

SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is made and entered into this 7th day of January, 2022, by and between the Rudolph Johnson Family L.L.C. (“Johnson”) and the City of Glendale, an Arizona municipal corporation (“Glendale”). This Agreement will become effective on the date on which the Glendale City Council approves it pursuant to Paragraph 21 below (the “Effective Date”). Johnson and Glendale are collectively referred to herein as the “Parties,” or individually as a “Party.”

RECITALS

WHEREAS, Johnson owns real property located at the southeast corner of North 99th Avenue and Olive Avenue in Maricopa County, Arizona, identified in the records of the Maricopa County Assessor as APNs 142-55-006D and 142-55-006C;

WHEREAS, this Agreement concerns the northern portion of the property identified as APN 142-55-006D and all of the property identified as APN 142-55-006C, as generally depicted in Exhibit A, except for any portion thereof lying in the North 99th Avenue Right-of-Way (together, the “Johnson Property”);

WHEREAS, Johnson’s predecessors-in-interest leased approximately 16 acres of the Johnson Property to Glendale in 1968 to operate and maintain a municipal landfill;

WHEREAS, Glendale operated a municipal landfill on the Johnson Property until approximately December 1970, and then closed, graded, and returned possession of the leased land to Johnson’s predecessors-in-interest;

WHEREAS, Johnson filed a lawsuit in the United States District Court for the District of Arizona against Glendale, Civil Action No. CV-19-05905-PHX-SRB (the “Lawsuit”), asserting claims against Glendale for breach of contract, negligence, nuisance, and claims under the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”) all relating to Glendale’s former operation of the landfill on the Johnson Property;

WHEREAS, without admission of liability, the Parties wish to settle and compromise all of their disputes, differences, and claims, whether known or unknown, asserted or unasserted, which are in any way related to the Lawsuit; and

NOW, THEREFORE, in consideration of the mutual promises, undertakings, and valuable consideration set forth below, the sufficiency of which is acknowledged by the Parties, the Parties agree as follows:

AGREEMENT

1. Intent and Purpose of the Agreement. Without any admission of liability and expressly denying same, it is the intent of the Parties and the purpose of this Agreement to fully and finally settle and resolve all disputes between the Parties relating in any way to the Johnson

Property, including the Lawsuit; to provide for payment as stated below; and to provide for a full and complete release.

2. Transfer of Title.

- a. Johnson agrees to convey and assign the Johnson Property to Glendale on the terms and subject to the conditions of this Agreement. Prior to the Property Closing (defined below), the southern boundary line of the Johnson Property and the location of the four vapor-monitoring wells located on the Johnson Property (the "Vapor Monitoring Wells") and the three (3) groundwater monitoring wells (the "Groundwater Monitoring Well") shall be mutually agreed to by the Parties and set forth on the Survey (defined below). At the Property Closing, Johnson shall convey to Glendale all of its right, title, and interest in and to the Vapor Monitoring Wells, the Groundwater Monitoring Wells and all associated equipment. The Parties agree to use commercially reasonable efforts to cause the consummation of the conveyance and assignment of the Johnson Property from Johnson to Glendale (the "Property Closing") to occur within sixty (60) days after the Effective Date, or as soon thereafter as commercially reasonable. At the Property Closing, Johnson shall (i) convey title to the Johnson Property to Glendale free and clear of any and all liens, encumbrances, or security interests, and (ii) give full, complete, and actual possession of the Johnson Property to Glendale, free and clear of all tenancies and other rights of occupancy in favor of any third parties. At the Property Closing, Johnson and Glendale shall enter into an Easement Agreement, in substantially the form attached hereto as Exhibit B (the "Easement Agreement"), pursuant to which, among other things, Glendale will convey to Johnson a non-exclusive easement for the sole purpose of the use, repair, and maintenance of the irrigation system located on the Johnson Property as of the date of the Property Closing (the "Ditch Easement"). Additionally, promptly following the Effective Date, Johnson shall use commercially reasonable efforts to cause the Maricopa County Tax Assessor to issue a single Assessor Tax Parcel Number for the Johnson Property.
- b. Promptly following the Effective Date, but in no event later than thirty (30) days thereafter (the "Title Commitment Delivery Deadline"), Johnson shall furnish to Glendale a current commitment (the "Title Commitment") for an owner's title insurance policy issued by a title company selected by Glendale (the "Title Company"), covering only the Johnson Property in an amount equal to the fair market value of the Johnson Property, as determined by Glendale in its sole discretion (the "Insured Amount"). Notwithstanding the forgoing, if, despite Johnson's best efforts, it cannot obtain the Title Commitment on or before the Title Commitment Delivery Deadline, the Title Commitment Delivery Deadline shall be extended for one (1) additional period of thirty (30) days. At the Property Closing, Johnson, at its sole cost and expense, shall furnish to Glendale an ALTA Owner's Title Insurance Policy, 6-17-06 (with deletion of the arbitration provisions and with extended coverage) issued by the Title Company in favor of Glendale and in the Insured Amount showing fee simple title in the Johnson

