
AGREEMENT

Between

**U.S. BANK NATIONAL ASSOCIATION
as Trustee**

and

CITY OF GOODYEAR, ARIZONA

Related to

**CITY OF GOODYEAR, ARIZONA
TAXABLE EXCISE TAX REVENUE REFUNDING OBLIGATIONS
SERIES 2021**

Dated as of [____], 2021

AGREEMENT

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AGREEMENT

THIS AGREEMENT (hereinafter referred to as this “*Agreement*”) by and between the City of Goodyear, Arizona, a municipal corporation and a political subdivision under the laws of the State of Arizona (hereinafter referred to as the “*City*”) and U.S. Bank National Association, a national banking association authorized to do trust business in the State of Arizona (hereinafter referred to as the “*Trustee*”), in its capacity as trustee under the Trust Agreement dated as of [_____] 1, 2021, by and between the Trustee and the City (the “*Trust Agreement*”);

W I T N E S S E T H:

WHEREAS, the City of Goodyear, Arizona Public Improvement Corporation (the “*PIC*”) previously issued its \$25,295,000 aggregate principal amount of Municipal Facilities Revenue Refunding Bonds, Series 2011A (the “*Series 2011A Bonds*”), pursuant to a Trust Indenture dated as December 1, 2007 (the “*2007 Trust Indenture*”), as thereafter supplemented and amended by the First Supplement to Indenture (2007), dated as of November 1, 2011, and by the Second Supplement to Indenture, dated as of October 1, 2016 (the 2007 Trust Indenture, as so supplemented, is collectively referred to as the “*Trust Indenture*”), by and between the PIC and the Trustee, as successor trustee to Wells Fargo Bank, N.A.; and

WHEREAS, there are outstanding \$23,770,000 of the Series 2011A Bonds, which represent participating interests in rental payments to be made by the City to the PIC pursuant to the Lease-Purchase Agreement dated as of December 1, 2007 between the PIC and the City, as thereafter amended and supplemented by the First Amendment to Lease-Purchase Agreement (2007), dated as of November 1, 2011, and the Second Amendment to Lease-Purchase Agreement (2007), dated as of October 1, 2016 (collectively, the “*Lease*”); and

WHEREAS, the City now desires to refinance and prepay certain rental payments due pursuant to the Lease relating to the Series 2011A Bonds and to redeem in advance of maturity the July 1, 2021, and the July 1, 2023, through and including the July 1, 2027, maturities of the Series 2011A Bonds (collectively, the “*Bonds Being Refunded*”); and

WHEREAS, the City has caused the refunding of the Series 2011A Bonds as provided for in the Trust Indenture, by authorizing the execution and delivery of the City’s Taxable Excise Tax Revenue Refunding Obligations, Series 2021 (the “*Obligations*”) to be executed and delivered pursuant to the Trust Agreement; and

WHEREAS, the Trustee will execute and deliver the Obligations and, at the direction of the City, use the proceeds of the Obligations to prepay the above-mentioned rental payments and thereby refund the Obligations Being Refunded and redeem them in advance of maturity, and the City shall have no further obligation to provide funds to pay costs and expenses attendant thereto; and

WHEREAS, the City shall hereby agree to pay to the Trustee from time to time the Payments (as defined herein) and to pledge its Excise Taxes (as defined herein) as security and the source of payment of such Payments and the Trustee shall hereby agree to accept such Payments;

NOW, THEREFORE, in consideration of the mutual covenants, conditions and agreements hereinafter contained, it is hereby agreed as follows:

1. Term and Payments

(a) To provide the funds necessary to refinance and prepay certain rental payments due pursuant to the Lease, the Trustee shall execute and deliver the Obligations and, at the City's direction, use the proceeds of the Obligations to prepay such rental payments and thereby refund the Obligations Being Refunded and redeem them in advance of maturity, and the City shall have no further obligation to provide funds to pay costs and expenses attendant thereto.

