

RESOLUTION NO. 1235

RESOLUTION OF THE BOARD OF PUBLIC UTILITIES RECOMMENDING THE CITY COUNCIL APPROVE A FEE DEFERRAL AND AGREEMENT TO PAY WATER DEMAND FEES BETWEEN EL CRYSTAL MOBILE HOME PARK (MHP) AND CITY OF SANTA ROSA

WHEREAS, the property owner, El Crystal MHP, LLC (“El Crystal”), is in need of connection to the City’s water system due to contamination of the existing water wells on the real property located at 3280 Santa Rosa Avenue, Santa Rosa, California, Assessor’s Parcel Number 044-101-012 (the “Property”); and

WHEREAS, Section 21-01.030 of the City Code establishes the time of collection of certain City fees and charges which are imposed and collected as conditions for connection of new or additional uses to the City Water System within the incorporated area of the City of Santa Rosa; and

WHEREAS, the Property is part of the AR 5705 Santa Rosa Consolidation Project, which is anticipated to provide state grant funds for the permanent connection to City water within five (5) years and will cover the cost of any connection fees and construction costs; and

WHEREAS, in order to facilitate the immediate connection of the Property to water service essential to provide clean drinking water to the residences located on the Property, El Crystal has requested the payment of the connection fees be deferred until AR 5705 state grant funds are available to cover the cost of the connection fees, but no longer than five (5) years; and

WHEREAS, staff is requesting that the City Council approve a Fee Deferral and Agreement to Pay Water Demand Fees, to allow immediate connection of the Property to clean drinking water.

NOW, THEREFORE, BE IT RESOLVED that the Board of Public Utilities, based on the foregoing, finds there is good reason to facilitate the immediate connection of the Property to City water service and therefore recommends that the City Council approve a Fee Deferral and Agreement to Pay Water Demand Fees with El Crystal MHP, LLC in substantially the form attached hereto in Exhibit A and made part of this Resolution.

DULY AND REGULARLY ADOPTED by the City of Santa Rosa Board of Public Utilities this 17th day of September, 2020.

AYES: (6) GALVIN, ARNONE, BADENFORT, GRABILL, MULLAN AND WRIGHT

NOES: (0)

ABSENT: (1) WATTS

ABSTAIN: (0)

APPROVED: _____/S/_____
Daniel J. Galvin III
Chair

ATTEST: _____/S/_____
Roberta Atha
Recording Secretary

APPROVED AS TO FORM:

 /S/
City Attorney

ATTACHMENT: Exhibit A – Fee Deferral and Agreement to Pay Water Demand Fees with El Crystal MHP, LLC

Exhibit A

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Santa Rosa Water
Water Engineering Services
35 Stony Point Road
Santa Rosa, CA 95401

Recorded for the City of Santa Rosa
Pursuant to Cal. Govt. Code §66007
NO FEE PER GOVERNMENT CODE 27383

FEE DEFERRAL AND AGREEMENT TO PAY
WATER DEMAND FEES

Between

El Crystal MHP, LLC
PROPERTY OWNER
AND
CITY OF SANTA ROSA

This Agreement is made and entered into this ____ day of _____, 20__, by and between El Crystal MHP, LLC, a California limited liability company (“Property Owner”) and the City of Santa Rosa, a charter City in the State of California (“The City”).

RECITALS

- A. The Property Owner is in need of a temporary connection to the City’s water system due to contamination of the existing water well on the real property located at 3280 Santa Rosa Avenue, Santa Rosa, California, Assessor’s Parcel Number 044-101-012 (hereinafter the “Project” or the “Property”) for a period not to exceed five (5) years. A legal description of the property is attached hereto as Exhibit A and incorporated herein by this reference.
- B. Sections 21-01.030 of the City Code establishes the time of collection of certain City fees and charges which are imposed and collected as conditions for connection of new or additional uses to the City Water System within the incorporated area of the City of Santa Rosa.
- C. The Property is part of the AR 5705 Santa Rosa Consolidation Project, which is anticipated to provide state grant funds for the permanent connection to City water (Project) within five (5) years and will cover the cost of any connection fees and construction costs.
- D. Due to the urgency of the need for water to serve the Property prior to the Project being completed, the City has agreed to allow a temporary emergency connection to proceed and pursuant to City Council Resolution No. _____ dated _____ the City has

agreed to defer water demand fees for a period of five (5) years to allow for completion of the Project.