Property to be vested in Glendale, free and clear of any and all liens, encumbrances, security interests, and tenancies and other rights of occupancy in favor of any third parties (other than the Ditch Easement), and subject only to those title matters which Glendale affirmatively agrees to accept, together with such endorsements, if any, as Glendale shall have requested from the Title Company at Glendale's sole cost for such endorsements (the "Title Policy"). Promptly following the Effective Date, but in no event later than thirty (30) days thereafter (the "Survey Delivery Deadline"), Johnson will, at its own expense, obtain and deliver to Glendale a current ALTA survey of the Johnson Property, prepared by a surveyor or engineer licensed by the appropriate governmental authorities of the jurisdiction where the Johnson Property is located, which shall be in a form acceptable to Glendale and the Title Company (the "Survey") and shall show the location of the southern boundary line of the Johnson Property and Ditch Easement. Notwithstanding the forgoing, if, despite Johnson's best efforts, it cannot obtain the Survey on or before the Survey Delivery Deadline, the Survey Delivery Deadline shall be extended for one (1) additional period of thirty (30) days. At the Property Closing, Johnson shall execute, deliver, and perform, at Johnson's expense, all documents, undertakings, and agreements required by the Title Company in order to issue the Title Policy, including, without limitation, an owner's affidavit (or similar assurance) in the form required by the Title Company.

3. Settlement Payment. At the time of Property Closing in accordance with Paragraph 2 above, Glendale shall pay to Johnson via check made payable to "Rudolph Johnson Family L.L.C." the sum of one hundred four thousand, five hundred ninety-six dollars and forty-six cents (\$104,596.46) (the "Settlement Payment").

4. Continued Involvement in VRP Program. Within ten (10) business days of the Effective Date, Johnson shall withdraw its Voluntary Remediation Program ("VRP") application, submitted to the Arizona Department of Environmental Quality ("ADEQ") on behalf of Johnson on January 11, 2021 (the "Johnson Application"). Within ten (10) business days following the withdrawal of the Johnson Application, Glendale will submit a VRP application on its own behalf to address the soil and groundwater conditions identified at the Johnson Property, including but not limited to any PCE and TCE contamination in both soil and groundwater. Glendale agrees to remain in the VRP and upon achieving any remediation levels or controls required by ADEQ pursuant to A.R.S. § 49-175.B, Glendale shall submit a report to ADEQ pursuant to A.R.S. § 49-181(A), requesting that ADEQ issue a "no further action" determination for the Property pursuant to A.R.S. § 49-181(C). The Parties acknowledge and understand that ADEQ may issue a conditional no further action determination pursuant to A.R.S. § 49-181(D) to the extent ongoing groundwater monitoring is necessary.

5. Methane Monitoring and Mitigation. Glendale will sample the four existing vapor monitoring wells on the Johnson Property on a quarterly basis for the first five (5) years and semiannually for an additional five (5) years. However, monitoring will terminate after the first five (5) years and prior to the completion of these 10 (ten) years if and when the concentration of methane from each of the four vapor monitoring wells is below 10% of the

lower explosive level (“LEL”) for four consecutive monitoring events. If the results of any sampling event show methane exceeding 25% of the LEL, Glendale will undertake further sampling and analysis to determine whether such conditions require remediation, and if so, the appropriate mitigation measures in accordance with any applicable ADEQ requirements to prevent migration of methane from the Johnson Property to the adjacent property directly to the south of the Johnson Property (the “Southern Parcel”).