(b) For such purpose, the City agrees to make payments (the "*Payments*") hereunder to the Trustee, and the Trustee hereby agrees to accept the Payments. The Payments shall be comprised of the amounts described as follows:

The City shall pay to the Trustee in the following order of priority the following amounts for deposit into the Payment Fund: (i) commencing on the 10th day of the month following the Closing Date of the Obligations, the City shall pay to the Trustee the amount due on the next succeeding Interest Payment Date divided by the number of monthly payments that can be made prior to such next succeeding Interest Payment Date, and commencing on the 10th day of the month following the Payment Date allocated to interest, the City shall pay to the Trustee 1/6th of the next forthcoming Payment allocated to interest on the Obligations, and (ii) commencing on the 10th day of the month following the Closing Date of the Obligations, the City shall pay to the Trustee the amount due on the next succeeding principal Payment Date divided by the number of monthly payments that can be made prior to such next succeeding principal payment date, and commencing on the 10th day of the month following the Payment date allocated to principal, the City shall pay to the Trustee 1/12th of the next forthcoming Payment allocated to principal on the Obligations.

When all of the above necessary transfers have been made for the month, the remaining Excise Taxes not required to be transferred as set forth may be used for any lawful purpose of the City, including debt service payments on any obligations secured by a lien and pledge on Excise Taxes subordinate to the lien and pledge of Excise Taxes securing the Obligations.

The City's obligation to make such Payments shall be limited to payment from Excise Taxes pledged to the payment thereof by the City.

(c) The obligations of the City to make the Payments from the sources described herein and to perform and observe the other agreements contained herein shall be absolute and unconditional and shall not be subject to any defense or any right of set-off, abatement, counterclaim, or recoupment arising out of any breach of the Trustee of any obligation to the City or otherwise, or out of indebtedness or liability at any time owing to the City by the Trustee. Until such time as all of the Payments shall have been fully paid or provided for, the City (i) will not suspend or discontinue any payments provided for in Section 1 herein, (ii) will perform and observe all other agreements contained herein, and (iii) will not terminate the term hereof for any cause, including, without limiting the generality of the foregoing, any change in the tax or other laws of the United States of America or of the State of Arizona or any political subdivision of either or any

failure of the Trustee to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Trust Agreement or this Agreement. Nothing contained in this Section shall be construed to release Trustee from the performance of any of the agreements on its part herein or in the Trust Agreement contained and in the event the Trustee shall fail to perform any such agreements on its part, the City may institute such action against the Trustee as the City may deem necessary to compel performance so long as such action does not abrogate the obligations of the City contained in the first sentence of this paragraph (c). This Agreement shall not terminate so long as any payments are due and owing under the Obligations.

(d) In the event that the City expects that it will not make a Payment when due hereunder, the City shall, at least five Business Days before the date such Payment is due, notify the Trustee in writing of such expectation.

