



City Council Regular Meeting
Municipal Court and Council Chambers
14455 W. Van Buren St., Suite B101
Goodyear, AZ 85338
Monday, October 4, 2021
6:00 PM

Mayor
Georgia Lord

Vice Mayor
Brannon Hampton

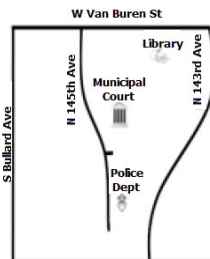
Councilmember
Joe Pizzillo

Councilmember
Sheri Lauritano

Councilmember
Wally Campbell

Councilmember
Bill Stipp

Councilmember
Laura Kaino



CITIZENS COMMENTS/APPEARANCES FROM THE FLOOR

Please complete a speaker card and submit it to the City Clerk prior to the meeting being convened, if possible. Each speaker is limited to three (3) minutes. Once the City Clerk has called your name, step up to the lectern and begin by clearly stating your name for the record and whether you are a Goodyear resident.

NON-AGENDA ITEMS

Members of the public may address the City Council regarding any non-agenda item within the jurisdiction of the City Council. The City Council will listen to comments and may take any of the following actions:

- Respond to criticism.
- Request that staff investigate and report on the matter.
- Request that the matter be scheduled on a future agenda.

AGENDA ITEMS

Members of the public may address the City Council regarding any item on the Consent, Public Hearing and/or Business portions of the agenda. Each speaker's name will be called in turn once the item has been reached and after City staff have completed their presentation.

PROCEDURES

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the members of the Goodyear City Council and to the general public that the Council of the city of Goodyear will hold a meeting open to the public. Public body members of the city of Goodyear will attend either in person or by telephone conference call and/or video communication. The Goodyear City Council may vote to go into Executive Session, pursuant to A.R.S. § 38-431.03(A)(3), which will not be open to the public, to discuss certain matters. Meetings are conducted in accordance with the City Council Meetings Council Rules of Procedure adopted by Resolution No.2018-1879



City Clerk's Office: 190 N. Litchfield Rd, Goodyear, AZ 85338 (623) 882-7830
www.goodyearaz.gov/cityclerk
City Council Meeting Live Broadcast: <https://www.facebook.com/goodyearazgov/videos>

CALL TO ORDER

PLEDGE OF ALLEGIANCE AND INVOCATION BY MAYOR LORD

ROLL CALL

COMMUNICATIONS

1. **MAYOR LORD WILL READ A PROCLAMATION RECOGNIZING OCTOBER AS DOMESTIC VIOLENCE AWARENESS MONTH AND PRESENT IT TO MYRIAH MHOON, EXECUTIVE DIRECTOR, NEW LIFE CENTER.**

CITIZENS COMMENTS/APPEARANCES FROM THE FLOOR

CONSENT

2. **GROUNDWATER SAVINGS FACILITY AGREEMENT WITH ROOSEVELT IRRIGATION DISTRICT**

Recommendation

1. Approve the Groundwater Facility Agreement between the Roosevelt Irrigation District and the City of Goodyear, Arizona.
2. Authorize and direct the City Manager or her designee to take any and all actions to execute all documents necessary to carry out the intent of these agreements. (Gretchen Erwin, Water Resources and Sustainability Manager)

3. **AGREEMENT WITH BUCKEYE WATER CONSERVATION AND DRAINAGE DISTRICT (BWCD) FOR REPAIR AND IMPROVEMENTS TO THE BULLARD WASH OUTFALL**

Recommendation

Approve the Agreement with the Buckeye Water Conservation and Drainage District for repairs and improvements to the Bullard Wash Outfall and the expenditure of funds to meet the terms of the Agreement. (Barbara Chappell, Deputy Public Works Director)

4. **APPROVE EXPENDITURE UP TO \$692,600 FOR THE PURCHASE OF RED ZONE GEAR**

Recommendation

Approve expenditure of funds up to \$692,600 to purchase remaining Red Zone particulate blocking firefighter turnout ensembles for all sworn personnel. (Paul Luizzi, Fire Chief)

5. **CONSENT TO ASSIGNMENT OF ESTRELLA AGREEMENTS**

Recommendation

Approve and authorize City Manager to execute a Consent to Assignment in the draft form attached as Exhibit 1, allowing a limited liability company that includes as its members and/or managers, Harvard Investments, Toll Brothers and Varde Partners, that will be acquiring interests of NNP III — Estrella Mountain Ranch, a Delaware Limited Liability Company, NNP III – EMR 3, LLC, a Delaware limited liability company, NNP III – EMR 4, LLC, a Delaware limited liability company, and Special AZ Properties I, LLC, an Arizona limited liability (collectively the “NNP Entities”) in real property subject to the various agreement to assume the NNP Entities rights, title, interest, in, and obligations under various agreements with the City. (Roric Massey, City Attorney)

6. **CONSENT TO ASSIGNMENT OF MADEIRA AGREEMENTS**

Recommendation

Approve and authorize City Manager to execute a Consent to Assignment in the draft form attached as Exhibit 1, allowing a limited liability company that includes as its members and/or managers, Harvard Investments, Toll Brothers and Varde Partners, that will be acquiring interests of Madeira-Maricopa, LLC, a Delaware limited liability company (“Madeira”) in real property subject to the various agreement to assume Madeira’s rights, title, interest, in, and obligations under various agreements with the City. (Roric Massey, City Attorney)

BUSINESS

7. **2022 INAUGURAL TOUR DE CURE ARIZONA: 56**

Recommendation

Approve support of the American Diabetes Association's Tour de Cure Arizona: 56 through the provision of public safety in-kind services. (Julie Karins, City Manager)

INFORMATION ITEMS

Comments, commendations, report on current events and presentations by Mayor, Councilmembers, staff or members of the public. The Council may not propose, discuss, deliberate or take any legal action on the information presented, pursuant to A.R.S. § 38-431.02.

1. Reports from the Mayor and City Council
 - a. This may include current events and activities as well as requests for information or future agenda items.
2. Report from the City Manager
 - a. This may include updates from events, staff summary, update of legislative issues, clarification on items being requested by City Council and Manager's update on Council Related Matters.

FUTURE MEETINGS

October 18, 2021

Work Session

5:00p.m.

ADJOURNMENT

THE CITY OF GOODYEAR ENDEAVORS TO MAKE ALL PUBLIC MEETINGS ACCESSIBLE TO PERSONS WITH DISABILITIES. With 48-hour advance notice, special assistance can be provided for sight and/or hearing-impaired persons at this meeting. Reasonable accommodations will be made upon request for persons with disabilities or non-English speaking residents. Please call the City Clerk (623) 882-7830 or Arizona Relay (TDD) 7-1-1 to request an accommodation to participate in this public meeting.

LA CIUDAD DE GOODYEAR PROCURA HACER TODA JUNTA PUBLICA ACCESIBLE A PERSONAS CON DISCAPACIDADES. Con un aviso de 48 horas por adelantado se puede proveer asistencia especial a personas con discapacidades visuales o auditivas durante la junta. Se harán adaptaciones razonables con previa solicitud para personas con discapacidades o para residentes que no hablan inglés. Favor de llamar a la Secretaria Municipal al (623) 882-7830 o Retransmisión de Arizona (TDD) 7-1-1 para solicitar adaptaciones para participar en la junta pública.

POSTING VERIFICATION

This agenda was posted on September 29, 2021 at 5:15 p.m. by VM.

ITEM #: 1.
DATE: 10/04/2021
AI #:504



CITY COUNCIL COMMUNICATION

STAFF PRESENTER(S): John Raeder, Assistant to the Council

SUBJECT:

MAYOR LORD WILL READ A PROCLAMATION RECOGNIZING OCTOBER AS DOMESTIC VIOLENCE AWARENESS MONTH AND PRESENT IT TO MYRIAH MHOON, EXECUTIVE DIRECTOR, NEW LIFE CENTER.

ITEM #: 2.
DATE: 10/04/2021
AI #:397



CITY COUNCIL ACTION REPORT

SUBJECT: GROUNDWATER SAVINGS FACILITY AGREEMENT WITH ROOSEVELT IRRIGATION DISTRICT

STAFF PRESENTER(S): Gretchen Erwin, Water Resources and Sustainability Manager

SUMMARY

The agreement replaces an existing agreement with the Roosevelt Irrigation District (RID). The ability to store water in the RID lands provides an alternative for storing Central Arizona Project (CAP) water in return for Long-Term Storage Credits (LTSCs).

Recommendation

1. Approve the Groundwater Facility Agreement between the Roosevelt Irrigation District and the City of Goodyear, Arizona.
2. Authorize and direct the City Manager or her designee to take any and all actions to execute all documents necessary to carry out the intent of these agreements. (Gretchen Erwin, Water Resources and Sustainability Manager)

FISCAL IMPACT

Storage at the Groundwater Savings Facility will be on a calendar year basis. The city will not incur any operational or administrative costs under the terms of this agreement. Instead, RID shall pay to Goodyear an amount agreed to annually in writing. In 2020 and 2021, RID paid Goodyear \$25 per acre-foot for the CAP water.

BACKGROUND AND PREVIOUS ACTIONS

The city has a Municipal & Industrial subcontract with the U.S. Bureau of Reclamation giving the city the right to purchase up to 10,742 acre-feet per year (AFY) of Colorado River water and a lease with the Gila River Indian Community for 7,000 AFY of Colorado River water.

Historically, the city has stored the CAP water it has ordered in a CAP-owned recharge facility, which allowed the city to earn Long-Term Storage Credits (LTSCs) that could be recovered and used to offset the city's withdrawals from wells within the city's service area. Recovering LTSCs allows the city to meet its renewable water supply requirements under the city's Designation of Assured Water Supply.

On June 22, 2020, Council approved a similar agreement between RID and the City of

Goodyear ("June 2020 RID Agreement"). The June 2020 RID Agreement allows the city to store annually a specified volume of the city's CAP water in a Groundwater Savings Facility on RID lands in return for LTSCs, and allows SRP to recover the credits using their wells in exchange for delivering the stored CAP water to the city using the SRP canals.

STAFF ANALYSIS

Storing water in the RID lands allows the city the flexibility to recover the LTSCs from SRP owned wells that can deliver water to the new Surface Water Treatment Facility. This adds another source of water to the plant. This new agreement is needed as RID is updating all agreements with all of the entities that store water with them to eliminate inconsistencies among the agreements. The terms of the new agreement are essentially the same as the previous agreement with two exceptions: 1) It will eliminate the priority system in which Goodyear had the lowest priority of all the storers which is a benefit to Goodyear, and 2) RID will not commit to specific pricing in the agreement. This is in reference to money that RID pays Goodyear in return for the savings they receive from not pumping. This is understandable as the new agreement will continue indefinitely. The city will negotiate pricing prior to committing to store water with the area's available storage facilities. Goodyear will determine which facility offers the most economic and strategic water storage advantages each year prior to ordering our CAP water. RID will be competing with other storage facilities for our water. This agreement will replace the previous agreement dated June 22, 2020.

Attachments

Agreement

GROUNDWATER SAVINGS FACILITY AGREEMENT

BETWEEN

ROOSEVELT IRRIGATION DISTRICT

AND

THE CITY OF GOODYEAR

GROUNDWATER SAVINGS FACILITY AGREEMENT

BETWEEN

ROOSEVELT IRRIGATION DISTRICT

AND

THE CITY OF GOODYEAR

1. PARTIES:

This Groundwater Savings Facility Agreement ("Agreement") is made and entered into this ____ day of _____, 2021, by and between ROOSEVELT IRRIGATION DISTRICT, an Arizona municipal corporation and political subdivision of the State of Arizona (hereinafter referred to as "RID") and the CITY OF GOODYEAR, a municipal corporation and political subdivision of the State of Arizona (hereinafter referred to as "Goodyear"). RID and Goodyear may hereinafter be referred to individually as "Party" and collectively as "Parties".

2. RECITALS:

2.1. RID operates a groundwater savings facility ("RID GSF") under Permit No. 72-572386.0006 ("RID GSF Permit") issued by the Arizona Department of Water Resources ("ADWR").

2.2. Under the RID GSF Permit, RID is permitted to accept into the RID GSF Central Arizona Project ("CAP") water in lieu of pumping groundwater from wells it operates east of the Agua Fria River ("Eastside Wells").

2.3. RID has entered into the 2020 Supplemental Agreement Among Roosevelt Irrigation District, Salt River Project Agricultural Improvement and Power District, Salt River Valley Water Users' Association and the United States of America that extends the term of the prior agreements between RID and SRP. Pursuant to the 2020 Supplemental Agreement RID has increased the permitted storage capacity of the RID GSF equal to the Annual Pumping Limit under the 2020 Supplement Agreement, which in 2021 is 132,849 acre-feet. The 2020 Supplemental Agreement provides that RID shall reduce pumping from the Eastside Wells on an acre-foot per acre-foot basis in exchange for the water it receives under the RID GSF Permit.

2.4. Goodyear holds (1) a CAP subcontract, Subcontract No. 07-XX-30-W0498 ("Goodyear CAP Contract"), for the use of 10,742 acre-feet of CAP water; (2) a Lease Agreement for CAP Water among the City of Goodyear, the Gila River Indian Community, and the United States dated May 15, 2006, for the use of 7,000 acre-feet of CAP Water; and (3) such additional CAP water as Goodyear may, from time to time, acquire (collectively "Goodyear CAP Water"), that it desires to store at the RID GSF in order to earn long-term storage credits ("LTSCs") under Arizona's Underground Water Storage, Savings, and Replenishment statutes, A.R.S. §§ 45-801.01 *et seq.*

2.5. Goodyear holds a water storage permit authorizing the storage of Goodyear CAP Water at the RID GSF ("Goodyear Water Storage Permit").

2.6. The RID water delivery system is not directly connected to the CAP canal. RID can accept the delivery of CAP water that is wheeled through the Salt River Project ("SRP") water delivery system that is connected to the CAP canal. Goodyear has executed an agreement entitled "CAP/SRP

Interconnection Facility Lease and Water Transportation Agreement among City of Goodyear, Salt River Valley Water Users' Association, and Salt River Project Agricultural Improvement and Power District" dated February 7, 2017, as amended from time to time, which allows SRP to wheel the Goodyear CAP Water through the SRP water delivery system for delivery to the RID GSF ("Goodyear-SRP CSIF Lease and Water Transportation Agreement").

2.7. RID and Goodyear desire to enter into this Agreement for delivery and use of Goodyear CAP Water within the RID GSF in lieu of groundwater pumped from the Eastside Wells.

2.8. RID and Goodyear are parties to a Groundwater Savings Facility Agreement dated June 22, 2020, as amended and extended (the "Initial GSF Agreement"). The Initial GSF Agreement is terminated upon completion of all incurred payments and reports contemplated therein for 2021 and superseded by this Agreement.

3. AGREEMENT:

Now, therefore, for and in consideration of the mutual covenants and agreements set forth herein and other good and valuable consideration, RID and Goodyear agree as follows:

4. AUTHORIZED REPRESENTATIVES:

Within thirty (30) days after execution of this Agreement, each Party shall designate in writing to the other Party, an authorized representative ("Authorized Representative") and an alternate to administer on behalf of the designating Party, the provisions of this Agreement as specified herein. Written notice of a change of an Authorized Representative or alternate shall be provided within thirty (30) days of such change. The alternate shall act only in the absence of the Authorized Representative. Neither the Authorized Representatives nor the alternates shall have authority to amend this Agreement provided, however, the Authorized Representatives or, in the absence of the Authorized Representatives, the alternates may by mutual written agreement extend the time for a party to perform its obligations under this Agreement in a given calendar year. Agreements of the Authorized Representatives pursuant to this Agreement shall be in writing and signed by them.

5. TERM AND TERMINATION:

5.1. This Agreement shall become effective upon execution by both Parties ("Effective Date").

5.2. Once effective, this Agreement shall remain in effect from year-to-year on a calendar year basis unless terminated as provided in Subparagraph 5.3 below.

5.3. Either Party may terminate this Agreement effective at the end of the then-current calendar year, upon written notice provided to the other Party on or before September 1 of the then-current calendar year.

5.4. Termination of this Agreement shall not relieve either Party of its obligation to make payments due pursuant to this Agreement.

6. THE INITIAL GSF AGREEMENT:

6.1. Except as required to complete incurred payments and reports contemplated therein for water stored in 2021, the Initial GSF Agreement is hereby terminated and superseded.

6.2. The obligations and liabilities of the Parties under the Initial GSF Agreement incurred prior to termination survive the termination of the Initial GSF Agreement.

7. PERMITS AND REPORTS:

7.1. At its expense, RID shall maintain the RID GSF Permit in effect to operate the RID GSF as a GSF pursuant to and in accordance with the RID GSF Permit. Within ten (10) days after submitting each of RID's compliance reports to ADWR, RID shall provide a copy of such report to Goodyear.

7.2. At its expense, Goodyear will maintain in effect the Goodyear Water Storage Permit issued or to be issued by ADWR under A.R.S. § 45-831.01 for the RID GSF.

7.3. The Party issued a permit by ADWR pursuant to this Paragraph 7 shall be responsible for the filing of reports required by the Party's permit.

7.4. The Party holding a permit issued by ADWR described in this Paragraph 7 shall promptly notify the other Party if (a) the Party holding the permit receives notice that ADWR intends to amend or terminate said permit; (b) the Party elects to submit an application to amend the permit; or (c) the Party elects not to submit an application to renew the permit. In addition, RID agrees to promptly notify Goodyear if RID receives notice from ADWR that ADWR has determined or may determine that a volume of water stored at the GSF is ineligible for storage or for long-term water storage credits.

7.5. Each Party shall cooperate with and provide nonproprietary information required by the other Party to obtain or conform to the requirements of the permits specified in this Paragraph 7. RID and Goodyear agree to comply with the operating requirements of the RID GSF Permit and the GSF plan of operation applicable to them.

7.6. Goodyear acknowledges that ADWR may determine that certain water losses incurred transporting Goodyear CAP Water as in-lieu water through the SRP water delivery system and the RID water delivery system for use in the RID GSF will reduce the amount of water credits accrued by Goodyear at the RID GSF.

8. IN-LIEU WATER DELIVERIES

8.1. CAP WATER:

8.1.1. Goodyear shall order Goodyear CAP Water in accordance with CAWCD water ordering procedures, and the following procedures to be followed by the Authorized Representatives.

8.1.2. On or before September 15 of each year, for the following year, the Authorized Representatives, in consultation with SRP, shall agree upon an initial estimate of the amount of RID groundwater pumping that can be displaced from the RID Eastside Wells within the RID GSF on a gallon-for-gallon (or acre-foot-for-acre-foot) basis by the receipt of Goodyear CAP Water by RID for use in the RID GSF. In reaching this agreement, the Authorized Representatives shall take into account the

anticipated quantity of effluent and CAP water offered by any other party seeking to store water in the RID GSF for the following calendar year.

8.1.3. The 2020 Supplemental Agreement provides that on or before September 30 of each year, SRP and RID will agree to the Annual Pumping Limit for the following calendar year. The Annual Pumping Limit establishes the maximum amount of water that can be stored in the RID GSF. If a reduction in the Annual Pumping Limit results in a need to reduce the initial estimate agreed to by the Authorized Representatives pursuant to Subparagraph 8.1.1 hereof, RID will notify Goodyear of the reduced amount of RID groundwater pumping that can be displaced within the GSF on an acre foot for acre foot basis by Goodyear CAP Water delivered to the GSF.

8.1.4. On a date specified by CAWCD in each year, the Goodyear Authorized Representative may order from CAWCD Goodyear CAP Water up to such estimated amount agreed upon by the Authorized Representatives under Subparagraph 8.1.2 for delivery to the RID GSF during the following calendar year, with a copy of such order to the RID Authorized Representative. For any year, the amount of Goodyear CAP Water ordered for delivery to the RID GSF may be in any amount, so long as the order does not exceed the estimated amount of Goodyear CAP Water agreed upon by the Authorized Representatives under Subparagraph 8.1.2.

8.1.5. Goodyear authorizes RID to receive the Goodyear CAP Water ordered by Goodyear directly from CAWCD as wheeled through the SRP water delivery system under the Goodyear-SRP CSIF Lease and Water Transportation Agreement. The amounts, times and rates of delivery of the Goodyear CAP Water to be delivered to the RID GSF during any month shall be determined by the order submitted by RID to SRP prior to the beginning of each month.

8.1.6. Goodyear CAP Water shall be delivered by SRP through the SRP Water Delivery System under the Goodyear-SRP CSIF Lease and Water Transportation Agreement, as amended on June 20, 2020 ("SRP CSIF Agreement"). Goodyear shall require that SRP, within forty-five (45) days after the end of the month in which SRP delivers Goodyear CAP Water to RID under this Agreement ("Reporting Month") and, in accordance with the water accounting method in the SRP CSIF Agreement, provide a monthly report to Goodyear and RID that specifies the total quantity of Goodyear CAP Water received by RID under this Agreement, as verified by the CAWCD delivery schedule, for (i) the Reporting Month and (ii) the calendar year to date through the end of the Reporting Month (the "SRP Report").