6. Monitoring Data. Glendale agrees to provide Johnson with the results of any sampling or submissions to ADEQ pursuant to Paragraphs 4 and 5, at the same time Glendale provides the submissions to ADEQ.

7. Maintenance and Use of the Johnson Property. Glendale agrees to perform routine maintenance on the Johnson Property, to keep it free of trash and debris, and not to allow any new use of the Johnson Property that would constitute a public nuisance, as defined by A.R.S. § 13-2917, or the installation of digital, commercial billboards. Glendale agrees that it will limit signage placed on the Johnson Property to those stating “no trespassing,” “no loitering,” and/or “no dumping,” unless additional or different signage is required by law or in the public interest.

8. Dismissal With Prejudice. Within three (3) business days of the execution of this Agreement by both Parties, Johnson and Glendale shall file a joint notice of dismissal with prejudice of all claims asserted against Glendale in the Lawsuit in the form attached as Exhibit C. The Parties further agree to take any and all additional steps that may be necessary, each at their own cost, to terminate fully and finally all proceedings in the Lawsuit.

9. Representations and Warranties.

- a. Johnson represents and warrants that, as of the Effective Date, it is the sole lawful owner of the Johnson Property and that the Johnson Property is free and clear of any and all liens, encumbrances, security interests, tenancies, and other rights of occupancy in favor of any third parties.
- b. The Parties represent and warrant that, as of the Effective Date, they have the right and authority to agree to the matters set forth in this Agreement and, if applicable, that all necessary corporate actions have been taken to authorize execution of this Agreement, subject to approval by the Glendale City Council, as discussed in Paragraph 21 below.
- c. The Parties represent and warrant that, as of the Effective Date, they have not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, demands, obligations, or causes of action referenced in this Agreement or released hereby.
- d. The Parties represent and warrant that, as of the Effective Date, they have produced in the Lawsuit all material information, including non-privileged

documents within their possession, custody, or control relating to the historical uses of the Johnson Property.

- e. Except as revealed through discovery in the Lawsuit, Johnson represents and warrants that, as of the Effective Date, it is unaware of any actions or omissions undertaken by Johnson, its predecessors-in-interest, or any third party that could have created or exacerbated environmental conditions on the Johnson Property.
- f. The Parties agree that these representations and warranties shall survive execution and performance of this Agreement and dismissal of the Lawsuit for a period of four (4) years.

10. Mutual Releases. Except as to obligations and rights contained within this Agreement, the Parties agree to the following:

- a. *Release by Johnson.* Johnson, on behalf of itself and its respective members, directors, officers, principals, agents, parents, subsidiaries, predecessors, successors, affiliates, attorneys, and assigns, hereby releases and forever discharges Glendale and its respective employees, elected officials, contractors, authorized representatives, insurers, principals, agents, predecessors, successors, affiliates, attorneys, and assigns, jointly and severally, from any and all claims, counterclaims, crossclaims, actions, damages, costs, liabilities, expenses, losses, demands, rights, and causes of action of any kind or nature, whether known or unknown, asserted or unasserted, disclosed or undisclosed, absolute or contingent, actual or consequential, which were brought or could have been brought in the Lawsuit. Johnson hereby waives any right to assert that any claim released hereby has been, through oversight, error, unilateral mistake, or mutual mistake, unintentionally included in this Agreement. Expressly excluded from this Release are any claims for breach of this Agreement, including any breach of the Representations and Warranties provided in Paragraph 9 above.
- b. *Release by Glendale.* Glendale, on behalf of itself and its respective employees, elected officials, contractors, authorized representatives, insurers, principals, agents, predecessors, successors, affiliates, attorneys, and assigns, hereby releases and forever discharges Johnson and its respective members, directors, officers, principals, agents, parents, subsidiaries, predecessors, successors, affiliates, attorneys, and assigns, jointly and severally, from any and all claims, counterclaims, crossclaims, actions, damages, costs, liabilities, expenses, losses, demands, rights, and causes of action of any kind or nature, whether known or unknown, asserted or unasserted, disclosed or undisclosed, absolute or contingent, actual or consequential, which were brought or could have been brought in the Lawsuit. Glendale hereby waives any right to assert that any claim released hereby has been, through oversight, error, unilateral mistake, or mutual mistake, unintentionally included in this Agreement. Expressly excluded from this Release are any claims for breach of this Agreement, including any breach of the Representations and Warranties provided in Paragraph 9 above.