2. Pledge of Excise Taxes; Limited Obligations

(a) The City hereby pledges for the Payments to be made hereunder and all other amounts payable pursuant hereto its Excise Taxes, as defined in Section 7 herein. The City intends that this pledge shall be a first lien pledge upon such amounts of said taxes as will be sufficient to make the Payments pursuant hereto when due. The City agrees and covenants to make said Payments from such Excise Taxes, except to the extent it chooses to make the Payments from other funds pursuant to Section 4. Said pledge of, and said lien on, the Excise Taxes is hereby irrevocably made and created for the prompt and punctual payment of the amounts due hereunder according to the terms hereof, and to create and maintain the funds as hereinafter specified in this Agreement or as may be specified in the Trust Agreement. All of the Payments are coequal as to the pledge of and lien on the Excise Taxes pledged for the payment thereof and share ratably, without preference, priority or distinction, as to the source or method of payment from Excise Taxes or security therefor. The pledge and lien shall be on a parity with the pledge of and lien on such Excise Taxes for the payments due with respect to the Parity Obligations (as defined in the Trust Agreement). The City shall remit to the Trustee (or other appropriate trustee with respect to Parity Obligations) from Excise Taxes all amounts due under this Agreement and Parity Obligations in the amounts and at the times and for the purposes as required herein. In order to secure payment of the Obligations and Parity Obligations, the City shall create a separate and special fund which shall contain only Excise Taxes and shall not contain any other moneys of the City, this fund shall be known as the "Goodyear Excise Tax Fund" (the "*Excise Tax Fund*"). The Excise Tax Fund shall be funded solely and only from the Excise Taxes received by the City and from no other source. Under no circumstances shall moneys be deposited from the City's general fund to the Excise Tax Fund. The Excise Tax Fund may be reduced to zero in each month after the amounts required to be transferred to the applicable trustee for the applicable payment fund for the Existing Parity Obligations, the Obligations and any other Parity Obligations have been transferred. All payments to be made pursuant to this Agreement shall be made from the Excise Tax Fund. If at any time the moneys in the Excise Tax Fund are not sufficient to make all of the deposits and transfers required by this Agreement or the Parity Obligations, the moneys in the Excise Tax Fund shall be distributed between this Agreement and the Parity Obligations on a pro rata basis as determined by the debt service then due without regard to the existence of a reserve fund, a cash funded reserve fund or a reserve fund guaranty or similar surety. Any deficiency in the Excise Tax Fund shall be made up from the first moneys thereafter received and available for such transfers under the terms of this Agreement, and the transfer of any

such sum or sums to said fund or accounts as may be necessary to make up any such deficiency shall be in addition to the then-current transfers required to be made pursuant hereto.

(b) The City's obligation to make payments of any amounts due under this Agreement, including amounts due after default or termination hereof, is limited to payment from Excise Taxes and shall in no circumstances constitute a general obligation of, or a pledge of the full faith and credit of, the City, the State of Arizona or any of its political subdivisions, or require the levy of, or be payable from the proceeds of, any ad valorem taxes.

3. **Surplus and Deficiency of the Excise Taxes.** All Excise Taxes in excess of amounts, if any, required to be deposited with or held by the Trustee (or other appropriate trustee with respect to Parity Obligations) for Payments due under this Agreement or the Trust Agreement or Parity Obligations shall constitute surplus revenues and may be used by the City for any lawful purpose for the benefit of the City, including the payment of junior lien obligations to which such Excise Taxes may from time to time be pledged. If at any time the moneys in the funds and accounts held for payment of amounts due under this Agreement or Parity Obligations are not sufficient to make the deposits and transfers therein required, any such deficiency shall be made up from the first moneys thereafter received and available for such transfers under the terms hereof, and the transfer of any such sum or sums to said fund or accounts as may be necessary to make up any such deficiency shall be in addition to the then-current transfers required to be made pursuant hereto.

4. **Use of Other Funds at the Option of the City.** The City may, at the City's sole option, make such Payments from its other funds as permitted by law and as the City shall determine from time to time, but the Trustee acknowledges that it has no claim hereunder to such other funds. No part of the Payments payable pursuant to this Agreement shall be payable out of any ad valorem taxes imposed by the City or from bonds or other obligations, the payment of which the City's general taxing authority is pledged, unless (a) the same shall have been duly budgeted by the City according to law, (b) such payment or payments shall be within the budget limitations of the statutes of the State of Arizona, and (c) any such bonded indebtedness or other obligation is within the debt limitations of the Constitution of the State of Arizona.

5. **Parity Obligations.** So long as any amounts due hereunder remain unpaid or unprovided for, the City shall not create, suffer or permit any lien upon the Excise Taxes senior to the lien hereof. So long as any amounts due hereunder remain unpaid or unprovided for, the City shall not create, suffer or permit any lien upon Excise Taxes on a parity herewith except for Parity Obligations upon compliance with the requirements therefor set out in the Trust Agreement.