8.1.7. Except as otherwise provided in this Agreement, RID shall have no obligation to conform to the requirements of the Goodyear CAP Contract. RID shall pay to Goodyear an amount agreed to in writing by the Authorized Representatives for each acre foot of Goodyear CAP Water RID orders and receives under this Agreement. RID's payments shall be remitted to Goodyear as provided in Subparagraph 8.1.8. RID will not charge a wheeling fee for transportation of Goodyear in lieu water within RID's GSF facility to the in-lieu water end user.

8.1.8. Within thirty (30) days after RID receives the SRP Report as described in Subparagraph 8.1.6, any payments for any Goodyear CAP Water due under this Agreement during the Reporting Month shall be paid in accordance with Subparagraph 8.1.7.

8.1.9. Upon providing RID with fifteen (15) days' advance written notice, Goodyear may cause deliveries of Goodyear CAP Water to be reduced, interrupted, or discontinued if one or more of the following events occur:

8.1.9.1. ADWR notifies RID or Goodyear that ADWR will not award LTSCs to Goodyear for the storage of Goodyear CAP Water in the RID GSF;

8.1.9.2. RID is not in compliance with the terms of the RID GSF Permit or the RID GSF plan of operation;

8.1.9.3. CAWCD notifies Goodyear that the amount of Goodyear CAP Water made available to Goodyear has been or will be reduced; or

8.1.9.4. SRP notifies Goodyear that SRP has or will exercise a right under the SRP CSIF Agreement to interrupt or curtail deliveries of Goodyear CAP Water to the RID GSF.

8.2. PROVISIONS APPLICABLE TO ALL IN-LIEU WATER DELIVERIES:

8.2.1. For each acre foot of Goodyear CAP Water received by RID, RID shall reduce its groundwater pumping from the RID Eastside Wells on a gallon-for-gallon (or acre-foot-for-acre-foot) basis in comparison to the amount of groundwater RID would have otherwise pumped from the RID Eastside Wells, had it not received the Goodyear CAP Water, RID shall annually report to ADWR the total Goodyear CAP Water accepted by RID for in lieu storage as provided in this Agreement and in accordance with the RID GSF permit.

8.2.2. RID shall be responsible for the Goodyear CAP Water and its delivery for use on RID land in the RID GSF once the water has been introduced to the RID canal system.

9. RECOVERY, SALE, TRANSFER, OR EXCHANGE OF STORED WATER AND CREDITS:

9.1. Goodyear shall have the right to recover, sell, or transfer any credits earned from the Goodyear CAP Water that Goodyear stores at the RID GSF under this Agreement.

9.2. RID and Goodyear acknowledge and agree that recovery of water stored underground in the RID GSF under this Agreement and applicable permits is beyond the scope of this Agreement, and recovery of such water shall be the sole responsibility of the Party desiring to recover such water.

10. WATER QUALITY:

Neither Party guarantees the quality of Goodyear CAP Water delivered, received or used pursuant to this Agreement.

11. INDEMNIFICATION:

Each Party (Indemnitor) to this Agreement shall indemnify and hold harmless the other Party (Indemnitee) and its governing bodies, agents, directors, officers, and employees from any loss, damage, or liability, including reasonable attorney's fees, caused by a negligent or wrongful action or inaction on the part of the Indemnitor and its governing bodies, agents, directors, officers, and employees, including without limitation, claims for bodily injury, illness, death, or damage to property. Each Party shall assume liability for its own negligent or wrongful action or inaction. Nothing in this Paragraph 11 shall excuse a Party from responsibility for that Party's breach of this Agreement.

12. UNCONTROLLABLE FORCES:

Neither Party shall be considered to be in default in the performance of any of its obligations hereunder (other than obligations of the Parties to make payments due hereunder) when a failure of performance shall be due to uncontrollable forces. The term "uncontrollable forces" shall mean any cause beyond the control of the Party unable to perform such obligation, including, but not limited to, failure of or threat of failure of facilities, flood, earthquake, storm, fire, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, strike, labor dispute, labor or material shortage, sabotage, and restraint by court order or public authority, and action or nonaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority, which by exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Nothing contained herein shall be construed to require either Party to settle any strike or labor dispute in which it is involved.

13. NOTICES:

Any notice, demand or request provided for in this Agreement shall be in writing and delivered in person, or sent by registered or certified mail, postage prepaid, to:

ROOSEVELT IRRIGATION DISTRICT

Roosevelt Irrigation District

Attention: Superintendent

103 West Baseline Road

Buckeye, Arizona 85326

Reference: Goodyear/Roosevelt Irrigation District Groundwater Savings Facility Agreement

(With a copy to the RID Authorized Representative)

GOODYEAR

City of Goodyear

Attention: City Manager and Water Resources

190 North Litchfield Road

Goodyear, Arizona 85338

Reference: Goodyear/Roosevelt Irrigation District Groundwater Savings Facility Agreement

(With a copy to the Goodyear Authorized Representative)

14. WAIVER:

The waiver by either Party of any breach of any term, covenant or condition herein shall not be deemed a waiver of any other term, covenant or condition, or any subsequent breach of the same or any other term, covenant or condition herein.

15. TRANSFER OF INTEREST:

No voluntary transfer of this Agreement or the rights or obligations of Goodyear under this Agreement shall be made without the written consent and approval of RID, except (a) to a successor in operation of the properties of Goodyear, or (b) to an Affiliate of Goodyear; however, water credits accrued by Goodyear from operation of the RID GSF may be assigned at the sole discretion of Goodyear.

For purposes of the foregoing, an "Affiliate" is any legal entity directly or indirectly, controlling, controlled by or under common control with Goodyear.

16. NO THIRD-PARTY BENEFICIARIES:

This Agreement is solely for the benefit of the Parties, and does not create nor shall it be construed to create rights in any third party. No third party may enforce the terms and conditions of this Agreement.

17. GOVERNING LAW:

This Agreement is made under, and shall be construed in accordance with and governed by, the laws of the State of Arizona without regard to the conflicts or choice of law provisions thereof. Any action to enforce any provision of this Agreement or to obtain any remedy with respect hereto shall be brought in the Superior Court, Maricopa County, Arizona, and for this purpose, each Party hereby expressly and irrevocably consents to the jurisdiction and venue of such Court.

18. HEADINGS:

Title and paragraph headings herein are for reference only and are not part of this Agreement.

19. ENTIRE AGREEMENT:

The terms, covenants and conditions of this Agreement constitute the entire Agreement between the Parties, and no understandings or obligations not herein expressly set forth shall be binding upon them. This Agreement may not be modified or amended in any manner unless in writing and signed by the Parties.

20. SEVERABILITY:

If any provision of this Agreement or any portion of any provision of this Agreement is finally adjudicated to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not alter the remaining portion of such provision, or any other provision hereof, to the extent that the remaining provisions reasonably set forth the original intent of the parties.

21. COUNTERPARTS:

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

22. AUTHORIZATIONS:

The Parties to this Agreement represent that the individuals signing this Agreement in the spaces provided below have been appropriately authorized to enter into the Agreement on behalf of the Party for which they sign and that no further action or approvals are necessary before execution of this Agreement.

[signatures on the following page]

IN WITNESS WHEREOF, this Agreement was executed by the Parties on the date first hereinabove written.

ROOSEVELT IRRIGATION DISTRICT

By: _____

Name: _____

Title: _____

CITY OF GOODYEAR

By: _____

Name: _____

Title: _____

ITEM #: 3.
DATE: 10/04/2021
AI #:453



CITY COUNCIL ACTION REPORT

SUBJECT: AGREEMENT WITH BUCKEYE WATER CONSERVATION AND DRAINAGE DISTRICT (BWCDD) FOR REPAIR AND IMPROVEMENTS TO THE BULLARD WASH OUTFALL

STAFF PRESENTER(S): Barbara Chappell, Deputy Public Works Director

SUMMARY

The proposed Agreement with Buckeye Water Conservation and Drainage District (BWCDD) will allow for structural repairs and improvements to the Bullard Wash Outfall for an amount not to exceed \$1,360,756.01.

Recommendation

Approve the Agreement with the Buckeye Water Conservation and Drainage District for repairs and improvements to the Bullard Wash Outfall and the expenditure of funds to meet the terms of the Agreement. (Barbara Chappell, Deputy Public Works Director)

FISCAL IMPACT

This Agreement will repair the canal banks, the outfall structure, and provide a walkway for inspection of the structure for an amount not to exceed \$1,360,756.01. The project was approved in the FY2022 Capital Improvement Plan and funds in the amount of \$1,800,000 are available in the Bullard Wash Outfall Repairs CIP Project (60073). Although eligible for ARPA funding, this project will be funded as originally intended utilizing general funds due to the required timing of the project and the complexities of federal funding associated with the BWCDD (another governmental agency) involved in the process.

BACKGROUND AND PREVIOUS ACTIONS

In April 1998, the city entered into an Intergovernmental Agreement (IGA) with the Maricopa County Flood Control District to share in the cost of construction of the Bullard Wash Outfall. The IGA further assigned the responsibility to inspect and maintain the completed project to the city.

The concrete structure that allows stormwater flows from Bullard Wash to cross over the BWCDD canal seems to have questionable design that restricts the water flow in the canal, and this Bullard Wash concrete structure has been undermined by erosion of the canal's earthen banks possibly caused by the design of the concrete structure and/or caused by past flooding events.

STAFF ANALYSIS

The BWCDD has a planned canal dry up for November 2021 for maintenance. We have contracted them to include the repairs to this outfall during this time. In order to facilitate the work on the canal, staff has worked with BWCDD to develop the scope for the design and construction of the repairs.

The current outfall configuration makes it difficult to inspect the south side of the structure. Staff has worked with BWCDD to have a walkway added to the edge of the structure so that this can occur even during wet weather events.

Attachments

Agreement

**AGREEMENT
BETWEEN
BUCKEYE WATER CONSERVATION & DRAINAGE DISTRICT
AND
THE CITY OF GOODYEAR
FOR IMPROVEMENTS TO THE BWCDD CANAL AND
BULLARD OUTFALL WASH**

**Project Name:
BULLARD WASH CROSSING REHABILITATION
PROJECT NO. BWC-2118**

This Agreement (“Agreement”) is made by and between Buckeye Water Conservation and Drainage District (“BWCDD”), a political subdivision of the State of Arizona; and the City of Goodyear (“City”), a political subdivision of the State of Arizona, for improvements to the BWCDD Canal (“Canal”) and to the Bullard Outfall Wash (“Wash”) that lies over and across said Canal, in order to remediate damage and erosion to the Canal and Wash intersection area, caused by the design of the Wash and/or caused by stormwater runoff events, and to provide terms for the design and construction of improvements to the Canal and Wash intersection area as reasonably required to prevent additional and future damage to the Canal and Wash intersection area. 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, § 48-2978.13, et seq., authorizes the District to exercise exclusive control over all District facilities, rights-of-way, and other District properties.
2. A.R.S. §11-951, et seq., authorizes public agencies to enter into Intergovernmental Agreements for the provision of services or for joint or cooperative action. This Agreement is entered into pursuant to A.R.S. § 11-951, et seq.

BACKGROUND

3. The Buckeye Irrigation Company (“BIC”) and BWCDD issued a nonexclusive license, license number MCFC.0011997.01 (“License”), to the Maricopa County Flood Control District (“MCFC”) for the purposes of constructing and maintaining the Wash, attached hereto as **Exhibit A**.
4. BWCDD is the owner of, has prescriptive rights, and jurisdictional authority, on, over, through and across all BWCDD owned land(s) and facilities, including, but not limited to, the Canal and rights-of-way, within BWCDD’s boundaries.
5. Section 7 of the License, upon written consent of BWCDD, as licensor, authorized the assignment of this license by the MCFC, or licensee to another agency, provided that any assignment shall not relieve licensee of its obligations to licensor pursuant to the License,

nor restrict licensor's remedies against licensee in the event of licensee's default of such obligations.

6. The MCFC and the City executed an Intergovernmental Agreement, IGA FCD 96002, attached hereto as **Exhibit B**, to identify and define the responsibilities of the MCFC and the City in the construction, operation, and maintenance of the Wash.
7. As set forth in section 4.1 of the License, the City is required to pay an annual License Fee of \$1.00 per License Year, subject to adjustments. Performance issues have arisen between the Parties under the License. In consideration of the City's payment of the Bullard Wash Crossing Rehabilitation Project No. BWC-2118 ("Wash Crossing Rehabilitation Project" or the "Project") costs set forth in **Exhibit D** attached hereto, subject to a maximum City payment amount of \$1,360,756.01, BWCDD hereby waives any past due consideration as set forth in section 4.1 of the License. Additionally, as set forth, and pursuant to section 8.9 of IGA FCD 96002, the City agreed to operate and maintain completed phases of the Wash construction project located within the City consistent with a maintenance plan prepared by BWCDD and approved by the City. Performance issues have also arisen with respect to the City's inspection and maintenance of the Wash. The Parties agree that the maintenance standards for the Wash are the Standard Maintenance Procedures, attached hereto as **Exhibit C**, prepared in 1998 on behalf of the MCFC by Wood, Patel & Associates, Inc., that are hereby adopted by the Parties as the approved maintenance plan for the Wash.
8. The City desires, and BWCDD has agreed, pursuant to the execution of this Agreement, to build and install a limited use, for inspection purposes only, enclosed and gated catwalk connected to the East side of the Wash, on, over and across the Canal (the "Inspection Catwalk"). The Inspection Catwalk shall be used for official purposes only, with restrictive access by duly authorized agents of the City, the MCFC, and BWCDD.

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

9. **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.
10. **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 BWCDD General Manager; and (ii) this Agreement is approved by the Goodyear City Council and fully executed by the Goodyear City Manager (the "Effective Date").
11. **Term.** This Agreement shall commence on the Effective Date described in Section 10 above and shall continue in effect until the completion of the Wash Crossing

Rehabilitation Project, unless terminated earlier as provided in Sections 20, 21 or 22 below.

12. Responsibilities of the City for the Wash Crossing Rehabilitation Project:

- 12.1 Payment of Costs. The City agrees to pay all costs of the Wash Crossing Rehabilitation Project, including, but not limited to the: licensing fee(s), administrative and construction management fees, engineering design costs, and construction cost set forth in **Exhibit D** attached hereto, subject to a maximum City payment amount of \$1,360,756.01.
- 12.2 Project Oversight. The City and BWCDD agree that BWCDD has the responsibility for overseeing BWCDD's contractor and managing the construction activities related to the Wash Crossing Rehabilitation Project.
- 12.3 Construction Authorities. If applicable, the City shall issue to BWCDD, a temporary construction easement and/or a permit to work within the City's property and/or rights-of-way at no cost to BWCDD.
- 12.4 Deposit of Funds. Within fifteen (15) days after the Effective Date, and no later than October 15, 2021, the City shall deposit with BWCDD funds equal to estimated amount of the Wash Crossing Rehabilitation Project costs set forth in **Exhibit D** attached hereto, subject to a maximum City payment amount of \$1,360,756.01.

13. Responsibilities of BWCDD for the Canal Wash Rehabilitation Improvements:

- 13.1 Construction Requirement. BWCDD shall construct the Wash Crossing Rehabilitation Project in accordance with BWCDD's canal lining improvement guidelines, engineered plans, designed by George Cairo Engineering, for the Wash rehabilitation and shall complete the Wash Crossing Rehabilitation Project by June 31, 2022. BWCDD agrees that it will require its contractor(s) to provide performance and payment bonds, and BWCDD agrees to require its contractor(s) to provide insurance with commercially reasonable insurance liability coverage limits with the City being named and endorsed as an additional insured party.
- 13.2 City Permits. If applicable, and not covered pursuant to A.R.S. § 48-2989, BWCDD shall apply for and obtain any no-cost permit(s) or approvals required to allow BWCDD to perform work within the City's property and/or right-of-way.
- 13.3 Use of Funds. BWCDD shall use the funds paid pursuant to Sections 12.4 and 12.5 above, to pay for the cost of the Wash Crossing Rehabilitation Project set forth in **Exhibit D**.
- 13.4 Reimbursement. Following completion of the Project, BWCDD shall reconcile the Project costs and reimburse the City the unused, if any, construction, and contingency fees according to **Exhibit D**, attached hereto.

13.5 Liens. After completion of the Wash Crossing Rehabilitation Project and payment by the City, BWCDD agrees to provide unconditional lien releases from any mechanics' or materialmen's liens.

14. **Joint Cooperation:**

14.1 Permits. The City shall expedite and 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.

14.2 Mutual Aid. Each Party agrees to work cooperatively with the other Party in the event of any emergency affecting the ability to complete the Wash Crossing Rehabilitation Project to the fullest extent possible.

14.3 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.

14.4 Reimbursement. If either Party performs maintenance or other obligations under this Agreement that is the obligation of the other Party, the other Party shall, upon demand, reimburse the Party who performed the obligations for all costs and expenses incurred in performing the obligations.

GENERAL TERMS AND CONDITIONS

15. **Cure of Existing Agreements**. Upon the Effective Date and the City's making the deposit required by Section 12.4 of this Agreement, BWCDD agrees that any past contractual nonperformance issues under Exhibit A - License MCFC.0011779.01 and Exhibit B - IGA FCD 96002 have been cured, provided, however, a breach of contract pursuant to Sections 19, 20, or 21 of this Agreement does not occur.

16. **No Admission of Liability**. The Parties agree that nothing in this Agreement shall be construed as an admission of liability with respect to any acts prior to the Effective Date, and the Parties agree that they have entered into the Agreement to amicably resolve differences between them with regard to the Wash and its maintenance.

17. **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, 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.

18. **Limitations of this Agreement:**

- 18.1 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.
- 18.2 No Roadway Control. This Agreement does not grant authority to any Party 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.
- 18.3 No Other Benefitted Parties. Nothing contained in this Agreement shall create any partnership, or joint venture 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.
- 18.4 No Relationship with Contractor. Nothing in this Agreement shall make any contractor or subcontractor an agent or employee of the Parties to this Agreement.

19. **Interpretation Related Provisions:**

- 19.1 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.
- 19.2 Time Related Terms. Time is of the essence of this Agreement. Unless otherwise specified in this Agreement, the term “day” as used in this Agreement means a 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 business day thereafter which is not a Saturday, Sunday, or legal holiday.
- 19.3 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.
- 19.4 Legal Review. Each Party has reviewed this Agreement and has had the opportunity to consult with its respective legal counsel concerning this Agreement.
- 19.5 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.

- 19.6 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.
20. **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.
21. **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 the City, or if the Termination of this Agreement is at the request of BWCD because of the occurrence of an Event of Default on the part of the City, then BWCD shall consider the termination request as an event of material breach and default as set forth in Exhibit A - License MCFC.0011997.01, Exhibit B - IGA FCD 96002 and pursuant to Section 22, below.
22. **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 21.2 below.
- 22.1 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;
 - 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; and

D. Breach of any warranty as set forth in Section 25 below.

- 22.2 Opportunity to Cure. A Defaulting Party to this Agreement 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.
- 22.3 Reimbursement in Event of Default. If BWCDD terminates this Agreement because of the occurrence of an Event of Default on the part of the City, BWCDD shall only reimburse the portion of unused construction cost to the City. Engineering fees and fees imposed by BWCDD are not reimbursable. Furthermore, BWCDD shall consider the termination an event of material breach and default as set forth in Exhibit A - License MCFC.0011997.01 and Exhibit B - IGA FCD 96002.
- 22.4 Remedies. 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.
23. **Termination for Nonappropriation 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 Goodyear's governing council and BWCDD's governing body in each such fiscal year. This Agreement may be terminated by either Party at the end of any fiscal year due to non-appropriation of funds.
24. **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.
25. **Indemnification.** By entering into this Agreement, the Parties agree, to the extent permitted by law, to 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 acts or omissions of the indemnifying Party under any of the provisions of this Agreement, except to the extent such injury or damage is caused or contributed to by the negligence of the other Party. The damages 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 any suit or other proceeding (including arbitration or mediation), the damages which are indemnified hereunder shall include costs, expenses of mediation, arbitration, or litigation (or other proceeding) and

reasonable attorney's fees. This obligation shall survive the expiration or earlier termination of this Agreement.

26. **Compliance with Applicable Laws.**

26.1 Compliance with A.R.S. § 41-4401. The Parties warrant they are in compliance with A.R.S. § 41-4401.

26.2 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.

26.3 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.

26.4 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.

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

27. **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: Barbara 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

with a copy to:

Ryley Carlock & Applewhite
Attn: Sheryl A. Sweeney
3200 N. Central Avenue, Suite 1600
Phoenix, Arizona 85012

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 private courier.

28. **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 be unreasonably withheld.
29. **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.
30. **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.

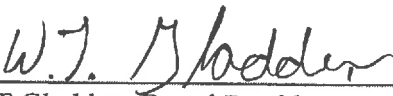
**BUCKEYE WATER CONSERVATION
AND DRAINAGE DISTRICT**, a political
subdivision of the State of Arizona

By:



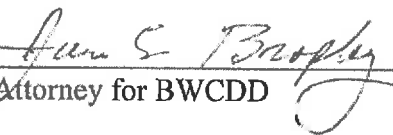
Noel Carter, General Manager

Attested by:



W.T. Gladden, Board President

Approved as to form:

By: 

Attorney for BWCDD

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

By:

Julie Karins, City Manager

Attested by:

Darcie McCracken, City Clerk

Approved as to form:

By: _____
Roric Massey, City Attorney

EXHIBIT A

When recorded mail to:

FLOOD CONTROL
PALMIERI



Unofficial
Document

MA

HELEN FORCELL

98-0497984

06/12/98

08:00

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1 OF 1

CAPTION HEADING:_____

DO NOT REMOVE

This is part of the official document.

