

AGREEMENT
BETWEEN THE CITY OF GOODYEAR
AND
BUCKEYE WATER CONSERVATION & DRAINAGE DISTRICT
FOR IMPROVEMENTS TO THE BWCDD CANAL AND DISCHARGE OF CITY
EFFLUENT INTO THE BWCDD CANAL

Project Name:
Effluent Discharge And Canal Improvements

This Agreement between The City of Goodyear (The City), a political subdivision of the State of Arizona, County of Maricopa, and the Buckeye Water Conservation and Drainage District, a political subdivision of the State of Arizona (BWCDD) for Improvements to the BWCDD Canal and Discharge of City Effluent into the BWCDD Canal (the “Agreement”) is entered to allow the discharge of 6 MGD of Class A+ effluent from the City’s 157th Avenue Water Reclamation Facility into a water delivery canal owned and operated by BWCDD (the “Canal”) and provide terms for the design and construction of improvements to the Canal needed for the Canal to accommodate such discharge. The City and BWCDD are collectively referred to as the Parties or individually as a Party.

STATUTORY AUTHORIZATION

1. A.R.S. 48 Chapter 19, Section 48-2978.13, et seq., Authorizes the District to Exercise exclusive control over all District facilities, rights-of-ways, and other district properties.
2. A.R.S. Section 11-951, et seq., authorizes public agencies to enter into Intergovernmental Agreements for the provision of services or for joint or cooperative action.

BACKGROUND

3. The City provides water and wastewater services to its customers within its service area.
4. The City is required to dispose of the Class A+ effluent produced at its 157th Avenue Water Reclamation Facility
5. BWCDD is able to put Class A+ effluent to beneficial use and the City of Goodyear and Buckeye Water Conservation Drainage District entered into that certain Effluent Discharge Agreement dated June 24, 2019 as amended (the “Existing Discharge Agreement”) that allows the City to discharge 2 MGD of Effluent into the Canal.

6. The City desires to increase the discharge of effluent into the Canal from 2 MGD to 6 MGD.
7. Certain improvements must be made to the Canal in order for the Canals to accommodate the discharge of 6 MGD of effluent into the Canal.
8. To accommodate the discharge of 6 MGD of effluent into the Canal, a section of the Canal beginning at the current point of effluent discharge continuing for a distance of 150' in the westerly direction of the Canal must be lined in accordance with BWCDD's Canal Lining Improvement Guidelines (the "Canal Improvements")
9. BWCDD has agreed to execute a new agreement, which is to replace the Existing Discharge Agreement, authorizing the increased volume of discharge contingent upon the City incurring the cost for the design and construction of the Canal Improvements.
10. The City is willing to fund the cost of the design and construction of the Canal Improvements subject to BWCDD's commitment that the City will have a right to discharge 6 MGD into the canal for a minimum of five (years).
11. The purpose of this Agreement is to establish the City's right to discharge 6 MGD of Class A+ Effluent into the Canal and to identify and define the responsibilities of the City and BWCDD for the Canal Improvements needed so that the Canal can accommodate the 6 MGD of effluent.

AGREEMENT

NOW THEREFORE, in consideration of the promises and covenants set forth below, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

TERMS OF THE AGREEMENT

12. **Incorporation of Provisions.** The foregoing provisions are incorporated herein by this reference as if fully set forth herein and are acknowledged and agreed to by the Parties.
13. **Effective Date.** This Agreement shall be effective as of the date all of the following has occurred (i) this Agreement is approved by the Board of Directors of BWCDD and executed by the Board of Directors of BWCDD or their designee; and (ii) this Agreement is approved by the Goodyear City Council and fully executed by the Goodyear City Manager.
14. **Term:** This Agreement shall commence on the Effective Date described in section 12 above and shall continue in effect until December 31, 2026 unless terminated earlier as provided in Section 24 below.
15. **Responsibilities of the City for Canal Improvements:**

