



Mayor
Georgia Lord

Vice Mayor
Brannon Hampton

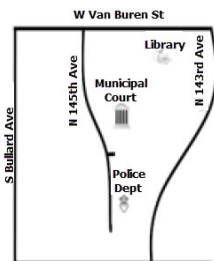
Councilmember
Joe Pizzillo

Councilmember
Sheri Lauritano

Councilmember
Wally Campbell

Councilmember
Bill Stipp

Councilmember
Laura Kaino



City Council Regular Meeting
Municipal Court and Council Chambers
14455 W. Van Buren St., Suite B101
Goodyear, AZ 85338

Monday, December 6, 2021

**Immediately following the Special Meeting that is immediately
following the Work Session that begins at 5:00 p.m.**

CITIZEN 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>

Immediately following the Special Meeting that is immediately following the Work Session that begins at 5:00 p.m.

CALL TO ORDER

PLEDGE OF ALLEGIANCE AND INVOCATION BY COUNCILMEMBER CAMPBELL

ROLL CALL

CITIZEN COMMENTS/APPEARANCES FROM THE FLOOR

CONSENT

1. APPROVAL OF MINUTES

Recommendation

Approve the draft minutes from the Regular Meeting held on November 15, 2021 and the Special Meeting held on November 29, 2021. (Darcie McCracken, City Clerk)

2. APPROVE THIRD AMENDMENT TO DEVELOPMENT AGREEMENT (Amending the 2006 Development Agreement between the City of Goodyear and Westcor/Goodyear, L.L.C.)

Recommendation

ADOPT RESOLUTION NO. 2021-2195 APPROVING THE THIRD AMENDMENT TO THE DEVELOPMENT AGREEMENT, PROVIDING AUTHORIZATION AND DIRECTION FOR EXECUTION AND PROVIDING AN EFFECTIVE DATE. (Roric Massey, City Attorney)

3. APPROVE EXPENDITURE UP TO \$1,568,560 FOR THE PURCHASE AND INSTALLATION OF A REPLACEMENT EMERGENCY BACKUP GENERATOR FOR BOOSTER SITE 11 (PROJECT 60047)

Recommendation

Approve expenditure of funds up to \$1,568,560 to purchase and install a new replacement generator for Booster Site 11. (Barbara Chappell, Deputy Public Works Director)

4. APPROVAL OF POWER OF ATTORNEY DOCUMENTS FOR RIDGEWAY INTERNATIONAL USA, INC. AND JOHN S. CONNOR GLOBAL LOGISTICS FOR SHIPMENT OF LESS-LETHAL WEAPONS

Recommendation

ADOPT RESOLUTION NO. 2021-2191 APPROVING THE POWER OF ATTORNEY DOCUMENTS AND ACKNOWLEDGEMENT OF TERMS AND CONDITIONS FOR RIDGEWAY INTERNATIONAL, INC. AND JOHN S. CONNOR GLOBAL LOGISTICS; PROVIDING AUTHORIZATION FOR THE CITY MANAGER OR HER DESIGNEE AND THE CITY ATTORNEY TO TAKE ANY AND ALL ACTIONS NECESSARY IN FURTHERANCE OF THE POWER OF ATTORNEY; AND PROVIDING FOR AN EFFECTIVE DATE. (Santiago Rodriguez, Chief of Police)

5. **RATIFICATION OF THE FUNDED STATE AND LOCAL TASK FORCE AGREEMENT AND APPROVAL OF THE DEPARTMENT OF JUSTICE EQUITABLE SHARING AGREEMENT AND CERTIFICATION**

Recommendation

Ratify the execution of the Funded State and Local Task Force Agreement and authorize the Mayor and the City Manager or her designee to execute the associated Equitable Sharing Agreement and Certification. (Santiago Rodriguez, Chief of Police)

BUSINESS

6. **FY2022 PAVEMENT MANAGEMENT PROJECTS**

Recommendation

Approve expenditures in the amount of \$3,293,000 to complete pavement management projects in various locations throughout the city. (Hugh Bigalk, P.E., City Traffic Engineer)

7. **AGREEMENT TO SHARE COSTS FOR THE FEASIBILITY STUDY OF BARTLETT DAM MODIFICATION ALTERNATIVES AMONG COST-SHARE PARTNERS AND SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT AND RELATED BUDGET TRANSFER**

Recommendation

Authorize the City Manager or her designee to take any and all actions to execute the agreement and approve related budget transfer. (Gretchen Erwin, Water Resources and Sustainability Manager)

8. **APPROVE CIVIC SQUARE PARKING RIGHTS AGREEMENT AND NON-DISTURBANCE AGREEMENT**

Recommendation

ADOPT RESOLUTION NO. 2021-2194 APPROVING THE CIVIC SQUARE PARKING RIGHTS AGREEMENT AND THE NON-DISTURBANCE AGREEMENT, PROVIDING AUTHORIZATION AND DIRECTION FOR EXECUTION AND PROVIDING AN EFFECTIVE DATE. (Roric Massey, City Attorney)

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

December 13, 2021	Work Session	4:30 p.m.
December 13, 2021	Regular Meeting	5:00 p.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 December 1, 2021 at 4:47 p.m. by vm.

ITEM #: 1.
DATE: 12/06/2021
AI #:388



APPROVAL OF MINUTES

SUBJECT

APPROVAL OF MINUTES

Recommendation

Approve the draft minutes from the Regular Meeting held on November 15, 2021 and the Special Meeting held on November 29, 2021. (Darcie McCracken, City Clerk)

Attachments

November 15, 2021 Draft Regular Meeting Minutes

November 29, 2021 Draft Special Meeting Minutes

City Council Regular Meeting

Municipal Court and Council Chambers
14455 W. Van Buren St., Suite B101
Goodyear, AZ 85338



Monday, November 15, 2021

6:00 p.m.

Meeting Minutes

CALL TO ORDER

Vice Mayor Hampton called the meeting to order at 6:00 p.m.

PLEDGE OF ALLEGIANCE AND INVOCATION BY COUNCILMEMBER KAINO

ROLL CALL

Present: **Vice Mayor Brannon Hampton; Councilmember Joe Pizzillo; Councilmember Sheri Lauritano; Councilmember Wally Campbell; Councilmember Bill Stipp; Councilmember Laura Kaino**

Absent: **Mayor Georgia Lord**

Staff Present: **City Manager Julie Karins; City Attorney Roric Massey; City Clerk Darcie McCracken**

MOTION BY Councilmember Joe Pizzillo, SECONDED BY Councilmember Laura Kaino to EXCUSE Mayor Lord. The motion carried as follows:

AYE: Vice Mayor Brannon Hampton, Councilmember Joe Pizzillo, Councilmember Sheri Lauritano, Councilmember Wally Campbell, Councilmember Bill Stipp, Councilmember Laura Kaino

Passed - Unanimously

CITIZEN COMMENTS/APPEARANCES FROM THE FLOOR

Tracy Turner, a Goodyear resident, spoke about the parking in her neighborhood from the nearby Millennium High School. She commented that she didn't believe the city street should be posted as no parking. Staff was directed to work with Ms. Turner to brainstorm for solutions.

CONSENT

MOTION BY Councilmember Wally Campbell, SECONDED BY Councilmember Joe Pizzillo to APPROVE Consent Agenda Items 1 through 4. The motion carried as follows:

AYE: **Vice Mayor Brannon Hampton, Councilmember Joe Pizzillo, Councilmember Sheri Lauritano, Councilmember Wally Campbell, Councilmember Bill Stipp, Councilmember Laura Kaino**

Passed - Unanimously

1. **APPROVAL OF MINUTES**

Recommendation

Approve the draft minutes from the Regular Meeting held on November 8, 2021. (Darcie McCracken, City Clerk)

2. **APPROVE BUDGET TRANSFERS**

Recommendation

Approve budget transfers. (Doug Sandstrom, Finance Director)

3. **APPROVE THE CONSTRUCTION OF A FENCE AT EL CIDRO AND ASSOCIATED BUDGET TRANSFER.**

Recommendation

Approve the construction of a fence at El Cidro in order to protect city owned parcel against illegal dumping and approve associated budget transfer. (Sumeet Mohan, P.E. Director of Engineering)

Council asked what was the purpose of the city's owning the property and Engineering Director Sumeet Mohan responded that there was a city facility on the property. Council also inquired if the fence would stop the dumping and Mr. Mohan responded in the affirmative.

4. **INTERGOVERNMENTAL AGREEMENT WITH AGUA FRIA UNION HIGH SCHOOL DISTRICT NO. 216 FOR JOINT USE OF FACILITIES**

Recommendation

Authorize the City Manager or designee to execute the Intergovernmental Agreement (IGA) between Agua Fria Union High School District (AFUHSD) No. 216 and the City of Goodyear for Joint Use Facilities between Desert Edge High School (DEHS) and the Goodyear Recreation Campus (GRC). (Deanna Ortiz, Recreation Superintendent)

BUSINESS

5. JUNETEENTH HOLIDAY

Human Resources Director Lyman Locket provided background information on the significance of June 19, 1865 as the actual date that slaves were freed. He added that it was 2 1/2 years after the Emancipation Proclamation. Mr. Locket shared the history of the observance on the federal, state and municipal levels. He continued that other cities were contemplating adding Juneteenth as a paid city holiday to be observed on June 19th.

Council commented with their support and added they were glad to be one of the first cities to formalize the recognition of Juneteenth.

MOTION BY Councilmember Bill Stipp, SECONDED BY Councilmember Sheri Lauritano to APPROVE June 19th as a new city holiday celebrating Juneteenth. The motion carried as follows:

AYE: Vice Mayor Brannon Hampton, Councilmember Joe Pizzillo, Councilmember Sheri Lauritano, Councilmember Wally Campbell, Councilmember Bill Stipp, Councilmember Laura Kaino

Passed - Unanimously

6. CONSIDER APPROVAL OF SUPER BOWL SPONSORSHIP AGREEMENT AND BUDGET TRANSFER

Ballpark Manager Bruce Kessman introduced the Arizona Super Bowl Host Committee President and CEO Jay Parry and Senior Vice President of Finance and Economic Impact Kyle Hedstrom. Ms. Parry spoke about the economic impacts to the valley from the 2015 Super Bowl which included \$720 million of economic impact, \$2 million in grants to Arizona non-profits, over 120,000 visitors to Arizona and greater than 50% hotel occupancy. She then reviewed the benefits of being a partner and sponsor of the Arizona Super Bowl Host Committee which included the "Official Partner" designation in advertising and communication efforts, the city logo on the Committee's website, and the ability to use the Arizona Super Bowl Host Committee logo on city advertising. She added that there would be partnership opportunities for community and event outreach and on social media.

Mr. Hedstrom spoke about the lodging and tourism impact and the expectation that of the four Goodyear hotels in the block, 407 rooms would be needed which is a 76% increase from 2015. He provided information about the Business Connect program which is the NFL and Arizona Super Bowl Host Committee's premier diversity, equity and inclusion program. The program identifies and engages local suppliers with networking events, business development training and contract opportunities before and after Super Bowl LVII.

Mr. Hedstorm reviewed the financial investment being requested from the City of Goodyear of \$99,082. He added that it was based on a formula which included hotel rooms and prop 302 funds in addition to other factors.

Council inquired where the funding would be coming from. Finance Director Doug Sandstrom responded that it would come from the unallocated fund balance which is revenue that has been higher than anticipated or planned for in the budget.

Council commented that it was a great opportunity for the city and they were looking forward to the partnership and the marketing returns.

Council asked when the events would begin. Ms. Parry responded that the build-out would begin about a month before the game and the activities surrounding the game would begin about a week before the game and continue until the day after with about 10 days of events.

MOTION BY Councilmember Wally Campbell, SECONDED BY Councilmember Sheri Lauritano to AUTHORIZE the City Manager or designee to execute the Arizona Super Bowl Host Committee Super Bowl LVII Sponsorship Agreement and AUTHORIZE the required budget transfer. The motion carried as follows:

AYE: Vice Mayor Brannon Hampton, Councilmember Joe Pizzillo, Councilmember Sheri Lauritano, Councilmember Wally Campbell, Councilmember Bill Stipp, Councilmember Laura Kaino

Passed - Unanimously

INFORMATION ITEMS

City Manager Julie Karins provided information regarding the Getting Arizona Involved in Neighborhoods (GAIN) events held over the weekend. She added her thanks to the residents and the Council and staff for attending.

Ms. Karins spoke about the City of Goodyear's 75th birthday that would be celebrated on Friday, November 19, with a free carnival at the site of the new Civic Square Park from 5 p.m. until 9 p.m.

FUTURE MEETINGS

December 6, 2021	Work Session	5:00 p.m.
December 6, 2021	Regular Meeting	6:00 p.m.

ADJOURNMENT

There being no further business to discuss, Vice Mayor Hampton adjourned the Regular Meeting at 6:32 p.m.

Darcie McCracken, City Clerk

Georgia Lord, Mayor

Date: _____

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the CITY COUNCIL REGULAR MEETING of the city of Goodyear, Arizona, held on November 15, 2021. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this ____ day of _____, 2021.

SEAL:

Darcie McCracken, City Clerk

City Council Special Meeting
Goodyear City Hall, Room 230
190 N. Litchfield Rd.
Goodyear, AZ 85338



Monday, November 29, 2021

5:00 p.m.

Meeting Minutes

CALL TO ORDER

Vice Mayor Hampton called the Special Meeting to order at 5:01 p.m.

ROLL CALL

Present: Vice Mayor Brannon Hampton; Councilmember Joe Pizzillo; Councilmember Sheri Lauritano; Councilmember Wally Campbell; Councilmember Bill Stipp; Councilmember Laura Kaino

Absent: Mayor Georgia Lord

Staff City Manager Julie Karins; City Attorney Roric Massey; City Clerk Darcie McCracken
Present:

MOTION BY Councilmember Sheri Lauritano, SECONDED BY Councilmember Joe Pizzillo to EXCUSE Mayor Lord. The motion carried as follows:

AYE: Vice Mayor Brannon Hampton, Councilmember Joe Pizzillo, Councilmember Sheri Lauritano, Councilmember Wally Campbell, Councilmember Bill Stipp, Councilmember Laura Kaino

Passed - Unanimously

BUSINESS

A VOTE MAY BE HELD TO CALL AN EXECUTIVE SESSION FOR THE FOLLOWING:

1. Pursuant to A.R.S. § 38-431.03(A)(1): Discussion with the City Manager regarding her annual performance evaluation.

MOTION BY Councilmember Bill Stipp, SECONDED BY Councilmember Wally Campbell to CONVENE an Executive Session. The motion carried as following:

AYE: Vice Mayor Brannon Hampton, Councilmember Joe Pizzillo, Councilmember Sheri Lauritano, Councilmember Wally Campbell, Councilmember Bill Stipp, Councilmember Laura Kaino

Passed - Unanimously

The City Council entered into Executive Session at 5:02 p.m.

ADJOURNMENT OF EXECUTIVE SESSION

Vice Mayor Hampton adjourned the Executive Session at 6:20 p.m.

RECONVENING OF SPECIAL MEETING

Vice Mayor Hampton reconvened the Special Meeting at 6:20 p.m.

CONTINUATION OF BUSINESS

2. Council will consider for possible action adjustments to the City Manager's compensation.

MOTION BY Councilmember Bill Stipp, SECONDED BY Councilmember Joe Pizzillo to provide a market adjustment to the City Manager's base salary of \$9,726. It was further moved to increase the base salary by 5% and leave all other terms as is. The motion carried as follows:

AYE: Vice Mayor Brannon Hampton, Councilmember Joe Pizzillo, Councilmember Sheri Lauritano, Councilmember Wally Campbell, Councilmember Bill Stipp, Councilmember Laura Kaino

Passed - Unanimously

ADJOURNMENT

There being no further business to discuss, Vice Mayor Hampton adjourned the Special Meeting at 6:21 p.m.

Darcie McCracken, City Clerk

Georgia Lord, Mayor

Date: _____

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the CITY COUNCIL SPECIAL MEETING of the city of Goodyear, Arizona, held on November 29, 2021. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this ____ day of _____, 2021.

SEAL:

Darcie McCracken, City Clerk

ITEM #: 2.
DATE: 12/06/2021
AI #:571



CITY COUNCIL ACTION REPORT

SUBJECT: APPROVE THIRD AMENDMENT TO DEVELOPMENT AGREEMENT
(Amending the 2006 Development Agreement between the City of Goodyear and Westcor/Goodyear, L.L.C.)