LICENSE

Buckeye Irrigation Company

0011997.01

Buckeye Project File No.: MCFC.0011997.01

Effective Date: As defined in Paragraph 5.1 hereof

1. LICENSE GRANTED:

WHEREAS, it is understood by the parties hereto that the Buckeye Irrigation Company ("BIC"), a non-profit, mutual irrigation corporation organized and existing by virtue of the laws of the State of Arizona, acting on behalf of itself and its shareholders as operating agent for the distribution of water for irrigation within the District, manages the Property in question pursuant to contracts with the Buckeye Water Conservation and Drainage District, a municipal corporation (the "District"), which assigns to BIC the responsibility and authority, for the care, operation, maintenance and management of the Buckeye Main Canal and all services roads servicing the Buckeye Main Canal ("Main Canal") of which the subject Property is a part, and;

WHEREAS, in strict accordance with the terms and provisions hereof, Licensors is willing to consent to Licensee's use of the subject property in a manner that does not in any way, compromise the contractual and legal obligations or authority of the Licensors to operate, maintain and manage the Main Canal.

NOW, THEREFORE, the Buckeye Irrigation Company and the Buckeye Water Conservation and Drainage District, an irrigation district with powers of drainage organized and existing as a municipal corporation under the laws of the State of Arizona ("Licensors"), grant to the Flood Control District of Maricopa County, a political subdivision of the State of Arizona ("Licensee"), a non-exclusive easement conveying the nonexclusive right and privilege to enter upon and use certain real property, the Licensed Property, (as defined below) under the following terms and conditions.

2. PURPOSE:

Licensors shall make the Licensed Property available to the Licensee who shall construct and maintain an Over-Chute Facility (the "Over-Chute Facility") over the Licensed Property in accordance with plans and specifications (the "Over-Chute Plans and Specifications") which shall be provided to Licensors by Licensee as soon as they are available. Licensee shall not use the Licensed Property for any other purposes without prior written approval of the Licensors.

3. LICENSED PROPERTY AND OVER-CHUTE FACILITY:

The Licensed Property shall mean; that portion of the Main Canal, including those portions of the north and south service roads adjacent thereto, more particularly described and specified in Exhibit A attached hereto and made a part hereof; and also, the service roads to the main canal located within that portion of Parcel No. WT10-40 described and specified in Exhibit A-1 attached hereto and made a part hereof, as to which the Licensee, its successors and assigns, shall have a non-exclusive right of ingress and egress for the construction, operation and maintenance of the Over-Chute improvements as contemplated in this License. Note, the ingress and egress provided for herein is limited to the service roads constructed within the delineated area, and does not extend into the canal improvements located within the delineated area.

The Over-Chute Plans and Specifications shall mean the final plans of the Over-Chute Facility. Said plans shall be appended to this License (Exhibit B) and made a part hereof when they are completed. The appending of such final plans shall be nunc pro tunc as of the date of execution of this License and shall be effective from said date.

4. CONSIDERATION:

4.1 As consideration for granting this License, Licensee shall pay Licensors an annual ^{Unofficial Document} License Fee (herein so called), in the sum of One and no/100 Dollars (\$1.00) per License Year, as described below, subject to adjustments as set forth below. For purposes of this License, the term "License Year" means each twelve (12) month period during the term of this License commencing on the Effective Date as defined in Paragraph 5.1 of this License and ending twelve (12) months thereafter.

4.2 Licensee shall reimburse Licensors, for all federal, state and local excise, sales, privilege, gross receipts and other similar taxes lawfully imposed on and paid by Licensors as a result of the consideration received by Licensors under this License; provided, however, that this Section shall not apply to income taxes. Licensee shall pay all property taxes, if any, levied on the Licensed Property. Licensee shall pay all taxes and assessments levied on the Over-Chute Facility.

4.3 Any payment due under this License that is not paid within thirty (30) days after notice of such default shall bear interest from the date such payment was due at a rate that is equal to the "prime rate" which means the "prime rate" announced and published from time to time by Bank One of Arizona ("Bank One"), or if Bank One ceases to announce and publish a "prime rate", then the "prime rate" as published and announced from time to time by Wells Fargo Bank ("WFB"), or if WFB ceases to announce and publish a "prime rate", or index

rate mutually selected by Licensor and Licensee, which Licensor and Licensee, in their reasonable discretion, deem comparable to such "prime rate".

4.4 Licensee shall pay any incremental increase in Licensor's operation and maintenance costs on the Licensed Property resulting from Licensee's exercise of its rights hereunder within thirty (30) days after receipt of an invoice to reimburse Licensor in accordance with this Section. Licensor shall use reasonable diligence in attempting to minimize any increase in operation or maintenance costs. Licensor shall incur no liability for any costs of repairing or replacing Licensee's improvements within the Licensed Property, including without limitation the Over-Chute Facility, damaged as a result of Licensor's operation and maintenance of its facilities, including the Main Canal, unless due to negligent or willful acts or omissions of Licensor or its agents or employees.

4.5 In the event of non-payment by Licensee of any amount due hereunder, Licensor's exclusive remedy shall be the collection of past due compensation.

5. EFFECTIVE DATE, TERM AND TERMINATION:

5.1 The Effective Date of this License shall be the date upon which both parties have executed same, and upon which, unless otherwise provided, all obligations set forth herein commence. Unless earlier terminated pursuant to the terms set forth herein, this License shall remain in effect for an initial term of Thirty-Five (35) Years from the Effective Date and shall automatically renew for six (6) extension terms, each for a period of ten (10) License Years, unless this License is terminated in accordance with Section 5.2 and Section 8.

5.2 In the event Licensee abandons or permanently ceases to use the Licensed Property for the purposes herein granted, all rights herein granted shall terminate, cease and revert immediately to the Licensor without any further action on the part of the Licensor.

6. RIGHTS OF THE BUCKEYE WATER CONSERVATION AND DRAINAGE DISTRICT:

This License is subject to the paramount rights of the Buckeye Water Conservation and Drainage District ("BWDC" or the "District") in and to the Licensed Property, including all agreements existing and to be made between and among BWDC and the Buckeye Irrigation Company ("BIC" or the "Company") regarding the possession, care, operation and maintenance of the Main Canal and all service roads pertaining thereto.

7. ASSIGNMENT:

Licensee shall not assign this License, in whole or in part, without Licensor's prior written consent, and absent such consent, any attempted assignment shall be void. Licensor shall not withhold or delay consent unreasonably. Licensee shall make all requests for Licensor's consent in writing and shall accompany each request with a non-refundable service charge of Two Hundred Fifty and no/100 Dollars (\$250.00). Any assignment shall not relieve Licensee of its obligations to Licensor pursuant to this License, nor restrict Licensor's remedies against Licensee in the event of Licensee's default of such obligations.

8. TERMINATION OF THE LICENSE:

8.1 In the event Licensee abandons or permanently ceases to use the Licensed Property for the purposes herein granted, all rights herein granted shall terminate, cease and revert immediately to the Licensor without any further action on the part of the Licensor.

8.2 In the event this License terminates and reverts to Licensor under the provision of Section 5.2 or Section 8.1 hereof, Licensee shall, unless Licensor otherwise provides, remove, at Licensee's own costs, within ninety (90) calendar days after written notice from Licensor, any improvements placed on the Licensed Property by Licensee, its directors, officers, employees, or agents, and restore the Licensed Property to the condition in which it existed on the date this License was executed, subject to improvements to the Licensed Property made by parties other than Licensee. If Licensee has failed to remove any of the improvements that it is required to move or restore the Licensed Property within such ninety (90) day period, Licensee shall reimburse Licensor for the reasonable costs incurred by Licensor for the removal or storage of Licensee's improvements and restoration of the Licensed Property. Licensee shall release Licensor from all damages resulting to Licensee as a result of such removal, storage, or restoration.

8.3 The provisions of this Section 8 shall survive termination of this License.

9. MAINTENANCE OF LICENSED PROPERTY AND INTERFACE WITH LICENSOR'S USE OF LICENSED PROPERTY:

9.1 Licensee, at its own expense, shall maintain all of the Licensed Property in reasonably good, sanitary and safe condition. Subject to the conditions set forth herein, Licensor reserves to itself a right of access to the Licensed Property including the construction, use, operation, maintenance, relocation and removal of any existing and future

water distribution or transmission facilities. Any such construction, use, operation, maintenance, relocation or removal shall be performed in a manner designed to avoid, to the extent feasible, disturbance to the Over-Chute Facility. Licensors shall give Licensee at least ninety (90) days prior written notice of any such construction, use, operation, maintenance, relocation or removal that would materially disrupt the Over-Chute Facility; provided, however, that such notice may be given in such shorter period as Licensors determines to be reasonable under prevailing circumstances, or with no notice in the event of an emergency where no notice is feasible. Nothing in this License shall be construed to deny or lessen the powers and privileges granted Licensors by the laws of the State of Arizona and the United States. Licensors shall not be liable to Licensee for any damage to public or private property or to installations located upon the Licensed Property unless due to negligent or willful acts or omissions of Licensors or its agents or employees. Licensee acknowledges the public importance of a functional Over-Chute Facility for flood water protection, and will not unreasonably interfere with the operations of the Over-Chute Facility under the provisions of this Paragraph.

9.2 If Licensee defaults in the performance of the obligations set forth in Section 9.1, and Licensors gives notice of the default, Licensee shall correct such default to the reasonable satisfaction of Licensors within the required period of time set forth in the notice of default (the "Correction Period"), which period of time shall be reasonable under the circumstances. If Licensee fails to correct the default within the Correction Period, Licensors may take any action reasonably determined by Licensors to be necessary to correct such default, including without limitation, making any repair or modification to or removing any of the Over-Chute Facility. Licensee shall reimburse Licensors for the reasonable costs of correcting such default incurred and paid by Licensors within thirty (30) calendar days after Licensors presents Licensee with a statement of such costs.

10. NONEXCLUSIVE RIGHTS:

This License is nonexclusive and nothing herein shall be construed to prevent or restrict Licensors from granting other privileges to use the Licensed Property in a manner not inconsistent with or which impairs or impedes Licensee's use of the Licensed Property in accordance with this License. Licensee shall be permitted to review and comment on the granting of other privileges by the Licensors to other individuals or entities to use the Licensed Property. Licensors will, in good faith, consider all comments and suggestions made by the Licensee in connection therewith.

11. EXISTING ENCUMBRANCES:

This License is subject to all existing encumbrances of record. Prior to or contemporaneously with the execution of this License, Licensor shall identify, by delivering to Licensee any applicable document, each encumbrance of which Licensor is aware; provided, however, that it shall be Licensee's obligation and responsibility to ascertain the rights of all third parties in or to the Licensed Property. Licensor consents only to the use of the Licensed Property for the purposes described herein. Nothing in this License shall be construed as Licensor's representation, warranty, approval or consent regarding rights in the Licensed Property held by the parties, except as have been created by Licensor. Licensee shall indemnify and hold Licensor harmless from any liability arising out of any dispute or claim regarding actual or alleged interests in the Licensed Property, affecting Licensor's interests created herein.

12. INDEMNIFICATION:

To the extent not prohibited by law, specifically including, but not limited to, Article IX, Section 7 of the Arizona Constitution, if applicable, Licensee (indemnitor), its successors and assigns, shall indemnify, release and hold harmless the Licensor (BIC and BWCDD) and the directors, officers, employees, agents, successors and assigns thereof (indemnitees) against and from any claim, demand, lawsuit, or action of any kind for damages or loss, whether such damage or loss is to person or property, arising out of: (a) negligent or otherwise wrongful acts or omissions of Licensee, its agents, contractors, officers, directors, or employees; (b) Licensee's use or occupancy of the Licensed Property for the purposes contemplated by this License, including, but not limited to, claims by third parties who are invited or permitted onto the Licensed Property, either expressly or impliedly, by Licensee or by the nature of Licensee's development or other use of the Licensed Property pursuant to this License; or (c) Licensee's failure to comply with or fulfill its obligations established by this License or by law. Such obligation to indemnify shall extend to and encompass all costs incurred by Licensor in defending against such claims, demands, lawsuits or actions, including, but not limited to, attorney, witness and expert fees, and any other litigation related expenses. The provisions of this Section shall survive termination of this License.

13. INSURANCE:

Without limiting any liabilities or any other obligations of Licensee, Licensee shall provide and maintain with forms and insurers acceptable to Licensor, and until all obligations under this License are satisfied, minimum insurance coverages, as follows:

13.1 If applicable, worker's compensation insurance to cover obligations imposed by applicable federal and state statutes and employer's liability insurance with a minimum limit of One Million and no/100 Dollars (\$1,000,000.00).

13.2 Commercial general liability insurance with a minimum combined single limit of Five Million and no/100 Dollars (\$5,000,000.00) each occurrence. The policy shall include coverage for bodily injury liability, property damage liability, flood damage, flood or other damage to the Buckeye Main Canal, personal injury liability, and contractual liability for liability assumed under this License. The policy shall contain a severability of interests provision.

13.3 Comprehensive automobile liability insurance with a combined single limit for bodily injury and property damage of not less than Five Million and no/100 Dollars (\$5,000,000.00) each occurrence with respect to Licensee's vehicles, whether owned, hired or non-owned, assigned to or used in the performance of the work.

13.4 The policies required by Sections 13.2 and 13.3 hereof shall be endorsed to include Licensor, members of its governing bodies, its officers, agents and employees as additional insureds and shall stipulate that the insurance afforded for Licensor, members of the its governing bodies, its officers, agents and employees shall be primary insurance and that any insurance carried by Licensor, members of its governing bodies, its officers, agents or employees shall be excess and not contributory insurance.

13.5 Licensee and its insurers providing the required coverages shall waive all rights of subrogation against Licensor and members of its governing bodies, its officers, agents and employees for matters arising out of this License that are covered by insurance.

13.6 Prior to commencing any work, Licensee shall furnish Licensor with Certificates of Insurance as evidence that policies providing the required coverages, conditions and limits are in full force and effect. Such certificates shall provide that no less than thirty (30) days advance notice of cancellation, termination, or alteration shall be sent directly to Licensor addressed as follows:

Mr. Jackie Meck
General Manager
BUCKEYE IRRIGATION COMPANY
Post Office Box 1726
Buckeye, Arizona 85326-0160

13.7 In lieu of providing for all or any specified insurance coverage by policy, Licensee shall have the option to self-insure the minimum limits set forth above by providing to Licensors for its approval, evidence of Licensee's financial ability to self-insure. By execution of this License with the Maricopa County Flood Control District, as Licensee, Licensors has approved and hereby consents to the applicability of Licensee's self-insurance coverage.

14. CONSTRUCTION:

14.1 Prior to making any installations on the Licensed Property, Licensee shall submit to Licensors for its approval final construction documents and plans, including the Over-Chute Facility Plans and Specifications, showing the location of any such installations. Licensors shall approve or disapprove such documents and plans within thirty (30) days. Construction on the Licensed Property shall be performed only in accordance with approved construction documents and plans. At least ten (10) days prior to the beginning of any construction on the Licensed Property, Licensee shall give Licensors written notice of the date that construction will begin and a schedule listing all construction activities and the dates when such construction activities will be performed. Licensee shall give Licensors written notice of all changes in the schedule and delays in construction immediately upon it being reasonably foreseeable that such change or delay will occur.

14.2 Licensee's improvements constructed, installed, operated and maintained on the Licensed Property shall not interfere with Licensors's use of Licensors's irrigation or electric facilities on or adjacent to the Licensed Property. Notwithstanding this paragraph, nor any other provision in this License Agreement, it is understood that Licensee's current conceptual design for the Over-Chute Facility will result in an occasional inundation of the north canal bank maintenance road, which Licensors consents to, so long as the south canal bank maintenance road remains functional and accessible.

14.3 Licensors may request Licensee to alter the scheduling of construction undertaken pursuant to Section 14.1 but only when and to the extent necessary to prevent any material interference with Licensors's use of the Licensed Property.

14.4 If relocation of Licensee's materials, facilities, or improvements is necessitated by Licensors's use of existing facilities or the construction of improvements by or on behalf of Licensors, Licensee shall bear the entire actual cost of relocating said materials, facilities and improvements.

14.5 Licensors shall not exercise its right to require relocation of Licensee's facilities, materials, and improvements in an unreasonable or arbitrary manner, and warrants to Licensee that as of the date of this License, relocation of Licensee's facilities is not expected or anticipated as a result of Licensors's existing plans for the Licensed Property.

15. PERMITS, STATUTES AND CODES:

Licensee shall comply with all requirements of all statutes, acts, ordinances, regulations, codes, and standards of legally constituted authorities with jurisdiction applicable to Licensee's use of the Licensed Property. Licensee shall obtain or cause to be obtained at its expense, all permits, approvals and authorizations required by Licensee's actions pursuant to this License.

16. LICENSOR'S RIGHT TO INSPECT:

16.1 Licensors may enter any part of the Licensed Property at all reasonable times to make an inspection thereof. During any construction by Licensee, Licensors may inspect all trenching, backfilling and other related construction activity that potentially affects Licensors's facilities, including the Main Canal, and require conformance with all Licensors's requirements and specifications related thereto.

Unofficial Document

16.2 Licensee shall release Licensors, from any claim for damages arising out of any reasonable or unforeseeable delay caused by Licensors in permitting or inspecting any work on the Licensed Property. The Provisions of this Section shall survive termination of this License.

17. DAMAGE TO THE MAIN CANAL:

Licensee hereby covenants, warrants and agrees to fully and completely indemnify Licensors from any and all damage or loss suffered or incurred to or by the Main Canal or any abutting or adjoining Canal service roads, as a result of any flooding, spill-over or other damage of any kind, including, but not limited to, any damage from equipment or machinery used to construct, operate or maintain the Over-Chute Facility or related works, or resulting from the failure of and/or the inability of the Over-Chute Facility to carry or otherwise accommodate flood waters and/or any other waters intended to be carried or transported over or across said Over-Chute Facility during a hundred year flood event. This will include but not be limited to any and all damages or losses suffered by the Main Canal or any abutting or adjoining Canal service roads, from any such machine and equipment or from any waters related to or pertaining to the failure or inability of the Over-Chute Facility to accommodate any such waters. The parties agree that Licensee does not indemnify Licensors for damages or

losses occurring as a result of a storm with a magnitude greater than a one hundred (100) year flood event.

18. SERVICE OF NOTICE:

All notices and demands required or permitted by this License shall be in writing and shall be deemed given properly when (i) sent by certified mail (postage fully prepaid) to the respective address below or to such other address furnished by either party to the other pursuant to this Section; or (ii) delivered personally to the parties hereto.

Notices to Licensor

Mr. Jackie Meck
General Manager
BUCKEYE IRRIGATION COMPANY
Post Office Box 1726
Buckeye, Arizona 85326-0160

Notices to Licensee

Mr. Al Dickie
Real Property Manager
FLOOD CONTROL DISTRICT OF MARICOPA COUNTY
2801 West Durango
Phoenix, Arizona 85009

19. WAIVER:

No waiver by either party of any breach of any of the covenants or conditions of this License which are to be performed by the other party shall be construed as a waiver of any succeeding breach of the same or any other covenant or conditions.

20. ATTORNEY'S FEES UPON DEFAULT:

If either party brings or defends any legal action, suit or proceeding based on rights or obligations arising from this License, the successful party shall be entitled to recover reasonable litigation expenses, court costs and reasonable attorney's fees, as determined by a court, in any such action, suit or proceedings. The foregoing shall not, in any way, limit or restrict any other right or remedy at law or equity otherwise available to such party.

21. FORCE MAJEURE:

If either party is rendered unable, wholly or in part, by force majeure to carry out its obligations under this License, other than the obligation of Licensee to make payments of amounts due hereunder, then the obligations of both Licensee and Licensor, so far as they are affected by such force majeure, shall be suspended during the continuance of any inability so caused, but for no longer period, and such cause shall so far as possible be remedied within a reasonable time. The term "force majeure" as employed in this License shall mean acts of God, strikes, lockouts, or other industrial disturbances, costs of public enemies, war, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, interruptions by government not due to the fault of the parties, civil disturbances, explosions, or unforeseeable action or nonaction by governmental bodies in approving the applications for approvals or permits or any material change in circumstances arising out of legislation or regulation. Nothing in this Section shall require Licensor to settle a strike.

22. ENTIRE AGREEMENT: CHANGES AFTER EXECUTION:

This License, including its specified addendum and exhibits, if any, constitutes the entire agreement between the parties, and any amendment hereto must be in writing, signed by both parties.

23. WATER DAMAGE:

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Licensor shall not be liable for any loss sustained by Licensee, its officers, employees, agents or invitees on the Licensed Property because of water damage resulting from any source whatsoever, including, but not limited to, flood, drainage or run-off, irrespective of any prior knowledge by Licensor of the possibility of such flood, drainage or run-off, arising from or in connection with the operation or maintenance of the Main Canal or other facilities.

24. TRANSACTIONAL CONFLICT OF INTEREST:

The parties hereto acknowledge that this License is subject to the cancellation provisions of A.R.S. §38-511.

25. APPROVALS:

Each party agrees that if any consent or approval shall be required by such party, such consent or approval shall not be unreasonably withheld.