11. Indemnification.

- a. To the fullest extent permitted by law, Glendale agrees to release, defend, indemnify, and hold harmless Johnson and its members, officers, employees, agents, successors, and assigns for, from, and against any and all claims, demands, actions, damages, judgments, settlements, personal injury (including sickness, disease, death, and bodily harm), property damage (including loss of use), infringement, governmental action, and all other losses and expenses, including attorneys' fees and litigation expenses (each, a "Claim") asserted by a third party, including any governmental authority, to the extent any such Claim arises out of the City's: (1) use of the Johnson Property as a landfill and the presence of hazardous substances and methane on the Johnson Property as of the Effective Date, except to the extent that such hazardous substances and/or methane was placed on the Johnson Property by a third party unrelated to Glendale's use of the Johnson Property as a landfill, or are migrating to the Johnson Property from an off-site source; and (2) ownership, operation, and maintenance of the Johnson Property, after the Effective Date, including Claims pertaining to the migration of hazardous substances or methane from the Johnson Property to the Southern Parcel, except to the extent that such hazardous substances and/or methane has migrated to the Johnson Property from an off-site source, or for any losses or expenses for which Johnson is obligated to indemnify Glendale pursuant to Section 6 of the Easement Agreement. The foregoing indemnification obligation of Glendale shall survive any subsequent transfer of the Johnson Property by Glendale to a third party.
- b. In the event any Claim is asserted against Johnson, Johnson must notify Glendale within ten (10) business days of receiving written notice of such Claim. Upon receipt of such notice, Glendale will assume Johnson's defense with experienced counsel selected by Glendale, subject to the approval of Johnson, which shall not be unreasonably withheld, conditioned, or delayed.
- c. Glendale agrees that indemnifying Johnson for certain acts or omissions committed by Glendale's employees or officials acting within the scope of their employment related to the Johnson Property does not violate Article 9, Section 7 of the Arizona Constitution (the "Gift Clause") or Section 2-210 of the Glendale City Code. Glendale further agrees that it will not assert that the underlying act(s) associated with operating the landfill on the Johnson Property is or was a legislative or administrative function making Glendale absolutely immune from suit within the meaning of A.R.S. § 12-820.01.

- d. This indemnification and hold harmless provision does not apply to:
(1) Claims arising out of actions, errors, or omissions of Johnson or any third party undertaken after the Effective Date; and (2) Claims relating to any breach of the Representations and Warranties in Paragraph 9 above.

12. Entire Agreement. This Agreement supersedes all prior written and verbal promises and agreements between the Parties. This Agreement constitutes the entire agreement between the Parties and may be amended, modified, or superseded only by a written agreement signed by all Parties, with appropriate authorization.

13. Representation by Counsel and Non-Reliance on Representations of Other Parties. The Parties acknowledge that they have been represented by competent and informed counsel in connection with the dispute underlying the Lawsuit and this Agreement, including in connection with the negotiations leading up to this Agreement and in connection with the drafting, execution, and effectuation of this Agreement. Because all Parties participated in the negotiation and drafting of this Agreement, no Party shall be deemed its primary drafter for purposes of its construction or interpretation. The Parties further acknowledge that they have relied on themselves and their own due diligence with regard to ascertaining the facts material to the execution of this Agreement, and that they, accordingly, have not relied in any manner on the other Party with respect to the provision or disclosure of any material information, other than representations contained in this Agreement. Finally, the Parties acknowledge that this Agreement was entered into only after full and adequate representation by counsel, and that each Party is entering into this Agreement willingly and of its own informed and free will, fully cognizant of the effect and implications of doing so, and not acting under coercion or duress.

14. Counterparts. This Agreement may be validly executed in counterparts and all counterpart signatures taken together shall constitute the original Agreement. Facsimile and electronic signatures shall have the same force and effect as original signatures.

15. Severability. If any provision of this Agreement is determined by a court or other tribunal of competent jurisdiction to be invalid, illegal, or unenforceable, such determination shall not affect or impair the validity, legality, and enforceability of the remaining provisions and all remaining provisions shall remain in full force and effect.