STAFF PRESENTER(S): Roric Massey, City Attorney

SUMMARY

Approval of this Third Amendment document will formally recognize Globe Land Investors, LLC as successor to the original Development Agreement and will extend the deadline to construct Phase II Improvements for the site for one year, until December 31, 2022.

Recommendation

ADOPT RESOLUTION NO. 2021-2195 APPROVING THE THIRD AMENDMENT TO THE DEVELOPMENT AGREEMENT, PROVIDING AUTHORIZATION AND DIRECTION FOR EXECUTION AND PROVIDING AN EFFECTIVE DATE. (Roric Massey, City Attorney)

FISCAL IMPACT

This Amendment extends certain sales tax reimbursement incentives and pre-paid fees that the Developer may be eligible for should certain improvements be constructed within specified time frames totaling approximately \$12 million.

This Amendment also reduces the potential Improvement District reimbursement by locking in a lower tier of repayment realizing a potential savings of approximately \$30 million over the course of the Agreement.

BACKGROUND AND PREVIOUS ACTIONS

The City of Goodyear and Westcor/Goodyear LLC(the "Developer"), first entered into the Development Agreement effective September 1, 2006 to provide for the planning and development of certain regional commercial and mixed-use development generally located northwest of McDowell Road and Bullard Avenue.

The Developer and the City formed the McDowell Road Corridor Improvement District and the Developer then constructed approximately \$43 million in roadway, infrastructure, and park improvements to Bullard Wash Park to support the regional center and surrounding commercial development. The Developer then constructed the Market at Estrella Falls power

center generally located at the intersection of McDowell Road and Pebblecreek Parkway.

The Great Recession delayed the construction of the planned regional mall and on December 14, 2009, the City and Macerich/Westcor entered into the First Amendment to the Development Agreement to extend the time frames to meet certain milestones in the project development due to ongoing economic conditions.

The Second Amendment to the Development Agreement was entered into by the parties on November 17, 2014, to redefine project milestones and provide for Phase I and Phase II Improvements for the project. The developer subsequently constructed the existing Harkins Theatre and developed a restaurant pad site for the Cheddar's Restaurant. The Second Amendment required that the Phase II improvements be completed no later than December 31, 2021 in order for certain incentives to remain in place.

In 2021, Globe Land Investors, LLC ("Globe"), purchased the approximately 150-acre regional center site from Macerich and assumed all rights and obligations under the original Development Agreement and its Amendments.

STAFF ANALYSIS

Globe is currently in the process of re-envisioning the development of the 150-acre site and has engaged a development partner in that process. Globe and the City have collaboratively begun working on this project and anticipate it will continue into 2022 and likely involve re-zoning the site, and a significantly restructured development agreement will need to be negotiated.

This proposed Third Amendment to the Development Agreement will extend the deadline to construct Phase II improvements for one year until December 31, 2022, and will keep the associated incentives and pre-paid fees in place until that time to allow the parties to collaborate on a new vision for development of a commercial and mixed- use development on the site.

The Third Amendment also formally recognizes that Globe Land Investors has assumed all rights and obligations under the Development Agreement and has replaced Macerich/Westcor as the master developer of the site.

Under the original Development Agreement, there was a tiered level of reimbursement to the Developer related to Improvement District costs expended for infrastructure improvements. This Amendment will lock in the reimbursement at the lower City Improvement Payment obligation under the terms of the original Development Agreement, rather than a higher reimbursement rate the Developer would have been eligible for, had they met their Phase II construction obligations by December 31, 2021.

Attachments

Resolution w/ Exhibit A-Agreement

RESOLUTION NO. 2021-2195

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, APPROVING THE THIRD AMENDMENT TO THE DEVELOPMENT AGREEMENT; PROVIDING AUTHORIZATION AND DIRECTION FOR EXECUTION AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, The City of Goodyear and Westcor/Goodyear LLC (the Developer), first entered into a Development Agreement effective September 1, 2006 to provide for the planning and development of certain regional commercial and mixed-use development generally located northwest of McDowell Road and Bullard Avenue and recorded in the Official Records of Maricopa County, Arizona on September 13, 2006, in Recording No. 2006-1215606, referred hereafter as (the "2006 Development Agreement"); and

WHEREAS, the Developer and the City formed the McDowell Road Corridor Improvement District and the Developer then constructed approximately \$43 million in roadway, infrastructure, and park improvements to Bullard Wash Park to support the regional center and surrounding commercial development. The Developer then constructed the Market at Estrella Falls power center generally located at the intersection of McDowell Road and Pebblecreek Parkway; and

WHEREAS, the Great Recession delayed the construction of the planned regional mall and on December 14, 2009, the City and Macerich/Westcor entered into the First Amendment to the 2006 Development Agreement, recorded in the Official Records on December 14, 2009, in Recording No. 2009-1143945, to extend the time frames to meet certain milestones in the project development due to ongoing economic conditions; and

WHEREAS, the Second Amendment to the 2006 Development Agreement was entered into by the parties on November 17, 2014, and recorded in the Official Records on November 20, 2014, in Recording No. 2014-0769834; to redefine project milestones and provide for Phase I and Phase II Improvements for the project and further required the Phase II Improvements be completed no later than December 31, 2021 in order for certain incentives to remain in place; and

WHEREAS, the developer subsequently constructed the existing Harkins Theatre and developed a restaurant pad site for the Cheddar's Restaurant; and

WHEREAS, The 2006 Development Agreement, as amended, will be referred to in this Amendment as the (Development Agreement); and

WHEREAS, in 2021, Globe Land Investors, LLC, a Delaware limited liability company ("Globe"), purchased the approximate 150-acre regional center site from Macerich and by the terms of an "Assignment and Assumption of Development Agreement" recorded on June 30, 2021, in Recording No. 2021-0720083, has succeeded to all of its predecessor's right, title and interest in and to the Development Agreement as "Developer" named in the Development Agreement, and has assumed, and has agreed to be bound by, all of its predecessor's rights and obligations as "Developer" contained in the Development Agreement that first arise from and after the date of the assignment and Globe's assumption; and

WHEREAS, the City acknowledges the assignment of the Development Agreement to, and its assumption by, Globe; and recognizes Globe as Developer in the Development Agreement; and

WHEREAS, Globe is currently in the process of re-envisioning the development of the 150-acre site and has engaged a development partner in that process; In addition, Globe and the City have collaboratively begun working on this project and anticipate it will continue into 2022 and likely involve re-zoning the site, and a significantly restructured development agreement will need to be negotiated; and

WHEREAS, In view of the assignment and assumption of the Development Agreement, the changes in the practice, logistics, conduct and economics of retail sales since the original date of execution of the Development Agreement in 2006, and subsequent changes in planning and zoning affecting the Property, the Parties now wish to amend the Development Agreement as set forth in this Third Amendment, which is attached hereto this Resolution as Exhibit "A"; and

WHEREAS, this Third Amendment document will extend the deadline to construct Phase II improvements for one year until December 31, 2022, and will keep the associated incentives and pre-paid fees in place until that time to allow the parties to collaborate on a new vision for development of a commercial and mixed-use development on the site; and

WHEREAS, the City and Globe confirm their obligations and rights arising in and under the Development Agreement, including, but not limited to, reimbursements to Globe as successor to Developer, as well as acknowledgement of City fees that have been prepaid pursuant to the terms of the Development Agreement; and

WHEREAS, under the original Development Agreement there was a tiered-level of reimbursement to the Developer related to Improvement District costs expended for infrastructure improvements; and

WHEREAS, this Third Amendment will lock in the reimbursement at the lower City Improvement payment obligation under the terms of the original Development Agreement, than the higher reimbursement rate the Developer would have been eligible for, had they met their Phase II construction obligations by December 31, 2021; and

WHEREAS, notwithstanding anything in this Third Amendment to the contrary, the City's obligation to pay the Reimbursement Amount to Developer is expressly conditioned upon Developer's completion of construction of the Phase II Improvements prior to December 31, 2022.

WHEREAS, the this Third Amendment to Development Agreement is intended to be a development agreement pursuant to A.R.S. § 9-500.05;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:

SECTION 1. The Mayor and Council of the City of Goodyear hereby approve the Third Amendment to the Development Agreement with Globe Land Investors, LLC, a Delaware limited liability company, attached as Exhibit "A."

SECTION 2. The City Manager or her designee is hereby authorized and directed to sign and execute the Third Amendment to the Development Agreement and to take any and all actions necessary to carry out the intent of this Resolution and the terms of this Third Amendment Agreement.

SECTION 3. This Resolution shall become effective upon its adoption by the Mayor and Council of the City of Goodyear.

PASSED AND ADOPTED by the Mayor and Council of the City of Goodyear, Maricopa County, Arizona, by a _____ vote, this _____ day of _____, 20_____.

Georgia Lord, Mayor

Date: _____

ATTEST:

APPROVED AS TO FORM:

Darcie McCracken, City Clerk

Roric Massey, City Attorney

EXHIBIT 'A'

THIRD AMENDMENT TO DEVELOPMENT AGREEMENT

(On the following pages)

When recorded, return to:
City of Goodyear
190 North Litchfield Road
Goodyear, Arizona 85338
Attn: City Manager

THIRD AMENDMENT TO DEVELOPMENT AGREEMENT

=====

This Third Amendment to Development Agreement (this “Amendment”) is made to be effective as of December ___, 2021 (the “Effective Date”) between the City of Goodyear, an Arizona municipal corporation (“City”) and Globe Land Investors, LLC, a Delaware limited liability company (“Globe”). Each of City and Globe may be referred to in this Amendment as a “Party,” or collectively as the “Parties.”

1. Recitals. As background to this Amendment, the Parties state, recite and acknowledge the following recitals, each of which is fully incorporated into this Amendment as a material term:

A. City previously entered into a Development Agreement with Globe’s predecessor as the party named in that agreement as “Developer.” The Development Agreement was dated to be effective as of September 1, 2006, and was recorded in the Official Records of Maricopa County, Arizona (the “Official Records”) on September 13, 2006, in Recording No. 2006-1215606 (the “2006 Development Agreement”).

B. That 2006 Development Agreement was amended twice: by a First Amendment to Development Agreement dated December 14, 2009, which was recorded in the Official Records on December 14, 2009, in Recording No. 2009-1143945, and by a Second Amendment to Development Agreement dated November 17, 2014, which was recorded in the Official Records on November 20, 2014, in Recording No. 2014-0769834.

C. The 2006 Development Agreement, as amended, will be referred to in this Amendment as the “Development Agreement.”

D. Globe, by the terms of an “Assignment and Assumption of Development Agreement” dated June 29, 2021, which was recorded on June 30, 2021, in Recording No. 2021-

0720083, has succeeded to all of its predecessor's right, title and interest in and to the Development Agreement as "Developer" named in the Development Agreement, and has assumed, and has agreed to be bound by, all of its predecessor's rights and obligations as "Developer" contained in the Development Agreement that first arise from and after the date of the assignment and Globe's assumption.

E In view of (i) the assignment and assumption of the Development Agreement, (ii) changes in the practice, logistics, conduct and economics of retail sales since the original date of execution of the Development Agreement in 2006, and (iii) subsequent changes in planning and zoning affecting the Property, the Parties now wish to amend the Development Agreement as set forth in this Amendment.

2. Agreement. For Ten Dollars, the exchange of promises contained in this Amendment, and other valuable consideration, the receipt and sufficiency of which are acknowledged by the Parties, the Parties agree as follows:

A. City acknowledges the assignment of the Development Agreement to, and its assumption by, Globe; and City recognizes Globe as Developer in the Development Agreement.

B. City and Globe confirm their obligations and rights arising in and under the Development Agreement, including (but not limited to) Section 8 (as to Reimbursements to Globe as successor to Developer) and acknowledgement of City Fees that have been prepaid pursuant to the terms of the Development Agreement and remain available to Globe as Developer until December 31, 2022; provided, however, that City and Globe acknowledge and agree that the City's obligation to make Rebate Payments pursuant to the Development Agreement shall hereafter be limited to (i) the portion of the Developer's ID Obligations defined as the City's ID Payment Obligation (i.e, the sum of \$25,000,000.00 plus interest thereon as specified in the Development Agreement) and (ii) the Reimbursement Amount in the amount of \$10,000,000. The City shall have no obligation to pay any portion of the Developer's ID Obligations that exceed the City's ID Payment obligation. The City's obligation for Rebate Payments shall be so limited regardless of whether Completion of Construction of the Phase II Improvements occurs prior to December 31, 2022. Notwithstanding anything in this Amendment to the contrary, the City's obligation to pay the Reimbursement Amount to Developer expressly conditioned upon Developer's Completion of Construction of the Phase II Improvements prior to December 31, 2022.

C. The date for Completion of Construction of the Phase II Improvements is hereby extended to December 31, 2022.

3. Miscellaneous. Terms not otherwise defined in this Amendment have the meanings attributed to them in the Development Agreement. Except as expressly modified by this Amendment, the Development Agreement is unchanged, and is in full force and effect. This Amendment may be executed by the Parties electronically and in counterparts. The Parties

represent to each other that their execution and delivery of this Amendment has been authorized by all requisite corporate or company (as applicable) action.

Signatures of the Parties are on the following page.

Signature Page to Third Amendment to Development Agreement

Executed by the Parties to be effective as of the Effective Date set forth above.

City of Goodyear, an Arizona municipal
corporation

By: _____
Printed Name: _____
Its: _____
Date of Execution: _____

Attest:

By: _____
City Clerk

Approved:

By: _____
City Attorney

Globe Land Investors, LLC, a Delaware
limited liability company

By: _____
Printed Name: _____
Title: _____
Date of Execution: _____

State of Arizona }
 }
Maricopa County }

The foregoing Third Amendment to Development Agreement was acknowledged before me, the undersigned Notary Public, by _____, known to me or otherwise proven to be the _____ of Globe Land Investors, LLC, who executed the same on behalf of the said company.

By: _____
Seal:

ITEM #: 3.
DATE: 12/06/2021
AI #:540



CITY COUNCIL ACTION REPORT

SUBJECT: APPROVE EXPENDITURE UP TO \$1,568,560 FOR THE PURCHASE AND INSTALLATION OF A REPLACEMENT EMERGENCY BACKUP GENERATOR FOR BOOSTER SITE 11 (PROJECT 60047)

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

OTHER PRESENTER(S):

Barbara Chappell, Deputy Public Works Director

SUMMARY

Approval of an expenditure up to \$1,568,560 for the purchase and installation of a new replacement backup generator at Booster Site 11.

Recommendation

Approve expenditure of funds up to \$1,568,560 to purchase and install a new replacement generator for Booster Site 11. (Barbara Chappell, Deputy Public Works Director)

FISCAL IMPACT

The Booster 11 Generator Replacement CIP Project (60047) was approved by Council in the Capital Improvement Plan with a project budget of \$1,920,200 in Water operating funds. \$351,446 have already been allocated for the design phase. We are currently requesting approval up to the remaining project balance of \$1,568,560 for the equipment and installation.

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. The city has developed and approved a Capital Improvement Program for FY2022 through FY2026. The existing generator replacement at the Booster Site 11 is planned to be replaced in FY2022 per this plan.

STAFF ANALYSIS

Per the approved CIP, the generator at Booster Site 11 which includes the Bullard Water Reverse Osmosis Treatment Facilities is planned to be replaced in FY2022 due to the age of the unit. These facilities are critical to the operations of the production and treatment systems in order to supply potable water at required pressures to meet the daily demands of our customers.

ITEM #: 4.
DATE: 12/06/2021
AI #:574



CITY COUNCIL ACTION REPORT

SUBJECT: APPROVAL OF POWER OF ATTORNEY DOCUMENTS FOR RIDGEWAY INTERNATIONAL USA, INC. AND JOHN S. CONNOR GLOBAL LOGISTICS FOR SHIPMENT OF LESS-LETHAL WEAPONS

STAFF PRESENTER(S): Santiago Rodriguez, Chief of Police

OTHER PRESENTER(S):

Lisa Maxie-Mullins

SUMMARY

Approval of Power of Attorney documents necessary to facilitate the shipping of less-lethal weapons from Canada to Arizona.

Recommendation

ADOPT RESOLUTION NO. 2021-2191 APPROVING THE POWER OF ATTORNEY DOCUMENTS AND ACKNOWLEDGEMENT OF TERMS AND CONDITIONS FOR RIDGEWAY INTERNATIONAL, INC. AND JOHN S. CONNOR GLOBAL LOGISTICS; PROVIDING AUTHORIZATION FOR THE CITY MANAGER OR HER DESIGNEE AND THE CITY ATTORNEY TO TAKE ANY AND ALL ACTIONS NECESSARY IN FURTHERANCE OF THE POWER OF ATTORNEY; AND PROVIDING FOR AN EFFECTIVE DATE. (Santiago Rodriguez, Chief of Police)

FISCAL IMPACT

The purchase price for the less-lethal weapons are currently allocated for expenditure in the FY2022 budget.