- 15.1 The City agrees to pay the costs of the Canal Improvements, including, but not limited to the: administrative and construction management fees, engineering design costs, and construction cost set forth in **Exhibit A** attached hereto subject to a maximum amount of \$374,971.
- 15.2 The City agrees that BWCDD has the responsibility for overseeing BWCDD's contractor and managing the construction activities related to the Canal Improvements.
- 15.3 If applicable, the City shall issue to BWCDD, a Temporary Construction Easement or permit to work within the City's Right-of-Way at no cost to BWCDD.
- 15.4 Within fifteen (15) days upon the execution of this Agreement by the City, the City shall deposit with BWCDD funds equal to amount of the project costs set forth in **Exhibit A** attached hereto, subject to a maximum amount of \$374,971.
16. **City's Right to Discharge:** The City shall have the right to discharge Class A+ effluent into the Canal subject to the following:
 - 16.1 Discharge Prior to Completion of Canal Improvements. Until the Canal Improvements are completed, the City shall have the right to discharge up to 2 MGD of Class A+ effluent into the Canal.
 - 16.2 Discharge After Completion of Canal Improvements. After the Canal Improvements are completed, the City shall have the right to discharge up to 6 MGD of Class A+ effluent into the Canal
 - 16.3 Delivery Point. The City and BWCDD agreed that discharges into the Canal shall be made at the delivery point currently being used, which is generally located at Estrella Parkway and the BWCDD Canal. In the event redundancy is necessary, or temporary alternative discharge points are needed, the City and BWCDD shall identify such additional or alternative discharge points and the City shall be intitled to discharge its Class A+ effluent into the Canal from such discharge points to the extent that the alternative delivery point does not cause damage to the BWCDD Canal.
 - 16.4 Metering. All discharges to the Canal shall be properly metered and reported on a monthly basis, and all costs related to metering and reporting shall be paid for by the City.
 - 16.5 Dry-Up Period. The City shall not discharge into the Canals during scheduled dry-up periods during which the BWCDD performs maintenance. The BWCDD shall provide the City with thirty (30) days written notice of the scheduled dry-up.

- 16.6 Emergencies. The City shall not discharge into the Canal following notification by the BWCDD of a natural events or emergencies that cause a temporary inability for the Canal to accept discharge from the City. By way of example, but not limitation, this includes storm events that cause an increase in the level of water in the Canal such that the City's discharge into the Canals may cause a breach of the Canal and the occurrence of some event that would require emergency repairs. The BWCDD shall notify the City by calling the City's On-Call number of the City's Reclamation Operations at 623-606-4831 of the need for the City to temporarily stop discharges into the Canal. Within one-hour or less of receiving notification from the BWCDD of an emergency event as provided herein, the City shall shut-off discharges into the Canal. The BWCDD shall notify the City as soon as practicable under the particular circumstances of when discharges can resume by contacting the On-Call number set forth above.
- 16.7 Requirements for Discharges of Effluent. Discharges of effluent into the Canal are governed by and subject to all applicable federal, state, and local laws, rules, and regulations governing such discharges.
- 16.8 Water Quality. All discharges to the Canal shall be of Class A+ effluent standards as permitted through the City's Arizona Pollutant Discharge Elimination System Permit, AZPDES Permit AZ0022357, and in compliance with all regulatory requirements, both present and future, for Class A+ effluent.
- 16.9 Water Quality Reporting. The City agrees to provide monthly water quality sampling results of the water discharged into the Canal as prepared for ADEQ in compliance with the City's AZPDES Permit AZ0022357, and incur the full cost for any such sampling and delivery of results. In the event the District has concerns with the reported water quality, those concerns will be reported, in writing or via e-mail, to the City within 30 days of receipt of the water quality sampling data/reports. The City agrees to remediate water quality concerns in a timely manner and suspend discharge if that becomes necessary.
- 16.10 Permitting. The City's current AZPDES Permit AZ0022357 includes the Canal as an approved discharge location. The City shall, at the City's sole cost, amend any of its existing permits and obtain any additional federal, state or local permits as may be required for the City's discharge of Class A+ effluent into the Canal. BWCDD shall cooperate with the City in the City's efforts to obtain such amendments or new permits by providing information as may reasonably requested by the City in a timely manner. In the event the City violates any terms or conditions of any such requisite permit, the City will agree to indemnify and hold harmless the BWCDD as to any such violations
- 16.11 Minimum Deliveries. The City is not obligated to provide any minimum delivery of Class A+ effluent to the Canal, however, the City shall notify BWCDD of

any increase or decrease in average daily flows within 1 hour of change in flows to the Canal.