16. Assumption of Risks. Each Party hereto expressly accepts and assumes the risk that if facts with respect to matters covered by this Agreement are found hereafter to be other than or different from the facts now believed or assumed to be true, this Agreement shall nevertheless remain effective.

17. Non-Waiver. The failure to enforce any right arising under this Agreement on one or more occasions shall not operate as a waiver of that right under this Agreement on any other occasion.

18. No Admission of Liability. Each Party expressly denies that it has taken any improper action in violation of any federal, state, or local statute, law, regulation, or common law

principle. The Parties hereby agree that this Agreement shall not be admissible in any proceeding as evidence of any improper or unlawful conduct by any Party.

19. Governing Law and Arbitration. This Agreement shall be construed in accordance with the laws of the State of Arizona. Any dispute regarding, relating to, or arising under this Agreement shall be submitted to binding arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. The Parties shall share equally in the costs of such arbitration, and the arbitration award shall award reasonable attorney's fees to the prevailing Party. In the event that the Parties are unable to effectuate the Property Closing and transfer of title as provided in Paragraph 2 above, the Parties agree to submit the claims currently pending in the Lawsuit and/or the dispute over the property transfer for resolution in binding arbitration pursuant to this provision.

20. Notices. All notices in connection with this Agreement shall be in writing and delivered as follows:

To Rudolph Johnson Family L.L.C.:

Rudolph Johnson Family L.L.C.
ATTN: Julie A. Johnson
9702 West Glendale Avenue
Glendale, Arizona 85305

with a copy to:

David J. Armstrong, Esq.
Ballard Spahr LLP
One East Washington Street, Suite 2300
Phoenix, Arizona 85004

To City of Glendale:

Nancy A. Mangone, Esq.
Deputy City Attorney
City of Glendale, Arizona
5850 W. Glendale Avenue
Glendale, Arizona 85301

with a copy to:

Elizabeth H. Temkin, Esq.
David Graham & Stubbs
1550 17th Street, Suite 500
Denver, CO 80202

21. Approval of Glendale City Council. The Parties recognize that the approval of this Agreement is conditioned on the Glendale City Council's authorization of its terms and the appropriation of adequate funding. To the extent the payments required hereunder may occur after the close of the Glendale's fiscal year, which ends on June 30, Glendale's payment obligation may be subject to the approval of a City of Glendale budget containing this Agreement as an expenditure therein. Glendale does not guarantee that the budget item will be actually adopted and the appropriation actually made, as this is a legislative act of the City Council that cannot be pre-determined. If the Council does not approve this Agreement, the Parties acknowledge that the Agreement shall become null and void and the Parties agree to submit the claims currently pending in the Lawsuit for resolution in binding arbitration pursuant to paragraph 19 of this Agreement.

SIGNATURES OF THE PARTIES

By affixing their signatures below, the Parties agree to the terms of the foregoing Confidential Settlement Agreement.

RUDOLPH JOHNSON FAMILY L.L.C.,
an Arizona limited liability company

By: Julie A. Johnson
Name: Julie A. Johnson
Title: Managing Member

1/7/2022
Date

CITY OF GLENDALE,
an Arizona municipal corporation

By: _____
Name: _____
Title: _____

Date

EXHIBIT A

The Johnson Property



EXHIBIT B

Easement

When recorded, mail to:
City Clerk, City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (this "Agreement") is made this _____ day of _____, 20__ (the "Effective Date"), by and between the CITY OF GLENDALE, an Arizona municipal corporation ("Grantor"), and RUDOLPH JOHNSON FAMILY, LLC, an Arizona limited liability company ("Grantee"). Grantor and Grantee are sometimes referred to herein collectively as the "Parties" and individually as a "Party".

RECITALS

Grantor owns certain real property as described and depicted on Exhibit A, attached hereto and made a part hereof (the "Grantor Property"). Reference to "Grantor" herein shall be deemed to mean and refer to the owner of the fee simple title from time to time of the Grantor Property.

Grantee owns certain real property as described and depicted on Exhibit B, attached hereto and made a part hereof (the "Grantee Property").