AGREEMENT

NOW, THEREFORE, in consideration of the recitals set forth above and the covenants, conditions and promises contained herein, the Property Owner and the City agree as follows:

1. Connection/Demand Fees. For purposes of this Agreement, “Connection/Demand Fees” means the connection/demand fees and amounts due for the connection of the Property to the City’s water system, which are estimated below based on the current fee schedule. The actual demand fees shall be calculated based on the fee schedule in effect at the time of authorization/approval of the Project construction, or when state grant funds are made available to pay the demand fees:

CONNECTION/DEMAND FEE	ESTIMATED AMOUNT
<ul style="list-style-type: none">• WATER DEMAND FEE	\$147,459.00

Upon availability of state grant funds, but in any event prior to construction of the permanent water connection to the Property, the City will issue a “final Statement of Fees Due” setting forth the actual amount of the Connection/Demand Fees subject to payment hereunder (the “Fee Amount”), and the Fee Amount shall be paid in full.

2. Payment of Connection/Demand Fees; Timing.

- (A) Payment Obligation. This Agreement does not modify in any way the amount of the fees required to be paid hereinunder or any other development or impact fees that might become due for the Project. Accordingly, Owner, on behalf of itself, and its successor and assigns, hereby agrees that the Fee Amount shall be due and payable prior to any permanent connection of the Property to the City’s water system. In the event that the state grant funds fail to materialize and the Project does not proceed, then Owner shall have the right to (1) disconnect the temporary connection from the City’s water system,(2) pay the Fee Amount in full, or (3) enter into a payment plan with the City as necessary for Owner to pay the Fee Amount over a five-year period.
- (B) Timing of Payment. Unless the temporary connection is abandoned or the Fee Amount is otherwise paid through state grant funds, the full Fee Amount shall be due and payable by Owner prior to any permanent connection but in no event later than five years from the date of this Agreement, provided that Owner shall have the right to enter into a payment plan with the City to extend the term of payment for the Fee Amount, subject to the approval of the Director of Water and with review of the City Attorney’s Office. The City will provide a Release of this Fee Deferral And Agreement to Pay Development Impact Fees after full payment of the Fee Amount or at time of disconnection from the City’s Water system.

- (C) In the event of any modification of the temporary connection or change in use of the Property, water demand fees shall be subject to recalculation according to such change in use and may be come due and payable (for any permanent use) as of such date. Nothing herein shall waive or excuse water demand fees for a permanent use or change in use of the Property.

3. Recording of Agreement.

The payment obligations of Owner to the City under this Agreement shall be recorded against the Property in the Official Records of Sonoma County, California pursuant to California Government Code Section 66007. Owner shall be responsible for recording this Agreement and providing a conformed copy to the City, which will be required prior to the installation of the temporary water connection the Property.

4. Further Conditions.

Notwithstanding any other provision of this Agreement to the contrary, the City shall be entitled to discontinue water service to the Property , including but not limited the temporary connection hereunder, if this Agreement is removed from title by a foreclosure, a deed in lieu of foreclosure or by any other means, including foreclosure of a superior lien, unless the Fee Amount under this Agreement is first paid as and when due hereunder.

5. Default.

Each of the following shall constitute an “Event of Default” hereunder:

- (a) If Owner fails to disconnect from the Water system on or prior to five (5) years from the date of this Agreement, unless the Fee Amount is paid pursuant to the terms of this Agreement, or Owner has otherwise entered into a payment plan for the Fee Amount in accordance with this Agreement; or
- (b) If Owner fails to render any payment due hereunder as and when said payment is due and payable if such default shall continue uncured for ten (10) days following such due date; or
- (c) If Owner makes an assignment for the benefit of creditors or admits its inability to pay its debts generally as they become due; or
- (d) If any action or proceeding is commenced by or against Property owner under the Federal Bankruptcy Act or under any other present or future state or federal law for the relief of debtors or for the appointment of a receiver or trustee or the issuance of an attachment of substantially all the assets of Owner, and is not stayed, satisfied or discharged within sixty (60) days; or
- (e) In the event that Owner shall fail to comply with all of the terms, conditions, and requirements of any such deed of trust or other obligation secured by, or constituting such a superior lien on the property so as to result in a default thereunder.