6. **City to Maintain Coverage of Two Times Debt Service.** The City covenants and agrees that the Excise Taxes which it presently imposes will continue to be imposed in each Fiscal Year so that the amount of Excise Taxes, all within and for the next preceding Fiscal Year of the City, shall be equal to at least two times the Annual Debt Service Requirement (as defined in the Trust Agreement) payable hereunder, and under any Outstanding Parity Obligations (as defined in the Trust Agreement), for the current Bond Year (as defined in the Trust Agreement). The City further covenants and agrees that if such receipts for any such Fiscal Year shall not equal at least two times such Annual Debt Service Requirement for such Bond Year, or if at any time it appears that the current Fiscal Year's receipts will not be sufficient to meet the current Bond Year's actual Annual Debt Service Requirement, the City will either impose new Excise Taxes or will increase

the rates of such taxes currently imposed in order that (a) the current Fiscal Year's receipts will be sufficient to meet the current Bond Year's Annual Debt Service Requirement and (b) the then current Fiscal Year's receipts will be equal to at least two times the next succeeding Bond Year's Annual Debt Service Requirement.

7. **Definition of Excise Taxes.** "Excise Taxes" shall have the meaning as defined in the Trust Agreement.

8. **Representations, Warranties and Covenants.**

(a) The City represents, warrants and covenants that it has the power to enter into this Agreement, that this Agreement is a lawful, valid and binding obligation of the City, enforceable against the City in accordance with its terms, and has been duly authorized, executed and delivered by the City; that all required procedures for execution and performance hereof, including publication of notice, public hearing or competitive bidding, if applicable, have been or will be complied with in a timely manner; that all Payments hereunder will be paid when due out of funds that are legally available for such purposes.

(b) The City represents, warrants and covenants that it has disclosed in writing to the Trustee all facts that do or will materially adversely affect the operations or financial condition of the City and that any financial statements, notices or other written statements provided by the City to the Trustee pursuant hereto will not contain any untrue statement of a material fact or omit any material fact necessary to make such statements or information not misleading.

(c) Except with respect to its power and authority to enter into this Agreement and to perform its covenants hereunder, the Trustee has made and makes no representation or warranty, express or implied, and assumes no obligation with respect to the projects refinanced by this Agreement. All such risks shall be borne by the City without in any way excusing the City from its obligations under this Agreement and the Trustee shall not be liable to the City for any damages on account of such risks. Except with respect to any acts by the Trustee which are not undertaken either (i) at the City's request, or (ii) with the City's prior approval, the City agrees to waive all claims against the Trustee relating to the projects refinanced by this Agreement.

9. **Prepayment Permitted; Providing for Payment.**

(a) Reserved. [HOLD FOR PRIOR REDEMPTION].

(b) The City may provide for the payment of any Payment in any one or more of the following ways:

(i) by paying such Payment as provided herein as and when the same becomes due and payable at its scheduled due date pursuant to Section 1 herein; or

(ii) by depositing with a Depository Trustee (as defined below), in trust for such purposes, at or before maturity, money which, together with the amounts then on deposit with the Trustee and available for such Payment is fully sufficient to make, or cause to be made, such Payment; or

(iii) by depositing with a Depository Trustee, in trust for such purposes, any United States Obligations (as defined in the Trust Agreement) that are noncallable, in such amount as shall be certified to the Trustee and the City, by a national firm of certified public accountants acceptable to both the Trustee and the City, as being fully sufficient, together with the interest to accrue thereon and moneys then on deposit with the Trustee and available for such Payment, to make, or cause to be made, such Payment, as and when the same becomes due and payable at maturity.

A Depository Trustee shall be any bank or trust company, including the Trustee, with a combined capital and surplus of at least \$50,000,000 and subject to supervision or examination by federal or State of Arizona authority who holds money and securities in trust for the purposes set forth in subparagraphs (ii) or (iii) of this paragraph (b) (a “*Depository Trustee*”).

10. Event of Default and Remedies Upon Event of Default; No Acceleration.

(a) Upon the occurrence of an Event of Default (as defined in the Trust Agreement) whether occurring voluntarily or involuntarily, by operation of law or pursuant to any order of any court or governmental agency the Trustee and the Owners of the Obligations Outstanding shall have such rights and obligations as set forth in Article XII of the Trust Agreement.