Grantor has agreed to grant to Grantee, a non-exclusive easement upon and across that portion of the Grantor Property as legally described and depicted on Exhibit C, attached hereto and made a part hereof (the "Easement Area"), for the sole purpose of transporting irrigation water through, and the repair and maintenance of, an existing irrigation system located within the Easement Area on the Effective Date solely for agricultural purposes (*i.e.*, growing, cultivating and harvesting crops or as pastureland for livestock) (the "Permitted Use").

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties represent and agree as follows:

1. Grant of Easement. For Ten Dollars and other valuable consideration set forth herein, Grantor does hereby convey to Grantee a non-exclusive easement (the "Easement") across the Easement Area for the sole purpose of the Permitted Use.
2. Term. The Easement granted hereunder shall commence on the Effective Date and continue for so long as the Grantee Property is used solely for agricultural purposes (*i.e.*, growing, cultivating and harvesting crops or as pastureland for livestock). The Easement shall be terminated (i) by mutual consent of the then-current owner of the Grantor Property and Grantee, or (ii) by operation of law, in the event that Grantee ceases to use the Easement Area for the Permitted Use for any continuous two (2) year period during the term of the Easement; provided, however, that such two (2) year period shall be tolled during

any period when there is not a sufficient supply of water available to use the Easement for the Permitted Use for the benefit of the Grantee Property.

3. Maintenance.

(a) Grantee shall, at its sole cost and expense, repair and maintain the Easement Area in good order, condition, and repair, and in compliance with all applicable laws, statutes, ordinances, governmental rules or regulations now in force or hereafter enacted by any applicable governmental or quasi-governmental authorities having jurisdiction over the Grantor Property. Grantee shall promptly repair any damage to the Easement Area caused by the acts (whether negligent, willful, or otherwise) of Grantee or its tenants, lessees, agents, employees, licensees, or any other third-parties (collectively, the “Permittees”), except to the extent any such damage is caused by the gross negligence or intentional misconduct of Grantor or its tenants, lessees, agents, employees, or licensees.

(b) In the event that Grantee fails to maintain the Easement Area in accordance with this Section 3 or any other provision of this Agreement, and after thirty (30) days’ written notice from Grantor, Grantee has not commenced repairs, replacements, or maintenance thereof (except in the case of an emergency, in which case no such prior notice by Grantor shall be required), Grantor may perform the required repair, replacement, or maintenance and shall bill Grantee for all costs incurred by Grantor in connection therewith. Reimbursement of any such amount shall be payable, in full, within twenty (20) days after the date of the Grantor’s bill. Any such Reimbursement does not excuse, prohibit or otherwise affect any and all claims Grantor could bring under Section 6 below.

4. Nature of Easement.

(a) The Easement herein granted will be non-exclusive, and Grantor expressly reserves the right, without materially interfering with or materially abridging the rights granted herein to Grantee, to the use, enjoyment, and occupancy of the surface of and all other portions of the Easement Area and Grantor Property for any and all purposes that are not inconsistent with the terms of this Agreement and the rights and interests afforded to Grantee under the terms hereof. Grantee may use the Easement solely for the Permitted Use and for no other purposes.

(b) Grantor shall have the right to access and enter the Easement Area to monitor the use and condition thereof, at its sole cost and expense, for the purpose of confirming compliance with the terms and conditions of this Agreement. In the event that Grantor determines that (i) the Easement Area is being improperly maintained, operated or used by Grantee or its Permittees, or (ii) circumstances exist that would give rise to the need for repair, replacement, security or additional monitoring of the Easement Area, Grantor shall notify Grantee of such circumstances, and Grantee shall immediately halt such improper use and address such non-complying conditions. In the event of a breach of the rights granted or created under this Agreement, Grantor shall, in addition to all other remedies available to it, be entitled to enforce this Agreement by injunctive relief or otherwise.

(c) In the event of a transfer or assignment by Grantor of its interest in the Grantor Property, Grantor, without the necessity of any further document signed or actions taken by any party, shall be released from any and all obligations hereunder arising on or after, but not prior to,

the date of transfer, and each party benefited hereby thereafter agrees to look solely to the successor-in-interest of Grantor for performance of such obligations.