BACKGROUND AND PREVIOUS ACTIONS

In the beginning of calendar year 2020, the Goodyear Police Department reviewed replacement options for aging less-lethal weapon systems utilized by the Special Assignments Unit (SAU). In September 2020, the Department decided to move forward with the ARWEN less-lethal launcher, a product manufactured and distributed by Police Ordnance, a Canadian company.

On September 2, 2020, the Department submitted a purchase order to Police Ordnance for the purchase of 2 ARWEN 37mm less-lethal launchers and associated ammunition. In June 2021, the ammunition was delivered to the Department. However, due to pandemic supply

chain issues and subsequent changes in custom processes, the weapons have not been delivered.

In June 2021, Police Ordnance advised the Department of changes to U.S. Customs and Alcohol Tobacco and Firearms requirements regarding the shipment of weapons. Between June and August 2021, Goodyear Police has engaged in communications with ATF, U.S. Customs, and Police Ordnance in an effort to resolve and comply with U.S. Customs requirements.

The Department was advised by U.S. Customs that shipping the weapons across the Canadian border requires registered shipping agents and customs brokers. In coordination with the vendor and various federal agencies, the Department has identified Ridgeway International, Inc., a shipping company, and John S. Connor Global Logistics, a customs brokerage firm. Both Ridgeway and Connor require the execution of Power of Attorney documents in order to move forward with transporting the weapons from Canada to Arizona. U.S. Customs has confirmed that the POA is generally requested and required by custom brokers and shipping agents and that is the only legally permissible way to transport the weapons across the Canadian border.

STAFF ANALYSIS

The Department is requesting Council's approval of the Ridgeway and Connor POAs to facilitate the transport of the ARWEN less-lethal weapons across the Canadian border. These weapons will be utilized by SAU to carry essential SAU functions which include the resolution of barricaded subjects, high risk search warrants, arrest of subjects with high violence potential, and hostage rescues. The SAU response includes the use of "less lethal" tools and equipment.

The ARWEN less-lethal weapons will be utilized to apprehend subjects in the most efficient manner by delivering less-lethal rounds and aerosol irritants. These weapons have been utilized by a several Arizona police departments, including Phoenix, Chandler and Scottsdale. The ARWEN less-lethal weapons are expected to last 7 years and are needed to replace aging less lethal weapons which are more than 15 years old.

Attachments

Resolution

RESOLUTION NO. 2021-2191

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, APPROVING THE POWER OF ATTORNEY DOCUMENTS AND ACKNOWLEDGEMENT OF TERMS AND CONDITIONS FOR RIDGEWAY INTERNATIONAL, INC. AND JOHN S. CONNOR GLOBAL LOGISTICS; PROVIDING AUTHORIZATION FOR THE CITY MANAGER OR HER DESIGNEE AND THE CITY ATTORNEY TO TAKE ANY AND ALL ACTIONS NECESSARY IN FURTHERANCE OF THE POWER OF ATTORNEY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Goodyear City Code Article 4-1, City of Goodyear has an established Police Department; and

WHEREAS, pursuant to Goodyear City Code sections 4-1-5 and 4-1-6, the duties of the Goodyear Police Department includes enforcing the Goodyear City Code and the statutes of the State of Arizona within jurisdictional limits, arresting and charging violators, and answering calls for aid and assistance when authorized beyond city limits; and

WHEREAS, the City of Goodyear Police Department Special Assignments Unit (SAU), is responsible for responses to critical incidents, including barricaded subjects, high risk search and arrest warrants; and

WHEREAS, the City of Goodyear Police Department, utilizes less-lethal weapon systems to end use of force situations with minimal force whenever possible; and

WHEREAS, the City of Goodyear Police Department is in the process of purchasing several less-lethal weapons from an Canadian company, Police Ordnance; and

WHEREAS, the less-lethal weapons require shipment from Canada to Arizona in accordance with United States Customs and Border Protection requirements; and

WHEREAS, Ridgeway International Inc., is a shipping company, and John S. Connor Global Logistics, is a customs brokerage firm; and

WHEREAS, the shipping company, Ridgeway International Inc. requires the city to execute a Power of Attorney Designation as Export Forwarding Agent and Acknowledgement of Terms and Conditions (Ridgeway POA), which is attached hereto as Exhibit A; and

WHEREAS, the customs brokerage firm, John S. Connor Global Logistics, requires the city to execute a Customs Power of Attorney and Acknowledgement of Terms and Conditions (Global POA), which is attached hereto as Exhibit B; and

WHEREAS, both Ridgeway International Inc. and John S. Connor Global Logistics coordinate import and shipping with the less-lethal weapon vendor in accordance with federal customs requirements; and

WHEREAS, the approval and execution of both the Ridgeway POA and Global POA are required to ship the weapons from Canada to Arizona and is necessary for the City of Goodyear Police Department to obtain the less-lethal weapons to facilitate and carry-out certain police operations.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:

SECTION 1. APPROVAL OF THE POWER OF ATTORNEY DOCUMENTS

The Mayor and Council of the City of Goodyear hereby approves of the following:

- A. The Ridgeway International, Inc. Power of Attorney Designation as Export Forwarding Agent and Acknowledgment of Terms and Conditions, a copy of which is attached hereto as Exhibit "A"; and
- B. The John S. Connor Global Logistics Customs Power of Attorney and Acknowledgement of Terms and Conditions; a copy of which is attached hereto as Exhibit "B".

SECTION 2. PROVIDING AUTHORIZATION AND DIRECTION

The Mayor and Council of the City of Goodyear hereby authorize and direct the City Manager or her designee to sign and execute the Power of Attorney documents hereto attached as Exhibit "A" and "B," and hereby further authorize the City Attorney and/or the City Manager or her designee to take any and all actions necessary in furtherance of this document and to carry out the intent of this Resolution, including the revocation of Power of Attorney documents after the weapons have been received.

SECTION 3. EFFECTIVE DATE

This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED by the Mayor and Council of the City of Goodyear, Maricopa County, Arizona, by a _____ vote, this _____ day of _____, 20_____.

Georgia Lord, Mayor

Date: _____

ATTEST:

APPROVED AS TO FORM:

Darcie McCracken, City Clerk

Roric Massey, City Attorney

EXHIBIT “A”

Ridgeway International, Inc. Power of Attorney Designation as Export Forwarding Agent
and Acknowledgment of Terms and Conditions

[On the following pages]

**POWER OF ATTORNEY
DESIGNATION AS EXPORT FORWARDING AGENT
and
Acknowledgment of Terms and Conditions**

Copyright 1995, National Customs Brokers and Forwarders Association of America, Inc.

(Revised 01/00)

✓ appropriate box: ☐ Individual
☐ Partnership
☒ Corporation
☐ Sole Proprietorship
☐ Limited Liability Company

KNOW ALL MEN BY THESE PRESENTS: That, City of Goodyear (Grantor), doing business as a municipal corporation under the laws of the State of Arizona, residing or having a principal place of business at 190 N. Litchfield Road, Goodyear, Arizona, hereby constitutes and appoints Ridgeway International USA Inc, its officers, employees, and/or specifically authorized agents (Grantee), to act for and on its behalf as a true and lawful agent and attorney of the grantor for and in the name, place and stead of said grantor, from this date, in the United States (the "territory") either in writing, electronically, or by other authorized means, to:

Make, endorse, sign, declare, or swear to any declaration, certificate, bill of lading, carnet or any other documents required by law or regulation in connection with the exportation or transportation, of any merchandise, shipped or consigned by said grantor; Perform any act or condition, which may be required by law or regulation in connection with such merchandise; to receive any merchandise on grantor's behalf;

Make endorsements on bills of lading conferring authority to transfer title; make, sign, declare, or swear to any statement or certificate required by law or regulation for export purposes, regardless of whether such document is intended for filing;

Sign, seal, and deliver for and as the act of said grantor any bond required by law or regulation in connection with exported merchandise, or in connection with the lading or navigation of any vessel or other means of conveyance owned or operated by said grantor, and any and all bonds which may be voluntarily given and accepted under applicable laws and regulations, or declarations, affidavits or statements in connection with the export of merchandise;

Sign and swear to any document and to perform any act that may be necessary or required by law or regulation in connection with the lading, or operation of any vessel or other means of conveyance;

Authorize other duly licensed forwarders within the territory to act as grantor's agent; if the grantor is a nonresident of the United States, to accept service of process on behalf of the grantor;

Grantor authorizes the above grantee to act within the territory as lawful agent and sign or endorse export documents (i.e., commercial invoices, bills of lading, insurance certificates, drafts and any other document) necessary for the completion of an export on grantor's behalf as may be required under law and regulation in the territory and to appoint forwarding agents on grantor's behalf;

And generally to transact business, including filing of claims pursuant to grantor's request, in which said grantor is or may be concerned or interested and which may properly be transacted or performed by an agent and attorney;

Giving to said agent and attorney full power and authority to do anything whatever requisite and necessary to be done in the premises as fully as said grantor could do if present and acting, hereby ratifying and confirming all that the said agent and attorney shall lawfully do by virtue of these presents;

This power of attorney to remain full force and effect until revocation in writing is duly given to and received by grantee;

Grantor acknowledges receipt of Ridgeway International USA Inc., Terms and Conditions of Service governing all transactions between the Parties.

If the Grantor is a Limited Liability Company, the signatory certifies that he/she has full authority to execute this power on behalf of the Grantor.

IN WITNESS WHEREOF, the said City of Goodyear

caused these presents to be sealed and signed:

_____(Signature)
Julie Karins, City of Goodyear City Manager

_____(Date)

INDIVIDUAL OR PARTNERSHIP CERTIFICATION (This section is not applicable to the City of Goodyear)

CITY _____
COUNTY _____ SS: _____
STATE _____

On this _____ day of _____, 20_____, personally appeared before me
_____ residing at

_____, personally known or sufficiently
identified to me, who certifies that _____(is) (are) the individual (s) who executed the
foregoing instrument and acknowledge it to be _____free act and deed.

(Notary Public)

(To be made by an officer of other than the one who executes the power of attorney)

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said corporation, at the City of
Goodyear

_____ (Signature)

_____ (Date)

[Background](#)

[Regulations and](#)

[Compliance](#)

[Case Studies and](#)

[Process](#)

[Improvement](#)

[Storage Facilities](#)

[Experience](#)

[Personnel](#)

[Contact Us](#)

[Terms of Service](#)

TERMS OF SERVICE

The following are our Standard Conditions of Trading as a Freight Forwarder. A full set of our Standard Trading Conditions are available on application.

RIDGEWAY INTERNATIONAL USA INC. CONDITIONS OF TRADING AS A FREIGHT FORWARDER

PART I:

GENERAL CONDITIONS

Application

1. (A) Subject to sub-clause (B) below, all services of the Company whether gratuitous or not are subject to these Conditions.
 - (i) The provisions of Part I shall apply to all such services.
 - (ii) The provisions of Part II shall only apply to the extent that such services are provided by the Company as agents.
 - (iii) The provisions of Part III shall only apply to the extent that such services are provided by the Company as principals.(B) The following provisions shall be paramount in so far as such provisions are inconsistent with these Conditions:
 - (i) the provisions embodied in a document bearing a title of or including "bill of lading" or "waybill" (whether or not negotiable) where such document is issued by or on behalf of the Company and provides that the Company contracts as a carrier
 - (ii) the provisions of Part IV of these Conditions, to the extent that the Company provides the services of cleaning, maintenance, repair or storage of Containers and ancillary services connected therewith.

variation, cancellation or waiver of these Conditions.

2. All services are provided by the Company as agents except in the following circumstances where the Company acts as principal:(A) where the company performs any carriage, handling or storage of Goods but only to the extent that the carriage is performed by the Company itself or its servants and the Goods are in the actual custody and control of the Company, or(B) where prior to the commencement of the carriage of Goods the Customer in writing demands from the Company particulars of the identity, services or charges of persons instructed by the Company to perform part or all of the carriage, the Company shall be deemed to be contracting as a principal in respect of which the Company fails to give such particulars demanded within 28 days of the Company's receipt of such demand, or(C) to the extent that the Company expressly agrees in writing to act as a principal, or

(D) to the extent that the Company is held by a court of law to have acted as a principal.

3. Without prejudice to the generality of Clause 2(A) the charging by the Company of a fixed price for a service or services of whatsoever nature shall not in itself determine or be evidence that the Company is acting as an agent or a principal in respect of such service or services;(B) the supplying by the Company of their own or leased equipment shall not in itself determine or be evidence that the Company in acting as an agent or a principal in respect of any carriage, handling or storage of Goods;(C) the company acts as an agent where the Company procures a bill of lading or other document evidencing a contract of carriage between a person, other than the Company, and the Customer or Owner;

similar services.

Definitions

4. In these conditions (A) "Company" is Ridgeway International USA Inc. (B) "Customer"

means any person at whose request or on whose behalf the Company provides a service;

(C) "Person"

includes persons or any body or bodies corporate;

(D) "Owner"

includes the owner, shipper and consignee of the Goods and any other person who is or may become interested in the Goods and anyone acting on their behalf;

(E) "Authority"

A duly constituted legal or administrative person, acting within its legal power and exercising jurisdiction within any nation, state, municipality, port or airport;

(F) "Goods"

includes the cargo and any container not supplied by or on behalf of the Company, in respect of which the Company provides a service;

(G) "Container"

includes any container, flexitank, trailer, transportable tank, flat, pallet or any article of transport used to carry or consolidate goods and any equipment of or connected thereto;

(H) "Dangerous Goods"

includes goods which are or may become of a dangerous, inflammable, radioactive or damaging nature and goods likely to harbor or encourage vermin or other pests;

(I) "Hagues Rules"

means the provisions of the International Convention for

means a statement of the Customers specific requirements.

Obligations of Customer

5. The Customer warrants that he is either the Owner or the authorized agent of the Owner of the Goods and that he is authorized to accept and is accepting these Conditions not only for himself but also as agent for and on behalf of the Owner of the Goods.
6. The Customer warrants that he has reasonable knowledge of matters affecting the conduct of his business, including but not limited to the term of sale and purchase of the Goods and all other matters relating thereto.
7. The Customer shall give sufficient and executable instructions.
8. The Customer warrants that the description and particulars of the Goods are complete and correct
9. The Customer warrants that the Goods are properly packed and labelled, except where the Company has accepted instructions in respect of such services.

Special Instructions, Goods and Services

10. (A) Unless otherwise previously agreed in writing, the Customer shall not deliver to the Company or cause the Company to deal with or handle Dangerous Goods.(B) If the Customer is in breach of sub-clause (A) above he shall be liable for all loss or damage whatsoever caused by or to or in connection with the Goods howsoever arising and shall defend, indemnify and hold harmless the Company against all penalties, claims, damages, costs and expenses whatsoever arising in connection therewith and the goods may without notice be destroyed or otherwise dealt with at the sole discretion of the Company or any other person in whose custody they may be at the relevant time.(C) If the Company agrees to accept Dangerous Goods and then in the opinion of the Company or any other person they

11. The Customer undertakes not to tender for transportation any Goods which require temperature control without previously giving written notice of their nature and particular temperature range to be maintained and in the case of a temperature controlled Container stuffed by or on behalf of the Customer further undertakes that the Container has been properly pre-cooled or preheated as appropriate, that the Goods have been properly stuffed in the Container and that its thermostatic controls have been properly set by the Customer. If the above requirements are not complied with the Company shall not be liable for any loss of or damage to the Goods caused by such non-compliance.
12. No insurance will be effected except upon express instructions given in writing by the Customer and all insurances effected by the Company are subject to the usual exceptions and conditions of the policies of the insurance Company or underwriters taking the risk. Unless otherwise agreed in writing, the Company shall not be under any obligation to effect a separate insurance on each consignment but may declare it on any open or general policy. The Company is an agent in respect of the effecting of insurance and should the insurers dispute their liability for any reason the insured shall have recourse against the insurers only and the Company shall not be under any responsibility or liability whatsoever in relation thereto notwithstanding that the premium upon the policy may not be at the same rate as that charged by the Company or paid to the Company by its customers.
13. Except in accordance with express instructions previously received in writing and accepted in writing by the Company, the Company shall not be obliged to make any declaration for the purpose of any statute, convention or contract as to the nature or value of any Goods or as to any special interest in delivery.
14. Unless otherwise previously agreed in writing or otherwise provided for under the provisions of a document signed by

misdelivery of Goods.