(b) The obligation of the City to make Payments is not subject to acceleration and such Payments may not be made immediately due and payable for any reason.

11. Assignment.

(a) Except as otherwise provided herein, without the prior written consent of the Trustee (which, prior to the payment of the Obligations in full, shall not be given without the Trustee’s receipt of direction from the Owners of a majority in aggregate principal amount of the Obligations then Outstanding to give such consent), the City shall not assign, transfer, pledge or hypothecate or otherwise dispose of this Agreement, or any interest therein.

(b) Subject to the terms of the Trust Agreement, the Trustee shall be entitled, with or without notice to, or the consent of, the City, to sell, pledge, assign, transfer and encumber all or any part of its right, title and interest in and to this Agreement and all payments of any kind due or that become due to the Trustee hereunder, provided that such transfer or assignment shall not impair the Obligations, that the transferee or assignee shall be bound by the terms hereof and all related agreements executed by the Trustee in connection herewith and shall execute such nondisturbance and acceptance instruments as shall reasonably be required to evidence the same as hereinafter provided and, upon the City’s receipt of notice of any such assignment or transfer of the Trustee’s interest, any such assignee(s) or transferee(s) shall thereafter (collectively, if more than one) become and be deemed to be the Trustee hereunder, and have all of the rights, powers, privileges and remedies, and be subject to all of the covenants and agreements, of the Trustee hereunder for all purposes hereof.

During the term hereof, the City shall maintain a complete and accurate record of all such sales, assignments and transfers in form necessary to comply with Section 149(a) of the United

States Internal Revenue Code of 1986, as amended, and the regulations proposed or existing, from time to time promulgated thereunder. Upon the City's receipt of written notice as above-described, of the Trustee's sale, assignment or transfer of all or any part of its interest in this Agreement or the payments hereunder, the City agrees to attorn to and recognize any such purchaser(s), assignee(s) or transferee(s) (jointly if more than one) as the owner(s) of all right, title and interest in, to and under this Agreement and the payments thereafter due and payable pursuant hereto, and as the trustee(s) hereunder. Upon the written request of any purchaser, assignee or transferee of the Trustee's interest, the City agrees to execute and deliver to such purchaser, assignee or transferee such certificates or other instruments in such forms as may reasonably be required by such purchaser, assignee or transferee, and to which the City can truthfully attest, including but not limited to a separate acknowledgment of assignment and attornment certificate in the customary form as to such purchaser's, assignee's or transferee's right, title and interest in, to and under this Agreement and the payments thereafter due and payable pursuant hereto. Any such purchaser, assignee or transferee shall agree in writing to assume and perform all of the duties and responsibilities of the Trustee and shall acknowledge the City's rights hereunder. Provided, however, that in the event the Trustee becomes merged or consolidated with any other entity and the resulting entity meets the requirements for a successor trustee under the Trust Agreement, then the resulting entity shall assume all rights, responsibilities and duties of the Trustee hereunder without the execution or filing of any papers or any further act on the part of either party and the "Trustee" hereunder shall refer to such resulting party.

12. Reserved.

13. Miscellaneous.

(a) No covenant or obligation herein to be performed by the City may be waived except by the written consent of the Trustee and a waiver of any such covenant or obligation or a forbearance to invoke any remedy on any occasion shall not constitute or be treated as a waiver of such covenant or obligation as to any other occasion and shall not preclude the Trustee from invoking such remedy at any later time prior to the City's cure of the condition giving rise to such remedy.

(b) This Agreement shall be construed and governed in accordance with the laws of the State of Arizona in effect from time to time.

(c) This Agreement constitutes the entire agreement between the parties and shall not be modified, waived, discharged, terminated, amended, supplemented, altered or changed in any respect except by a written document signed by both the Trustee and the City.

(d) Any term or provision hereof found to be prohibited by law or unenforceable or which would cause this Agreement to be invalid, prohibited by law or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without, to the extent reasonably possible, causing the remainder of this Agreement to be invalid, prohibited by law or unenforceable.