6. Remedies.

- (a) Upon the occurrence of an Event of Default, City may (unless all defaults have therefore been remedied) at its option disconnect the Property from service, or if service is allowed to continue then declare the Fee Amount hereunder to be immediately due and payable without further demand or notice to Owner, and the entire unpaid balance due under this Agreement then outstanding shall be and become immediately due and payable at the election of City. Upon the occurrence of an Event of Default, City shall have all rights and remedies available at law or equity.
- (b) In addition to any other remedy provided by law or granted elsewhere under this Agreement, the City may elect to seek in a court of appropriate jurisdiction such injunctive orders or other relief as the City considers may be necessary to secure the performance by Owner, its successors and assigns, of its commitments and obligations under this Agreement. In any such action, the City shall, in addition to injunctive relief, be entitled to the full scope of remedies afforded by law, including, but not limited to, economic damages.
- (c) In the event of any default by Owner under this Agreement, including, but not limited to, the failure to pay the Fee Amount when due, interest shall be due and shall be paid to the City on the actual amount of the Fee Amount from the date due under this Agreement until the date actually paid to the City, or, alternatively, until a court judgment concerning this Agreement is entered in favor of the City and against Owner, whichever event occurs first. The annual rate of interest under this Section 6 shall be 10 percent per annum.

7. Cost of Collection.

If any amounts under this Agreement are not paid when due, whether on the due dates or as a result of acceleration as set forth in Section 6 above, then Owner promises to pay all costs and expenses of collection, whether or not an action shall be instituted to enforce this Agreement.

8. No Joint Venture Relationship.

The relationship between the City and Owner under this Agreement is that of a creditor/debtor and not that of a joint venture. Owner is not the agent of the City for any purpose in connection with this Agreement, the Property or the Project.

9. Entire Agreement.

This Agreement, together with any exhibits hereto, constitutes the entire Agreement between the parties respecting the matters covered, and supersedes all prior agreements and representations concerning the subject matter hereof, whether written or oral.

10. Severability.

If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the entirety of this Agreement shall be rendered null and void and the Fee Amount shall thereupon be immediately due and payable.

11. Notices

Any notices and payments called for by this Agreement shall be personally delivered or served by first-class or certified mail on the parties at the following addresses:

To City:	City of Santa Rosa Water Engineering Services 35 Stony Point Rd. Santa Rosa, CA 95401
With a Copy to:	City Attorney's Office 100 Santa Rosa Avenue, Dept #8 Santa Rosa, CA 95404
To Owner:	El Crystal MHP, LLC P.O. Box 1646 San Juan Capistrano, CA 92693

Notice of any change of address shall be given pursuant to this Section 11. Any correctly addressed notice that is refused or undeliverable because of an act or omission of the party to be notified shall be considered to be effective as of the first date that the notice was refused or considered undeliverable by the postal authorities, messenger, or overnight delivery service.

12. Conditions to Assignment.

The rights and obligations of the parties under this Agreement are based upon the special skills and abilities of each party and there shall not be any assignment of such rights or obligations by one party without the prior written consent of the other party.

13. Headings Not Part of Agreement.

The headings used in this Agreement are not part of the Agreement and will not be considered in its interpretation.

14. Modifications to Agreement.

This Agreement may be modified or amended only by subsequent written agreement(s) signed by each of the parties to this Agreement.

15. Governing Law; Venue.

This Agreement shall be governed by and construed in accordance with the laws of the state of California. Any and all actions, suits or other legal proceedings arising in connection with this agreement shall be held in courts located in the County of Sonoma.

16. Authority; Signatures Required for Corporations.

Owner hereby further represents and warrants that this Agreement has been duly authorized, and when executed by the signatory or signatories listed below, shall constitute a valid agreement binding on Property owner in accordance with the terms hereof. Unless signature authority is otherwise demonstrated to the satisfaction of the City, this Agreement is entered into by a corporation, it shall be signed by two corporate officers, one from each of the following two groups: a) the chairman of the board, president or any vice-president; b) the secretary, any assistant secretary, chief financial officer, or any assistant treasurer. The title of the corporate officer shall be listed under the signature.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date set forth in the first paragraph hereof.

CITY OF SANTA ROSA

OWNER

El Crystal MHP, LLC
a California limited liability Company

By: _____
Name: _____
Title: _____

By: Jennifer Burke
Director of Santa Rosa Water Department

By: _____
Name: _____
Title: _____

NOTE: ACKNOWLEDGEMENTS MUST BE ATTACHED FOR ALL SIGNATORIES.

APPROVED AS TO FORM:

Dated: _____

By: _____
Assistant City Attorney

Attachment:
Exhibit "A" - Legal Description for the Property