26. RESERVATION OF REMEDIES:

In addition to any remedies herein provided, each party shall have available to it, all remedies provided by law or equity.

27. ARCHAEOLOGICAL AND ENVIRONMENTAL COMPLIANCE:

27.1 Licensee shall obtain a cultural resource clearance from the Environmental Department of the Arizona Projects Office of the Bureau of Reclamation prior to construction on the Licensed Property as required by the National Historic Preservation Act, Section 106, and ensuing 36 CFR 800 regulations. A copy of the Bureau of Reclamation archaeological clearance shall be provided to Licensor prior to any construction activity on the Licensed Property.

Licensee shall notify Licensor should any cultural resources or human remains be found on the Licensed Property, and when appropriate, shall be responsible for other notifications and legal requirements as required by the Archaeological Resource Protection Act and the Native American Grave Protection and Repatriation Act and ensuing 43 CFR 10 regulations. All costs are the responsibility of the Licensee.

27.2 Licensee hereby assumes and accepts all liability and responsibility for initiation and completion of response, cleanup, and corrective and remedial action, and the cost thereof, required on the Licensed Property and any other affected premises due to any hazardous substance being placed by Licensee on the Licensed Property within the meaning of Federal Comprehensive Environmental Response, Compensation and Liability Act -- 42 U.S.C. §9601 et seq., or regulated substance within the meaning of Subtitle I of the Federal Resource Conservation and Recovery Act (Underground Storage Tanks)--42 U.S.C. §6991a et seq., or the Arizona Underground Storage Tank Law A.R.S. §49-1001 et seq., as such laws may have been or may be amended from time to time. This Section 26.2 shall survive termination of this License.

28. MISCELLANEOUS:

28.1 Licensee's construction or other activities shall not interfere with or impede Licensor's ability to operate, maintain, construct or access the Main Canal, its existing facilities or any reasonably anticipated future power or water facility, including any service roads pertaining thereto. Notwithstanding this paragraph, nor any other provision in this License Agreement, it is understood that Licensee's current conceptual design for the Over-Chute Facility will result in an occasional inundation of the north canal bank maintenance road, which Licensor consents to, so long as the south canal bank maintenance road remains functional and accessible.

28.2 All construction shall be subject to Licensor's approval to ensure maintenance right of way clearance requirements.

28.3 By execution of this License none of the parties hereto shall in any way waive or relinquish any of their rights or claims.

IN WITNESS WHEREOF, the parties hereto have executed this License this ____ day of _____, 1998.

LICENSOR:

BUCKEYE IRRIGATION COMPANY

By: [Signature]
Its: SECRETARY/GENERAL MANAGER

BUCKEYE WATER CONSERVATION AND
DRAINAGE DISTRICT

By: [Signature]
Its: SECRETARY/GENERAL MANAGER

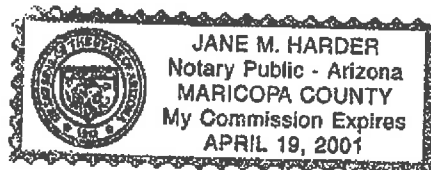
Unofficial Document

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 30th day of May, 1998, the foregoing instrument was acknowledged before me by Sadie Neek, a Secretary/General Manager of the Buckeye Irrigation Company and Buckeye Water Conservation and Drainage District (the "Buckeye Parties") organized and existing under laws of the State of Arizona, on behalf of the Buckeye Parties.

My Commission Expires:
04-19-2001

[Signature]
Notary Public



LICENSEE:

RECOMMENDED FOR APPROVAL:

FLOOD CONTROL DISTRICT OF
MARICOPA COUNTY

111551K1
MICHAEL S. ELLEGOOD, P.E.
Chief Engineer & General Manger
Date: 5/29/98

J. Schw
JIM L. SCHWARTZMANN
Manager, Public Works & Division
Date: 5/28/98

ACCEPTED AND APPROVED:

BOARD OF DIRECTORS OF
FLOOD CONTROL DISTRICT OF
MARICOPA COUNTY

Jan Brewer 6/3/98
CHAIRMAN OF THE BOARD

ATTEST:

Ed. Hays
CLERK OF THE BOARD

C:\FILES\1455\1455-2-2\LICAGRS.FNL
May 8, 1998 @ 9:53am

Unofficial Document

**EXHIBIT A
TO LICENSE**
Unofficial Document

LEGAL DESCRIPTION

BULLARD WASH OUTFALL PROJECT
WT10-40-PCE; 500-81-004J
BUCKEYE WATER CONSERVATION AND DRAINAGE DISTRICT

The East 170' of the North 260' of the following described property:

A portion of the Southwest quarter (SW4) of Section 29, T1N, R1W, G&SRB&M, Maricopa County, Arizona, said portion being that part of that certain parcel of land recorded at Book 412 of Deeds, Page 160 as recorded in the office of the Recorder of said County which lies West of a line parallel with and 75' East of the following described line:

LINE DESCRIPTION

COMMENCING at the West quarter corner of said Section 29; thence along the East-West mid-section line, North 89°45'50" East 1533.42'; thence along a line 225' East of and parallel with the West line of the East half of said Southwest quarter, South 00°18'10" East 476.94'; thence 39.81' along a tangent curve to the right having a radius of 225' and a central angle of 10°08'11" to the **POINT OF BEGINNING**; thence South 9°50'01" West 2165.17' to a point on the South line of said Section 29 which bears North 89°54'41" East 1150.85' from the Southwest corner of said Section 29; said point being the terminus of the herein described line.

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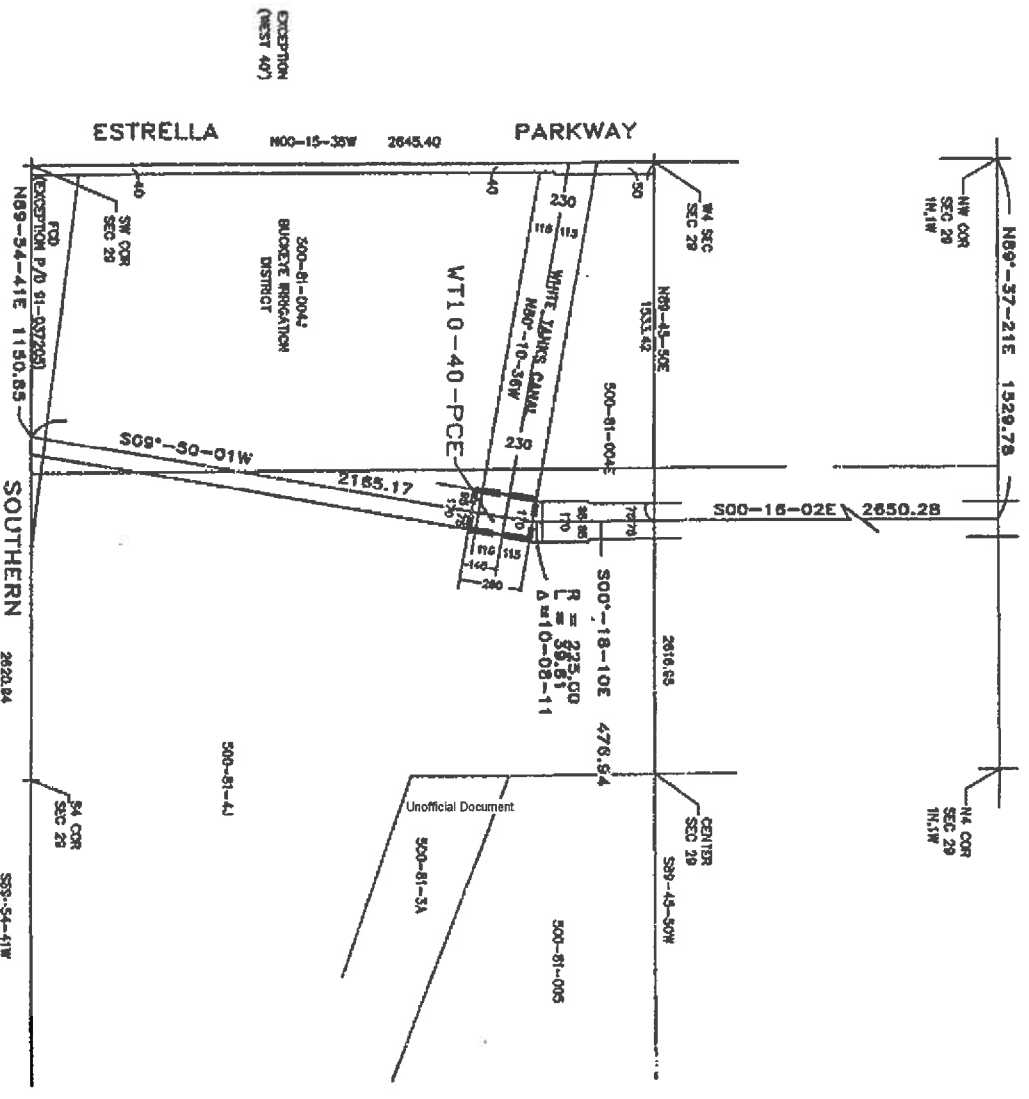
The above described parcel contains 44,199 square feet or 1.0147 acres more or less.

FLOOD CONTROL DISTRICT OF MARICOPA COUNTY		
prelim: 1-30-96	chk: <i>OCB 3-25-98</i>	appr: <i>Net 3-25-97</i>
revised: 7-25-96; 11-19-96; 3-25-98		final:
Maricopa County Public Works Land and Right of Way Division		Titles and Right of Way

EXHIBIT A

WT10-40-PCE

SCALE
1" = 800'



REFERENCE:
BROOKS-HERSEY & ASSOCIATES SURVEY
PER BOOK 409, PAGE 14
AND PER DOCKET 96-0037382

WT10-40-PCE

SQ. FT. ACRES
44,199 1.0147

FLOOD CONTROL DISTRICT OF MARICOPA COUNTY-ARI ZONA
BULLARD WASH OUTFALL PROJECT
PT SW4 SECTION 29 - T11N, R11W
WT10-40-PCE : 500-81-004J BUCKEYE IRRIGATION DISTRICT
PRELIMINARY, 1-19-96 MS
REVISED 7-25-96 11-19-96 3-25-98
FINAL

WT10-40-PCE.DWG

**EXHIBIT A-1
TO LICENSE**

INGRESS & EGRESS

Unofficial Document

BULLARD WASH OUTFALL PROJECT
WT10-40-IE; 500-81-004J
BUCKEYE WATER CONSERVATION AND DRAINAGE DISTRICT

INGRESS AND EGRESS

The Northerly 230 feet of that certain parcel of land recorded at Book 412 of Deeds, Page 160 as recorded in the office of the Recorder of said County, lying within the Southwest quarter (SW4) of Section 29, T1N, R1W, G&SRB&M, Maricopa County, Arizona, lying West of the following described line:

COMMENCING at the West quarter corner of said Section 29; thence along the East-West mid-section line, North 89°45'50" East 1533.42 feet; thence along a line 225 feet East of and parallel with the West line of the East half of said Southwest quarter, South 00°18'10" East 476.94 feet; thence 39.81 feet along a tangent curve to the right having a radius of 225 feet and a central angle of 10°08'11" to a point on the Northerly right of way line the "Buckeye Irrigation District Canal; thence along the North Unofficial Document 30° of said canal, South 80°10'36" East 475 feet to the **POINT OF BEGINNING**; thence 09°49'24" West to a point on the Southerly line of the North 230 of the parcel of land according Book 412, of Deeds, Page 160 and the terminus of said line.

The above described parcel contains 462,031 square feet or 10.6068 acres more or less.

This ingress and egress provides a right of access to the service roads constructed within the area delineated above; it does not provide ingress and egress to the canal improvements constructed within the delineated area.

FLOOD CONTROL DISTRICT OF MARICOPA COUNTY			
prelim: 3-27-98	chk: <i>CP 3-31-98</i>	appr: <i>K.A. 3-30-98</i>	
revised:		final:	
Maricopa County Public Works Land and Right of Way Division			Titles and Right of Way

EXHIBIT A-4

**EXHIBIT B
TO LICENSE**

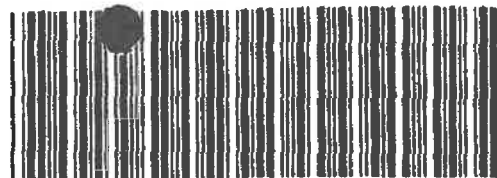
Unofficial Document

OVER-CHUTE FACILITY PLANS and SPECIFICATIONS

EXHIBIT B

17

HOLD FOR PICK UP
CLERK OF THE BOARD
COUNTER PICK UP



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL

98-0283516 04/08/98 02:52

MARYANN

INTERGOVERNMENTAL AGREEMENT
for the
Construction, Operation and Maintenance
of the
BULLARD WASH OUTFALL CHANNEL IMPROVEMENTS
(Gila River to Lower Buckeye Road))
between
The City of Goodyear
and
The Flood Control District of Maricopa County

IGA FCD 96002

C 69.98.063.2.00

This Agreement is entered into by and between the Flood Control District of Maricopa County, hereinafter called DISTRICT, a municipal corporation and political subdivision of the State of Arizona, acting by and through its Board of Directors, and the City of Goodyear, hereinafter called GOODYEAR, acting by and through its City Council

This Agreement shall become effective as of the date it is filed with the Maricopa County Recorder pursuant to Arizona Revised Status (A R S) § 11-952, as amended

DATE FILED WITH MARICOPA COUNTY RECORDER

4/08/98

- 1 The DISTRICT is empowered by A R S § 48-3603 and §11-952, as amended, to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the DISTRICT
- 2 GOODYEAR is empowered by A R S §11-952, as amended, to enter into this Agreement

BACKGROUND

- 3 The DISTRICT completed a study, to identify required improvements to Bullard Wash for the reach extending from the Gila River to Lower Buckeye Road The results of the study are documented in the report *Bullard Wash Outfall Feasibility Study*, June 1995 (hereinafter referred to as the Feasibility Study) The Feasibility Study identified the need to complete improvements to the channel consisting of reshaping the channel, armoring the channel banks, constructing bridges at the Maricopa County Highway 85 (MC85) and the UPRR, constructing an overchute structure at the Buckeye Irrigation District's main supply canal, and relocating various utilities and irrigation features.
- 4 Both the DISTRICT and GOODYEAR desire to work together to complete the Bullard Wash Outfall Channel, hereinafter the PROJECT The PROJECT will be completed in two phases with the first phase extending from the Gila River to the UPRR and the second phase extending from the UPRR to Lower Buckeye Road
- 5 The DISTRICT and GOODYEAR will each contribute fifty (50) percent of the project costs The cost of the PROJECT, including design, rights-of-way, utility relocations, and construction, is

When Recorded Return to
Flood Control District of Maricopa County
2801 West Durango
Phoenix, Arizona 85009

INTERGOVERNMENTAL AGREEMENT
for the
Construction, Operation and Maintenance
of the
BULLARD WASH OUTFALL CHANNEL IMPROVEMENTS
(Gila River to Lower Buckeye Road))
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- 5 The DISTRICT and GOODYEAR will each contribute fifty (50) percent of the project costs The cost of the PROJECT, including design, rights-of-way, utility relocations, and construction, is

estimated to be \$4,032,000 for Phase 1 and \$4,095,000 for Phase 2, for a total estimated project cost of \$8,127,000. The estimated cost to each the DISTRICT and GOODYEAR is \$4,063,500.

- 6 The responsibilities of the DISTRICT and GOODYEAR related to design and land acquisition for the PROJECT are identified and defined in the Agreement FCD 96001.

PURPOSE OF THE AGREEMENT

- 7 The purpose of this Agreement is to identify and define the responsibilities of the DISTRICT and GOODYEAR in the construction, operation and maintenance of the PROJECT.

TERMS OF THE AGREEMENT

- 8 GOODYEAR shall

- 8 1 Grant easements, to the DISTRICT, for the use of GOODYEAR owned rights-of-way and utility easements required to construct, maintain, and operate the PROJECT, at no cost to the DISTRICT. Require utilities, which do not have prior rights, to relocate their facilities at no cost to the DISTRICT.
- 8 2 Participate in all public involvement activities organized by the DISTRICT concerning the PROJECT, and provide the meeting place at no cost to the DISTRICT.
- 8 3 Assist the DISTRICT in acquisition of all required permits and grant any City permits to the DISTRICT at no cost to the DISTRICT.
- 8 4 Agree to accept and assist the DISTRICT in the transfer of all lands and easements, required for the PROJECT, to GOODYEAR at no cost to GOODYEAR.
- 8 5 Inspect completed construction, within ten (10) working days of request by DISTRICT, to verify compliance with the plans and specifications. Provide written acceptance or notice identifying deficiencies, within ten (10) working days of inspection.
- 8 6 Reimburse the DISTRICT \$1,000,000 on or before June 30, 1999, \$1,000,000 on or before June 30, 2000, \$1,000,000 on or before June 30, 2001, and \$1,063,500, or the balance of fifty (50) percent of the total cost of the PROJECT, on or before June 30, 2002. It is anticipated that construction contracts will be awarded for Phase 1 prior to December 31, 1998 and Phase 2 prior to December 31, 1999. If contract award dates are delayed, GOODYEAR may delay payment dates accordingly.
 - 8 6 1 GOODYEAR shall reimburse the DISTRICT for the costs to implement non-flood control features requested by GOODYEAR. These costs shall be reimbursed to the DISTRICT within thirty (30) days of completion of the construction of the PROJECT.
- 8 7 Be responsible for funding and completing the landscaping of the PROJECT. The costs incurred by GOODYEAR in completing the landscaping, which are allowable under the DISTRICT's "Policy for the Aesthetic Treatment and Landscaping of Flood Control Projects", may be deducted from payments to be made to the DISTRICT according to paragraph 8 6. The amount deducted will be reduced by funds spent by the DISTRICT during construction for allowable aesthetic and landscaping purposes under the DISTRICT's *Policy for the Aesthetic Treatment and Landscaping of Flood Control Projects*.

- 8 8 Be responsible for funding and completing the fencing of the perimeter of the PROJECT. One half of the cost incurred by GOODYEAR in completing the fencing may be deducted from payments to be made to the DISTRICT according to paragraph 8 6. GOODYEAR may eliminate the fencing if the DISTRICT's land rights within the PROJECT area are transferred to GOODYEAR, reserving rights for construction of the PROJECT by the DISTRICT, prior to the award of the construction contracts and GOODYEAR assumes the liability resulting from the elimination of the fencing. If the fencing is eliminated, GOODYEAR may deduct \$42,400 for Phase 1 and \$58,400 for Phase 2 from payments to be made to the DISTRICT according to paragraph 8 6.
- 8 9 Operate and maintain the completed phases of the PROJECT, which are located within the City of GOODYEAR, at its sole expense, and consistent with a maintenance plan prepared by the DISTRICT and approved by GOODYEAR. The DISTRICT has the option to inspect and repair and/or maintain the Bullard Wash Channel if GOODYEAR fails to take action within sixty (60) days of written notification by the DISTRICT of failure to repair and maintain the PROJECT. GOODYEAR shall reimburse the DISTRICT for actual costs incurred by the DISTRICT for any such repair or maintenance within ninety (90) days of invoice.
- 8 10 Require developers of land bordering the PROJECT to complete the portions of the PROJECT adjacent to their property if they initiate their development prior to construction of the adjacent portions of the PROJECT.
- 8 11 Obtain written permission of the DISTRICT to increase the future flows that discharge into the PROJECT beyond those amounts designed by the DISTRICT.
- 8 12 Take reasonable and necessary actions within its authority to ensure that any water discharged into the PROJECT through storm drain facilities, from lands owned or regulated by GOODYEAR, comply at the point of discharge with any applicable requirements of the Clean Water Act, National Pollutant Discharge Elimination System (NPDES), or any other applicable discharge requirements, including any permit requirements.
- 9 The DISTRICT shall
- 9 1 Be the contracting agency and perform all services necessary to administer the construction of the PROJECT. Upon receipt of written approval from GOODYEAR of the construction plans, the DISTRICT will proceed with implementation of the construction of the PROJECT. The DISTRICT shall have the following construction and construction management responsibilities:
- 9 1 1 Be the lead agency in the construction and construction management of the PROJECT.
- 9 1 2 Act as contracting agency for the PROJECT and perform all services necessary to administer construction, including, but not limited to, the following:
- 9 1 2 1 Issue Invitations for bids, receive, protect and open bids, determine the lowest responsible and responsive bidder, award the contract, and issue the notice to proceed.
- 9 1 2 2 Reserve the right to enter into a contract with a consulting firm for the construction management of the PROJECT.

