

RESOLUTION NO. 07-21

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF MARICOPA, ARIZONA, APPROVING AND ADOPTING THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MARICOPA AND SIERRA ESTRELLA LANDFILL, INC., IN COMPLIANCE WITH A.R.S. §9-500.05.

WHEREAS, pursuant to A.R.S. §9-500.05, Sierra Estrella Landfill, Inc., an Arizona corporation ("Developer"), requested that the City of Maricopa enter into a Development Agreement in the form which is attached to this Resolution and by this reference made a part hereof; and

WHEREAS, the City of Maricopa believes that it is in the best interest of the City to enter into this Development Agreement in order to facilitate the proper municipal zoning designation of the property subject to the Development Agreement.


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

Section 1. The City of Maricopa by the requisite vote of its City Council hereby approves and adopts, and authorizes and instructs its Mayor on behalf of the City of Maricopa to enter into the Development Agreement with the Developer in the form attached to and made a part of this Resolution.

Section 2. Pursuant to A.R.S. §9-500.05(G), the provisions of this Resolution are not enacted as an emergency measure and shall not be effective for thirty (30) days.

PASSED AND ADOPTED by the Mayor and City Council of the City of Maricopa, Arizona, this 9th day of April, 2007.


APPROVED:



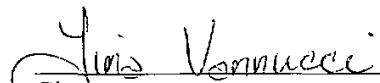
Former Mayor Kelly Anderson
Mayor

ATTEST:

APPROVED AS TO FORM:



City Clerk



City Attorney

**EXHIBIT B
CITY RESOLUTION**

See attached.

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OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
LAURA DEAN-LYTLE

When recorded, return to:

City of Maricopa
c/o Denis Fitzgibbons, City Attorney
Fitzgibbons Law Offices, PLC
711 E. Cottonwood, Suite E
Casa Grande, AZ 85230

DATE/TIME: 04/13/07 1611
FEE: \$13.50
PAGES: 10
FEE NUMBER: 2007-045187

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made on April 9, 2007 between the CITY OF MARICOPA, an Arizona municipal corporation (the "City"), and SIERRA ESTRELLA LANDFILL, INC., an Arizona corporation and a wholly-owned subsidiary of Waste Management of Arizona, Inc., a California corporation ("Sierra Estrella").

RECITALS

A. The property that is the subject of this Agreement is located in Pinal County, Arizona and is more particularly described on Exhibit A (the "Property").

B. In the early 1990's, Browning Ferris Industries of Pinal County, Inc. ("BFI") applied for and obtained from Pinal County an Industrial Use Permit for the Property (the "County IUP"); the Property was zoned CI-2 by Pinal County when BFI applied for and obtained the County IUP. The CI-2 zoning and the County IUP, collectively, authorized the Property to be used as a municipal solid waste landfill and are referred to as the "Existing Land Use Approvals."

C. Based on the Existing Land Use Approvals, the Property was used as a municipal solid waste landfill known as the Sierra Estrella Landfill (the "Landfill") in the 1990's.

D. The ownership of the entity that owned the Landfill was transferred on two occasions; in conjunction with this transfer of ownership, the name of the entity that owned the Property was changed from Browning Ferris Industries of Pinal County, Inc. to USA Waste of Pinal County, Inc. to Sierra Estrella Landfill, Inc.

E. The City has expressed an interest in annexing the Property into the City.

F. Sierra Estrella is amenable to the annexation and is willing to sign a petition in support of the annexation so long as the City takes the appropriate actions to grant new land use approvals that are no more restrictive and no less restrictive than the Existing Land Use Approvals so that the Property may continue to be used as a municipal solid waste landfill.

G. The use of the Property as a landfill is consistent with the City's general plan as of the date this Agreement is executed.

AGREEMENTS

NOW, THEREFORE, in consideration of the foregoing recitals, and the mutual covenants and conditions set forth below which the parties acknowledge provide adequate consideration, the parties agree as follows:

1. Incorporation of Recitals. The foregoing Recitals are incorporated into this Agreement and the parties acknowledge and agree that these Recitals are true and accurate.