15. Unless otherwise previously agreed in writing that the Goods shall depart or arrive by a particular date, the Company accepts no responsibility for departure or arrival dates of Goods.
16. (A) The Customer and Owner shall defend, indemnify and hold harmless the Company against all liability, loss, damage, costs and expenses arising (i) from the nature of the goods unless caused by the Company's negligence, (ii) out of the Company acting in accordance with the Customer's or Owner's instructions, or (iii) arising from the breach of warranty or obligation by the Customer or arising from the negligence of the Customer or Owner. (B) Except to the extent caused by the Company's negligence, the Customer and Owner shall be liable for and shall defend, indemnify, and hold harmless the Company in respect of all duties, taxes, imposts, levies, deposits and outlays of whatsoever nature levied by any Authority and for all payments, fines, costs, expenses, loss and damage whatsoever incurred or sustained by the Company in connection therewith. (C) Advice and information, in whatever form it may be given, are provided by the Company for the Customer only and the Customer shall defend, indemnify and hold harmless the Company for all liability, loss, damage, costs and expenses arising out of any other person relying on such advice or information. (D) (i) The Customer undertakes that no claim be made against any servant, sub-contractor or agent of the Company which imposes or attempts to impose upon any of them any liability whatsoever in connection with the Goods, if any such claim should nevertheless be made, to indemnify the Company against all consequences thereof. (ii) Without prejudice to the foregoing, every such servant, sub-contractor or agent shall have the benefit of all provisions herein, as if such provisions were expressly for their benefit. In entering into this contract the Company, to the extent of those provisions, does not only on his behalf, but as an agent and trustee, for such servants, sub-

preferred in excess of the liability of the Company under the terms of these Conditions and without prejudice to the generality of this clause this indemnity shall cover all claims, costs and demands arising from or in connection with the negligence of the Company, its servants, sub-contractors and agents.

(iv) In this clause, "sub-contractors" includes direct and indirect sub-contractors and their respective servants and agents.

(E) The customer shall be liable for the loss, damage, contamination, soiling, detention or demurrage before, during and after the Carriage of property (including, but not limited to, Containers) of the Company or any person or vessel referred to in (D) above caused by the Customer or Owner or any person acting on behalf of either of them or for which the Customer is otherwise responsible.

Charges etc.

17. (A) The customer shall pay to the Company in cash or agreed all sums immediately when due without deduction or deferment on account of any claim, counterclaim or set-off. (B) When the Company is instructed to collect freight, duties, charges or other expenses from any person other than the Customer, the Customer shall be responsible for the same on receipt of evidence of demand and non-payment by such other person when due. (C) On all amounts overdue to the Company, the Company shall be entitled to interest, calculated at 4 percent above the base rate of the Lloyds Bank Plc applicable during the period that such amounts are overdue.

Liberties and Rights of Company

18. The Company shall be entitled, except insofar as has been otherwise agreed in writing, to enter into contracts on behalf of itself or the Customer and without notice to the Customer. (A) for the carriage of Goods by any route, means

whether on shore or afloat and for any length of time,

(D) for the carriage or storage of Goods in containers or with other goods of whatever nature,

(E) for the performance of its own obligations, and to do such acts as in the opinion of the Company may be necessary or incidental to the performance of the Company's obligations.

19. (A) The Company shall be entitled but under no obligation, to depart from the Customer's instructions in any respect if in the opinion of the Company there is good reason to do so in the Customer's interest and it shall not thereby incur any addition liability.(B) The Company may at any time comply with the orders or recommendations given by any Authority. The responsibility of the Company in respect of the Goods shall cease on the delivery or other disposition of the Goods in accordance with such orders or recommendations.

20. If at any time the performance of the Company's obligations, in the opinion of the Company or any other person whose services the Company makes use of, is or is likely to be affected by any hindrance, risk, delay, difficulty or disadvantage whatsoever and which cannot be avoided by reasonable endeavors by the Company may, on giving notice in writing to the Customer or Owner or without notice where it is not reasonably possible to give such notice, treat the performance of its obligations as terminated and place the Goods or any part of them at the Customer or Owner's disposal at any place, which the Company may deem safe and convenient, whereupon the responsibility of the Company in respect of the Goods shall cease. The Customer shall be responsible for any additional costs of carriage to and delivery and storage at such place and all other expenses incurred by the Company.

Owner to take delivery thereof, the Company or such other person shall be entitled to store the Goods in the open or under cover at the sole risk and expense of the Customer.

22. Notwithstanding clauses 20 and 21, the Company shall be entitled but under no obligation at the expense of the Customer payable on demand and without any liability to the Customer and Owner, to sell or dispose of (A) on giving 21 days notice in writing to the customer all Goods which in the opinion of the Company cannot be delivered as instructed, and (B) without notice Goods which have perished, deteriorated or altered, or are in immediate prospect of doing so in a manner which has caused or may be reasonably expected to cause loss or damage to any person or property or to contravene applicable regulations.
23. The Company shall have a particular and general lien on all Goods or documents relating to Goods in its possession for all sums due at any time from the Customer or Owner and on giving 28 days notice in writing to the Customer, shall be entitled to sell or dispose of such Goods or documents at the expense of the Customer and without any liability to the Customer and Owner and apply the proceeds in or towards the payment of such sums.
24. The Company shall be entitled to retain and be paid all brokerages, commissions, allowances and other remunerations customarily retained by or paid to freight forwarders.
25. The Company shall have the right to enforce against the Owner and the the Customer jointly and severally any liability of the Customer under these Conditions or to recover from them any sums to be paid by the Customer which upon demand have not been paid.

stuffed,

(ii) the unsuitability of the contents for carriage in containers, unless the Company has approved the suitability,

(iii) the unsuitability or defective condition of the Container provided that where the Container has been supplied by or on behalf of the Company this paragraph (iii) shall only apply if the unsuitability or defective condition arose (a) without any negligence on the part of the Company or (b) would have been apparent upon reasonable inspection by the Customer or Owner or person acting on behalf of either of them.

(iv) if the Container is not sealed at the commencement of the Carriage except where the Company has agreed to seal the Container. (B) The Customer shall defend, indemnify and hold harmless the Company against all liability, loss, damage, costs and expenses arising from one or more of the matters covered by (A) above except for (A) (iii) (a) above.

(C) Where the Company is instructed to provide a Container, in the absence of a written request to the contrary, the Company is not under an obligation to provide a Container of any particular type of quality.

General Liability

27. (A) Except insofar as otherwise provided by these Conditions, the Company shall not be liable for any loss or damage whatsoever arising from:

(i) the act or omission of the Customer or Owner or any person acting on their behalf,

(ii) compliance with the instructions given to the Company by the Customer, Owner or any other person entitled to give them,

(iii) insufficiency of the packing or labelling of the Goods except where such services has been provided by the Company,

(vi) riots, civil commotions, strikes, lockouts, stoppage or restraint of labour from whatsoever cause,

(vii) fire, flood or storm, or

(viii) any cause which the Company could not avoid and the consequences whereof it could not prevent by the exercise of reasonable diligence.(B) Subject to clause 15, howsoever caused the Company shall not be liable for loss or damage to property other than the Goods themselves, indirect or consequential loss or damage, loss of profit, delay or deviation.

Amount of Compensation

28. Except in so far as otherwise provided by these Conditions, the liability of the Company, howsoever arising, and notwithstanding that the cause of loss or damage be unexplained shall not exceed the following:(A) in respect of all claims other than those subject to the provisions of sub-clause (c) below, whichever is the least of:

(i) the value of, or

(ii) 2 Special Drawing Rights (SDR's) per gross kilogram of, the Goods lost, damaged, misdirected, misdelivered or in respect of which a claim arises.

(B) The SDR shall be as defined by the International Monetary Fund and the value of a SDR shall be calculated as at the date when settlement is agreed or judgement.

(C) In respect of claim for delay where not excluded by the provisions of these Conditions, the amount of the Company's charges in respect of the Goods delayed.

29. (A) Compensation shall be calculated by reference to the invoice value of the Goods plus freight and insurance if paid.(B) If there be no invoice value for the Goods, the compensation shall be calculated by reference to the value of such Goods at the place and time when they are delivered to the Customer or Owner or should have been delivered. The value of the Goods shall be fixed according

30. By special agreement in writing and on payment of additional charges, higher compensation may be claimed from the Company not exceeding the value of the Goods or the agreed value, whichever is the lesser.

Notice of loss, Time Bar

31. (A) The Company shall be discharged of all liability unless:
- (i) notice of any claim is received in writing by the Company or its agent within 14 days after the date specified in (B) below, or within a reasonable time after such date if the Customer proves that it was impossible to so notify, and
 - (ii) suit is brought in the proper forum and written notice thereof received by the Company within 9 months after the date specified in (B) below.
- (B) (i) in the case of loss or damage to Goods, the date of delivery of the Goods,
- (ii) in the case of delay or non-delivery of the Goods, the date that the Goods should have been delivered,
- (iii) in any other case, the event giving rise to the claim.

General Average

32. The Customer shall defend, indemnify and hold harmless the Company in respect of any claims of a General Average nature which may be made on the Company and the Customer shall provide such security as may be required by the Company in this connection.

Miscellaneous

33. Any notice served by post shall be deemed to have to be given on the third day following the day on which it was posted to the address of the recipient of such notice last known to the Company.
34. The defences and limits of liability provided for by these Conditions shall apply in any action against the Company whether such action be founded in contract or tort.

the Company of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation and if any part of these Conditions be repugnant to such legislation to any extent such part shall as regards such business be over-ridden to that extent and no further.

36. Headings of clauses or groups of clauses in these Conditions are for indicative purposes only.

Jurisdiction and Law

37. The Conditions and any claim or dispute arising out of or in connection with the services of the Company shall be subject to English Law and the exclusive jurisdiction of the English courts.

PART II: COMPANY AS AGENT

Special Liability and Indemnity Conditions

38. (A) To the extent that the Company acts as an agent, the Company does not make or purport to make any contract with the Customer for the carriage, storage or handling of the Goods nor for any other physical service in relation to them and acts solely on behalf of the Customer in securing such services by establishing contracts with third parties so that direct contractual relationships are established between the Customer and such third parties. (B) The Company shall not be liable for the acts and omissions of such third parties referred to in sub-clause (A) above.

39. (A) The Company when acting as an agent has the authority of the Customer to enter into contracts on the Customer's behalf and to do such acts so as to bind the Customer by such contracts and acts in all respects notwithstanding any departure from the Customer's instructions. (B) Except to the extent caused by the Company's negligence, the Customer shall defend, indemnify and hold harmless the

Choice of Rates

40. Where there is a choice of rates according to the extent or degree of liability assumed by persons carrying, storing, handling the Goods, no declaration of value where optional will be made unless otherwise agreed in writing.

PART III: COMPANY AS PRINCIPAL

41. To the extent that the Company contracts as principal for the performance of the Customer's instructions, the Company undertakes to perform or in its own name to procure the performance of the Customer's instructions and subject to the provisions of these Conditions shall be liable for the loss of or damage to the Goods occurring from the time that the Goods are taken into its charge until the time of delivery.
42. Where the Company contracts as a principal and sub-contracts the performance of its services and it can be proved that the loss of or damage to or in respect of the Goods arose or was caused whilst the Goods were in the care or custody of the sub-contractor (if not of General application, insert here the words "in the continent of Africa", "in the continent of Australia" or such other applicable wording), the company shall have the full benefit of all rights, limitations and exclusions of liability available to such sub-contractor in the contract between the Company and such sub-contractor and in any law, statute or regulation and liability of the company shall not exceed the amount recovered, if any, by the Company from such sub-contractor.
43. Notwithstanding other provisions in these Conditions, if it can be proved where the loss or damage to the Goods occurred, the Company's liability shall be determined by the provisions contained in any international convention or national law, the provisions of which:(A) cannot be

or stage of carriage where the loss or damage occurred and received as evidence thereof any particular document which must be issued if such international convention or national law shall apply.

44. Notwithstanding other provisions in these Conditions, if it can be proved that the loss of or damage to the Goods occurred at sea or inland waterway and the provisions of clause 42 do not apply, the Company's liability shall be determined by the Hague Rules. Reference in the Hague Rules to carriage by sea shall be deemed to include reference to carriage by inland waterways and the Hague Rules shall be construed accordingly.
45. Notwithstanding the provisions of clause 42 if the loss of or damage to the Goods occurred at sea or inland waterways, and the Owner, Charterer or operator of the vessel establishes a limitation fund, the liability of the Company shall be limited to the proportion of the said limitation fund allocated to the Goods.
46. Air Carriage If the Company acts as a principal in respect of a carriage of Goods by air, the following notice is hereby given: If the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and the Convention governs and in most cases limits the liability of carriers in respect of loss of or damage to cargo. Agreed stopping places are those places (other than the places of departure and destination) shown under requested routing and/or those places shown in carriers' timetables as scheduled stopping places for the route. The address of the first carrier is the airport of departure.
47. Both to Blame Collision Clause The current Both-to-Blame Collision Clause as adopted by BIMCO is in these conditions.

contracts and tariffs and any law compulsorily applicable. The Company guarantees the fulfillment of such carrier's obligations under their contracts and tariffs.(B) If and to the extent that the provisions of the Harter Act of the USA 1893 would otherwise be compulsorily applicable to regulate the Company's responsibility for the Goods during any period prior to loading on or after discharge from the vessel on which the Goods are to be or have been carried, the Company's responsibility shall instead be determined by the provisions of these Conditions, but if such provisions are found to be invalid such responsibility shall be determined by the provisions in the Carriage of Goods by Sea Act of the USA approved 1936.

COMPANY PROVIDING SERVICES FOR CLEANING, MAINTENANCE, REPAIR OR STORAGE OF CONTAINERS AND ANY SERVICES CONNECTED THEREWITH

49. Subject to clause 35 above, the Company shall not be liable for any improper performance or non performance of its Services, or the consequences arising therefrom, except to the extent provided in this Part

IV.

50. (A) The Company's liability shall not exceed the reasonable cost of rectifying the services improperly or not performed by the Company, subject to a limit per Container of that Container's market value.(B) At the Company's sole option, the company may rectify at its own expense the services improperly or not performed. If the Company exercises this option, or is not given an opportunity by the Customer or Owner to exercise this option, the Company shall not be liable for any costs incurred by the Customer or Owner in rectifying such services.

51. The Customer and Owner undertake to inspect the Container or redelivery to the Customer or Owner or person acting on their behalf. The Company shall not be

Company's services which would have been apparent upon reasonable inspection of the Container at the time of redelivery.

52. The Company shall be discharged of all liability unless:

- (i) Notice of any claim is received by the Company in writing within 14 days, and
- (ii) suit is brought in the proper form and written notice thereof received by the Company within 9 months after the date of redelivery of the Container to the Customer or Owner or person acting on their behalf.