17. Responsibilities of BWCDD for the Canal Improvements:

- 17.1 Construction Requirement. BWCDD shall construct the Canal Improvements in accordance with BWCDD's Canal Lining Improvement guidelines and shall complete the Canal Improvements by December 31, 2021.
- 17.2 COG Permits. If applicable, BWCDD shall apply for and obtain any no-cost permit(s) or approvals required to allow BWCDD to perform work within City of Goodyear ROW.
- 17.3 Use of Funds. BWCDD shall use the funds deposited pursuant to Section 15.4 above, to pay for the cost of the Canal Improvements.
- 17.4 Reimbursement. BWCDD shall reimburse the City the funds the City paid BWCDD pursuant to Section 15.4 above if BWCDD fails to complete the Canal Improvements by December 31, 2021.

18. Joint Cooperation

- 18.1 Permits. The City shall obtain all necessary permits in order to meet its regulatory requirements to effectuate the Parties purposes for entering into this Agreement and BWCDD agrees to support these efforts.
- 18.2 Easements. In the event it become necessary for BWCDD to provide any easements to the City for the construction or operation of infrastructure needed for the City to discharge its Class A+ effluent into the Canal, BWCDD agrees to provide such required easement(s), temporary or permanent, to the City at no cost.
- 18.3 Mutual Aid. Each Party agrees to work cooperatively in the event of any emergency impacting deliveries under this Agreement to the fullest extent possible.
- 18.4 Delivery of Documents. The Parties agree to execute and/or deliver to each other such other instruments and documents as may be reasonably necessary to fulfill the covenants and obligations to be performed by such Party pursuant to this Agreement.

GENERAL TERMS AND CONDITIONS

- 19. **Replacement of Existing Discharge Agreement.** This Agreement replaces and supersedes the Existing Discharge Agreement upon the Effective Date of this Agreement, and as of the Effective Date of this Agreement, the Existing Discharge is terminated and has no further force or effect.

20. **Entire Agreement.** This Agreement, including all Exhibits attached to this Agreement, constitutes the entire understanding between the Parties regarding the subject matter of this Agreement, supersedes any and all previous understandings between the Parties regarding the subject matter of this Agreement, and binds and inures to the benefit of the Parties, their successors, assigns and purchasers for value. Neither of the Parties has entered into this Agreement in reliance upon any oral or written representation or information provided by the other Party. This Agreement cannot be modified or changed except by a written instrument executed by all of the Parties hereto.
21. **Limitations of this Agreement.**
- 21.1 Limited Obligations. This Agreement does not create a duty or responsibility unless the intention to do so is clearly and unambiguously stated in this Agreement. This Agreement does not imply authority to perform any tasks, or accept any responsibility, not expressly stated in this Agreement.
- 21.2 No Roadway Control. This Agreement does not grant authority to control any City roadway except to the extent necessary to perform the tasks expressly undertaken pursuant to this Agreement, and then, pursuant to a permit if required by the City.
- 21.3 No Other Benefitted Parties. Nothing contained in this Agreement shall create any partnership, joint venture or other agreement between the Parties hereto. Except as expressly provided in this Agreement, no term or provision of this Agreement is intended or shall be for the benefit of any person or entity not a party to this Agreement, and no such other person or entity shall have any right or cause of action under this Agreement.
- 21.4 No Relationship with Contractor. Nothing in this Agreement shall make any contractor or subcontractor an agent or employee of the Parties to this Agreement.
22. **Interpretation Related Provisions.**
- 22.1 Governing Law. The laws of the State of Arizona govern the interpretation and performance of this Agreement, and any action brought to enforce this Agreement shall be brought in a court of competent jurisdiction in Maricopa County, Arizona.
- 22.2 Time Related Terms. Time is of the essence concerning this Agreement. Unless otherwise specified in this Agreement, the term “day” as used in this Agreement means calendar day. If the date for performance of any obligation under this Agreement or the last day of any time period provided in this Agreement falls on a Saturday, Sunday or legal holiday, then the date for performance or time period shall expire at the close of business on the first day thereafter which is not a Saturday, Sunday or legal holiday