5. Liens. Grantee shall protect the Easement Area and the Grantor Property from mechanic's, materialmen's, and other liens arising in connection with maintenance of the Easement Area or the Grantor Property and any structures or improvements thereon, and to indemnify and defend Grantor and its successors and assigns from and against and with respect to any such liens and to cause any such lien to be removed by payment or bonding within thirty (30) days of recording thereof.

6. Release; Indemnity. The use, maintenance, or repair of the Easement Area and any structure or improvement thereon and enjoyment of the Easement Area pursuant to this Agreement shall be at the sole risk of Grantee. Grantee shall indemnify, defend, and hold harmless Grantor from and against any and all claims, suits, actions, debts, damages, costs, losses, obligations, death, injury to persons or property or liabilities (including reasonable attorneys' fees and costs) arising from the breach of this Agreement by the Grantee or its Permittees, or the use of the Easement Area or any other portion of the Grantor Property by Grantee or its Permittees, except to the extent that any such loss is caused by the gross negligence, intentional misconduct, or breach of this agreement by Grantor or its tenants, lessees, agents, employees, or licensees.

7. Improvements; Temporary Construction Easement. Notwithstanding anything to the contrary set forth in this Agreement, Grantee shall not place in the Easement Area any permanent or temporary structures or other improvements other than those improvements which constitute the existing irrigation system located in the Easement Area on the Effective Date. In the event Grantee wishes to replace, improve or upgrade any existing improvements or install new facilities, structures or improvements, Grantor and Grantee shall use commercially reasonable efforts to negotiate and enter into in good faith and in a timely manner, an agreement that allows for the permanent placement of such replaced, improved, upgraded or new facilities, structures or improvements and a temporary construction easement in order to facilitate Grantee's construction or reconstruction activities; provided, however, that such activities (i) shall not unreasonably interfere with Grantor's use of the Grantor Property, and (ii) shall be subject to Grantor's review and approval of all construction plans in connection therewith without charge or cost to Grantor.

8. No Public Dedication. Nothing contained in this Agreement shall be deemed a gift or dedication of any portion of the Easement Area to the general public or for the general public or for any public purposes whatsoever, it being the intention of the Parties that this Agreement and the Easement shall be strictly limited to and for the purposes herein expressed. There are no intended third-party beneficiaries to this Agreement.

9. Relationship of the Parties. None of the terms or provisions of this Agreement create a partnership between or among the parties in their respective businesses or otherwise, or constitute the Parties as joint venturers or members of any joint enterprise. Each party to this Agreement shall be considered a separate owning entity and no party shall have the right to act as agent for another party unless expressly authorized to do so by written instrument signed by the authorized party.

10. Default and Remedies.

(a) If a Party defaults on any obligation under this Agreement, and such default remains uncured for thirty (30) days following delivery of notice from the non-defaulting Party to the defaulting Party (or, if such default cannot reasonably be cured within a thirty (30) day period, an appropriate cure is not commenced and diligently pursued within such thirty (30) day period), then

the non-defaulting Party may seek any and all such relief as may be available at law or equity for the default.

(b) In addition to the remedies set forth in Section 10(a) above, if within thirty (30) days after receipt of such notice, the defaulting party has not cured the default (or, if such default cannot reasonably be cured within a thirty (30) day period, has not commenced the diligent pursuit of an appropriate cure in such thirty (30) day period), the non-defaulting Party may take such actions and/or expend such funds as are reasonably necessary to cure such default. In such event, the non-defaulting Party incurring costs to cure shall be entitled to recover from the defaulting Party such costs as are actually and reasonably incurred in curing the default, the aggregate amount of which shall be due immediately upon notice to the defaulting Party.

(c) In the event of any litigation between the Parties relating to this Agreement, the prevailing Party will be entitled to recover its court costs and reasonable attorneys' fees.

11. Notices. All notices, demands and other communications required or permitted to be given hereunder will be in writing and any and all such items will be deemed to have been duly delivered as follows: (i) upon personal delivery; (ii) as of the third (3rd) business day after mailing by United States mail, certified, return receipt requested, postage prepaid, addressed as follows; (iii) as of 12:00 p.m. local time on the immediately following business day after deposit with FedEx or a similar overnight courier service, addressed as follows; or (iv) after transmitting by facsimile or e-mail to the facsimile number or e-mail address set forth below:

If to Grantor:

Field Operations
6210 W. Myrtle Avenue, Suite 111
Glendale, AZ 85301

with a copy to:

City Attorney
City of Glendale, Arizona
5850 W. Glendale Avenue
Glendale, Arizona 85301

If to Grantee:

E-mail: _____

Any address, facsimile number or e-mail address fixed pursuant to the foregoing may be changed by the addressee by notice given pursuant to this Section 11.