EXHIBIT “B”

John S. Connor Global Logistics Customs Power of Attorney
and Acknowledgement of Terms and Conditions

[On the following pages]

IRS/SS Number [REDACTED] OR Customs Assigned Number [REDACTED]
ACH Payor Unit Number [REDACTED]
CTPAT SVI Number [REDACTED]
FDA Registration Number [REDACTED]

CUSTOMS POWER OF ATTORNEY
and
Acknowledgement of Terms and Conditions

Copyright 1995, National Customs Brokers and Forwarders
Association of America, Inc. (Revised 01/00)

☒ Appropriate box: ☐ Individual ☐ Partnership ☒ Corporation
☐ Sole Proprietorship ☐ Limited Liability Company

KNOW ALL MEN BY THESE PRESENTS:

That, CITY OF GOODYEAR doing
(Full name of Individual, Partnership, Corporation, Sole Proprietorship, or Limited Liability Company) (Identity)

business as A MUNICIPAL CORPORATION under the laws of the State of ARIZONA residing or having a

principal place of business at 190 N. LITCHFIELD ROAD, GOODYEAR, ARIZONA, 85338, hereby constitutes and

appoints John S. Connor, Inc., its officers, employees, and/or specifically authorized agents, to act for and on its behalf as a true
(Grantee's Name)

and lawful agent and attorney of the grantor for and in the name, place and stead of said grantor, from this date, in the United States (the "territory") either in writing, electronically, or by other authorized means, to:

Make, endorse, sign, declare, or swear to any customs entry, withdrawal, declaration, certificate, bill of lading, carnet or any other documents required by law or regulation in connection with the importation, exportation, transportation, of any merchandise in or through the customs territory, shipped or consigned by or to said grantor;

Perform any act or condition, which may be required by law or regulation in connection with such merchandise deliverable to said grantor; to receive any merchandise;

Make endorsements on bills of lading conferring authority to transfer title; make entry or collect drawback; and to make, sign, declare, or swear to any statement or certificate required by law or regulation for drawback purposes, regardless of whether such document is intended for filing with Customs;

Sign, seal, and deliver for and as the act of said grantor any bond required by law or regulation in connection with the entry or withdrawal of imported merchandise or merchandise exported with or without benefit of drawback, or in connection with the entry, clearance, lading, unlading or navigation of any vessel or other means of conveyance owned or operated by said grantor, and any and all bonds which may be voluntarily given and accepted under applicable laws and regulations, consignee's and owner's declarations provided for in section 485, Tariff Act of 1930, as amended, or affidavits or statements in connection with the entry of merchandise;

Sign and swear to any document and to perform any act that may be necessary or required by law or regulation in connection with the entering, clearing, lading, unlading, or operation of any vessel or other means of conveyance owned or operated by said grantor;

Authorize other Customs Brokers duly licensed within the territory to act as grantor's agent; to receive, endorse and collect checks issued for Customs duty refunds in grantor's name drawn on the Treasurer of the United States; if the grantor is a nonresident of the United States, to accept service of process on behalf of the grantor;

And generally to transact Customs business, including filing of claims or protests under section 514 of the Tariff Act of 1930, or pursuant to other laws of the territories, in which said grantor is or may be concerned or interested and which may properly be transacted or performed by an agent and attorney;

Giving to said agent and attorney full power and authority to do anything whatever requisite and necessary to be done in the premises as fully as said grantor could do if present and acting, hereby ratifying and confirming all that the said agent and attorney shall lawfully do by virtue of these presents;

This power of attorney to remain full force and effect until revocation in writing is duly given to and received by grantee (if the donor Of this power of attorney is a partnership, the said power shall in no case have any force or effect in the United States after the expiration 2 years from the dates of its execution);

Appointment as Forwarding Agent: Grantor authorizes the above Grantee to act within the territory as lawful agent and sign or endorse export documents (i.e., commercial invoices, bill of lading, insurance certificates, drafts and any other document) necessary for the completion of an export on grantor's behalf as may be required under law and regulation in the territory and to appoint forwarding agents on grantor's behalf;

Grantor acknowledges receipt of John S. Connor, Inc. Terms and Conditions of Service governing all transactions between
(Grantee's Name)
the Parties. If the Grantor is a Limited Liability Company, the signatory certifies that he/she has full authority to execute this power on behalf of the Grantor.

IN WITNESS WHEREOF, the said CITY OF GOODYEAR, ARIZONA caused these presents to be sealed and signed:
(Full name of company)

(Signature) _____ (Capacity) CITY MANAGER Date: _____

Witness: (if required) N/A

if you are the importer of record, payment to the broker will not relieve you of liability for U.S. Customs charges (duties, taxes or other debts owed Customs) in the event the charges are not paid by the broker. Therefore, if you pay by check, Customs charges may be paid with a separate check payable to the "U.S. Customs Service" which shall be delivered to Customs by the broker. Importers who wish to utilize this procedure must contact our office in advance to arrange timely receipt of duty checks.

INDIVIDUAL OR PARTNERSHIP CERTIFICATION

CITY N/A

COUNTY N/A SS

STATE N/A

On this N/A day of N/A, 20N/A personally appeared before me residing at N/A, personally known or sufficiently identified to me,

who certifies that N/A (is) (are) the individual (s) who executed the foregoing instrument and acknowledge

it to be N/A free act and deed.

Notary Public

CORPORATE CERTIFICATION

(To be made by an officer of other than the one who executes the power of attorney)

I, DARCIE MCCracken, certify that I am the CITY CLERK of CITY OF GOODYEAR, organize

under the laws of the State of ARIZONA that JULIE KARINS, CITY MANAGER, who signed this power of attorney

on behalf of the Grantor, is-the CITY MANAGER of said corporation; and that said power of attorney was duly signed, and attested for and in behalf of said corporation by authority of its governing body as the same appears in a resolution of the Board of Directors passed at a regular meeting held on

the 6TH day of DECEMBER, 2021 now in my possession or custody. I further certify that the resolution is in accordance with the articles of incorporation and bylaws of said corporation and was executed in accordance with the laws of the State or Country of Incorporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said corporation, at the City of GOODYEAR

this _____ day of _____, 20____.

(Signature)

(date)

Terms & Conditions of Service

These terms and conditions of service constitute a legally binding contract between the "Company" and the "Customer". In the event the Company renders services and issues a document containing Terms and Conditions governing such services, the Terms and Conditions set forth in such other document(s) shall govern those services.

1. Definitions. "Company" shall mean **John S. Connor, Inc.**, its subsidiaries, related companies, agents and/or representatives; (a) "Customer" shall mean the person for which the Company is rendering service, as well as its principals, agents and/or representatives, including, but not limited to, shippers, importers, exporters, carriers, secured parties, warehousemen, buyers and/or sellers, shipper's agents, insurers and underwriters, break-bulk agents, consignees, etc. **It is the responsibility of the Customer to provide notice and copy(s) of these terms and conditions of service to all such agents or representatives;**

(b) "Documentation" shall mean all information received directly or indirectly from Customer, whether in paper or electronic form; (c) "Ocean Transportation Intermediaries" ("OTI") shall include an "ocean freight forwarder" and a "non-vessel operating carrier"; (d) "Third parties" shall include, but not be limited to, the following: "carriers, truckmen, cartmen, lightermen, forwarders, OTIs, customs brokers, agents, warehousemen and others to which the goods are entrusted for transportation, cartage, handling and/or delivery and/or storage or otherwise".

2. Company as agent. The Company acts as the "agent" of the Customer for the purpose of performing duties in connection with the entry and release of goods, post entry services, the securing of export licenses, the filing of export and security documentation on behalf of the Customer and other dealings with Government Agencies, or for arranging for transportation services, both domestically and internationally, or other logistics services in any capacity other than as a carrier.

3. Limitation of Actions.

(a) Unless subject to a specific statute or international convention, all claims against the Company for a potential or actual loss, must be made in writing and received by the Company, within ninety (90) days of the event giving rise to claim; the failure to give the Company timely notice shall be a complete defense to any suit or action commenced by Customer.

(b) All suits against Company must be filed and properly served on Company as follows:

- (i) For claims arising out of ocean transportation, within one (1) year from the date of the loss;
- (ii) For claims arising out of brokering domestic motor carrier transportation, within one (1) year from the date of loss;
- (iii) For claims arising out of air transportation, within two (2) years from the date of the loss;
- (iv) For claims arising out of the preparation and/or submission of an import entry(s), within seventy five (75) days from the date of liquidation of the entry(s);
- (v) For any and all other claims of any other type, within two (2) years from the date of the loss or damage.

4. No Liability For The Selection or Services of Third Parties and/or Routes. Unless services are performed by persons or firms engaged pursuant to express written instructions from the Customer, Company shall use reasonable care in its selection of third parties, or in selecting the means, route and procedure to be followed in the handling, transportation, clearance and delivery of the shipment; advice by the Company that a particular person or firm has been selected to render services with respect to the goods, shall not be construed to mean that the Company warrants or represents that such person or firm will render such services nor does Company assume responsibility or liability for any actions(s) and/or inaction(s) of such third parties and/or its agents, and shall not be liable for any delay or loss of any kind, which occurs while a shipment is in the custody or control of a third party or the agent of a third party; all claims in connection with the Act of a third party shall be brought solely against such party and/or its agents; in connection with any such claim, the Company shall reasonably cooperate with the Customer, which shall be liable for any charges or costs incurred by the Company.

5. Quotations Not Binding. Quotations as to fees, rates of duty, freight charges, insurance premiums or other charges given by the Company to the Customer are for informational purposes only and are subject to change without notice; no quotation shall be binding upon the Company unless the Company in writing agrees to undertake the handling or transportation of the shipment at a specific rate or amount set forth in the quotation and payment arrangements are agreed to between the Company and the Customer.

6. Reliance On Information Furnished.

(a) Customer acknowledges that it is required to review all documents and declarations prepared and/or filed with U.S. Customs & Border Protection, other Government Agency and/or third parties, and will immediately advise the Company of any errors, discrepancies, incorrect statements, or omissions on any declaration or other submission filed on Customers behalf;

(b) In preparing and submitting customs entries, export declarations, applications, security filings, documentation and/or other required data, the Company relies on the correctness of all documentation, whether in written or electronic format, and all information furnished by Customer; Customer shall use reasonable care to ensure the correctness of all such information and shall indemnify and hold the Company harmless from any and all claims asserted and/or liability or losses suffered by reason of the Customer's failure to disclose information or any incorrect, incomplete or false statement by the Customer or its agent, representative or contractor upon which the Company reasonably relied. The Customer agrees that the Customer has an affirmative non-delegable duty to disclose any and all information required to import, export or enter the goods.

(c) Customer acknowledges that it is required to provide verified weights obtained on calibrated, certified equipment of all cargo that is to be tendered to steamship lines and represents that Company is entitled to rely on the accuracy of such weights and to counter-sign or endorse it as agent of Customer in order to provide the certified weight to the steamship lines. The Customer

agrees that it shall indemnify and hold the Company harmless from any and all claims, losses, penalties or other costs resulting from any incorrect or questionable statements of the weight provided by the Customer or its agent or contractor on which the Company relies.

(d) Customer acknowledges that it is required to advise Company in advance of its intention to tender hazardous material goods and that it will otherwise comply with all federal and international hazardous material regulations.

7. Declaring Higher Value To Third Parties. Third parties to whom the goods are entrusted may limit liability for loss or damage; the Company will request excess valuation coverage only upon specific written instructions from the Customer, which must agree to pay any charges therefore; in the absence of written instructions or the refusal of the third party to agree to a higher declared value, at Company's discretion, the goods may be tendered to the third party, subject to the terms of the third party's limitations of liability and/or terms and conditions of service.

8. Insurance. Unless requested to do so in writing and confirmed to Customer in writing, Company is under no obligation to procure insurance on Customer's behalf; in all cases, Customer shall pay all premiums and costs in connection with procuring requested insurance.

9. Disclaimers; Limitation of Liability.

(a) Except as specifically set forth in these terms and conditions, Company makes no express or implied warranties in connection with its services;

(b) Customer may obtain insurance coverage for cargo loss or damage, up to the actual or declared value of the shipment or transaction, by requesting such coverage and agreeing to make payment therefor, which request must be confirmed in writing by the Company prior to rendering services for the covered transaction(s).

(c) In all events, the Company's liability shall be limited to the following:

(i) where the claim arises from activities other than those relating to customs business, \$50 per shipment or transaction, or

(ii) where the claim arises from activities relating to "Customs business," \$50 per entry or the amount of

brokerage fees paid to Company for the entry, whichever is less;

(d) In no event shall Company be liable or responsible for consequential, indirect, incidental, statutory or punitive damages, even if it has been put on notice of the possibility of such damages, or for the acts of third parties.

(e) With respect to domestic transportation, Company shall not be liable for a motor carrier's failure to maintain insurance or for the accuracy of any documentation furnished by a motor carrier to Company or Customer evidencing said coverage.

10. Advancing Money. All charges must be paid by Customer in advance unless the Company agrees in writing to extend credit to customer; the granting of credit to a Customer in connection with a particular transaction shall not be considered a waiver of this provision by the Company.

11. Indemnification/Hold Harmless. The Customer agrees to indemnify, defend, and hold the Company harmless from any claims and/or liability, fines, penalties and/or attorneys' fees arising from the importation or exportation of customers merchandise and/or any conduct of the Customer, including but not limited to the inaccuracy of entry, export or security data supplied by Customer or its agent or representative, which violates any Federal, State and/or other laws, and further agrees to indemnify and hold the Company harmless against any and all liability, loss, damages, costs, claims, penalties, fines and/or expenses, including but not limited to reasonable attorney's fees, which the Company may hereafter incur, suffer or be required to pay by reason of such claims; in the event that any claim, suit or proceeding is brought against the Company, it shall give notice in writing to the Customer by mail at its address on file with the Company.

12. C.O.D. or Cash Collect Shipments. Company shall use reasonable care regarding written instructions relating to "Cash/Collect on Deliver (C.O.D.)" shipments, bank drafts, cashier's and/or certified checks, letter(s) of credit and other similar payment documents and/or instructions regarding collection of monies but shall not have liability if the bank or consignee refuses to pay for the shipment.

13. Costs of Collection. In any dispute involving monies owed to Company, the Company shall be entitled to all costs of collection, including reasonable attorney's fees and interest at 18% per annum or the highest rate allowed by law, whichever is less unless a lower amount is agreed to by Company.

14. General Lien and Right To Sell Customer's Property.

(a) Company shall have a continuing lien on any and all property and documents relating thereto of Customer coming into Company's actual or constructive possession, custody or control or enroute, which lien shall survive delivery, for all charges, expenses or advances owed to Company with regard to the shipment on which the lien is claimed, a prior shipment(s) and/or both. Customs duties, transportation charges, and related payments advanced by the Company shall be deemed paid in trust on behalf of the Customer and treated as pass through payments made on behalf of the Customer for which the Company is acting as a mere conduit.

(b) Company shall provide written notice to Customer of its intent to exercise such lien, the exact amount of monies due and owing, as well as any on-going storage or other charges; Customer shall notify all parties having an interest in its shipment(s) of Company's rights and/or the exercise of such lien.

(c) Unless, within thirty days of receiving notice of lien, Customer posts cash or letter of credit at sight, or, if the amount due is in dispute, an acceptable bond equal to 110% of the value of the total amount due, in favor of Company, guaranteeing payment of the monies owed, plus all storage charges accrued or to be accrued, Company shall have the right to sell such shipment(s) at public or private sale or auction and any net proceeds remaining thereafter shall be refunded to Customer.

15. No Duty To Maintain Records For Customer. Customer acknowledges that pursuant to Sections 508 and 509 of the Tariff Act, as amended, (19 USC §1508 and 1509) it has the duty and is solely liable for maintaining all records required under the Customs and/or other Laws and Regulations of the United States; unless otherwise agreed to in writing, the Company shall only keep such records that it is required to maintain by Statute(s) and/or Regulation(s), but not act as a "recordkeeper" or "recordkeeping agent" for Customer.

16. Obtaining Binding Rulings, Filing Protests, etc. Unless requested by Customer in writing and agreed to by Company in writing, Company shall be under no obligation to undertake any pre- or post Customs release action, including, but not limited to,

obtaining binding rulings, advising of liquidations, filing of petition(s) and/or protests, etc.

17. No Duty To Provide Licensing Authority. Unless requested by Customer in writing and agreed to by the Company in writing, Company shall not be responsible for determining licensing authority or obtaining any license or other authority pertaining to the export from or import into the United States.

18. Preparation and Issuance of Bills of Lading. Where Company prepares and/or issues a bill of lading, Company shall be under no obligation to specify thereon the number of pieces, packages and/or cartons, etc.; unless specifically requested to do so in writing by Customer or its agent and Customer agrees to pay for same, Company shall rely upon and use the cargo weight supplied by Customer.

19. No Modification or Amendment Unless Written. These terms and conditions of service may only be modified, altered or amended in writing signed by both Customer and Company; any attempt to unilaterally modify, alter or amend same shall be null and void.

20. Compensation of Company. The compensation of the Company for its services shall be included with and is in addition to the rates and charges of all carriers and other agencies selected by the Company to transport and deal with the goods and such compensation shall be exclusive of any brokerage, commissions, dividends, or other revenue received by the Company from carriers, insurers and others in connection with the shipment. On ocean exports, upon request, the Company shall provide a detailed breakout of the components of all charges assessed and a true copy of each pertinent document relating to these charges. In any referral for collection or action against the Customer for monies due the Company, upon recovery by the Company, the Customer shall pay the expenses of collection and/or litigation, including a reasonable attorney fee.

21. Force Majeure. Company shall not be liable for losses, damages, delays, wrongful or missed deliveries or nonperformance, in whole or in part, of its responsibilities under the Agreement, resulting from circumstances beyond the control of either Company or its sub-contractors, including but not limited to: (i) acts of God, including flood, earthquake, tornado, storm, hurricane, power failure, epidemic or other severe health crisis, or other natural disaster; (ii) war, hijacking, robbery, theft or terrorist activities; (iii) incidents or deteriorations to means of transportation, (iv) embargoes, (v) civil commotions or riots, (vi) defects, nature or inherent vice of the goods; (vii) acts, breaches of contract or omissions by Customer, Shipper, Consignee or anyone else who may have an interest in the shipment, (viii) acts by any government or any agency or subdivision thereof, including denial or cancellation of any import/export or other necessary license; or (ix) strikes, lockouts or other labor conflicts. In such event, Company reserves the right to amend any tariff or negotiated freight or logistics rates, on one day's notice, as necessary to provide the requested service.