- 22.3 Construction. This Agreement shall be construed as a whole and in accordance with its fair meaning and without regard to any presumption or other rule requiring construction against the party drafting this Agreement.
- 22.4 Legal Review. Each Party has reviewed this Agreement and has had the opportunity to have it reviewed by their respective legal counsel.
- 22.5 Section Headings. Section headings and other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- 22.6 Severability. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law, but if any provision shall be invalid or prohibited under the law, such provision shall be ineffective to the extent of such prohibition or invalidation but shall not invalidate the remainder of such provision or the remaining provisions.
23. **No. Waiver**. The waiver by any Party of any right granted to it under this Agreement is not a waiver of any other right granted under this Agreement, nor may any waiver be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived.
24. **Termination by Agreement**. Either Party may terminate this Agreement upon a written request of the Party. If the Agreement is terminated at the request of BWCDD or if the Termination of this Agreement is at the request of the City because of the occurrence of an Event of Default on the part of BWCDD, then BWCDD shall reimburse the City for a proportionate share of the funds the City paid BWCDD pursuant to Section 15.4 above, which shall be calculated as follows: $((\text{number of days between December 31, 2026 and Termination Date}) \div (\text{number of days between December 31, 2021 and December 31, 2026})) \times \text{total funds City paid BWCDD}$. This reimbursement obligation shall survive the termination of this Agreement.
25. **Default and Termination**. Upon the occurrence of an Event of Default, in addition to any remedies available under this Agreement, in law, or in equity to the Party not in default (the "Non-defaulting Party"), the Non-Defaulting Party shall have the right to terminate this Agreement immediately upon written notice to the Party responsible for the occurrence of the Event of Default (the "Defaulting Party") if the Event of Default is not properly cured pursuant to Section 25.2 below. .
- 25.1 Event of Default. The occurrence of any of the events set forth below shall constitute an Event of Default hereunder ("Event of Default"):
- A. Failure or refusal of the Defaulting Party to timely perform any term, covenant, or condition pursuant to the terms and conditions of this Agreement;

- B. Failure to make any payment required hereunder within thirty (30) days of written notice from the Non-defaulting Party that such payment is overdue, provided such payment is properly owed; and
 - C. Unless caused by an Uncontrollable Circumstance, the failure to otherwise comply with any of the other obligations, covenants, agreements, terms, or provisions of this Agreement. "Uncontrollable Circumstance" means any act, event, or condition that is caused by or due to circumstances beyond the reasonable control of the Party relying thereon as justification for not performing an obligation or complying with any condition required of such Party under this Agreement, and that materially interferes with performing its obligations hereunder (other than payment obligations) to the extent that such act, event, or condition is not the result of the willful or negligent act, error or omission, failure to exercise reasonable diligence, or breach of this Agreement on the part of such Party.
 - D. Breach of any warranty as set forth in Section 29.5 below.
- 25.2 Opportunity to Cure. The Defaulting Party shall have forty-five (45) days following the receipt of written notice of an Event of Default by the Non- Defaulting Party to cure the Event of Default, which notice shall clearly identify the specific nature of the Event of Default. As to non-monetary Events of Default, if and to the extent the Event of Default cannot reasonably be cured within such forty-five (45) day period, and if the Defaulting Party has theretofore diligently attempted to cure the same and thereafter continues to diligently cure the same, then the cure period provided for herein shall extend for the period of time reasonably needed to cure the Event of Default.
- 25.3 Reimbursement in Event of Default. If the City of Goodyear terminates this Agreement because of the occurrence of an Event of Default on the part of BWCDD, BWCDD shall reimburse the City for a proportionate share of the funds the City paid BWCDD pursuant to Section 15.4 above, which shall be calculated as follows: $((\text{number of days between December 31, 2026 and Termination Date}) \div (\text{number of days between December 31, 2021 and December 31, 2026})) \times \text{total funds City paid BWCDD}$). This reimbursement obligation shall survive the termination of this Agreement.
- 25.4 Remedies. Further, upon the occurrence of any Event of Default and at any time thereafter, the Non-Defaulting Party may, but shall not be required to, exercise any remedies now or hereafter available to it at law or in equity.
26. **Termination for Non-Appropriation of Funds.** Any funding provided for in this Agreement, other than in the current fiscal year, is contingent upon being budgeted and appropriated by the City of Goodyears governing council and the BWCDD's governing body in such fiscal year. This Agreement may be terminated by any Party at the end of