2. Annexation and Zoning. The City and Sierra Estrella acknowledge that Ariz. Rev. Stat. § 9-471(L) requires that the City initially zone lands annexed into the City for densities and land uses no greater than the Existing Land Use Approvals. Further, upon annexation of the Property into the City, the City and Sierra Estrella intend to provide zoning and other land use approvals with densities and land uses no more restrictive than the Existing Land Use Approvals. The City has initiated a zoning request to apply its CI-2 zoning (the "City CI-2 Zoning") to the Property. Sierra Estrella has initiated an IUP for the Property (the "City IUP"). With respect to the City CI-2 Zoning and the City IUP, the City warrants and represents to Sierra Estrella that all procedures required by law have been followed and that the City CI-2 Zoning and the City IUP (collectively, the "Proposed Land Use Approvals") grant legal and binding land use approvals that are no more restrictive and no less restrictive than the Existing Land Use Approvals. If the Proposed Land Use Approvals, as actually adopted by the City on April 9 or a later date, are more restrictive than the Existing Land Use Approvals, the City shall on that same date rescind and revoke the annexation. After the Property is annexed by the City, the City shall not enact any additional ordinances or regulations governing the development or use of the Property that are inconsistent with the ordinances or regulations governing the development or use of landfills in other jurisdictions within the State of Arizona or which materially impacts the ability of Sierra Estrella to develop or use the Property as a landfill. The City and Sierra Estrella agree that if the approved City CI-2 Zoning and/or City IUP are determined to be invalid, ineffective, void, or to not apply to the Property, as a result of a referendum or for any other reason, then the Existing Land Use Approvals shall continue in full force and effect and shall govern the use of the Property. In the event of a final decision by a court of competent jurisdiction holding that the preceding sentence is invalid or unenforceable, the City and Sierra Estrella agree that there shall be no zoning on the Property, as contemplated by City Ordinance Number 07-02 and Ariz. Rev. Stat. § 9-462.04(E), which provides that county zoning shall continue on the land for no longer than six months after annexation. If there is no zoning on the Property as contemplated by the preceding sentence, then Sierra Estrella agrees that it shall not use the Property for uses greater or more intensive than uses permitted by the Existing Land Use Approvals.

3. Runs with the Land. The City acknowledges that the Proposed Land Use Approvals run with the land and are not personal to Sierra Estrella.

4. Effective Date. This Agreement does not become operative unless annexation proceedings to annex the Property to the City are completed by May 15, 2007, or such additional time that is necessary to complete any appeal or challenge to an annexation that would otherwise be completed by May 15, 2007 in the absence of an appeal or challenge.

5. Miscellaneous Provisions.

5.1 Governing Law and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of Arizona. This Agreement is subject to the provisions of Ariz. Rev. Stat. § 38-511. The City shall cause this Agreement to be recorded with the Pinal County Recorder within ten days as required by Ariz. Rev. Stat. § 9-500.05. Any action at law or judicial proceeding instituted by any party relating to this Agreement shall be instituted in the courts of Pinal County.

5.2 Entire Agreement. This writing evidences the final and complete agreement between the parties with respect to the subject matter of this Agreement and no other prior statement, representation or understanding shall be binding upon the parties unless expressly set forth herein. It is mutually understood and agreed that no alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the parties hereto. Written and signed amendments shall automatically become part of this Agreement, and shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.

5.3 Notice. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (i) delivered to the party at the address set forth below, (ii) deposited in the U.S. Mail, certified, return receipt requested, to the address set forth below, or (iii) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the City:	City of Maricopa 44624 W. Garvey Road Box 610 Maricopa, AZ 85239 Attn: City Manager
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With a copy to:	Fitzgibbons Law Offices, PLC 711 E. Cottonwood, Suite E Casa Grande, AZ 85230 Attn: Denis Fitzgibbons
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If to WM: Sierra Estrella Landfill, Inc.
c/o Waste Management of Arizona, Inc.
1580 E. Elwood
Phoenix, AZ 85040
Attn: Market Area General Manager

With a copy to: Jordan Bischoff & Hiser, PLC
7272 E. Indian School Road, Suite 360
Scottsdale, AZ 85251
Attn: Doug Jordan

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this Section. Notices shall be deemed received (i) when delivered to the party, (ii) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage, or (iii) the following business day after being given to a recognized and reputable overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day.