(e) Trustee hereunder shall have the right at any time or times, by notice to the City, to designate or appoint any person or entity to act as agent or trustee for the Trustee for any purposes hereunder.

(f) The City agrees to pay interest at the rates necessary to pay the interest components specified in Exhibit A.

(g) Use of the neuter gender herein is for purposes of convenience only and shall be deemed to mean and include the masculine or feminine gender whenever and wherever appropriate.

(h) The captions set forth herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

(i) Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, assigns and personal representatives, as the case may be. Any person or entity acquiring any interest in or to the Trustee's right, title or interest herein shall be and have the rights of a third party beneficiary hereunder.

14. Notices; Mailing Addresses. All notices, consents or other communications required or permitted hereunder shall be deemed sufficient if given in writing addressed and mailed by registered or certified mail, or delivered to the party for which the same is intended or certified, as follows:

If to the Trustee: [_____] _____

If to the City: City of Goodyear, Arizona
190 N. Litchfield Road
P.O. Box 5100
Goodyear, Arizona 85338
Attn: Finance Director

with a copy to: Gust Rosenfeld, P.L.C.
One E. Washington Street, Suite 1600
Phoenix, Arizona 85004
Attn: Timothy A. Stratton, Esq.

15. Definitions. All terms not otherwise defined herein are as defined in the Trust Agreement.

16. Reserved.

17. Notice as to Conflict of Interest. A.R.S. § 38-511 provides that the City may, within three years after its execution, cancel any contract, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other

party of the contract with respect to the subject matter of the contract. In addition, the City may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City from any other party to the contract arising as a result of the contract.

18. Trustee. The Trustee is acting hereunder in its capacity as the Trustee under the Trust Agreement and is entitled to all the rights, protections, immunities and indemnities hereunder as afforded to the Trustee under the Trust Agreement. The Trustee has no duty or obligation to monitor the City's compliance with the City's covenants set forth in this Agreement.

19. E-Verify Requirements. To the extent applicable under A.R.S. § 41-4401, the Trustee and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under A.R.S. § 23-214(A). The Trustee or its subcontractors' breach of the above-mentioned warranty shall be deemed a material breach of this Agreement and may result in the termination of the Trustee's services by the City. The City retains the legal right to randomly inspect the papers and records of the Trustee or its subcontractors who work on this Agreement to ensure that the Trustee and its subcontractors are complying with the above-mentioned warranty.

The Trustee and its subcontractors warrant to keep such papers, information, and records necessary to verify compliance with the above-mentioned warranty (collectively, the "*Information*") open for random inspection by the City during normal business hours. The Trustee and its subcontractors shall reasonably cooperate with the City's random inspections including granting the City entry rights onto their property to perform the random inspections, granting the City access to, and use of the Information, provided that, the City agrees that it will use the Information solely for the purpose of verifying compliance with the E-verify requirements and the warranty of this Section 19 and, subject to the requirements of law, including the public records law of the State of Arizona, the City will preserve the confidentiality of any information, records, or papers the City views, accesses, or otherwise obtains during any and every such random inspection, including, without limitation, the Information.

20. No Boycott of Israel. To the extent A.R.S. §§ 35-393 - 35-393.03 are applicable, the Trustee hereby certifies that it is not currently engaged in, and agrees for the duration of this Agreement to not engage in, a boycott of goods or services from Israel, as that term is defined in A.R.S. § 35-393.

[Signature Pages to Follow]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the first day of _____, 2021.

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By _____
Its _____

[First Signature Page to Agreement between U.S. Bank and City of Goodyear]

CITY OF GOODYEAR, ARIZONA, a
municipal corporation and political subdivision
under the laws of the State of Arizona

By _____
Mayor

ATTEST:

By _____
City Clerk

[Second Signature Page to Agreement between U.S. Bank and City of Goodyear]

EXHIBIT A

PAYMENT SCHEDULE

<u>Payment Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Total Payment</u>
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