any fiscal year due to non-appropriation of funds. Notwithstanding the foregoing however, If BWCDD terminates this Agreement because of a non-appropriation of funds on the part of BWCDD's governing body, shall reimburse the City for a proportionate share of the funds the City paid BWCDD pursuant to Section 15.4 above, which shall be calculated as follows: $((\text{number of days between December 31, 2026 and Termination Date}) \div (\text{number of days between December 31, 2021 and December 31, 2026})) \times \text{total funds City paid BWCDD}$). This reimbursement obligation shall survive the termination of this Agreement

27. **Cancellation for Conflicts of Interest.** The provision of A.R.S. § 38-511 are incorporated into this Agreement to the extent applicable, and this Agreement shall be subject to termination pursuant to the provisions of A.R.S. § 38-511.
28. **Indemnification.** By entering into this Agreement, the Parties agree that to the extent permitted by law, each Party will indemnify, defend and save the other Party harmless, including any of the other Party's departments, agencies, officers, employees, elected officials or agents, for, from and against all loss, liability, expense, damage or claim of any nature whatsoever which is caused by any activity, condition or event arising out of the negligent performance or nonperformance by the indemnifying Party of any of the provisions of this Agreement, except to the extent such injury or damage as shall have been caused or contributed to by the negligence of the other Party. The damages which are the subject of this indemnity shall include but not be limited to the damages incurred by any Party, its departments, agencies, officers, employees, elected officials, or agents. In the event of an action, the damages which are the subject of this indemnity shall include costs, expenses of litigation and reasonable attorney's fees. This obligation shall survive the expiration or earlier termination of this Agreement.
29. **Compliance with Applicable Laws.**
 - 29.1 Compliance with A.R.S. § 41-4401. The Parties warrant they are in compliance with A.R.S. § 41-4401.
 - 29.2 Compliance with Immigration Laws. The Parties agree that all contractors or subcontractors contracted by a Party to perform work on the Canal Improvements shall warrant their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214(A), and shall keep a record of the verification for the duration of the employee's employment or at least three (3) years, whichever is longer.
 - 29.3 No Debarred Contractors. Each Party to this Agreement warrants that neither it nor any contractor or vendor under contract with the Party to provide goods or services toward the accomplishment of the objectives of this Agreement is suspended or debarred by any federal agency which has provided funding that will be used in the Canal Improvements.
 - 29.4 Inspection of Papers. The Parties retain the legal right to inspect the papers of any contractor or subcontractor employee who works on the Canal Improvements to

ensure that the contractor or subcontractor is complying with the warranty above and that the contractor agrees to make all papers and employment records of said employee available during normal working hours in order to facilitate such an inspection.

29.5 Breach of Warranty. A breach of any of the warranties referred to above shall be an Event of Default.

30. **Notices.** All notices required under this Agreement to be given in writing shall be sent to the addresses set forth below or to any other addresses designated by any of the Parties in a writing:

City:

City of Goodyear
Attn: Barbra Chappell
4980 S. 157th Avenue
Goodyear, Arizona 85338

with a copy to:

City of Goodyear
Attn: City Attorney
190 No. Litchfield Road
Goodyear, Arizona 85338

BWCDD:

Buckeye Water Conservation and Drainage District
Attn: Noel Carter
205 E. Roosevelt Avenue
Buckeye, Arizona 85326

All notices required or permitted by this Agreement or applicable law shall be in writing and may be delivered in person (by hand or courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, and shall be deemed sufficiently given if served in a manner specified in this paragraph. Either Party may by written notice to the other specify a different address for notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail, the notice shall be deemed given 72 hours after the notice is addressed as required in this paragraph and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given 24 hours after delivery of the notice to the Postal Service or courier.