5.4 Further Assurances. Each party, promptly upon the request of the other, shall take such further actions and shall execute, acknowledge, and deliver to the other any and all further instruments as may be necessary or proper to carry out the purpose and intent of this Agreement.

5.5 Successors and Assigns. This Agreement and all the terms and provisions hereof shall be binding upon and inure to the benefit of the parties and their heirs, successors and assigns.

5.6 Survival. All agreements, representations and warranties made in this Agreement shall survive the annexation of the Property by the City.

5.7 Attorneys' Fees. In the event of any controversy, claim or dispute between the parties arising out of or relating to this Agreement or the breach thereof, the prevailing party shall be entitled, in addition to such other relief as may be granted, to recover its costs and expenses, including without limitation, reasonable attorneys' fees, expert witness fees and investigators' fees, which shall be determined by the court if the matter is litigated or otherwise in a separate action brought for that purpose.

5.8 Authorization. The execution and performance of this Agreement have been duly authorized by all necessary laws, resolutions or actions of the respective parties. The parties have obtained all necessary consents of lenders, landlords and other third parties for the execution and performance of this Agreement; and this Agreement constitutes the valid and enforceable obligations of the parties hereto in accordance with its terms. The City resolution authorizing this Agreement is attached as Exhibit B.

5.9 Construction of Agreement. This Agreement has been arrived at by negotiation and shall not be construed against either party to it or against the party who prepared the last draft.

5.10 Severability. If any part, terms or provision of this Agreement shall be held illegal, unenforceable or in conflict with any law, the validity of the remaining portions and provisions hereof shall not be affected.

5.11 Dispute Resolution. In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree that there shall be a sixty (60) 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 Sierra Estrella and the City. 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 City and Sierra Estrella shall request the presiding judge of the Superior Court in and for the County of Pinal, State of Arizona, to appoint an independent mediator. The cost of any such mediation shall be divided equally between the City and Sierra Estrella. The results of the mediation shall be nonbinding on the parties, and any party shall be free to initiate litigation subsequent to the moratorium. This provision shall not be applicable to an emergency situation in which irreparable harm may occur within such 60 day period.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first set forth above.

“SIERRA ESTRELLA”

SIERRA ESTRELLA LANDFILL,
INC., an Arizona corporation

By: [Signature]
Title: MAGM

“CITY”

CITY OF MARICOPA, an Arizona
municipal corporation

By: [Signature]
Title: Vice-mayor

Attest:

[Signature]
City of Maricopa Clerk

Approved as to Form:

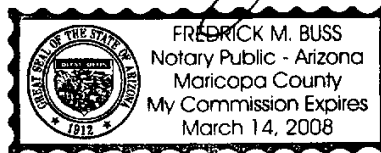
Jina Vannucci
Maricopa City Attorney

STATE OF ARIZONA)
) ss.
County of PINAL)

The foregoing instrument was acknowledged before me this 9TH day of APRIL, 2007, by Dan Vermeer, the Vice President of Sierra Estrella Landfill, Inc., an Arizona corporation and a wholly owned subsidiary of Waste Management of Arizona, Inc., a California corporation, for and on behalf of the corporation.

Fredrick M. Buss
Notary Public

My Commission Expires:
3/14/2008



STATE OF ARIZONA)
) ss.
County of PINAL)

The foregoing instrument was acknowledged before me this 9TH day of APRIL, 2007, by PRENT MURPHY the VICE-MAYOR of the City of Maricopa, an Arizona municipal corporation, for and on behalf of the municipal corporation.