22. Severability. In the event any Paragraph(s) and/or portion(s) hereof is found to be invalid and/or unenforceable, then in such event the remainder hereof shall remain in Full force and effect. Company's decision to waive any provision herein, either by conduct or otherwise, shall not be deemed to be a further or continuing waiver of such provision or to otherwise waive or invalidate any other provision herein.

23. Governing Law; Consent to Jurisdiction and Venue. These terms and conditions of service and the relationship of the parties shall be construed according to the laws of the State of Maryland without giving consideration to principles of conflict of law. Customer and Company:

- (a) irrevocably consent to the jurisdiction of the United States District Court and the State courts of Maryland;
- (b) agree that any action relating to the services performed by Company, shall only be brought in said courts;
- (c) consent to the exercise of *in personam* jurisdiction by said courts over it, and
- (d) further agree that any action to enforce a judgment may be instituted in any jurisdiction.

ITEM #: 5.
DATE: 12/06/2021
AI #:545



CITY COUNCIL ACTION REPORT

SUBJECT: RATIFICATION OF THE FUNDED STATE AND LOCAL TASK FORCE AGREEMENT AND APPROVAL OF THE DEPARTMENT OF JUSTICE EQUITABLE SHARING AGREEMENT AND CERTIFICATION

STAFF PRESENTER(S): Santiago Rodriguez, Chief of Police

OTHER PRESENTER(S):

Lisa Maxie-Mullins, Assistant City Attorney

SUMMARY

Request to ratify the execution of the Funded State and Local Task Force Agreement with the Drug Enforcement Administration and approval of the associated Department of Justice Equitable Sharing Agreement and Certification.

Recommendation

Ratify the execution of the Funded State and Local Task Force Agreement and authorize the Mayor and the City Manager or her designee to execute the associated Equitable Sharing Agreement and Certification. (Santiago Rodriguez, Chief of Police)

FISCAL IMPACT

Any officer assigned to this task force is currently covered by the police department's FY2022 budget. Per the agreement, the Department of Justice and DEA, subject to availability, will provide necessary funds and equipment to support the Goodyear officer assigned to the task force. Additionally, the DEA will reimburse officer overtime up to 25% in accordance with federal pay scale standards.

Additionally, the City's participation in this task force qualifies the police department for the associated Equitable Sharing Program which allows the Department of Justice (DOJ) to allocate a portion of asset forfeitures to the City. These funds will be tracked within the existing Racketeering Influenced and Corrupt Organizations Act (RICO) object codes.

BACKGROUND AND PREVIOUS ACTIONS

The cooperation between federal and local task force agencies began in the 1970s. As of 2016, DEA managed 271 state and local task forces. The DEA Phoenix Task Force consists of federal and local law enforcement agents. The purpose of the task force is to disrupt drug trafficking in the State. Assigned task force members gather intelligence concerning drug trafficking, conduct undercover operations, and assist as necessary with the prosecution of criminal defendants and trafficking organizations.

STAFF ANALYSIS

The City's participation in the DEA Task Force allows both the local and federal law enforcement agencies to share resources, intelligence information, and expertise related to trafficking of narcotics and dangerous drugs in the State. The task force agreement allows the Goodyear Police Department to participate in a task force and assign an officer to the task force.

The City's participation in the task force will also allow the City to participate in the Department of Justice Equitable Sharing Program and receive federal forfeiture funds if available. The City's participation Equitable Sharing Program requires the approval and execution of the DOJ Equitable Sharing Agreement and Certification which certifies the police department is in compliance with applicable nondiscrimination requirements. The Equitable Sharing Agreement also certifies that the police department will only use asset forfeiture funds for approved purposes which include support for law enforcement operations, equipment, investigations, training, and education.

On July 12, 2021, and subsequently on October 4, 2021, the task force agreement was signed by both the City and the DEA. The execution of the agreement required Council approval but was erroneously approved administratively. The task force agreement expires on September 30, 2022, but may be terminated by either party with thirty days' advance written notice.

Staff is seeking to ratify the execution of the Funded State and Local Task Force Agreement and authorize the Mayor and the City Manager or her designee to execute the associated Equitable Sharing Agreement and Certification Affidavit.

Attachments

DOJ Equitable Sharing Agreement and Certification Affidavit

DEA Contract

Equitable Sharing Program Guide



Equitable Sharing Agreement and Certification



NCIC/ORI/Tracking Number: AZ0071500
Agency Name: Goodyear Police Department
Mailing Address: 14455 W Van Buren Street
E-101
Goodyear, AZ 85338

Type: Police Department

Agency Finance Contact

Name: Archuleta, Jessica
Phone: 623-882-7882

Email: jessica.archuleta@goodyearaz.gov

Jurisdiction Finance Contact

Name: Sandstrom, Doug
Phone: 623-882-7898

Email: doug.sandstrom@goodyearaz.gov

ESAC Preparer

Name: Archuleta, Jessica
Phone: 623-882-7882

Email: jessica.archuleta@goodyearaz.gov

FY End Date: 06/30/2021

Agency FY 2022 Budget: \$60,085,900.00

Annual Certification Report

Summary of Equitable Sharing Activity		Justice Funds ¹	Treasury Funds ²
1	Beginning Equitable Sharing Fund Balance	\$0.00	\$0.00
2	Equitable Sharing Funds Received	\$0.00	\$0.00
3	Equitable Sharing Funds Received from Other Law Enforcement Agencies and Task Force	\$0.00	\$0.00
4	Other Income	\$0.00	\$0.00
5	Interest Income	\$0.00	\$0.00
6	Total Equitable Sharing Funds Received (total of lines 2-5)	\$0.00	\$0.00
7	Equitable Sharing Funds Spent (total of lines a - n)	\$0.00	\$0.00
8	Ending Equitable Sharing Funds Balance (difference between line 7 and the sum of lines 1 and 6)	\$0.00	\$0.00

¹Department of Justice Asset Forfeiture Program participants are: FBI, DEA, ATF, USPIS, USDA, DCIS, DSS, and FDA

²Department of the Treasury Asset Forfeiture Program participants are: IRS, ICE, CBP and USSS.

Summary of Shared Funds Spent		Justice Funds	Treasury Funds
a	Law Enforcement Operations and Investigations	\$0.00	\$0.00
b	Training and Education	\$0.00	\$0.00
c	Law Enforcement, Public Safety, and Detention Facilities	\$0.00	\$0.00
d	Law Enforcement Equipment	\$0.00	\$0.00
e	Joint Law Enforcement/Public Safety Equipment and Operations	\$0.00	\$0.00
f	Contracts for Services	\$0.00	\$0.00
g	Law Enforcement Travel and Per Diem	\$0.00	\$0.00
h	Law Enforcement Awards and Memorials	\$0.00	\$0.00
i	Drug, Gang, and Other Education or Awareness Programs	\$0.00	\$0.00
j	Matching Grants	\$0.00	\$0.00
k	Transfers to Other Participating Law Enforcement Agencies	\$0.00	\$0.00
l	Support of Community-Based Programs	\$0.00	
m	Non-Categorized Expenditures	\$0.00	\$0.00
n	Salaries	\$0.00	\$0.00
	Total	\$0.00	\$0.00

Equitable Sharing Funds Received From Other Agencies

Transferring Agency Name	Justice Funds	Treasury Funds

Other Income

Other Income Type	Justice Funds	Treasury Funds

Matching Grants

Matching Grant Name	Justice Funds	Treasury Funds

Transfers to Other Participating Law Enforcement Agencies

Receiving Agency Name	Justice Funds	Treasury Funds

Support of Community-Based Programs

Recipient	Justice Funds	

Non-Categorized Expenditures

Description	Justice Funds	Treasury Funds

Salaries

Salary Type	Justice Funds	Treasury Funds

Paperwork Reduction Act Notice

Under the Paperwork Reduction Act, a person is not required to respond to a collection of information unless it displays a valid OMB control number. We try to create accurate and easily understood forms that impose the least possible burden on you to complete. The estimated average time to complete this form is 30 minutes. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, please write to the Asset Forfeiture and Money Laundering Section at 1400 New York Avenue, N.W., Washington, DC 20005.

Privacy Act Notice

The Department of Justice is collecting this information for the purpose of reviewing your equitable sharing expenditures. Providing this information is voluntary; however, the information is necessary for your agency to maintain Program compliance. Information collected is covered by Department of Justice System of Records Notice, 71 Fed. Reg. 29170 (May 19, 2006), JMD-022 Department of Justice Consolidated Asset Tracking System (CATS). This information may be disclosed to contractors when necessary to accomplish an agency function, to law enforcement when there is a violation or potential violation of law, or in accordance with other published routine uses. For a complete list of routine uses, see the System of Records Notice as amended by subsequent publications.

Single Audit Information**Independent Auditor****Name:****Company:****Phone:****Email:**

Were equitable sharing expenditures included on your jurisdiction's prior fiscal year's Schedule of Expenditures of Federal Awards (SEFA)?

YES ☐ NO ☐

Prior year Single Audit Number Assigned by Harvester Database:

Affidavit

Under penalty of perjury, the undersigned officials certify that they have read and understand their obligations under the *Guide to Equitable Sharing for State, Local, and Tribal Law Enforcement Agencies (Guide)* and all subsequent updates, this Equitable Sharing Agreement, and the applicable sections of the Code of Federal Regulations. The undersigned officials certify that the information submitted on the Equitable Sharing Agreement and Certification form (ESAC) is an accurate accounting of funds received and spent by the Agency.

The undersigned certify that the Agency is in compliance with the applicable nondiscrimination requirements of the following laws and their Department of Justice implementing regulations: Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 *et seq.*), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), and the Age Discrimination Act of 1975 (42 U.S.C. § 6101 *et seq.*), which prohibit discrimination on the basis of race, color, national origin, disability, or age in any federally assisted program or activity, or on the basis of sex in any federally assisted education program or activity. The Agency agrees that it will comply with all federal statutes and regulations permitting federal investigators access to records and any other sources of information as may be necessary to determine compliance with civil rights and other applicable statutes and regulations.

Equitable Sharing Agreement

This Federal Equitable Sharing Agreement, entered into among (1) the Federal Government, (2) the Agency, and (3) the Agency's governing body, sets forth the requirements for participation in the federal Equitable Sharing Program and the restrictions upon the use of federally forfeited funds, property, and any interest earned thereon, which are equitably shared with participating law enforcement agencies. By submitting this form, the Agency agrees that it will be bound by the *Guide* and all subsequent updates, this Equitable Sharing Agreement, and the applicable sections of the Code of Federal Regulations. Submission of the ESAC is a prerequisite to receiving any funds or property through the Equitable Sharing Program.

1. Submission. The ESAC must be signed and electronically submitted within 60 days of the end of the Agency's fiscal year. Electronic submission constitutes submission to the Department of Justice and the Department of the Treasury.

2. Signatories. The ESAC must be signed by the head of the Agency and the head of the governing body. Examples of Agency heads include police chief, sheriff, director, commissioner, superintendent, administrator, county attorney, district attorney, prosecuting attorney, state attorney, commonwealth attorney, and attorney general. The governing body head is the head of the agency that appropriates funding to the Agency. Examples of governing body heads include city manager, mayor, city council chairperson, county executive, county council chairperson, administrator, commissioner, and governor. The governing body head cannot be an official or employee of the Agency and must be from a separate entity.

3. Uses. Shared assets must be used for law enforcement purposes in accordance with the *Guide* and all subsequent updates, this Equitable Sharing Agreement, and the applicable sections of the Code of Federal Regulations.

4. Transfers. Before the Agency transfers funds to other state or local law enforcement agencies, it must obtain written approval from the Department of Justice or Department of the Treasury. Transfers of tangible property are not permitted. Agencies that transfer or receive equitable sharing funds must perform sub-recipient monitoring in accordance with the Code of Federal Regulations.

5. Internal Controls. The Agency agrees to account separately for federal equitable sharing funds received from the Department of Justice and the Department of the Treasury, funds from state and local forfeitures, joint law enforcement operations funds, and any other sources must not be commingled with federal equitable sharing funds.

The Agency certifies that equitable sharing funds are maintained by the entity that maintains the Agency's appropriated or general funds and agrees that the funds will be subject to the standard accounting requirements and practices employed by the Agency's jurisdiction in accordance with the requirements set forth in the *Guide*, any subsequent updates, and the Code of Federal Regulations, including the requirement to maintain relevant documents and records for five years.

The misuse or misapplication of equitably shared funds or assets or supplantation of existing resources with shared funds or assets is prohibited. The Agency must follow its jurisdiction's procurement policies when expending equitably shared funds. Failure to comply with any provision of the *Guide*, any subsequent updates, and the Code of Federal Regulations may subject the Agency to sanctions.

6. Single Audit Report and Other Reviews. Audits shall be conducted as provided by the Single Audit Act Amendments of 1996 and OMB Uniform Administrative Requirements, Costs Principles, and Audit Requirements for Federal Awards. The Agency must report its equitable sharing expenditures on the Schedule of Expenditures of Federal Awards (SEFA) under Catalog of Federal Domestic Assistance number 16.922 for Department of Justice and 21.016 for Department of the Treasury. The Department of Justice and the Department of the Treasury reserve the right to conduct audits or reviews.

7. Freedom of Information Act (FOIA). Information provided in this Document is subject to the FOIA requirements of the Department of Justice and the Department of the Treasury. Agencies must follow local release of information policies.

8. Waste, Fraud, or Abuse. An Agency or governing body is required to immediately notify the Money Laundering and Asset Recovery Section of the Department of Justice and the Executive Office for Asset Forfeiture of the Department of the Treasury of any allegations or theft, fraud, waste, or abuse involving federal equitable sharing funds.

Civil Rights Cases

During the past fiscal year: (1) has any court or administrative agency issued any finding, judgment, or determination that the Agency discriminated against any person or group in violation of any of the federal civil rights statutes listed above; or (2) has the Agency entered into any settlement agreement with respect to any complaint filed with a court or administrative agency alleging that the Agency discriminated against any person or group in violation of any of the federal civil rights statutes listed above?

☐ Yes ☒ No

Agency Head

Name:

Title:

Email:

Signature: _____ Date: _____

To the best of my knowledge and belief, the information provided on this ESAC is true and accurate and has been reviewed and authorized by the Law Enforcement Agency Head whose name appears above. Entry of the Agency Head name above indicates his/her agreement to abide by the Guide, any subsequent updates, and the Code of Federal Regulations, including ensuring permissibility of expenditures and following all required procurement policies and procedures.

Governing Body Head

Name:

Title:

Email:

Signature: _____ Date: _____

To the best of my knowledge and belief, the Agency's current fiscal year budget reported on this ESAC is true and accurate and the Governing Body Head whose name appears above certifies that the agency's budget has not been supplanted as a result of receiving equitable sharing funds. Entry of the Governing Body Head name above indicates his/her agreement to abide by the policies and procedures set forth in the Guide, any subsequent updates, and the Code of Federal Regulations.

☐ I certify that I have obtained approval from and I am authorized to submit this form on behalf of the Agency Head and the Governing Body Head.

PROGRAM - FUNDED STATE AND LOCAL TASK FORCE AGREEMENT

This agreement is made this 1st day of **October 2021**, between the United States Department of Justice, Drug Enforcement Administration (hereinafter "DEA"), and the **Goodyear Police Department, ORI# AZ0071500** (hereinafter "GPD"). The DEA is authorized to enter into this cooperative agreement concerning the use and abuse of controlled substances under the provisions of 21 U.S.C. § 873.

WHEREAS there is evidence that trafficking in narcotics and dangerous drugs exists in the state of Arizona area and that such illegal activity has a substantial and detrimental effect on the health and general welfare of the people of Arizona, the parties hereto agree to the following:

1. The **Phoenix Task Force** will perform the activities and duties described below:
 - a. disrupt the illicit drug traffic in the state of Arizona area by immobilizing targeted violators and trafficking organizations;
 - b. gather and report intelligence data relating to trafficking in narcotics and dangerous drugs; and
 - c. conduct undercover operations where appropriate and engage in other traditional methods of investigation in order that the task force's activities will result in effective prosecution before the courts of the United States and the state of Arizona.
2. To accomplish the objectives of the **Phoenix Task Force**, the **GPD** agrees to detail **one (1) experienced officer(s)** to the **Phoenix Task Force** for a period of not less than two years. During this period of assignment, the **GPD** officers will be under the direct supervision and control of DEA supervisory personnel assigned to the task force.
3. The **GPD** officers assigned to the task force shall adhere to DEA policies and procedures. Failure to adhere to DEA policies and procedures shall be grounds for dismissal from the task force.
4. The **GPD** officers assigned to the task force shall be deputized as Task Force Officers of DEA pursuant to 21 U.S.C. Section 878.
5. To accomplish the objectives of the **Phoenix Task Force**, DEA will assign up to **eight (8)** special agents to the task force. The DEA will also, subject to the availability of annually appropriated funds or any continuing resolution thereof, provide necessary funds and equipment to support the activities of the DEA special agent and **GPD** officers assigned to the task force. This support will include: office space, office supplies, travel funds, funds for the purchase of evidence and information, investigative equipment, training, and other support items.