- 9 1 2 3 Provide for facilities and personnel to carry out the necessary work of contract administration
- 9 1 2 4 Pay the contractor as provided in the contract
- 9 1 2 5 Advise, consult with, and obtain written concurrence from GOODYEAR within five (5) working days on any substantial matters in which the GOODYEAR could have a financial interest. If concurrence is not obtained within five (5) working days, it is agreed that the work of the DISTRICT's contractor shall proceed while attempts at reaching concurrence are made
- 9 1 2 6 Coordinate the final inspection of the PROJECT with GOODYEAR to enable their participation so as to determine whether all work has been performed in accordance with contractual requirements
- 9 1 2 7 Take reasonable and necessary action to dispose of all contractual and administrative issues arising out of any contracts awarded by the DISTRICT under this Agreement. This includes, but is not limited to, disputes, claims, protests of award, source evaluation and lawsuits. Costs and expenses resulting from such disputes, claims or lawsuits shall be shared equally by the parties to this Agreement. In all instances, cost-sharable expenses shall not include any party's internal administrative costs
- 9 1 2 8 Agree that to the extent the DISTRICT's contractor provides general, automobile and professional liability insurance to the DISTRICT, GOODYEAR will be named as additional insured on those policies
- 9 2 Fund the total project costs, except for utility relocations done by GOODYEAR under section 8 1, including the construction and construction management associated with the PROJECT except for any non-flood control related items such as recreational amenities, landscaping beyond PROJECT requirements, or other items which may be added or identified by GOODYEAR
- 9 3 Conduct public involvement activities concerning the PROJECT
- 9 4 Prepare a maintenance plan to be implemented by GOODYEAR and conduct an annual maintenance inspection with GOODYEAR
- 9 5 Transfer sufficient land rights acquired by the DISTRICT for each phase of the project to GOODYEAR, prior to the award of the construction contract for each phase, for GOODYEAR's operation and maintenance of the PROJECT. The DISTRICT shall retain rights to enter and complete maintenance required under paragraph 8 9 and construction in accordance with paragraph 8 8
- 9 6 Process and coordinate a Letter of Map Revision through the Arizona Department of Water Resources and the Federal Emergency Management Agency for the redefined Bullard Wash floodplain
- 9 7 Not be responsible for the operation or maintenance of the PROJECT at any time, or incur liability from any damages that may occur from the PROJECT not functioning because of lack of maintenance, as provided in section 8 8

- 9 8 Reserve the right to review and approve any on-site lateral drainage or future flood control, drainage or construction projects to be constructed or approved by GOODYEAR that will flow into the PROJECT
- 10 Each party to this Agreement (indemnitor) shall, to the extent legally permissible by law, indemnify, defend and save harmless the others (indemnitees) including, agents, officers, board and council members, directors, governors and employees thereof, from and against any loss or expense incurred as a result of any claim or suit of any nature whatsoever which arises out of indemnitor's negligent or wrongful acts or omissions pursuant to this Agreement. Such indemnification obligation shall encompass any personal injury, death or property damages resulting from the indemnitor's acts or omissions, as well as reasonable attorney's fees, court costs, and other expenses relating to the defense against claims or litigation, incurred by the indemnitees. Indemnitees shall be liable to the extent of their own negligence or wrongful acts as provided by law.
- 11 Each party to this Agreement will pay for and not seek reimbursement for its own personnel and administrative costs associated with design, rights-of-way/easement acquisition, permitting, coordination, review, construction, inspection, management and administration of the PROJECT.
- 12 In the case of any dispute over any items in this Agreement, the parties agree to use their best efforts and enter into good faith negotiations to resolve the disputed matters. However, this shall not limit the rights of the parties to seek any remedies provided by law.
- 13 The parties to this Agreement agree to equally share the cost of a project compliance audit to be initiated within sixty (60) days of each phase of the PROJECT. An independent auditing firm agreed to by both parties and on contract to the DISTRICT, will perform the audit. Any payments or reimbursements necessary to bring the PROJECT into compliance with the audit findings shall be made within forty-five (45) days of acceptance by both parties of the audit report.
- 14 This Agreement shall remain in force and effect for a period of fifty (50) years from the effective date of the contract, provided, however, upon mutual written agreement of all parties, this Agreement may be amended or terminated but only after the parties have paid their respective amounts accrued or obligated or liable to third parties as of the date of termination.
- 15 Should only portions of the PROJECT be completed, or be completed by others, the terms and conditions of this Agreement shall apply to the completed portions of the PROJECT.
- 16 This Agreement is subject to the cancellation provisions of A R S § 38-511.
- 17 If legislation is enacted after the effective date of this Agreement, which changes the relationship or structure of one or more of the parties to this Agreement, the parties agree that this Agreement shall be renegotiated at the written request of any party.
- 18 All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:
- | | |
|--|--|
| Flood Control District of Maricopa County
Chief Engineer and General Manager
2801 West Durango
Phoenix, Arizona 85009 | City of Goodyear
City Manager
119 North Litchfield Road
Goodyear, Arizona 85338 |
|--|--|
- 19 Attached hereto and incorporated herein is a copy of the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written

Flood Control District of Maricopa County
A Municipal Corporation

Recommended by

11/5/97 1/23/98
Michael S. Ellegood, P.E. Date
Chief Engineer and General Manager

Approved and Accepted

By Jan Brewer APR 01 1998
Chairman, Board of Directors Date

Attest

By Jan McCarty APR 01 1998
Clerk of the Board Date

This Intergovernmental Agreement, FCD 96002, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned General Counsel, who has determined that it is in proper form and within the powers and authority granted to the Flood Control District of Maricopa County under the laws of the State of Arizona

By Julie M. Symon 2/25/98
General Counsel Date

City of Goodyear
A Municipal Corporation

City Manager

By Stephen S. Cleveland 1/13/98
Date

Attest

By Shae Cochran 1-13-98
City Clerk Date

The foregoing Intergovernmental Agreement, FCD 96002, has been reviewed pursuant to A R S § 11-952, as amended, by the undersigned attorney who has determined that it is in proper form and within the powers and authority granted to the City of Goodyear under the laws of the State of Arizona

By John A. Clark 1/12/98
City Attorney Date

RESOLUTION 98-614

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT WITH THE MARICOPA COUNTY FLOOD CONTROL DISTRICT FOR THE COMPLETION OF BULLARD WASH OUTFALL CHANNEL, WHICH WILL IMPROVE DRAINAGE THROUGH PORTIONS OF GOODYEAR, AVONDALE, GLENDALE, AND UN-INCORPORATED PORTIONS OF MARICOPA COUNTY.

Whereas, the Mayor and Council of the City of Goodyear agree to participate in the construction, operation , and maintenance of the Bullard Wash Outfall Channel, and

Whereas, the Maricopa Flood Control District and the City of Goodyear desire to work together and share in the costs and responsibilities for the planning and construction of the Bullard Wash Outfall Channel, costs will be a 50 percent estimated total contribution by the City, with payment from the City to the Maricopa County Flood Control District to be extended for the next 4 four years, and

Whereas, proposed Intergovernmental Agreement No 98-614, between the City of Goodyear and the Maricopa County Flood Control District will identify and define responsibilities of the District and the City of Goodyear in the construction, operation, and maintenance of the Bullard Wash Outfall Improvements, and

Now, therefore be it resolved by the Mayor and Council of the City of Goodyear, Arizona, that the Mayor execute and deliver on behalf of the City of Goodyear, Intergovernmental Agreement No 97-614 between the City of Goodyear and Maricopa County Flood Control District to allow cooperation between the City of Goodyear and the District to , complete the Bullard Wash Outfall Channel Improvements Projects

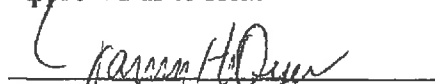
Passed and adopted by the Mayor and Council of the City of Goodyear, Maricopa County, Arizona, this 12th day of January, 1998


Mayor

Attest


City Clerk

Approved as to form:


City Attorney

CERTIFICATION OF RECORDING OFFICER

STATE OF ARIZONA)
) ss
COUNT OF MARICOPA)

I, the undersigned Dee Cockrum, being the duly appointed, qualified and acting City Clerk of the City of Goodyear, Maricopa County, Arizona, certify that the foregoing Resolution No 97-614 is a true, correct and accurate copy of Resolution No 97-614, passed and adopted at January 12, 1998 meeting of the Council of the City of Goodyear, Maricopa County, Arizona held on the 12th day of January, 1998, at which a quorum was present and, by a three-fourths vote, voted in favor of said resolution

Given under my hand and seal, this 12th day of January, 1998

Seal


City Clerk

200

200

200

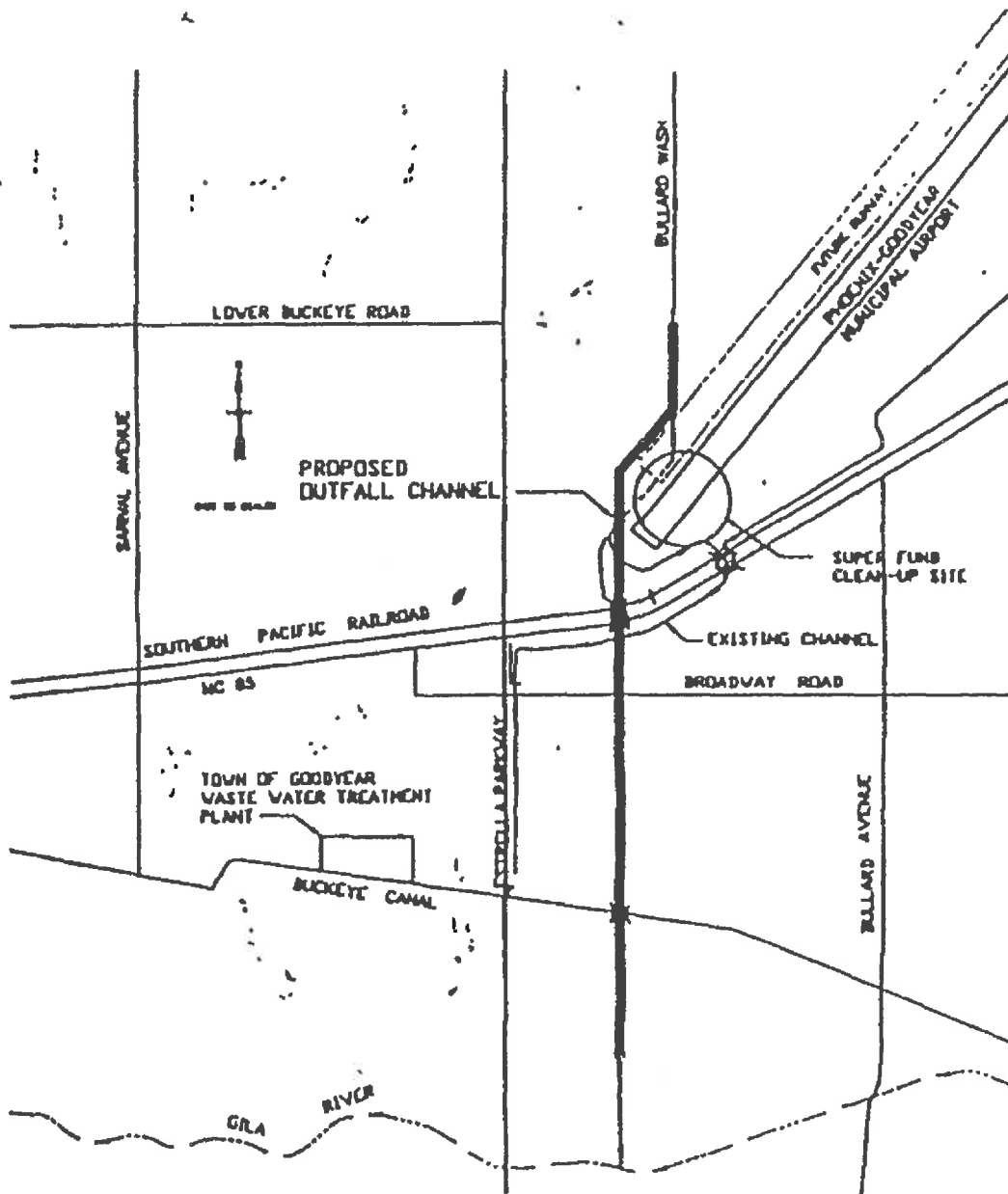


EXHIBIT C

20

TAKEN FROM:

BULLARD WASH CHANNEL IMPROVEMENTS

City of Goodyear, Maricopa County, Arizona

TECHNICAL DATA NOTEBOOK

VOLUME TWO

FCD #95-39

Property of
Flood Control District of Maricopa County Library
2801 West Durango
Phoenix, AZ 85009

Prepared for:

SVERDRUP CIVIL, INC.

637 South 48th Street
Suite 101
Tempe, AZ 85281
(602) 303-9799

And

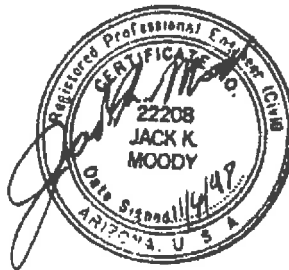
FLOOD CONTROL DISTRICT OF MARICOPA COUNTY

2801 West Durango
Phoenix, AZ 85009
(602) 506-1501

Prepared by:

Wood, Patel & Associates, Inc.

1550 East Missouri Avenue, Suite 203
Phoenix, AZ 85014
(602) 234-1344



November 4, 1998
WP #96464

Appendix B3
Meeting Minutes and Reports

Standard Maintenance Procedures **Prepared for the Bullard Wash Channel Project**

- SUBJECT:** Maintenance of Channels, Linings and Structures
- PURPOSE:** To insure the integrity of the project is preserved and will function as designed.
- OWNERSHIP:** The City of Goodyear, Arizona shall be responsible for the ownership, operation and maintenance of the completed project. The Interim Public Works Director, Andrew Cooper, will be the responsible person at the City.
- LOCATION:** Main Bullard Wash Channel, East Tributary Channel, Spillway at the BID Canal east of the Bullard Wash Channel, and the O&M Road and Berm at Lower Buckeye Road

PROCEDURE A: Channel and Inlet Pipes

1. **Vegetation** - Desert brush and grasses can be allowed to grow within the channel bottom. Desert brush must not exceed 2-3 feet in height and vegetation type must be able to break away during storm event (i.e. brittlebush) or be able to bend over and flatten (i.e. Desert Marigold). Vegetation types that must be removed include woody stemmed plants (i.e. Desert Broom, Salt Cedar, etc.). If grasses are established, maintain the height to a maximum of six inches.
2. **Sediment Deposits** - Remove deposits of loose material to obtain designed grades and cross sections. Loose deposited materials shall not be used within the channel unless tested to meet the earthfill criteria in the construction specifications. At a minimum, sediment deposits shall be removed annually, unless quarterly inspections identify a need for more frequent removal.
3. **Erosion** - Make repairs to eroded areas by replacing lost material with compacted earth, or other suitable erosion resistant material, in accordance with the original construction specifications.
4. **Debris/Trash** - During quarterly inspections and after storm events, all trash and organic debris is to be removed from the area as soon as possible. Inspect all drainage pipes that discharge into the channel. Remove all trash and organic debris from pipe inlets as soon as possible.
5. **Gabion Lining** - During quarterly inspections and after storm events, all gabion baskets or mattresses that have been damaged shall be repaired using the manufacturer procedures as soon as possible. The Polyvinyl Chloride (PVC)

coating on the gabion wire also requires inspection. Where the PVC coating has been damaged, the damaged coating shall be removed and the PVC coating reapplied per manufacturer's procedures. Yearly inspections will include excavation of buried gabions and a check of steel anchor stakes to inspect for corrosion. At a minimum, excavation locations will include one site south of the Buckeye Irrigation District (BID) South Maintenance Road, three sites between the BID Canal and the MC 85 Bridge, and three additional sites between the drop structure located north of the Union Pacific Railroad Bridge and Lower Buckeye Road. Each yearly inspection shall also stagger the excavation locations so that a comprehensive inspection is performed year-to-year.

6. **Grouted Riprap Lining** – During quarterly inspections and after storm events, riprap lining that has been damaged shall be repaired. Repairs shall include replacement of riprap material and grout, filter blankets, and the seepage/back drainage system. Inspections shall include a check of all weep holes and removal of any blockages.
7. **Concrete Lining** – During quarterly inspections and after storm events, the concrete lining shall be checked for damage and cracking. Hairline cracks are typically caused by shrinkage of the concrete, which is a normal condition. Cracks that are wide enough for a quarter to be inserted into the crack, should be repaired as soon as possible. Inspection shall include a check of the weep holes.
8. **BID Overchute / BID South Maintenance Road Box Culvert** – During quarterly inspections and after storm events, the concrete surfaces shall be checked for damage and cracking. Inspect the condition of all joints. Items requiring repair should be scheduled as soon as possible. Maintenance vehicle weights should be limited to that which is legal for operation on a highway. The box culvert has a height limitation of 10 feet.
9. **Levee** – Top of berm elevations along the earthen levee, located between the BID Canal and 450 feet south of Broadway Road, shall be surveyed annually for the first five (5) years of operation to check for settlement and/or subsidence, and then bi-annually in the following years. Areas requiring repair shall be scheduled as soon as possible. Caution must be given to overhead power lines. The maximum height of vehicles is 15 feet.

PROCEDURE B: Rodent Control

1. Gophers can damage embankments, berms and levees by burrowing deep holes with more than one outlet. Fresh mounds of soil can identify new gopher outlets.
2. Ground squirrels can also damage structures even with insignificant numbers and must be treated.

3. A licensed pesticide applicator shall apply the appropriate pesticide and the Material Safety Data Sheets shall be with the licensed applicator.
4. After rodent activity has been controlled, holes are to be filled and compacted.

PROCEDURE C: General Vandalism and Graffiti

1. Graffiti needs to be removed as soon as possible to discourage repeated applications.
2. General vandalism to include cut or damaged fencing, damaged signs, illegal ingress, dumped trash, etc. are to be removed/repared as soon as noted for the safety of the general public and to control other forms of vandalism from occurring.
3. All vandalized signs are to be repaired or replaced to insure public safety and awareness.

INSPECTIONS:

1. Quarterly Operational Inspections:
 - a. List any discrepancies.
 - b. Review for action required.
 - c. Schedule necessary repairs.
2. Annual Maintenance Inspection:
 - a. List all needed maintenance and repairs.
 - b. Assign work orders for the noted repairs.
3. Formal Annual Inspection:
 - a. Inspect project to insure all maintenance and repairs are completed satisfactorily.
 - b. Complete annual inspection reports for file.
4. Major Storm Event:
 - a. Inspect project during or after every major storm event.
 - b. List any problems.
 - c. Record flow depths.
 - d. Schedule necessary repairs.
5. Citizen Complaints/Inquiries:
 - a. Investigate area of complaint.
 - b. Respond to citizen within 48 hours.
 - c. Take action if in-house/refer to proper agency, if not.

MEMORANDUM

Sverdrup Civil, Inc.

Date: August 5, 1998

TO: Larry Martinez and Chris Stevens
City of Goodyear
119 North Litchfield Road
Goodyear, Arizona 85338

Don Rerick
Flood Control District of Maricopa County
2801 West Durango Street
Phoenix, Arizona 85009

FROM: Bradford D. Olbert, P.E.
Project Manager
Sverdrup Civil, Inc.

SUBJECT: Contract FCD 95-39
Flood Control District of Maricopa County
Bullard Wash Channel Improvements - Final Design
Channel Roughness Factors

The proposed Bullard Wash Channel from the Lower Buckeye Road inlet area to the Gila River is composed of several different channel sections and types of lining materials. Below is a discussion of the roughness factors used to calculate the channel hydraulic capacity/water surface profiles, and the limitations of each channel section to keep the channel operating within the design parameters.

To simplify the discussion, Bullard Wash has been divided into segments correlating to the different types of channel section used. Starting from just north of Lower Buckeye Road and proceeding south to the Gila River, the channel segments are identified by the stationing used in the construction plan set.

Station 122+00 to 119+54 (Channel Inlet Area) – Drop inlet area is designed to collect upstream flows. The inlet area will be lined with rock-filled gabion baskets and mattresses to minimize erosion to the channel. The baskets will be stair stepped to provide a cascading effect to the captured overbank flows. The rock-filled baskets have a roughness factor (n) of 0.029 (per manufacturer). For the design, an n value of 0.030 was used. This channel section is temporary and will be removed when the channel is extended to the north.

Station 119+54 to 81+02 (Composite Channel Section) – Composite channel section is designed to convey flows around the west end of the Phoenix Goodyear Airport. The composite section is composed of 2:1 and 3:1 sideslopes lined with rock-filled mattresses (to minimize erosion to the channel banks) and an earthen bottom. In addition, a narrow concrete lined ditch is located within the channel section to convey irrigation tailwater flows. The tailwater exits at the end of this channel reach. The rock-filled mattresses have a roughness factor of 0.027 (per manufacturer). For the design,

an n value of 0.030 was used. The higher n value was chosen to allow for some vegetative growth (grasses and brush 1 to 2 ft high) along the sideslopes. For the channel bottom an n value of 0.032 was selected for the design. A clean soil bottom will have an n value of 0.025, however, with the City of Goodyear's desire to allow vegetative growth within the channel, for aesthetic reasons, the higher n value was used. The narrow concrete lined ditch will have an n value of 0.015 (heavy broom finish).

The vegetative growth on the channel bottom will need to be limited to grasses and short brush 1 to 3 ft in height. Some examples of brush types to use are common desert plants such as the brittle bush and desert marigold. The brittlebush is particularly good because of its brittle nature it will be easily striped away during a major storm event. One brush type to avoid is the desert broom, which has a deep taproot and can grow to 10+ ft in height. Tree plantings should be avoided within this section.