31. **Assignment.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assignees. Neither Party shall assign its interest in this Agreement without the prior written consent of the other Party which shall not unreasonably withheld.
32. **Survival Clause.** All provisions in this Agreement that logically ought to survive the expiration or earlier termination of this Agreement shall survive the expiration or earlier termination of this Agreement. This includes, by way of example but not limitation: all provisions imposing obligations that will not be triggered until the Agreement is terminated, all indemnification provisions, and all remedies and damage related provisions. The fact that certain provisions in this Agreement expressly state that such provisions shall survive the expiration or earlier termination of this Agreement, shall not be construed as limiting the application of this Survival Clause as to other provisions in this Agreement. a.
33. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one agreement, binding on all the Parties. Further this Agreement may be executed and delivered by electronic transmission. A manually signed copy of this Agreement delivered by facsimile, e-mail, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

End of Agreement - Signature Page Follows

IN WITNESS WHEREOF, the Parties have executed this Agreement.

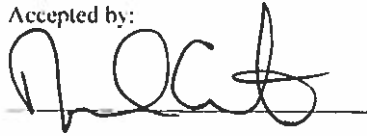
**BUCKEYE WATER CONSERVATION
AND DRAINAGE DISTRICT**, a political
subdivision of the State of Arizona

CITY OF GOODYEAR, a political
subdivision of the State of Arizona

Recommended by:

Recommended by:

Accepted by:



Accepted by:

Approved as to form:

Approved as to form:

By:


Attorney for BWCD

By:

Attorney for the City

IN WITNESS WHEREOF, the Parties have executed this Agreement.

**BUCKEYE WATER CONSERVATION
AND DRAINAGE DISTRICT**, a political
subdivision of the State of Arizona

CITY OF GOODYEAR, a political
subdivision of the State of Arizona

Recommended by:

Recommended by:

Accepted by:

Accepted by:

Approved as to form:

Approved as to form:

By: _____
Attorney for BWCDD

By: _____
Attorney for the City

EXHIBIT A



Project Number: BWC2119
08/26/2021

Barbara Chappell
Deputy Public Works Director
4980 S. 157th Ave
Goodyear, Az 85338

BWCDD:
Canal Lining for Effluent Discharge Agreement

Ms. Chappell:

Please review the following construction costs and fees for the above referenced project and return a signed copy to the District office. Thank you

ITEM #	QTY.	UNIT	DISCRIPTION	UNIT PRICE	EXTENSION
1	1	LS	Mobilization	\$ 15,706.00	\$ 15,706.00
2	1	LS	Survey	\$ 7,500.00	\$ 7,500.00
3	1	LS	Traffic Control	\$ 1,600.00	\$ 1,600.00
4	1	LS	Material Testing	\$ 4,215.00	\$ 4,215.00
5	300	CY	Over-Excavate Canal Floor	\$ 50.00	\$ 15,000.00
6	400	SY	Install MAG ABC-Canal Floor	\$ 47.00	\$ 18,800.00
7	400	SY	Install Geogrid-Canal Floor	\$ 4.50	\$ 1,800.00
8	1275	CY	Place Canal Fill (Slopes)	\$ 86.00	\$ 109,650.00
9	1100	SY	Canal Lining-Shotcrete	\$ 76.00	\$ 83,600.00
10	300	LF	Backfill Top of Shotcrete	\$ 32.00	\$ 9,600.00
11	1	LS	Contingency Fee	\$ 30,000.00	\$ 30,000.00
12	1	LS	Engineering	\$ 15,000.00	\$ 15,000.00
13	1	LS	District Admin/Const. & Development Fee	\$ 62,500.00	\$ 62,500.00
Project Total					\$ 374,971.00

Noel Carter

Barbara Chappell

General Manager,
BWCD

Deputy Public Works Director,
City of Goodyear