use of the interconnect to serve Developer after April 30, 2021, except as described in ¶ 8.6.1 of this Fourth Amendment, unless and until an additional amendment of the Water Agreement acceptable to Granby is entered into.

B. Paragraph 8.4.3 of the First Amendment is amended and restated below in its entirety.

8.4.3. Interconnect Service Fees. Developer shall install a master meter on the Interconnect that shall measure Developer’s potable water usage from the Interconnect (“Developer Interconnect Usage”). Granby shall impose a monthly water service charge on Developer based on Developer’s Interconnect Usage at a rate of eighteen dollars and 22 cents (\$18.22) per one thousand (1000) gallons (“Interconnect Service Fees”). In addition, Granby shall bill Developer and Developer shall reimburse Granby for all staff time related to the provision of such water including but not limited to administrative, water department, engineering and legal efforts. Developer shall not be obligated to reimburse Granby for any cost or expense that is not reasonably related to the provision of water to Developer or

operation and maintenance of the Public Potable Facilities and Public Raw Facilities. The Interconnect Service Fee and all fees Developer is obligated to reimburse to Granby shall be paid in full within fourteen (14) days of billing or Granby may interrupt or terminate providing water under this Fourth Amendment.

On or before February 28, 2021, Developer shall apply for initial acceptance of the Public Potable Facilities and Public Raw Facilities necessary to provide Developer potable water as provided for in the Water Agreement. For each and every day, or part of a day thereafter, until the date Developer has applied for initial acceptance of such facilities, Developer shall owe the Town five-hundred dollars (\$500.00) which shall be paid by Developer within fourteen (14) days of billing or Granby may interrupt or terminate providing water under this Fourth Amendment. This amount shall be in addition to any fees, obligations or reimbursables of the Developer to Granby after February 28, 2021.

In the event Granby utilizes the Public Potable Facilities and Public Raw Facilities to serve water to Developer's Parcels and Sun SCC's Additional Parcels, Developer agrees to reimburse Granby for all costs and expenses incurred for such provision, including but not limited to materials, labor, staff, administrative, legal and engineering time, equipment and tools and any other costs or expenses incurred by the Town. Developer shall not be obligated to reimburse Granby for any cost or expense that is not reasonably related to the provision of water to Developer or operation and maintenance of the Public Potable Facilities and Public Raw Facilities. At such time as the Potable Water Service Fee and Raw Water Service Fees pursuant to ¶¶ 3.7 and 5.8 have been determined from the necessary rate study and the Town has issued a Certificate of Initial Acceptance of the Public Potable Facilities and Public Raw Facilities necessary to serve potable water to Developer's Parcels and Sun SCC's Additional Parcels, and continuing thereafter, Granby shall charge Developer such monthly operation and maintenance fees.

Under no circumstance shall Granby be obligated to use funds other than funds generated by the fees paid by Developer as provided for in the Water Agreement and Amendments thereto, including this Fourth Amendment, to meet Developer's potable and raw water demands for Developer's Parcels and Sun SCC's Additional Parcels. Developer's obligations provided in this Fourth Amendment are in addition to, and not in lieu of, any financial obligations of the Developer, including but not limited to the obligations contained in ¶6 of the Water Agreement.

8.4.3.1. Purchase of equipment. Commencing on the effective date of this amendment, Granby may purchase equipment related to the provision of water to Developer and Developer shall reimburse Granby for the same. For any purchase exceeding \$500, Granby shall send written notice to [individual and email] ("Developer's Representative") a written request for such purchase. Developer's Representative shall respond within 48 hours either approving or denying the request. Any equipment purchased pursuant to this paragraph shall be used solely and exclusively within and for Granby's West Service Area. Such purchases shall be billed and reimbursed separately from the fees provided for in ¶8.4.3 of this Amendment. In the event Developer denies a request and Granby uses equipment

from another service area or department of the Town for the provision of water to Developer, Granby shall separately bill Developer for the reasonable costs of such use as determined by Granby and Developer shall reimburse Granby for such use within fourteen (14) days of receipt of such invoice.

C. Paragraph 8.6.1 of the First Amendment is amended and restated below in its entirety.

8.6.1. To Serve Developer. After the April 30, 2021, Granby may utilize the Interconnect to serve potable water to Developer's Parcels and/or Sun SCC's Additional Parcels from Granby's Existing Supplies, subject to the terms and conditions below and in ¶¶ 8.4.3 to 8.4.5 of the First Amendment. Granby shall use its best efforts to rectify any situation warranting Emergency Interconnect Usage or Non-emergency Interconnect Usage to avoid causing financial hardship to Developer resulting from the Developer Interconnect Usage.

D. Developer acknowledges that all costs, fees and expenses incurred by the Town and related in any manner to the negotiation, preparation, execution and implementation of this Fourth Amendment, shall be reimbursed by Developer within fourteen (14) days of billing.

3. FULL FORCE AND EFFECT. Except as specified in ¶ 2 of this Fourth Amendment, all provisions of the Water Agreement, the First Amendment, the Second Amendment, the Third Amendment, and the Development Agreement shall remain in full force and effect.

[remainder of page intentionally left blank; signatures on separate page]

The Parties have executed this Fourth Amendment.

DEVELOPER:

SUN RIVER RUN RANCH RV LLC, a Michigan limited liability company

By: SUN COMMUNITIES OPERATING LIMITED PARTNERSHIP, a Michigan limited partnership, its Sole Member

By: SUN COMMUNITIES, INC., a Maryland corporation, General Partner

By: _____
John B. McLaren, President and Chief Operating Officer

GRANBY:

TOWN OF GRANBY, COLORADO

Josh Hardy, Mayor

ATTEST:

Deborah K. Hess, CMC Town Clerk