Station 81+02 to 77+00 (Grouted Riprap Channel Section) – The grouted riprap channel section is designed to provide a roughened (high n value) channel section in lieu of a drop structure at the southwest end of the Phoenix Goodyear Airport. The section is lined with grouted rock that is 22 inches thick. A narrow 15-ft wide concrete maintenance roadway is located within the channel section to provide continuous access along the channel bottom. The pathway surface will have a roughened surface (raked finish) to discourage the use of roller blades or skateboards. In addition, several tree wells using concrete pipe section have been added to enhance aesthetics. The grouted riprap has an n value of 0.042. The narrow 15-ft wide concrete maintenance roadway has an n value of 0.019. A composite n value of 0.038 was used for the design of the channel section.

Station 77+00 to 72+90 (Concrete Lined Channel Section) – The concrete lined channel section is designed to provide a hardened channel section at the end of the grouted riprap section and through the railroad and highway bridges. The section is lined with reinforced concrete that is 6 inches thick. The hardened surface is necessary to control the erosive action downstream of the grouted riprap section and eliminate local scour conditions at the bridges. The railroad bridge has a limited vertical clearance. A 15-ft wide maintenance path that is depressed one-foot under the railroad bridge will provide a 10-ft clearance for maintenance vehicles. The highway bridge provides 10+ ft of clearance. The bottom concrete surface will be roughened (raked finish) to discourage the use of roller blades or skateboards. The concrete bottom surface and the concrete sideslopes (heavy broom finish) have roughness factors of 0.019 and 0.015 respectively.

Station 72+90 to 33+30 (Composite Channel Section) – Composite channel section is designed to convey flows south of the highway to the BID canal. The composite section is composed of sideslopes lined with rock-filled mattresses (to minimize erosion to the channel banks) and an earthen bottom. The rock-filled mattresses have a roughness factor of 0.027 (per manufacturer). For the design, an n value of 0.030 was used. The higher n value was chosen to allow for some vegetative growth (grasses) along the sideslopes. For the channel bottom an n value of 0.032 was selected for the design. See earlier section concerning the City of Goodyear's desire to allow vegetative growth within the channel for aesthetic reasons.

Station 33+30 to 30+02 (Concrete Lined Channel Section) – The concrete lined channel section is designed to provide a hardened transition channel section from the PVNGS 96-inch concrete encasement to the BID overchute structure. The section is lined with reinforced concrete that is 6 inches thick. The hardened surface is necessary to transition from the 80-ft wide composite section to the 62-ft wide overchute structure. The bottom concrete surface will be roughened to discourage

the use of roller blades or skateboards. The concrete bottom surface (raked finish) and the concrete sideslopes (heavy broom finish) have roughness factors of 0.019 and 0.015 respectively.

Station 30+02 to 29+04 (Grouted Riprap Channel Section) – The grouted riprap channel section is designed to provide a roughened (high n value) channel section in lieu of a drop structure at the south end of the BID overchute structure. The section is lined with grouted rock that is 22 inches thick. A narrow 15-ft wide concrete maintenance roadway is located within the channel section to provide continuous access along the channel bottom. The roadway surface will have a roughened surface (raked finish) to discourage the use of roller blades or skateboards. The grouted riprap has a roughness factor of 0.042. A composite n value of 0.038 was used for the design of the channel section.

Station 29+04 to 28+60 (Box Culvert Section) – The box culvert is designed to convey flows under the BID South Maintenance Road. The box culvert has four barrels that are 10-ft high and 12-ft wide. The eastern most barrel will be used to provide continuous maintenance access from the Gila River to the upper sections of the channel. For the design, the bottom surface of the eastern most barrel will be roughened with a raked finish similar to the maintenance roadway (n value of 0.019). The other three barrels will have the bottom surface roughened with a heavy broom finish (n value of 0.015).

Station 28+60 to 25+00 (Composite Channel Section) – Composite channel section is designed to convey flows south of the BID canal maintenance road to the Gila River. The composite section is composed of sideslopes lined with rock-filled gabion baskets (to minimize erosion to the channel banks) and an earthen bottom. An n value of 0.030 was used for the rock-filled gabion baskets and 0.032 was selected for the channel bottom. See earlier composite channel section description concerning the City of Goodyear's desire to allow vegetative growth within the channel for aesthetic reasons. This section is located within the Gila River floodway and may experience damage when the river flows. The flexible gabion system has the highest potential of surviving a major flow on the Gila River in comparison to other lining materials.

Station 25+00 to 18+00 (Earthen Channel Section) – The earthen channel section is designed to convey low flows south of the composite channel section. The earthen channel section is located within the Gila River floodway and provides an excavated low flow pathway to the main Gila River channel. This section may be washed away when the river flows. A roughness factor of 0.032 was used for the channel sideslopes and bottom. See earlier section concerning the City of Goodyear's desire to allow vegetative growth within the channel for aesthetic reasons.

Signed:


Bradford D. Olbert, P.E.

Distribution:

013884-2B

MEMORANDUM

Sverdrup Civil, Inc.

Date: July 14, 1998

TO: Tim Edwards and Larry Martinez
City of Goodyear
119 North Litchfield Road
Goodyear, Arizona 85338

Don Rerick
Flood Control District of Maricopa County
2801 West Durango Street
Phoenix, Arizona 85009

FROM: Bradford D. Olbert, P.E.
Project Manager
Sverdrup Civil, Inc.

SUBJECT: Contract FCD 95-39
Flood Control District of Maricopa County
Bullard Wash Channel Improvements - Final Design
Gabion Basket Longevity and Maintenance

The proposed Bullard Wash Channel from the Lower Buckeye Road inlet area to the Gila River utilizes the gabion system (rock filled wire baskets) of lining material for approximately 87 percent of the channel length. Several linings were investigated to preclude meandering of the channel including concrete, soil cement, grouted riprap, riprap and gabions. The City of Goodyear chose the gabion system because it was more aesthetically pleasing than the concrete lining material that was recommended in an earlier study. Other benefits of the gabion system are it provides a bank lining that is flexible (less likely to have a total failure of the lining), it is durable, and it is easier for an individual to exit the drainage channel during a flood event (in comparison to concrete). Three drawbacks of the gabion system include a higher roughness coefficient (in comparison to concrete, 0.030 vs. 0.015), wire damage, and corrosion potential of the wire. The higher roughness coefficient results in a larger channel section, while damage and corrosion of the wire are related to how long the system will last and maintenance concerns. Below is a discussion of the wire damage and corrosion potential of the system and measures taken to reduce that potential.

The gabion system of bank protection has been widely used for many years and many locations. The first gabion system has been in use since 1894 along the Reno River banks in Italy. The gabion system has been used in Arizona for flood protection. One installation located in the City of Glendale on Skunk Creek south of Union Hills Road has been in place since 1987. The Skunk Creek installation used the standard zinc-coated steel gabion mesh. Inspection of the gabion system showed no signs of corrosion or damage to the baskets over that time period. Additional flood protection along Skunk Creek using the gabion system is proposed for the near future. ADOT has used the gabion system principally for local scour conditions at its older bridge locations. ADOT's major concern has been the longevity of the wire mesh against impacts from other rocks being transported downstream during a storm event.

The Bullard Wash project is located in an area where soil corrosion has been identified as an issue. Corrosion of utilities have been reported by the City of Goodyear of its ductile iron pipes near the wastewater treatment facility, located west of Estrella Parkway and north of the Buckeye Irrigation Canal (BID). APS has performed corrosion repair work to its 96-inch reclaimed water line in several locations just north of the BID Canal. While damage to the gabion basket wires is always a concern, damage to basket wires below the channel bottom caused by large stones will not be an issue for this project because borings along the channel have indicated no large rocks and only traces of gravel. Wire damage should be limited to above ground by floating debris or vandals.

Manufacturers of gabion systems have provided improved corrosion protection coatings to minimize corrosion potential. The traditional zinc coating can be replaced with a zinc-aluminum alloy coating with a non-porous surface that reduces the rate of corrosion. Manufacturer corrosion tests indicated that the zinc-aluminum coating lasts 2-½ times longer than the traditional zinc coatings. In addition, PVC coatings help to further improve long lasting protection against corrosion. The coating completely protects the wire from corrosion. For the Bullard Wash Channel improvements, a higher level of corrosion protection is warranted based upon the corrosion history of the area. Claims of complete protection for the PVC coating may be true where the coating is fully intact for the life of the improvement. However, with time, damage will occur to the PVC coating from debris contact, vandalism, damage during construction, and from contact with maintenance vehicles. The complete protection is only as good as the PVC coverage. Nicks or scratches in the coating will provide locations where corrosion would take place. A combination of the two coatings would maximize the corrosion protection, and this combination will be used for this project.

While the coatings provide a passive protection system against corrosion, annual inspections of the channel lining to check for damage to the lining and corrosion is necessary. Spot inspections will be required on the below ground lining protection as well. Repairs to damaged wires discovered should be scheduled immediately after the inspections have been completed. This maintenance requirement will be addressed in the operation and maintenance manual being prepared for this project.

Signed:


Bradford D. Olbert, P.E.

Distribution:

013884-2B

EXHIBIT D



Project Number: BWC2118
09/13/2021

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

BWCDD:
Bullard Wash Crossing Rehabilitation

Ms. Chappell:

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

ITEM #	QTY.	UNIT	DISCRIPTION	UNIT PRICE	EXTENSION
Phase 1 Construction Costs.					
1	1	LS	Mobilization	\$ 20,708.00	\$ 20,708.00
2	1	LS	Survey	\$ 9,500.00	\$ 9,500.00
3	1	LS	Traffic Control	\$ 1,200.00	\$ 1,200.00
4	1	LS	Material Testing	\$ 5,215.00	\$ 5,215.00
5	861	SF	Saw Cut & Remove Concrete Apron	\$ 10.00	\$ 8,610.00
6	833	SY	Over-Excavate Canal Floor (2.5')	\$ 54.00	\$ 44,982.00
7	1000	SY	Install MAG ABC-Canal Floor	\$ 54.00	\$ 54,000.00
8	1000	SY	Install Geogrid-Canal Floor	\$ 5.00	\$ 5,000.00
9	3111	CY	Place Canal Fill (Slopes)	\$ 85.00	\$ 264,435.00
10	1	EA	Subgrade Prep for Maintenance Ramp	\$ 7,120.00	\$ 7,120.00
11	2797	SY	Canal Lining-Shotcrete	\$ 76.00	\$ 212,572.00
12	631	LF	Seal Transverse Joints	\$ 20.00	\$ 12,620.00
13	230	CY	Excavate for Scour Repair	\$ 92.00	\$ 21,160.00
14	230	CY	Place Slurry for Scour Repair	\$ 260.00	\$ 59,800.00
15	162	LF	Saw Cut Existing Spillway Structure	\$ 22.00	\$ 3,564.00
16	405	SF	Remove Existing Grouted Riprap	\$ 32.00	\$ 12,960.00
17	150	CY	Place Slurry Behind South Abutment	\$ 260.00	\$ 39,000.00
18	405	SF	Replace Grouted Riprap	\$ 40.00	\$ 16,200.00
Phase 1 Total					\$ 798,646.00
Phase 2 Construction Costs					
ITEM #	QTY.	UNIT	DESCRIPTION	UNIT PRICE	EXTENSION
1	1	LS	Mobilization	\$ 6,500.00	\$ 6,500.00
2	1	LS	Survey	\$ 2,500.00	\$ 2,500.00



3	1750	SY	Excavate to Subgrade	\$ 11.00	\$ 19,250.00
4	1750	SY	Install ABC (6")	\$ 12.50	\$ 21,875.00
5	310	LF	Install Handrail	\$ 142.00	\$ 44,020.00
6	60	LF	Install Walkway	\$ 690.00	\$ 41,400.00
7	500	SF	Install 2' Wide Concrete Walkway	\$ 11.00	\$ 5,500.00
8	2310	SF	Install Drainage Swale	\$ 16.00	\$ 36,960.00
9	2	EA	Backfill Behind Box Culvert Wingwalls	\$ 2,500.00	\$ 5,000.00
10	5000	SF	Clear & Grub	\$ 2.00	\$ 10,000.00

Phase 2 Total

\$ 193,005.00

BWCCDD FEES					
ITEM #	QTY.	UNIT	DESCRIPTION	UNIT PRICE	EXTENSION
1	1	EA	Engineering & Design Cost	\$ 162,400.00	\$ 162,400.00
2	1	EA	BWCCDD - Administrative, Legal, Construction Management Oversight, Inspection, Consulting, and Impact Cost	\$ 116,692.00	\$ 116,692.00
3	13	EA	Unpaid Licensing Fees pursuant to agreement MCFC.0011997.01	\$ 1.00	\$ 13.00
4	1	EA	Contingency Fee (Reimbursable if not used)	\$ 90,000.00	\$ 90,000.00
BWCCDD Total					\$ 369,105.00

Sub-Total

Phase 1, Phase 2 & BWCCDD FEES

\$ 1,360,756.00

Construction Dates

Phase 1 – October 29, 2021, to November 20, 2021

Phase 2 – Between November 20, 2021, and March 31, 2021

Assumptions

Our costs are based on assuming that the following conditions exist at the project site:

1. Assumed depth of canal excavation including over excavation is 2.5' from existing grade.
2. Geogrid is included in canal floor ABC subgrade.
3. ABC depth on canal floor is 2'. (Footprint is 375' x 20' wide)
4. Depth of canal is assumed to be 16'. Bottom width is assumed to be 20'.
5. The eroded void behind the south abutment can't be quantified prior to construction. The assumed dimensions are 81' x 5' x 10'. The void will be filled with 1-sack ABC slurry.
6. No structural reinforcement is assumed when re-installing the grouted riprap spillway.



7. Joint sealing will only be adjacent to the Bullard Outfall Structure. Sealing the canal lining is not included.

Clarifications

1. This proposal is on 60% plans from GCE. Inc. DBA Construction, Inc. reserves the right to review pricing based on plans issued for construction.
2. Control joints in shotcrete are 12' OC transverse and longitudinal.
3. Canal floor shotcrete will be 4", slope shotcrete will be 3".
4. Drainage swale in phase 2 includes #4 rebar and 3000 psi concrete, 6" thick.

Exclusions

1. Construction permits, right of way.
2. The adjustment, shoring and relocation of conflicting utilities.
3. Taxes and bonds.

BWCCD requires payment in full no later than October 11, 2021.

Noel Carter

Noel Carter

General Manager,
BWCCD

Barbara Chappell

Deputy Public Works Director,
City of Goodyear

ITEM #: 4.
DATE: 10/04/2021
AI #:497



CITY COUNCIL ACTION REPORT

**SUBJECT: APPROVE EXPENDITURE UP TO \$692,600 FOR THE
PURCHASE OF RED ZONE GEAR**

STAFF PRESENTER(S): Paul Luizzi, Fire Chief

SUMMARY

Request Council approval of the expenditure of FY2022 funds for the purchase of 2 sets of Red Zone particulate blocking firefighter turnout ensembles for all sworn personnel.

Recommendation

Approve expenditure of funds up to \$692,600 to purchase remaining Red Zone particulate blocking firefighter turnout ensembles for all sworn personnel. (Paul Luizzi, Fire Chief)

FISCAL IMPACT

The FY21-22 Fire Budget has an allocation of \$692,600 for the procurement of the Red Zone particulate blocking firefighter ensembles.

BACKGROUND AND PREVIOUS ACTIONS

Per City of Goodyear Resolution 08-1255, all expenditures of budgeted funds in excess of \$500,000 must obtain Council approval. During the FY20-21 Budget Supplemental process the purchase of the Red Zone turnout ensembles was originally approved and funded. The original budget supplemental included a phased purchase approach to occur over the course of three years beginning in FY2021. The first expenditure of \$223,800 was made in FY20-21 for a portion of the Red Zone gear purchase.

STAFF ANALYSIS

The FY20-21 budget supplemental for Red Zone gear outlined a 3 year phased purchase approach. However, through further budget discussions it was determined that there is funding and capacity to complete the procurement of the remaining 2 years of Red Zone gear in the current FY21-22 budget, which is in allocation of \$692,600.

The Red Zone product line offers the highest level of protection to the firefighter against hazardous particulates contained in smoke and soot. The gear is designated to minimize the amount of dangerous particulates/carcinogens to reach the skin thus minimizing the risk exposure. The gear has been certified to meet the standards of the National Fire Protection Association (NFPA) 1971, 2019 edition.

ITEM #: 5.
DATE: 10/04/2021
AI #:505



CITY COUNCIL ACTION REPORT

SUBJECT: CONSENT TO ASSIGNMENT OF ESTRELLA AGREEMENTS

STAFF PRESENTER(S): Roric Massey, City Attorney

SUMMARY

Approve and authorize execution of Consent to Assignment of various agreements related to development within Estrella (formerly known as Estrella Mountain Ranch).

Recommendation

Approve and authorize City Manager to execute a Consent to Assignment in the draft form attached as Exhibit 1, allowing a limited liability company that includes as its members and/or managers, Harvard Investments, Toll Brothers and Varde Partners, that will be acquiring interests of NNP III — Estrella Mountain Ranch, a Delaware Limited Liability Company, NNP III – EMR 3, LLC, a Delaware limited liability company, NNP III – EMR 4, LLC, a Delaware limited liability company, and Special AZ Properties I, LLC, an Arizona limited liability (collectively the “NNP Entities”) in real property subject to the various agreement to assume the NNP Entities rights, title, interest, in, and obligations under various agreements with the City. (Roric Massey, City Attorney)

FISCAL IMPACT

There will be no fiscal impact as a result of the assignment. The assignment will modify the parties entitled to the rights and interests and responsible for the obligations and liabilities under the various agreements.

BACKGROUND AND PREVIOUS ACTIONS

NNP III — Estrella Mountain Ranch, a Delaware Limited Liability Company, NNP III – EMR 3, LLC, a Delaware limited liability company, NNP III – EMR 4, LLC, a Delaware limited liability company, and Special AZ Properties I, LLC, an Arizona limited liability (collectively the “NNP Entities”) are currently parties to individually or collectively to a number of agreements with the City related to the development of a master planned community known as Estrella (formerly known as Estrella Mountain Ranch).

STAFF ANALYSIS

The NNP Entities are in the process of selling certain property located within Estrella to a limited liability company that has yet to be formed, but that will include as members and/or managers the following entities: Harvard Investments, which has served as a master developer of planned communities in Arizona similar in character as Estrella; Toll Brothers, which is a national home builder and developer; and Varde Partners, which is a global investment advisor. (The entity to be formed as described above is referred to as the “Newly Formed Entity.”) The NNP Entities are asking the City to consent to the assignment by the NNP Entities of their respective rights, title, interest in, and obligations under the agreements itemized in Exhibit 1, to the Newly Formed Entity’s upon the Newly Formed Entity’s acquisition of the property that is subject to such agreements. The execution of the consent will have the effect of releasing the NNP Entities from liability under these agreements with respect to the property that is acquired by the Newly Formed Entity.

Although the newly formed entity referred to above will be formed prior to closing, the only council meeting before the closing is the meeting on October 4, 2021. Accordingly, staff is asking the City to authorize the City Manager to execute a consent to assignment substantially in the form attached hereto as Exhibit 1 upon the formation of the Newly Formed Entity as described above. Based on communications with parties involved in the acquisition, the City will likely benefit from the assignment because the Newly Formed Entity is planning on the continued development of Estrella.

Attachments

Ex. 1- Form of Consent

EXHIBIT "1"
CONSENT TO ASSIGNMENT

The undersigned, City of Goodyear, an Arizona municipal corporation, hereby consents to the assignment by NNP III — Estrella Mountain Ranch, a Delaware Limited Liability Company, NNP III – EMR 3, LLC, a Delaware limited liability company, NNP III – EMR 4, LLC, a Delaware limited liability company, and Special AZ Properties I, LLC, an Arizona limited liability (collectively the "NNP Entities") of their respective rights, title, interest in, and obligations under the following agreements with respect to any property subject to this such agreement that is acquired by _____. The NNP Entities will remain liable for all obligations under these agreements with respect to any property covered by such agreements until the property subject to such agreements has been acquired by _____. This consent, in no way modifies the terms any of the following agreements, and each agreement continues to run with the land and bind all future successors in interest to title to any or all of the real property subject to the following agreements.