12. Insurance. Grantee shall obtain and maintain, and shall ensure that its Permittees obtain and maintain, at all times during the term of the Easement, commercial general liability insurance in

commercially reasonable amounts for its use of the Easement, covering Grantee's interest in and use of the Easement.

13. Severability. If any term, covenant, condition, or provision of this Agreement is, at any time or to any extent, declared invalid or unenforceable, the remainder of this Agreement will not be affected thereby, it being the intent of the Parties that this Agreement and each provision hereof will be enforceable and enforced to the fullest extent permitted by law.

14. Entire Agreement. This Agreement and any other contracts or agreements specifically referred to herein represent the entire agreement between the Parties with respect to the subject matter hereof and all prior or extrinsic agreements, understandings, or negotiations will be deemed merged herein.

15. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Arizona, without reference to its conflict of laws provisions.

16. Modification and Waiver. No purported modification of the terms of this Agreement, or purported waiver by any Party of its rights and interests hereunder, will be binding unless and except to the extent specifically set forth in a written instrument executed by the party against whom enforcement of the purported modification or waiver is sought.

17. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, and all of which together will constitute one and the same instrument and agreement.

18. Binding Effect. For the term of the Easement, this Agreement shall be binding upon the Parties and their successors and assigns.

(Signature pages follow)

IN WITNESS WHEREOF, the Parties have made and entered into this Agreement as of the Effective Date.

GRANTOR:

CITY OF GLENDALE,
an Arizona municipal corporation

By: _____

Name: _____

Title: _____

**Exempt Pursuant to A.R.S. §11-1134(A)(2),
11-1134(A)(3)**

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 202_ by _____, _____, who acknowledged that she executed this instrument for the purposes therein contained.

Notary Public

My commission expires:

(Grantee signature page follows)

IN WITNESS WHEREOF, the Parties have made and entered into this Agreement as of the Effective Date.

GRANTEE:

RUDOLPH JOHNSON FAMILY, LLC,
an Arizona limited liability company

By: _____

Name: _____

Title: _____

**Exempt Pursuant to A.R.S. §11-1134(A)(2),
11-1134(A)(3)**

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 202_ by _____, _____, who acknowledged that she executed this instrument for the purposes therein contained.

Notary Public

My commission expires:

Exhibit A

Grantor Property

Exhibit B

Grantee Property

Exhibit C

Easement Area

EXHIBIT C

Joint Notice of Dismissal

1 David J. Armstrong
2 BALLARD SPAHR LLP
3 1 East Washington Street, Suite 2300
4 Phoenix, AZ 85004-2555
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8 *Rudolph Johnson Family L.L.C.*

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16 *Attorneys for Defendant City of Glendale*

17 THE UNITED STATES DISTRICT COURT
18 FOR THE DISTRICT OF ARIZONA

19 Rudolph Johnson Family L.L.C., an Arizona
20 limited liability company,

21 Plaintiff,

22 vs.

23 City of Glendale, an Arizona municipal
24 corporation,

25 Defendant.

Case No. 2:19-cv-05905-PHX-SRB

**JOINT NOTICE OF DISMISSAL
WITH PREJUDICE**

26 Pursuant to Fed. R. Civ. P. 41(a)(1), Plaintiff Rudolph Johnson Family L.L.C. and
27 Defendant City of Glendale (collectively, the “Parties”) stipulate that all claims asserted
28 against the City of Glendale in this action shall be hereby dismissed with prejudice, all
Parties to bear their own attorneys’ fees and costs.

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DATED: _____, 2022

David J. Armstrong
BALLARD SPAHR LLP

*Attorneys for Plaintiff
Rudolph Johnson Family L.L.C.*

Elizabeth H. Temkin
James R. Henderson
DAVIS GRAHAM & STUBBS LLP

*Attorneys for Defendant
City of Glendale*