6. During the period of assignment to the task force, the **GPD** will remain responsible for establishing the salary and benefits, including overtime, of the officers assigned to the task force, and for making all payments due them. DEA will, subject to availability of funds, reimburse the **GPD** for overtime payment. Annual overtime for each state or local law enforcement officer is capped at the equivalent of 25% of a GS-12, Step 1, of the general pay scale for the Rest of United States. Reimbursement for all types of qualified expenses shall be contingent upon availability of funds and the submission of a proper request for reimbursement which shall be submitted **monthly or quarterly** on a fiscal year basis, and which provides the names of the investigators who incurred overtime for DEA during the invoiced period, the number of overtime hours incurred, the hourly regular and overtime rates in effect for each investigator, and the total cost for the invoiced period. Invoices must be submitted at least quarterly within 30 days of the end of the invoiced period. (**Note: Task Force Officer's overtime shall not include any costs for benefits, such as retirement, FICA, and other expenses.**)
7. In no event will the **GPD** charge any indirect cost rate to DEA for the administration or implementation of this agreement.
8. The **GPD** shall maintain on a current basis complete and accurate records and accounts of all obligations and expenditures of funds under this agreement in accordance with generally accepted accounting principles and instructions provided by DEA to facilitate on-site inspection and auditing of such records and accounts.
9. The **GPD** shall permit and have readily available for examination and auditing by DEA, the United States Department of Justice, the Comptroller General of the United States, and any of their duly authorized agents and representatives, any and all records, documents, accounts, invoices, receipts or expenditures relating to this agreement. The **GPD** shall maintain all such reports and records until all litigation, claim, audits and examinations are completed and resolved, or for a period of six (6) years after termination of this agreement, whichever is later.
10. The **GPD** shall comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, as amended, and all requirements imposed by or pursuant to the regulations of the United States Department of Justice implementing those laws, 28 C.F.R. Part 42, Subparts C, F, G, H and I.
11. The **GPD** agrees that an authorized officer or employee will execute and return to DEA the attached OJP Form 4061/6, *Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements*. The **GPD** acknowledges that this agreement will not take effect and no federal funds will be awarded to the **GPD** by the DEA until the completed certification is received.

12. When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with federal money, the **GPD** shall clearly state (1) the percentage of the total cost of the program or project which will be financed with federal money and (2) the dollar amount of federal funds for the project or program.
13. The term of this agreement shall be effective from the date in paragraph number one until **September 30, 2022**. This agreement may be terminated by either party on thirty days' advance written notice. Billing for all outstanding obligations must be received by DEA within 90 days of the date of termination of this agreement. DEA will be responsible only for obligations incurred by **GPD** during the term of this agreement.

For the Drug Enforcement Administration:



Cheri Oz, Special Agent in Charge
Phoenix Field Division

Date: 10/21/2021

For the Goodyear Police Department:

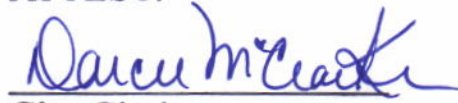

Julie Karins, City Manager
City of Goodyear

Date: 10/4/21
(10/04/2021)

Approved as to form:


City Attorney

ATTEST:


City Clerk

U.S. DEPARTMENT OF JUSTICE
U.S. DEPARTMENT OF THE TREASURY

GUIDE TO EQUITABLE SHARING FOR STATE, LOCAL, AND TRIBAL LAW ENFORCEMENT AGENCIES



July 2018

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I. Asset Forfeiture and Equitable Sharing Overview

A. Asset Forfeiture Programs

The Department of Justice and the Department of the Treasury Asset Forfeiture Programs are, first and foremost, law enforcement programs. They remove the tools of crime from criminal organizations, deprive wrongdoers of the proceeds of their crimes, recover property that may be used to compensate victims, and deter crime. The Department of Justice and the Department of the Treasury emphasize these law enforcement purposes to their own law enforcement agencies and all federal, state, local, and tribal partner agencies.

B. Civil Rights Compliance

Agencies must comply with the applicable nondiscrimination requirements of the following laws and their implementing regulations: Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), and the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.), which prohibit discrimination on the basis of race, color, national origin, disability, or age in any federally assisted program or activity, or on the basis of sex in any federally assisted education program or activity. Agencies must take reasonable steps to provide meaningful access to their programs and activities for persons with limited English proficiency, consistent with Department of Justice and Department of the Treasury requirements. Agencies also must agree to comply with all federal statutes and regulations permitting federal investigators access to records and any other sources of information as may be necessary to determine compliance with civil rights and other applicable statutes and regulations.

C. Equitable Sharing Program

One of the ancillary benefits of asset forfeiture is the potential to share federal forfeiture proceeds with cooperating state and local law enforcement agencies through equitable sharing. The Department of Justice and the Department of the Treasury Equitable Sharing Programs (Program)¹ enhance cooperation amongst federal, state, local, and tribal law enforcement by providing valuable additional resources to state and local law enforcement agencies. However, the Program is designed to supplement and enhance, not supplant, appropriated agency resources.

Not all law enforcement efforts will result in equitable sharing. Specifically, compensating victims remains a top priority of the Asset Forfeiture Program. Pursuant to the Crime Victims' Rights Act, the Mandatory Victims Restitution Act, and Department of Justice and Department of the Treasury policies, victim compensation always takes priority over equitable sharing. Government agencies are at times victims entitled to compensation prior to equitable sharing.

The Department of Justice and the Department of the Treasury are two separate federal agencies with two separate forfeiture funds. However, this *Guide to Equitable Sharing for State, Local, and Tribal Law Enforcement Agencies* (Guide) applies to both Programs. The Department of Justice and the Department of the Treasury may make further decisions and issue guidance independent of this Guide to ensure the integrity of the Program.

¹ Hereafter, the Department of Justice and the Department of the Treasury Equitable Sharing Programs will be collectively referred to as "Program" unless otherwise noted.

1. Equitable Sharing Authority

Federal law authorizes the Attorney General and the Secretary of the Treasury to share federally forfeited property with participating state and local law enforcement agencies.² The exercise of this authority is discretionary and limited by statute. The Attorney General and the Secretary of the Treasury are not required to share property in any case. The Attorney General and the Secretary of the Treasury shall assure that any property transferred to a State or local law enforcement agency:

(A) has a value that bears a reasonable relationship to the degree of direct participation of the State or local agency in the law enforcement effort resulting in the forfeiture, taking into account the total value of all property forfeited and the total law enforcement effort as a whole; and with respect to the violation of law on which the forfeiture is based; and

(B) will serve to encourage further cooperation between the recipient State or local agency and Federal law enforcement agencies.³

2. Department of Justice Participants

Participation in an investigation with one of the following agencies may result in equitable sharing paid from the Department of Justice Assets Forfeiture Fund.

U.S. Department of Justice agencies and components:

Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)

Drug Enforcement Administration (DEA)

Federal Bureau of Investigation (FBI)

Participating components outside the U.S. Department of Justice:

U.S. Department of Agriculture – Office of Inspector General (USDA-OIG)

U.S. Department of Defense – Defense Criminal Investigative Service (DCIS)

U.S. Department of State – Bureau of Diplomatic Security (DSS)

U.S. Food and Drug Administration – Office of Criminal Investigations (FDA-OCI)

U.S. Postal Inspection Service (USPIS)⁴

² 21 U.S.C. § 881(e)(1)(A), 18 U.S.C. § 981(e)(2), and 19 U.S.C. § 1616a; 31 U.S.C. § 9705(b)(4)(A) and (b)(4)(B).

³ 21 U.S.C. § 881(e)(3).

⁴ Participation on an investigation led by the U.S. Postal Inspection Service may result in equitable sharing that is paid from the U.S. Postal Inspection Service Forfeiture Fund. These payments are considered Department of Justice equitable sharing funds for the purpose of this *Guide*.

3. Department of the Treasury Participants

Participation in an investigation with one of the following agencies may result in equitable sharing that is paid from the Department of the Treasury Forfeiture Fund.

U.S. Immigration and Customs Enforcement – Homeland Security Investigations (HSI)

Internal Revenue Service – Criminal Investigation (IRS-CI)

U.S. Secret Service (USSS)

U.S. Customs and Border Protection (CBP)

II. Which Non-Federal Agencies Are Eligible to Participate in the Equitable Sharing Program?

A. State, Local, or Tribal Law Enforcement Agencies

Any state, local, or tribal law enforcement agency that is a participant in the Program and directly participates in an investigation or prosecution resulting in a federal forfeiture may request an equitable share of the net proceeds of the forfeiture. In order for a state, local, or tribal law enforcement agency to receive shared funds, the agency must be compliant with the Program guidelines and reporting requirements.

For purposes of equitable sharing, a *law enforcement agency* is defined as a state, local, or tribal government organization authorized to engage as its primary function in the investigation and apprehension, or the prosecution of individuals suspected or convicted of offenses against the criminal laws of the United States or of any state, county, municipality, or territory of the United States. Furthermore, a law enforcement agency is primarily composed of or employs individuals designated or qualified under state statutes as peace officers or those who are authorized to prosecute criminal violations or to exercise police powers such as making arrests, seizing property, executing warrants and court orders, and carrying firearms.

A *primary function* is one that: (1) occupies a clear majority of the agency's working time over a typical work cycle; and (2) is performed on a regular and recurring basis by the agency and a majority of its officers, employees, and agents. Functions that are of an emergency, incidental, or temporary nature are not considered primary even if they amount to a majority of an agency's working time.

B. State National Guard Counterdrug Unit

A state National Guard generally does not meet the criteria for participation in the Program as a law enforcement agency because its primary mission serves a military or other non-law enforcement purpose. An individual National Guard Counterdrug Unit, however, may be eligible to participate in the Program if it is a distinct unit of a state National Guard that has counterdrug activities as its primary mission and receives funding solely for this purpose.

The Department of Justice and the Department of the Treasury determine whether individual National Guard units are eligible to participate in the Program on a case-by-case basis. Once a state National Guard unit has been determined to be eligible, it participates in the Program in the same manner as any other state, local, or tribal law enforcement agency, including adherence to reporting and compliance requirements, procedures to apply for shares of forfeited property, and all equitable sharing policies.

C. State and Local Prosecutorial Agencies

State and local prosecutorial agencies are eligible to receive equitable sharing for assistance they provide in federal forfeiture cases based on the level of contribution to the law enforcement effort. In addition, an agency may be eligible for sharing if it cross-designated a state or local attorney as a Special Assistant U.S. Attorney (SAUSA) to handle the federal forfeiture or related criminal cases in federal court. In all instances, the agency must submit a sharing request. The percentage awarded will be based on work hours and qualitative contributions to either the prosecution or efforts leading to the forfeiture. Prosecutorial agencies must adhere to reporting and compliance requirements, procedures to apply for shares of forfeited property, and all equitable sharing policies.

D. Task Forces

Equitable sharing for task forces may be paid either to a fiduciary agency or to individual member agencies. Compliant state, local, and tribal law enforcement agencies participating in task forces may request and receive equitable sharing payments under their individual NCIC codes. These payments will be paid directly either to the fiduciary agency or to individual member agencies based on participation.

Agencies participating in task forces may designate one task force member agency to serve as the fiduciary agency for the task force. The fiduciary agency must be a Program participant and must be compliant with the Program guidelines and reporting requirements. The fiduciary agency may submit one Equitable Sharing Request form (DAG-71) or Treasury TD F 92-22.46 form (TD F) under its NCIC code on behalf of the task force. The DAG-71 or TD F form must include the total workhour and qualitative contributions of all task force member agencies in the investigation. Shared funds based on all task force member agencies' contributions pursuant to the task force agreement or memorandum of understanding (MOU) will be awarded to the fiduciary agency. The other task force member agencies will neither submit individual sharing requests nor receive funds from the fiduciary agency. Funds awarded to the fiduciary agency will be the fiduciary agency's funds and must be maintained by the fiduciary agency's jurisdiction. The fiduciary agency may earmark funds for use in support of the task force's operations. A waiver to transfer funds to other member agencies in extraordinary circumstances may be granted upon concurrence from both the transferring and recipient agency heads, governing body heads, and jurisdiction chief financial officers to ensure applicable sub-recipient monitoring requirements pursuant to OMB *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* are met.

Alternatively, each agency participating in a task force may file an individual DAG-71 or TD F form requesting sharing under its own agency NCIC code. Agencies participating in task forces with written task force agreements or MOUs with pre-arranged percentages may submit the agreement with the DAG-71 or TD F form. The decision maker will generally honor the pre-determined sharing percentages provided the agency is a Program participant and the percentages accurately reflect the degree of participation by the task force members, including work hours by federal agencies. The decision maker may allocate percentages to the individual member agencies based on the agencies' participation in the task force rather than any specific officer's participation in the law enforcement effort leading to forfeiture. A member agency paying task force operating expenses may be awarded a higher percentage as a qualitative factor. If multiple member agencies submit requests, shared funds will be awarded individually to the member agencies. Funds awarded to each individual agency will be the individual agency's funds and must be maintained by the individual agency's jurisdictions.

DAG-71 and T DF forms filed under a task force's NCIC code will be rejected. In addition, payments will not be directed to an account held by a task force or associated with a task force NCIC code.

The fiduciary agency or participating member agencies must file the Equitable Sharing Agreement and Certification (ESAC) form. ESAC filings will not be accepted under task force NCIC codes. Approval from the Agency Head and Governing Body Head and submission of the ESAC obligates the fiduciary agency or participating member agencies to the terms and conditions of participation in the Program.

Participating agencies may support task force operations through permissible expenditures as detailed in Section V of this *Guide*. Task force member agencies may purchase equipment and other tangible items as well as pay direct operational expenses such as leases for the benefit of the task force. However,

agencies may not transfer shared funds to task forces or pay for unspecified or impermissible operational expenses. The agency expending funds must report the expenditure and maintain ownership and control of any tangible items. Should the task force dissolve or the fiduciary withdraw, all equipment must be returned to the purchasing agency. This ensures that audit and regulatory requirements are met under the Single Audit Act Amendments of 1996 and Office of Management and Budget (OMB) *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*.

E. Federal Agencies

Federal agencies are not eligible to receive equitable sharing funds. Federal agency participants in the Department of Justice or the Department of the Treasury Forfeiture Programs must follow their agency policy regarding submission of a Federal Contribution Form detailing participation in a forfeiture. The percentage awarded will be based on work hours and qualitative contributions for efforts leading to the forfeiture. Any award will be made to the participating agency's forfeiture fund and not the agency directly.

In no instance will any persons from a federal agency maintain control of shared funds, direct the use of shared funds, sign as the Agency Head or the Governing Body Head on an Equitable Sharing Agreement and Certification (ESAC) form, or certify a DAG-71 or TD F.

III. How Do Agencies Participate in the Equitable Sharing Program?

A. Joining the Equitable Sharing Program

Traditional law enforcement agencies generally include city, district, local, county, state, or tribal police, sheriff, or highway patrol departments, and state or local prosecutors' offices. To become a Program participant, these traditional agencies must first submit an ESAC form and affidavit to the Money Laundering and Asset Recovery Section (MLARS). Once the form is reviewed and accepted, the agency is placed into compliance. Yearly filing of the ESAC is required to maintain compliance.

All participating agencies must submit an Automated Clearing House (ACH) Vendor form to the United States Marshals Service (USMS) and to the Department of the Treasury. Separate accounts or account codes must be established for Department of Justice and Department of the Treasury funds; therefore a separate ACH form must be sent to each federal agency. ACH forms for each respective agency are available on each federal agency's website. If an agency's banking information changes, an updated ACH Vendor form must be submitted to the USMS and to the Department of the Treasury. Agencies may only include account and routing information for accounts assigned to their agency.

Agencies with law enforcement functions, but not included above as a traditional law enforcement agency, are subject to a separate review to determine the agency's eligibility to participate in the Program. The agency must demonstrate that it meets the requirements of a law enforcement agency as defined in Section II above.