1. Agreement (aka "Estrella Master Development Agreement"), dated 08/11/86
 - Amendment, dated 10/05/87
 - Addendum to Agreement and Amendment, dated 09/09/97, recorded at 97-0707994
2. Development Financing Participation and Intergovernmental Agreement No. 1, dated 08/01/00, recorded at 2000-0635059
 - 1st Amendment, recorded at 2019-0076277
3. Community Park at Estrella Mountain Ranch Development Agreement, recorded at 2006-0453926
4. Development and Fire Services Agreement, dated 05/22/06, recorded at 2006-0731018
 - 1st Amendment, dated 01/23/17, recorded at 2017-0077329
 - 2nd Amendment, dated 05/23/18, recorded at 2018-0395674
5. Agreement Concerning Roadway Improvements Adjacent to Parcel 12.41, dated 08/16/10, recorded at 2010-0705699
6. Development Agreement for Estrella Parcel 3.14, recorded at 2017-0026404
7. Development Agreement for Estrella Parcel 7.5, recorded at 2017-0154739
8. Development Agreement for Estrella Parcel 9.1, recorded at 2017-074058
9. Development Agreement for Estrella Parcel 9.8, recorded at 2017-0275666
10. Development Agreement for Estrella Parcel 9.30, recorded at 2020-0498865

11. Development Agreement for Estrella Parcel 9.31, recorded at 2019-0351751
12. Development Agreement for Estrella Parcel 9.43, recorded at 2020-0812584
13. Development Agreement for Estrella Parcel 12.23, recorded at 2020-0785053
14. Development Agreement for Estrella Parcel 12.24, recorded at 2020-0785050
15. Development Agreement for Lucero, recorded at 2018-0116741
16. Participation and Development Agreement Regarding Construction and Financing of Phase 1 of the City's Surface Water Treatment Plant and Related Infrastructure dated 04/23/18, recorded at 2018-0319193
17. Infrastructure Reimbursement Agreement for Fiber Optic Conduit, dated 12/10/20 (Contract CON-21-5835)
18. Development Agreement for Expansion of RVWRF, recorded at 2020-0498396
19. Water Service Agreement, October 5, 1987, between City of Goodyear and Amcor Investments Corporation
20. Letter Agreement, June 9, 1994 re Estrella Amendments to Development Agreements, between City of Goodyear and SunChase Estrella Limited Partnership
21. Water Agreement, dated 09/10/97, recorded at 97-0664493
22. Goodyear—Sun MP Rainbow Valley Water Reclamation Facility Agreement, December 8, 2003, between City of Goodyear and Sun MP, LLC. (CON-CX-6009-C3)
23. Corgett Wash Water Reclamation Plant Operations, Maintenance and Development Agreement, dated 06/30/06, recorded at 2006-0969412 and re-recorded at 2007-0123090
24. Participation Agreement Cotton Lane Water Transmission Main Evaluation—Phase 1, Proj. No. WA 0901, dated 05/18/09 (Contract CON-CX-1344-09)
25. Participation Agreement – Corgett Wash Water Reclamation Plant Improvements, dated 06/27/11 (Contract CON-CX-11-1890)
 - 1st Amendment, dated 10/23/12 (Contract CON-CX-11-1189-A-1)
26. Northern Solution Water Facilities Agreement, dated 03/02/12, recorded at 2012-0179581
 - 1st Amendment, dated 11/04/13, recorded at 2013-0980086

- 2nd Amendment, 07/14/14, recorded at 2014-0479287
 - 3rd Amendment, dated 12/15/14, recorded at 2014-0831424
 - 4th Amendment, dated 09/28/15, recorded at 2015-0707611
27. Development Agreement re Arroyo Ranch, dated 12/09/13, recorded at 2013-1054024
 28. Development Agreement for Expansion of Rainbow Valley Water Reclamation Facility, dated 06/09/20, recorded at 2020-0498396
 29. June 9, 1994 Letter Agreement re Estrella Water Service
 30. Land Use Agreement and Perpetual Easement Restricting Land Uses Adjacent to the Rainbow Valley Water Reclamation Facility and Providing for Noise and Odor Setbacks recorded at 2006-0299531
 31. Cotton Lane/Bridge Cost Sharing Agreement Recorded at 2006-1322631 as revised by Revised Cotton Lane Bridge Cost Sharing Agreement dated April 23, 2007 (Contract CON-CX-003-A1-07)
 32. Waterman Reverse Osmosis Facility/Brine Beds Development Agreement recorded at 2007-0845758
 33. Southwest Rainbow Valley Well Field Development Agreement recorded at 2007-0845759
 34. Rainbow Valley Water Storage Reservoir and Booster Station Development Agreement recorded at 2007-0845760
 35. Rainbow Valley Road Water Transmission Lines Development Agreement recorded at 2007-0845761
 36. H-7 Temporary Reverse Osmosis Facility Development Agreement recorded at 2007-0845762
 37. Infrastructure Reimbursement Agreement for Replacement of Tank Level Indicator at Booster Station 13 entered in May 2021
 38. Letter Agreement dated February 7, 2000, re: Fire Emergency Medical and Police Operations between City of Goodyear and SunChase Estrella Limited Partnership

ITEM #: 6.
DATE: 10/04/2021
AI #:507



CITY COUNCIL ACTION REPORT

SUBJECT: CONSENT TO ASSIGNMENT OF MADEIRA AGREEMENTS

STAFF PRESENTER(S): Roric Massey, City Attorney

SUMMARY

Approve and authorize the execution of Consent to Assignment of two agreements related to development within the development known as Madeira.

Recommendation

Approve and authorize City Manager to execute a Consent to Assignment in the draft form attached as Exhibit 1, allowing a limited liability company that includes as its members and/or managers, Harvard Investments, Toll Brothers and Varde Partners, that will be acquiring interests of Madeira-Maricopa, LLC, a Delaware limited liability company ("Madeira") in real property subject to the various agreement to assume Madeira's rights, title, interest, in, and obligations under various agreements with the City. (Roric Massey, City Attorney)

FISCAL IMPACT

There will be no fiscal impact as a result of the assignment. The assignment will modify the parties entitled to the rights and interests and responsible for the obligations and liabilities under the various agreements.

BACKGROUND AND PREVIOUS ACTIONS

Madeira-Maricopa, LLC ("Madeira") is a party to that certain Pre-Annexation and Development agreement recorded at 2007-1308897. Madeira, along with two other entities that also own property within the development known as Madeira (Rainbow I, LLC, an Arizona limited liability company and C&S Rainbow, LLC, an Arizona limited liability company) is also a party to that certain Madeira Master Development Agreement recorded at 2009-1167765.

STAFF ANALYSIS

Madeira is in the process of selling certain property that it owns property within the development known as Madeira to a limited liability company that has yet to be formed, but that will include as members and/or managers the following entities: Harvard Investments, which has served as a master developer of planned communities in Arizona similar in character as Estrella; Toll Brothers, which is a national home builder and developer; and Varde Partners, which is a global investment advisor. (The entity to be formed as described above is referred to as the "Newly Formed Entity.") Madeira is asking the City to consent to the assignment by Madeira of its respective rights, title, interest in, and obligations under the

agreements itemized in Exhibit 1, to the Newly Formed Entity's upon the Newly Formed Entity's acquisition of the property that is subject to such agreements. The execution of the consent will have the effect of releasing Madeira-Maricopa, LLC from liability under these agreements with respect to the property that is acquired by the Newly Formed Entity.

Although the newly formed entity referred to above will be formed prior to closing, the only council meeting before the closing is the meeting on October 4, 2021. Accordingly, staff is requesting Council to authorize the City Manager to execute a consent to assignment substantially in the form attached hereto as Exhibit 1, upon the formation of the Newly Formed Entity as described above.

Attachments

Exhibit 1-Form of Consent

EXHIBIT "1"
CONSENT TO ASSIGNMENT

The undersigned, City of Goodyear, an Arizona municipal corporation, hereby consents to the assignment by Madeira-Maricopa, LLC ("Madeira") of its rights, title, interest in, and obligations under the following agreements with respect to any property subject to this such agreement that is acquired by _____. Madeira will remain liable for all obligations under these agreements with respect to any property covered by such agreements until the property subject to such agreements has been acquired by _____. This consent, in no way modifies the terms any of the following agreements, and each agreement continues to run with the land and bind all future successors in interest to title to any or all of the real property subject to the following agreements.

1. Pre-Annexation and Development agreement recorded at 2007-1308897
2. Madeira Master Development Agreement recorded at 2009-1167765

ITEM #: 7.
DATE: 10/04/2021
AI #:463



CITY COUNCIL ACTION REPORT

SUBJECT: 2022 INAUGURAL TOUR DE CURE ARIZONA: 56

STAFF PRESENTER(S): Julie Karins, City Manager

OTHER PRESENTER(S):

Aaron Dunn, American Diabetes Association Executive Director for Arizona and New Mexico

SUMMARY

A Tour de Cure is the American Diabetes Association's (ADA) premiere fundraising and engagement event. Each Tour de Cure event recruits municipalities, corporations, volunteers, friends, and families in the community to be a part of an epic cycle ride benefiting the ADA. The 2022 Inaugural Tour de Cure Arizona: 56 will take place in the West Valley, starting and ending at Goodyear Ballpark, and will give riders a unique experience they'll want to be part of year after year. In addition to the city of Goodyear, other key partners include the 56th Fighter Wing at Luke Air Force Base, Phoenix Raceway, and the community of Verrado.

The 56-mile ride is mapped to have distinct views and attractions throughout the trek. Starting at Goodyear Ballpark, the next major attraction is Phoenix Raceway - where participants will ride one lap around the iconic track. Riders will make their way through the West Valley to their next major stop, Luke Air Force Base, to ride down the runway, head through Verrado enjoying views of the Estrella and White Tank Mountains and then back to Goodyear Ballpark to conclude the ride. In addition to the 56-mile ride, there will be community and family fun ride options, including a 29-mile ride and 5.6-mile ride respectively.

The bike ride is scheduled for March 6, 2022. Event setup at the start/finish line will begin at 5 a.m. followed by a 7 a.m. race start. It is anticipated the ride will finish by 1 p.m. with post-ride festivities concluding no later than 3 p.m. – participants can go directly into the ballpark and enjoy a spring training game, should they choose.

Recommendation

Approve support of the American Diabetes Association's Tour de Cure Arizona: 56 through the provision of public safety in-kind services. (Julie Karins, City Manager)

FISCAL IMPACT

This is expected to become an annual event, attracting participants from across the country as well as locals. The ADA is expecting the inaugural event to draw 1,500 participants, of which 30% will be from outside the Phoenix metro area. With the unique attractions this ride offers, participation is predicted to grow each year and out of town guests are projected to increase to 50% by year three. Participants will be encouraged to stay in Goodyear hotels, dine at local restaurants and shop in Goodyear.

Ballpark staff are working closely with the ADA to include a special ticket promotion to encourage ticket purchases for the spring training game. Ballpark staff continually seek opportunities to partner with other events to attract visitors to spring training and increase attendance. The Tour de Cure creates a unique opportunity to utilize the reach of the ADA to market both spring training and visitgoodyear.com. The ADA has a national email database reaching more than 2.7 million. In addition, 40,000 consultants receive emails and text message specific to the Tour de Cure event.

The City will be financially supporting this event through the provision of Public Safety services to include all overtime costs necessary. It is anticipated that public safety overtime will total approximately \$32,000 and although not specifically programmed for this event, event overtime costs are included in the FY2022 overtime budgets for both police and fire.

BACKGROUND AND PREVIOUS ACTIONS

This is the inaugural Tour de Cure in Arizona. There are no prior actions.

STAFF ANALYSIS

The ADA is working closely with the cities and agencies involved with the ride and has sent a formal letter requesting in-kind support to those involved. Goodyear's Public Safety will experience the largest impact, with the ride both beginning and ending in Goodyear. Based on the ride route (attached) the following public safety resource needs are anticipated:

Goodyear Police:

- Command team that will monitor race activities, have direct contact with our PD partners, be the overall emergency incident commander and be the central area for emergency resources
- Officers staffed at intersections along each ride route in Goodyear, with two to three officers at major intersections
- Officers staffed for traffic control at Goodyear Ballpark

Goodyear Fire:

- EMS team at Goodyear Ballpark (first aid station)
- Coordinate first aid and medical support throughout the ride route

In addition to the resources listed above, Goodyear will develop the Incident Action Plan for the Tour de Cure which is customary for all large events.

To assign a value to the in-kind services, staff used the mid-range salary point of the appropriate position and calculated an event overtime rate for each position needed. Using an eight-hour event duration the value of in-kind services is estimated at \$32,000.00. The value represents the hours needed from Firefighters,

EMT's, Captains, Officers, Sergeants and Lieutenants to ensure a well-coordinated and safe event. Many of these hours are reflective of the officers needed to man multiple intersections on each of the three routes within Goodyear City limits.

Attachments

ADA Tour de Cure
Presentation



Julie Karins
190 N Litchfield Road
Goodyear, AZ 85338

Dear Julie Karins,

The American Diabetes Association (ADA) is respectfully requesting your city's support for the **Inaugural Tour de Cure Arizona:56** community charity cycling event on Sunday, March 6, 2022. The 56-mile route will showcase areas of the southwest valley to hundreds, and potentially thousands, of riders from Arizona and throughout the country. Our request is for in-kind contributions of public safety support for the portion of the ride that is within your jurisdiction. Attached is the proposed route map and how it will traverse through your city.

For more than 30 years, the Tour de Cure is the signature fundraising event of the American Diabetes Association. It is a ride, not a race, and is our nation's largest diabetes cycling event with over 50,000 participants in nearly 80 cities across the country. It enables the ADA to continue the mission to prevent and cure diabetes and to improve the lives of all people affected by diabetes.

Tour de Cure Arizona:56 will be our only event in Arizona in 2022. It is being supported by Major League Baseball, Luke AFB, Phoenix Raceway and Fighter Country Partnership. In honor of Luke AFB' 56 Fighter Wing, we have created this new 56-mile route. Each rider will travel through and experience firsthand the cities of Goodyear, Avondale, Litchfield Park, Buckeye and Glendale, to include Maricopa County jurisdictions. Riders begin at the Goodyear Ballpark where MLB Spring Training will be in full swing, then to Phoenix Raceway where riders will take a lap around the iconic NASCAR track. They will continue to Luke Air Force Base where participants will ride the same runway as the F35's. Next it will head to Verrado at the base of the White Tanks before finishing back at the ballpark. This is just a sample of what is planned for a truly one-of-a-kind Tour de Cure experience.

Our long-time event production company is working on logistics. We plan to meet individually with each city and the county to properly develop traffic and safety plans.

Our goal is that this will be the first of many annual events in the Southwest Valley, so it is critical that we make our inaugural event successful. Your partnership and willingness to donate public safety in-kind service will help make this possible, as well as keeping it safe and running smoothly. On behalf of the ADA, I thank you in advance for your consideration and hope to have your support. If you have any questions regarding this ride or the ADA, please reach out to me anytime at 602-413-3427 or email at adunn@diabetes.org.

My best,

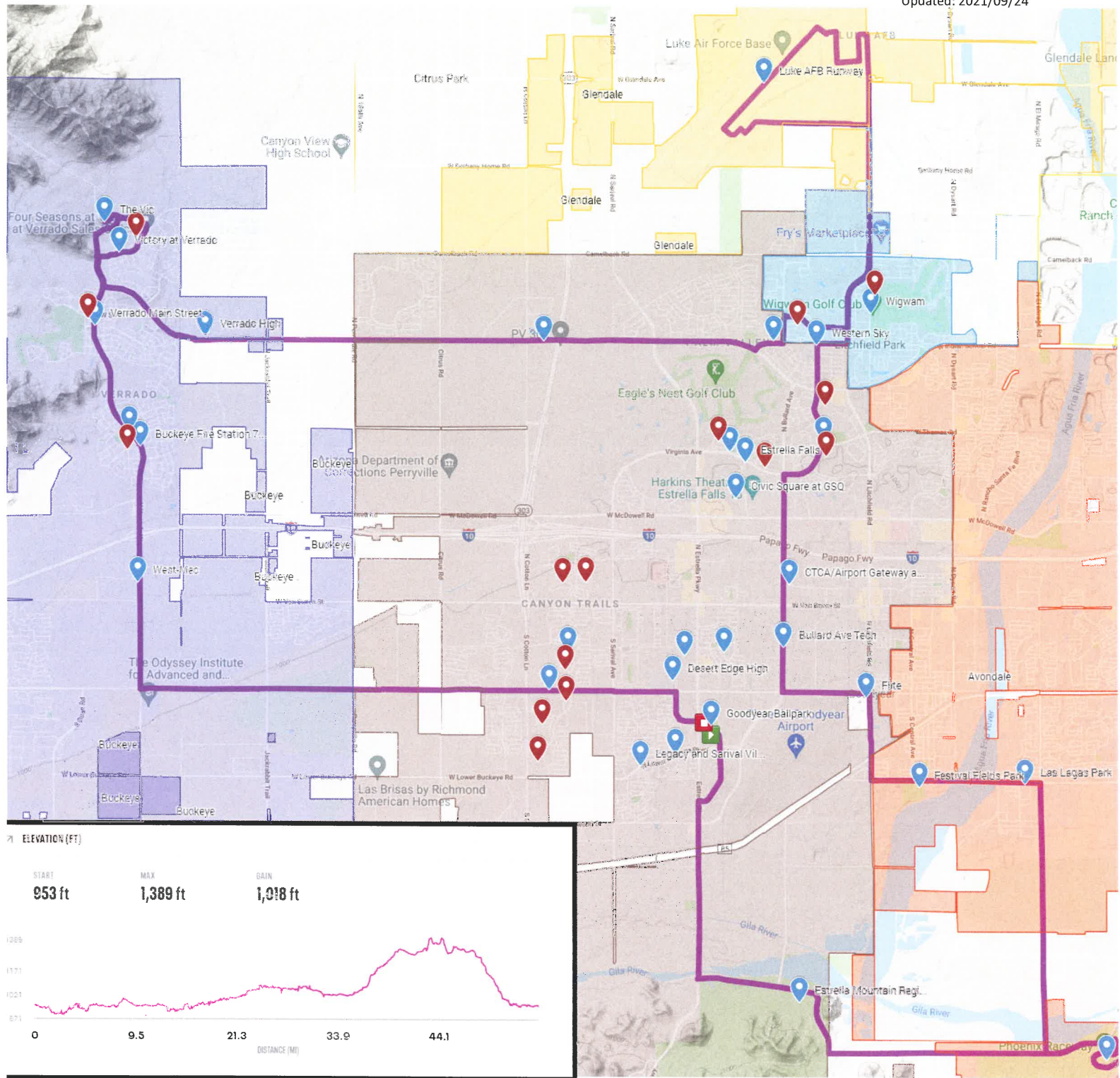
A handwritten signature in dark ink, appearing to read "Aaron Dunn".

Aaron Dunn
Executive Director, Arizona & New Mexico
American Diabetes Association

Attachment: Proposed 56-mile Route Map

56 Miles (56.95 Miles) – Ballpark, Raceway, Runway, Verrado

Updated: 2021/09/24

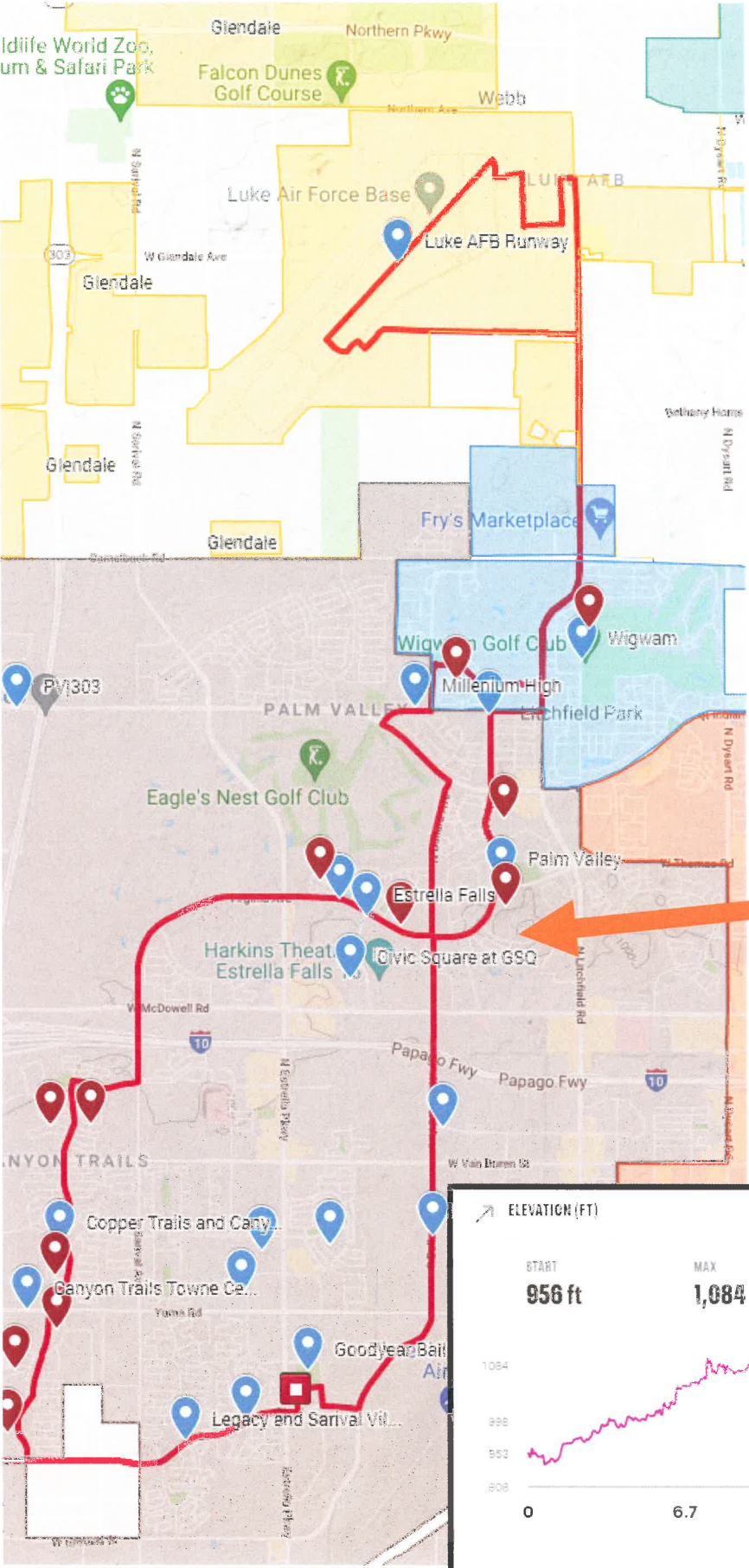


Goodyear Ballpark to Estrella Parkway (**GYR**)
 To Vineyard to Indian Springs to Phoenix Raceway (**AVON**)
 To El Mirage to Lower Buckeye
 To Litchfield to Yuma to Bullard (**GYR**)
 To Bullard and Encanto (Palm Valley)
 To 144th and Wigwam (**LP**)
 To Litchfield to Luke AFB Runway (**GLND**)