Vanessa Bueras
Notary Public

My Commission Expires:
12/29/08



VANESSA BUERAS
Notary Public - Arizona
Pinal County
My Commission Expires
December 29, 2008

EXHIBIT A
LEGAL DESCRIPTION OF THE SIERRA ESTRELLA
LANDFILL

Beginning at the NE corner of Section 13, T. 4S. -R.2E., G. & S.R.B. & M., Pinal County, Arizona (G.L.O., Brass Cap); thence S. 0 deg. 21' 27" E., along the Easterly line of said Section 13, a distance of 2640.19 feet to the E ¼ corner of said Section 13 (1" I. Pipe filled with concrete); thence along the right-of-way line of the Maricopa Stanfield Irrigation and Drainage District as recorded in Docket 1499, Page 430 thereof, Pinal County Records, Pinal County, Arizona. the following various courses; N. 89 deg. 50' 29" W., 108.00 feet, (N. 89 deg. 42' 53" W. , 108.00 feet. Record), thence S. 0 deg. 23' 00" E., 373.72 feet, (S. 0 deg. 15' 36" E., 373.69 feet. Record); thence S. 42 deg. 41' 14" W. 82.12 feet, (S. 42 deg. 48' 48" W., 82.12 feet. Record); thence N. 89 deg. 21' 01" W. 208.99 feet, (N. 89 deg. 13' 25" W. 208.99 feet. Record); thence N. 80 deg. 05' 40" W., 1167.61 feet, (N. 79 deg. 58' 05" W., 1167.64 feet. Record); thence N. 81 deg. 45' 00" W., 955.35 feet, (N. 81 deg. 37' 25" W., 955.38 feet. Record); thence N. 83 deg. 04' 16" W., 650.99 feet, (N. 82 deg. 56' 40" W., 651.01 feet. Record); thence N. 6 deg. 56' 04" E., 5.03 feet, (N. 7 deg. 03' 20" E., 5.03 feet. Record); thence N. 85 deg. 08' 03" W., 1201.29 feet, (N. 85 deg. 00' 27" W., 1201.32 feet. Record); thence N. 86 deg. 28' 39" W., 690.52 feet, (N. 86 deg. 21' 03" W., 690.53 feet. Record); thence N. 3 deg. 31' 40" E., 10.00 feet, (N. 3 deg. 38' 57" E., 10.00 feet. Record); thence N. 86 deg. 28' 39" W., 191.17 feet (N. 86 deg. 21' 03" W., Record) to a point; thence leaving said right-of-way line of the Maricopa Stanfield Irrigation and Drainage District, thence S. 0 deg. 29' 20" W., being parallel with and 33' Easterly of the Westerly line of said Section 13. a distance of 96.11 feet to a point on the Northerly right-of-way line of State Route 238, as per Docket 1463, Page 573 and Docket 1535 Page 573, as are recorded in Pinal County Records, Pinal County, Arizona, said point also be on a curve concave Southerly, and from said point the center point of said curve bears S. 2 deg. 44' 19" W., 34,630.61 feet distant therefrom; thence westerly along the arc of said curve through a central angle of 0 deg. 06' 33", a distance of 66.05 feet; thence N. 0 deg. 29' 20" E., being parallel with and 33.00 feet Westerly of said Westerly line of Section 13, a distance of 336.70 feet; thence S. 89 deg. 30' 40" E., 33.00 feet to a point on the said Section line and from which the NW corner of said Section 13 bears N. 0 deg. 29' 20" E., 2202.75 feet distant therefrom; thence continuing S. 89 deg. 30' 40" E., a distance of 201.25 feet; thence N. 0 deg. 29' 20" E., being parallel with the Westerly line of said Section 13, a distance of 2205.95 feet to a point on the Northerly line of said Section 13, and from which point the NW corner of said Section 13, (BLM Brass Cap) bears S. 89 deg. 34' 50" W., 201.28 feet distant therefrom; thence N. 89 deg. 34' 50" E., along the said Northerly line of Section 13, a distance of 2390.62 feet to the N ¼ corner of said Section 13 (BLM Brass Cap); thence, continuing N. 89 deg. 34' 50" E., along the said Northerly line of Section 13, a distance of 2591.72 feet to the POINT OF BEGINNING.

Subject to a 100 foot wide right-of-way and easement for an El Paso Natural Gas Company high pressure natural gas line as described in Docket 568, Page 87 thereof, Pinal County Records, Pinal County, Arizona.

And also subject to a 33.00 foot wide easement for declared roadway over the Northerly 33.00 feet of said Section 13, and over the Easterly 33.00 feet of said Section 13, as described in Docket 375, Page 572 thereof Pinal County Records, Pinal County, Arizona.

Subject to any and all existing easements and or rights-of-way affecting the above described property.