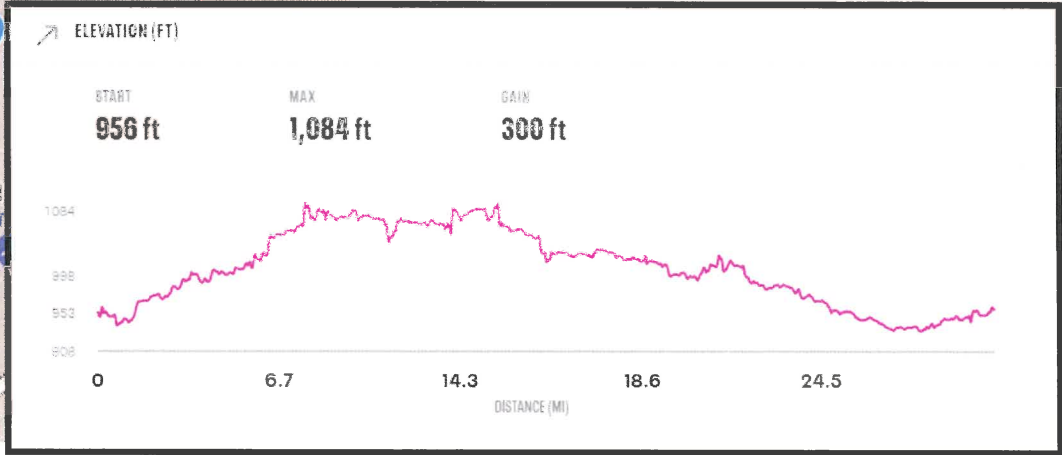
To Litchfield and Village at Litchfield Park (**LP**)
 To Indian School
 To Victory/Verrado (**BUCK**)
 To Yuma
 To Goodyear Boulevard (**GYR**)
 To Goodyear Ballpark

28 Miles (28.33) – Ballpark, Runway, Estrella Falls, Neighborhoods

Updated: 2021/09/24

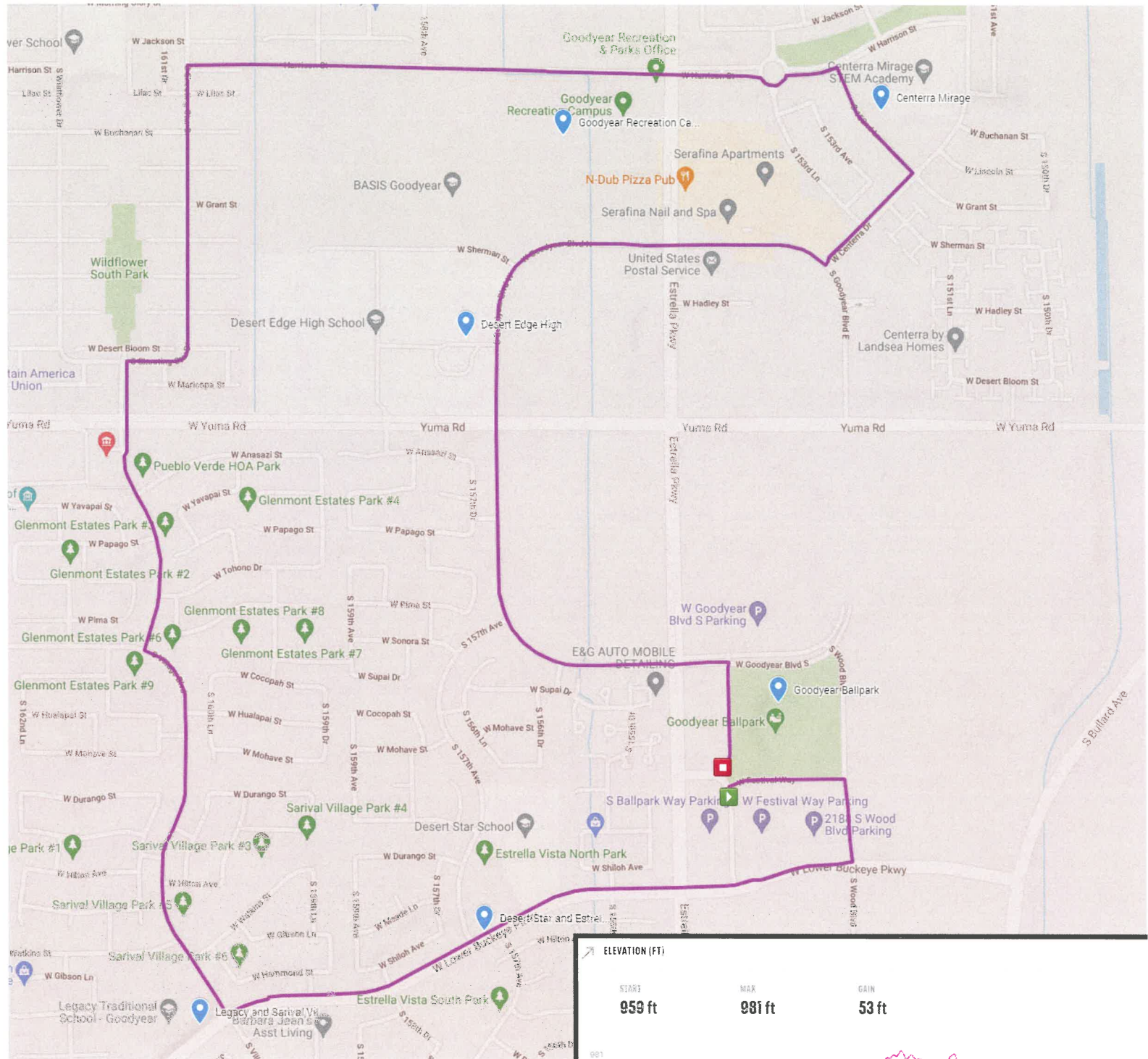


- Goodyear Ballpark to Bullard (GYR)
- To Bullard and Encanto (Palm Valley)
- To 144th and Wigwam (LP)
- To Litchfield to Luke AFB Runway (GLND)
- To Litchfield and Village at Litchfield Park (LP)
- To Indian School to Bullard (GYR)
- To Encanto and Sarival
- To Portland and 167th
- To Canyon Trails and Lower Buckeye
- To Goodyear Ballpark



5.6 Miles (5.52) – Ballpark, Estrella Vista, Rec Campus

Updated: 2021/09/24



Goodyear Ballpark to Lower Buckeye (GYR)
Pass Estrella Vista to Village
To Wildflower Ranch Shooting Star
To Goodyear Recreation Campus (Harrison)
To Centerra Mirage School Park
To Goodyear Recreation Campus (Goodyear Blvd N/W) Loop
To Desert Edge and Goodyear Blvd (W/S) Loop to Goodyear Ballpark



The background of the poster is a composite image. In the foreground, an F-16 fighter jet is parked on a tarmac. In the middle ground, a baseball player in a white uniform with the number 23 on the back is walking away from the camera. In the background, a line of cars is parked along a road. The sky is a mix of orange and blue, suggesting a sunset or sunrise. The text 'TOUR de CURE Arizona:56' is overlaid in the center, and 'MARCH 6, 2022' is below it. The American Diabetes Association logo is in the top left corner, and 'The Inaugural Ride' is in the bottom right corner.

**TOUR[®]
de CURE** 
American Diabetes Association[®]

TOUR DE CURE ARIZONA:56

MARCH 6, 2022

The Inaugural Ride

Connected for
Life.



Our Mission

To prevent and cure diabetes and to improve the lives of all people affected by diabetes.

The Burden of Diabetes

- Approximately **34,000,000** people in America have diagnosed diabetes
- There are **88,000,000** people in America who have prediabetes

Diagnosed diabetes costs an estimated \$327 billion in America each year.

The serious complications include heart disease, stroke, amputation, end-stage kidney disease, blindness – and death.





Tour de Cure Arizona:56

Key Partners

Mr. Paul Dolan

Honorary Chair

Owner, Chairman, and Chief

Executive Officer of the Cleveland Indians Major
League Baseball Team.



Mr. Chris Henrichsen

Executive Chair

Vice President of Risk and Litigation

at Discount Tire.





- **30 Year History**

- Since 1991 Tour de Cure has raised over 500 million dollars to the mission
- 44 different states through the years
- 80 cities across the country
- Over 50,000 riders

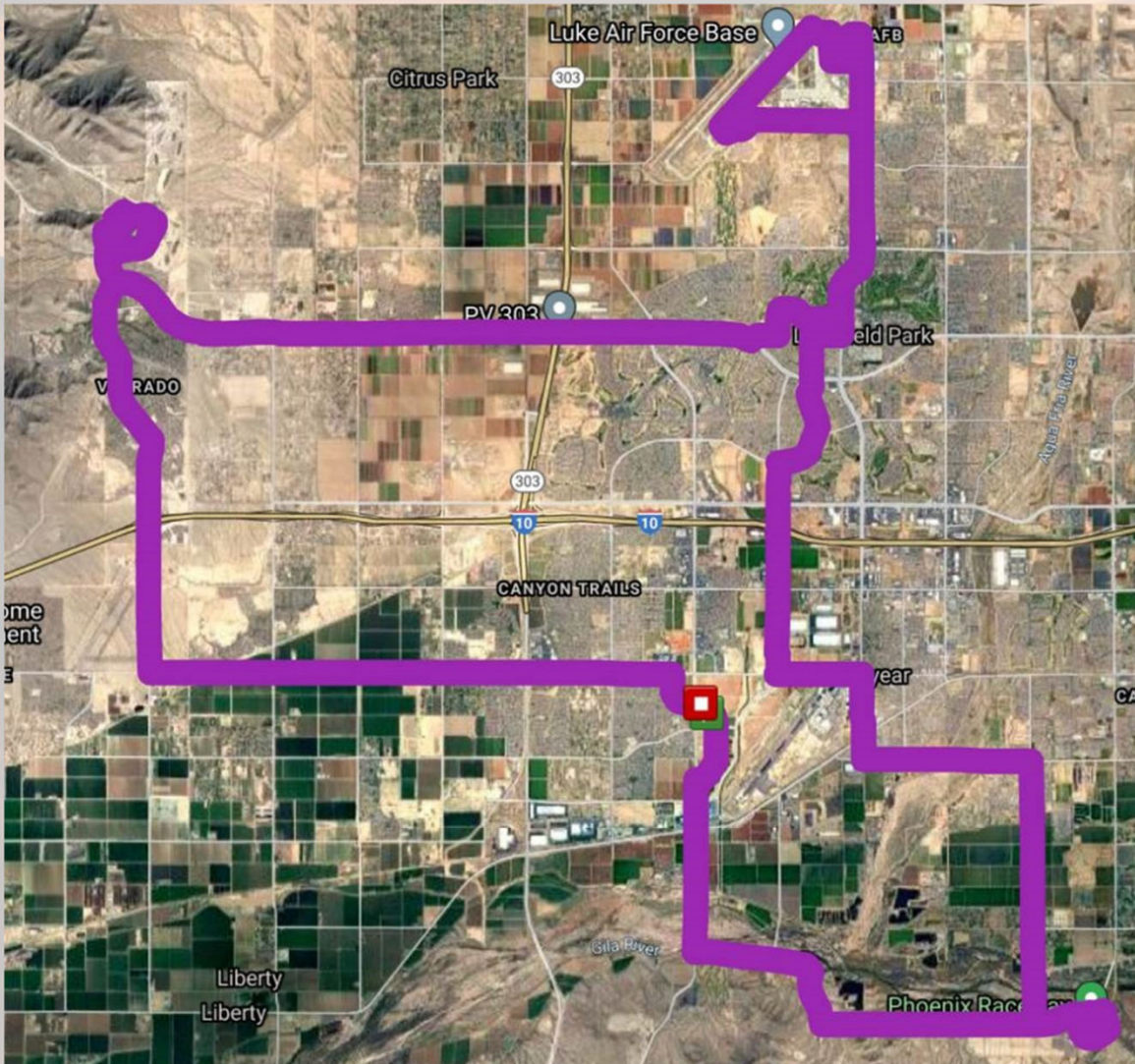
- **2022 Events**

- 21 planned Tour de Cure and Step Out Walks across the Nation
- Tour de Cure Arizona:56 will be the first ride of 2022

Tour de Cure Arizona: 56

Notable Ride
Locations





56 MILE ROUTE

This route is inspired by the 56th Fighter Wing of Luke Air Force Base.

Locations on this route:

- Goodyear Ballpark (start and finish)
- Phoenix Raceway (ride on track)
- Luke Air Force Base (ride on runway)
- Verrado Community (White Tanks Mountains)
- Estrella Mountain Park



29 MILE ROUTE

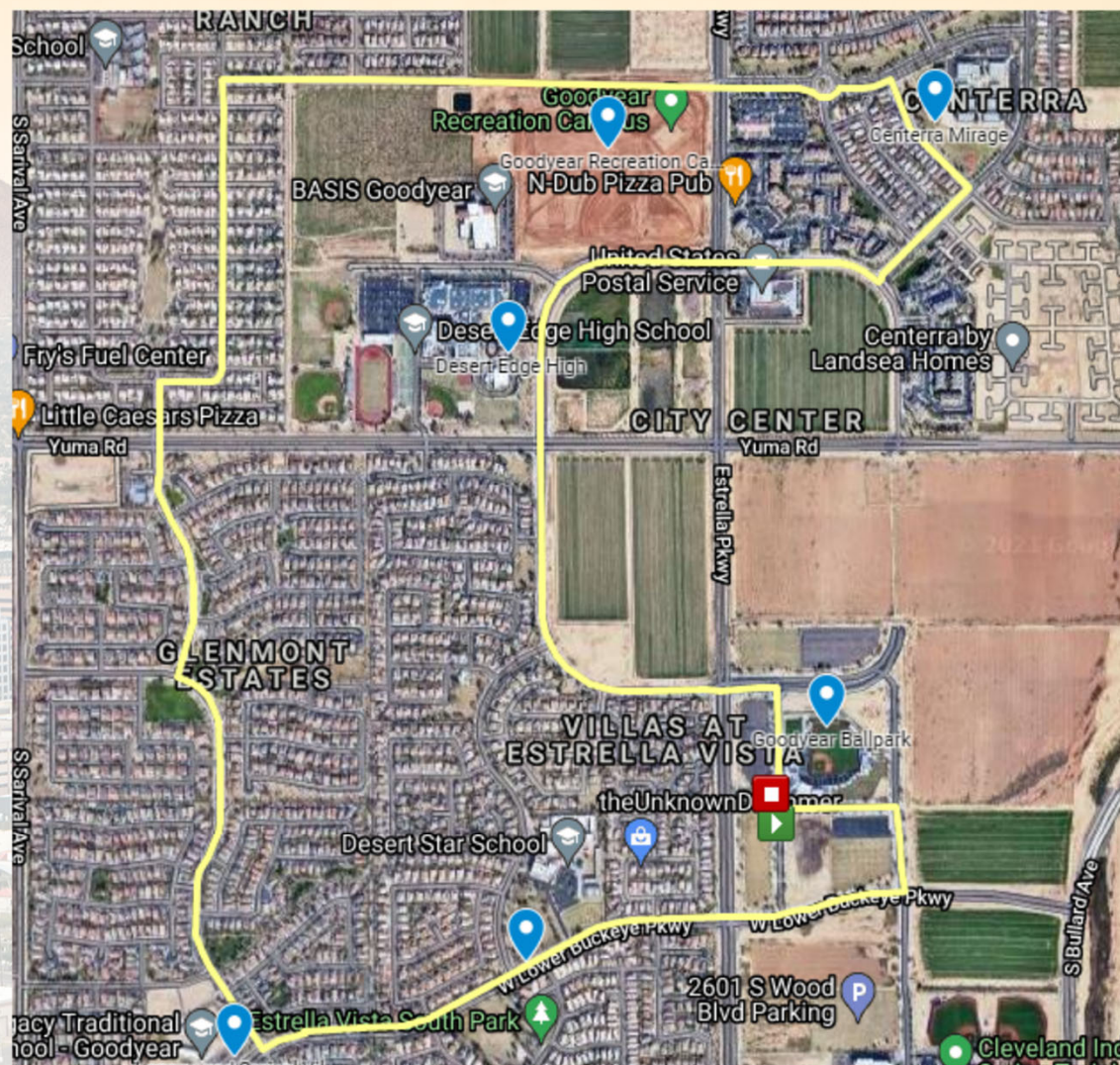
This route is inspired by Goodyear Ballpark and the average length of a baseball bat (29 inches).

Locations on this route:

Goodyear Ballpark (start and finish)

Luke Air Force Base (ride on runway)

Verrado Community (White Tanks Mountains)



5.6 MILE ROUTE

This route is inspired by 5.6 being the range of a normal A1C, the measurement of healthy glucose control.

Locations on this route:

Goodyear Ballpark (start and finish)

A great route for our beginner riders and families



Tour de Cure Arizona:56

Where are we at today

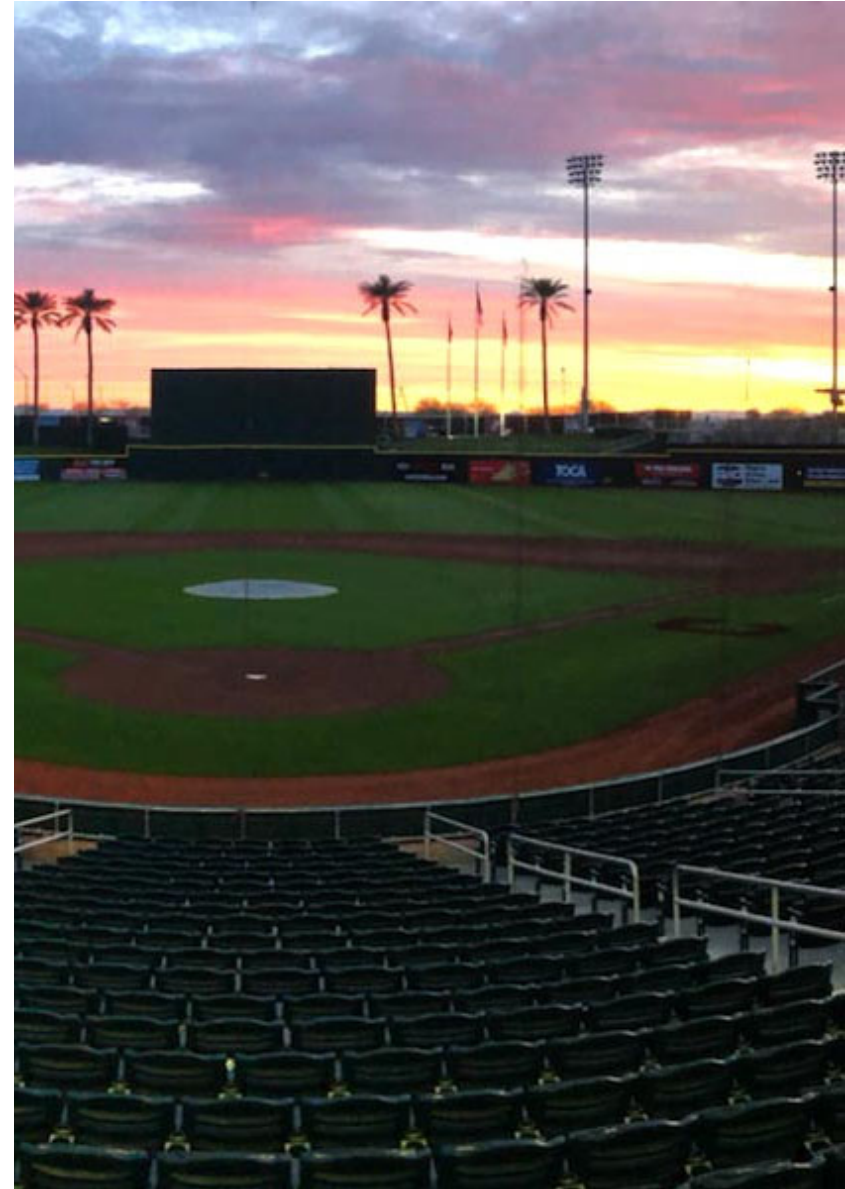
- Vision of the ride
- Partners identified
- Mapping
- Event Production
- Communication & Marketing
- Volunteer Plan

Tour de Cure Arizona:56

American Diabetes Association

REACH:

- *National email database - 2.7 million*
- *40,000 consultants receive targeted emails that are Tour de Cure*
- *40,000 consultants receive targeted texts that are Tour de Cure*
- *Participation from ADA chapters across the country*



Tour de Cure Arizona:56

IMPACT:

- **Year 1**
1,500 plus riders
30% outside of the Phoenix area
- **Year 3**
3,000 plus riders
50% outside of the Phoenix area

Staff Recommendation

Approve support of the American Diabetes Association's Tour de Cure through the provision of public safety in-kind services.