Non-governmental entities, including non-profit organizations and public or private corporations or institutions, are not eligible to participate in the Program.

Determinations of agency eligibility are solely within the discretion of the Department of Justice and the Department of the Treasury.

B. Participating in a Federal Forfeiture

In order to receive an equitable share, an agency must assist in the law enforcement effort resulting in federal forfeiture. As a general rule, the forfeiture should follow the criminal case. If the property is seized as part of an ongoing federal investigation and the defendants are being prosecuted in federal court, the property should be federally forfeited. If the property is seized as part of an ongoing state investigation and the defendants are being prosecuted in state court, the property should be forfeited in state court, assuming that state law allows for forfeiture. A state or local law enforcement agency transferring property to the federal government must comply with all applicable state laws and regulations pertaining to such transfers.

Consult the federal seizing agency for minimum monetary or equity thresholds and pre-seizure planning requirements on seized property.

IV. What Is the Process to Apply for and Receive a Share?

A. Requesting an Equitable Share

1. Department of Justice-led Investigations

If state law permits, a participating state or local law enforcement agency may request a share of the forfeited assets by electronically submitting a DAG-71 to the federal seizing agency through the Department of Justice's eShare Portal. A separate DAG-71 must be completed by the requesting agency for each asset to be shared. An agency may not file a DAG-71 on behalf of another agency.

Sharing requests may be submitted at any time following the seizure, but no later than 45 days after forfeiture. A waiver request must be included with any sharing requests submitted after 45 days following the forfeiture. The lead seizing agency determines whether such a waiver will be granted.

The DAG-71 must include both work hours contributed and a detailed narrative of the agency's contribution to the law enforcement effort resulting in federal forfeiture of the asset. The agency is responsible for ensuring the deciding authority is provided with enough information to adequately evaluate the qualitative and quantitative contributions. Without this information, the deciding authority may not award a share that fully captures the agency's law enforcement contributions resulting in federal forfeiture of the requested asset. Agencies must certify that the information provided on the DAG-71 is a true and accurate statement of the agency's activities. Falsified information on the DAG-71 could, among other things, result in the agency's suspension or expulsion from the Program.

No sharing decisions will be made until after the forfeiture is complete. No sharing request will be accepted and processed after a sharing decision has been made by the deciding authority.

2. Department of the Treasury-led Investigations

If state law permits, a participating state or local law enforcement agency may request a share of the forfeited assets by submitting a TD F form to the federal agency processing the forfeiture. An agency may not file a TD F on behalf of another agency.

When multiple assets are seized in a single investigation, one TD F may be filed with an attached listing of all the assets for which a share is being requested.

Sharing requests may be submitted at any time following the seizure, but no later than 45 days after forfeiture. A waiver request must be included with any sharing requests submitted after 45 days following the forfeiture. The lead seizing agency determines whether such a waiver will be granted.

The TD F must include both work hours contributed and a detailed narrative of the agency's contribution to the law enforcement effort resulting in federal forfeiture of the asset. The agency is responsible for ensuring the deciding authority is provided with enough information to adequately evaluate the qualitative and quantitative contributions. Without this information, the deciding authority may not award a share that fully captures the agency's law enforcement contributions resulting in federal forfeiture of the requested asset. Agencies must certify that the information provided on the TD F is a true and accurate statement of the agency's activities. Falsified information on the TD F could, among other things, result in the agency's suspension or expulsion from the Program.

No sharing decisions will be made until after the forfeiture is complete. No sharing request will be accepted and processed after a sharing decision has been made by the deciding authority.

B. Calculating Shares

Percentages allocated to a law enforcement agency must bear a reasonable relationship to the agency's direct participation in the law enforcement effort resulting in the federal forfeiture. The deciding authority ordinarily determines percentages by comparing the number of work hours expended by each agency participating in the federal forfeiture, including all federal, state, local, and tribal agency contributions.

Where the work hours alone do not reflect the contribution of a law enforcement agency, the deciding authority considers qualitative factors in making adjustments to the sharing percentage. The deciding authority will consider such qualitative factors as:

- the inherent importance of the contributing activity;
- whether the agency otherwise entitled to an adjustment would already receive a comparatively large share based on reported work hours;
- whether the agency originated the information leading to the seizure;
- whether the agency provided and articulated specific unique or indispensable assistance; or
- whether the agency seized one or more assets that were forfeited in non-federal proceedings during the same investigation.

Any of these qualitative factors may warrant an increase or decrease in the percentage awarded to an agency. The deciding authority has discretion to determine on a case-by-case basis whether and how much to adjust the sharing allocation.

No sharing request or recommendation, including shares negotiated in a task force or other agreement, is final until approved by the federal deciding authority.

1. Federal Contribution

All cases resulting in equitable sharing have some level of federal involvement. The deciding authority must obtain and review the work hours and qualitative contributions of all federal agency participants when determining the appropriate share to retain in the Department of Justice Assets Forfeiture Fund or the Department of the Treasury Forfeiture Fund. Federal participation will be evaluated in the same manner as state and local participation. Work hours and qualitative contributions must be evaluated to determine the appropriate share. In addition, the deciding authority may consider federal prosecutorial contributions when evaluating the federal share.

The *minimum* federal share is 20 percent.

2. State and Local Contribution

The deciding authority must review the reported work hours and qualitative contributions of all participating state and local agencies and determine the appropriate share to award to each agency after considering all federal, state, local, and tribal agency contributions to the law enforcement effort resulting in federal forfeiture.

3. Task Force Contribution

Many task forces involving federal, state, local, and tribal law enforcement agencies have pre-arranged, written equitable sharing agreements based upon relative numbers of personnel and other contributions to the task force operation.

The Department of Justice and the Department of the Treasury will generally honor written sharing agreements that were in place *prior* to the onset of the law enforcement effort resulting in federal forfeiture. The sharing agreement must be current, in writing, and signed by the head of each agency that participates in the task force, and must contain the pre-arranged sharing percentages which reflect overall agency investigative, financial, or administrative contributions to the task force. If an agency requests sharing pursuant to a task force agreement or MOU, the agreement must be submitted to the deciding authority along with the DAG-71 or TD F. If a federal law enforcement agency is a member of a task force, and the task force chooses to enter into an MOU containing pre-arranged sharing percentages, the MOU must reflect the manpower and contributions of the federal agency and the federal share must be no less than 20 percent. Approved sharing will be disbursed directly to the member agencies. The deciding authority will not honor any verbal sharing agreements agreed upon before, during, or after the onset of the law enforcement effort resulting in federal forfeiture.

4. Spin-off Investigations

Agencies may share intelligence information that leads to spin-off investigations and additional federal forfeitures. In limited instances, the deciding authority may approve sharing to an agency that provided critical intelligence information essential to that forfeiture, but did not actively participate in the subsequent law enforcement effort resulting in federal forfeiture. The deciding authority will determine an agency's eligibility to share in federal forfeitures in spin-off investigations on a case-by-case basis.

5. Excessive Distribution Cap

A single equitable sharing distribution may not exceed the lesser of \$2 million plus twice the amount of the recipient agency's most recent budget or \$30 million. The overage will remain in the federal forfeiture fund and will be used to support nationwide law enforcement efforts.

C. Department of Justice Equitable Sharing Deciding Authorities

All decision makers will exercise due diligence when reviewing and considering work hours and qualitative factors to ensure consistency and uniformity Program-wide when determining shares.

1. Federal Investigative Agency

If the total appraised value of all the assets forfeited in a single administrative declaration of forfeiture is less than \$1 million, the investigative agency determines the appropriate equitable share for each asset and requesting agency.

2. United States Attorney

If the total appraised value of all the assets forfeited in a single judicial forfeiture order is less than \$1 million, the United States Attorney determines the appropriate equitable share for each asset and requesting agency.

3. Department of Justice, Criminal Division

In multi-district cases, cases involving the equitable transfer of real property, or cases where the total appraised value of all the assets forfeited in a single administrative or judicial forfeiture is equal to or greater than \$1 million, the Criminal Division determines the appropriate equitable share of each asset. Property forfeited under a single judicial order cannot be split up or separated so that only those individual assets with values equal to or greater than \$1 million are sent to the Criminal Division for sharing decisions.

D. Department of the Treasury Equitable Sharing Deciding Authorities

1. Federal Investigative Agency

In all forfeiture cases, whether judicial or administrative, where the total appraised value of the assets in a single forfeiture order or declaration is less than \$1 million, the authority to approve equitable sharing has been delegated to the federal investigative agency.

Forfeited assets valued at less than \$1 million that involve foreign sharing require approval from the Director of the Treasury Executive Office for Asset Forfeiture (TEOAF).

2. Department of the Treasury, Treasury Executive Office for Asset Forfeiture

Where the total appraised value of all assets contained in a single forfeiture order or declaration is equal to or greater than \$1 million, the Director of TEOAF must approve the amount of the equitable share.

In all judicial forfeitures, regardless of value, the United States Attorney's Office shall be given the opportunity to provide input on all recommendations for equitable sharing.

E. Common Causes of Delay

Equitable sharing occurs only after the federal forfeiture has been completed, the United States has taken clear title to the property, the property has been sold or otherwise disposed of as provided by law, third parties and victims have been fully compensated, and a final sharing decision has been made by the appropriate federal official. Factors that may delay sharing include:

1. If the forfeiture involves victims of crime who may be entitled to compensation, sharing cannot occur until the victims' claims are resolved and paid in full. All available funds must be used to compensate victims before any sharing payments are made.
2. If the forfeiture involves property that must be sold, the sale must be completed and the net proceeds determined before sharing may occur.
3. If the agency submits an incomplete DAG-71 or TD F, the missing information must be provided before sharing can occur. The applicable equitable sharing deciding authority cannot evaluate the sharing request without this information.
4. Distribution in equitable sharing cases involving forfeited assets with a total value of \$1 million or more requires the approval of the Criminal Division for Department of Justice forfeitures or TEOAF for Department of the Treasury forfeitures. These additional levels of approval extend the review time.

5. If complete or correct banking information is not on file, payments will be delayed.
6. In cases involving both domestic and international sharing, international sharing must be approved before domestic sharing can occur. International sharing requires the involvement of the Department of Justice, the Department of State, and the Department of the Treasury, and often takes additional time to complete.

F. Sharing is Always Based on Net Proceeds

Equitable sharing is based on the net proceeds of the forfeiture, which is calculated as follows:

Gross receipts	From forfeiture or the sale of forfeited property
Less	Qualified third-party interests (e.g., valid liens or mortgages) Payments to victims Federal case-related expenses (e.g., advertising costs, out-of-pocket investigative or litigation expenses) Federal property management and disposition expenses (e.g., appraisal, storage, security, sale) Awards paid to federal informants Payments for the services of experts and consultants hired to assist in asset identification, seizure, management, forfeiture, or disposition International sharing Reimbursements relating to the seizure from the Department of Justice Assets Forfeiture Fund or the Department of the Treasury Forfeiture Fund to the requesting agency (e.g., overtime, leased space)
Equals	Net proceeds of the forfeiture

Federal law provides that sharing is discretionary. Therefore, any equitable sharing payments to be disbursed to state and local law enforcement agencies that amount to less than \$500 after all expenses are paid will be extinguished and the funds will remain in the forfeiture fund. In addition, federal budgetary constraints such as sequestration and rescissions may affect equitable sharing disbursements.

V. What Are the Uses of Equitably Shared Funds?

Asset forfeiture is a powerful tool that provides valuable resources to state and local law enforcement that may not have otherwise been available. Equitably shared funds must be used in accordance with this *Guide* for law enforcement purposes that directly supplement the appropriated resources of the recipient law enforcement agency. Sharing will be withheld from any state or local law enforcement agency if the governing body or state or local law, regulation, or policy requires or directs (1) specific expenditures of shared funds; (2) the transfer of federal equitable sharing funds to non-participating law enforcement agencies; or (3) expenditures for non-law enforcement purposes.

Equitably shared funds are federal financial assistance and are subject to the provisions of the Code of Federal Regulations (CFR). Equitable sharing funds must be used in a reasonable and necessary manner and not create the appearance of waste or extravagance.

To avoid a conflict of interest or the appearance of a conflict of interest, any person or members of his or her immediate family who was involved in an investigation which led to the forfeiture of property to be sold is prohibited from purchasing, either directly or indirectly, that forfeited property.

A. General Guidance on Supplantation and Budgeting

1. Supplantation

Shared funds must be used to increase or supplement the resources of the receiving state or local law enforcement agency. Shared funds shall not be used to replace or supplant the appropriated resources of the recipient. The recipient agency must benefit directly from the sharing. In determining whether supplantation has occurred, the Department of Justice or the Department of the Treasury will examine the law enforcement agency's budget as a whole and allow agencies to use equitable sharing funds for any permissible purpose as long as shared funds **increase the entire law enforcement budget**. The Department of Justice or the Department of the Treasury may terminate sharing with law enforcement agencies that are not permitted by their governing body to benefit directly from equitable sharing.

Example of Improper Supplantation: A police department receives \$100,000 in federal sharing money only to have its budget cut \$100,000 by the city council. In this instance, the police department has received no direct benefit from equitable sharing whatsoever. Rather, the city as a whole has received the benefit of the sharing.

2. Anticipated shared funds or property should not be budgeted

Agencies should not "spend it before you get it" or budget anticipated receipts. Receiving agencies may not commit to spending shared funds in advance. For example, if a local law enforcement agency files a DAG-71 or TD F and anticipates a 50 percent share of \$100,000, the anticipated \$50,000 should not be obligated or budgeted for two reasons: (1) the completion of the forfeiture is uncertain; and (2) the amount of the sharing that will ultimately be approved is also uncertain. However, agencies may earmark or budget sharing funds already received.

B. Use of Shared Funds

Except as noted in this *Guide*, equitably shared funds shall be used by law enforcement agencies for law enforcement purposes only. The uses outlined below are examples of permissible and impermissible expenditures. If an agency is unsure whether a proposed expenditure is permissible, it should email mlars.ESProgram@usdoj.gov for Department of Justice fund expenditures or treas.aca@treasury.gov for Department of the Treasury fund expenditures.

Shared funds may be used for any permissible agency expenditure and may be used by both sworn and non-sworn law enforcement personnel. The fact that shared property was forfeited by a particular unit or as a result of a particular federal violation does not limit its use to purchases only for that unit or to further investigations only for that particular federal violation. If an agency wishes to support a multi-agency expenditure, such as a new payroll system or city municipal building, with a non-law enforcement agency, the law enforcement agency's costs based on its use may be calculated on a pro-rata basis.

1. Permissible Uses

- a. **Law enforcement operations and investigations**—Support of investigations and operations that further the law enforcement goals or missions. Examples include reward money (annual dues paid to a crime tip organization or payment for a specific reward for information in a specific case), recruitment and advertisement costs, agency accreditation or agency membership dues (but individual dues are impermissible), equitable sharing account maintenance fees, reimbursement to the jurisdiction for payments to informants, purchase of evidence, buy-back programs, and “buy” money.
- b. **Law enforcement training and education**—Training of investigators, prosecutors, and sworn and non-sworn law enforcement personnel in any area necessary to perform official law enforcement duties, such as canine handler, narcotics, defensive tactics, criminal justice, language, constitutional law, accounting/finance, or forensics—provided that the employees' regular duties require knowledge of these topics. Examples include training and conference registration fees, tuition, speaker fees, or costs to produce training curricula.

This provision does not permit donations or transfers of funds to associations or organizations providing training.

- c. **Law enforcement, public safety, and detention facilities**—Costs associated with the purchase, lease, construction, expansion, improvement, or operation of law enforcement, public safety, or detention facilities used or managed by the recipient agency. Examples include the costs of leasing, operating, and furnishing an off-site undercover narcotics facility. Improvements should not be made on leased property or space since the law enforcement agency will not benefit from the improvements upon termination of the lease.

Agencies must contact MLARS prior to using Department of Justice equitable sharing funds for all improvement and expansion projects. For example, the construction of a new facility or minor renovations including drywall, electrical, HVAC replacements, and internal modifications to an existing facility. Expenditures such as lease payments or utilities do not require consultation.

- d. **Law enforcement equipment**—Costs associated with the purchase, lease, maintenance (including repairs or service agreements), or operation of law enforcement equipment for use by law enforcement personnel that supports law enforcement activities. Examples include furniture, file cabinets, office supplies, telecommunications equipment, copiers, safes, fitness equipment, computers, computer accessories and software, body armor, uniforms, firearms, radios, cellular telephones, electronic surveillance equipment, vehicles (e.g., patrol and unmarked vehicles), and animals and animal-related expenses.
- e. **Joint law enforcement/public safety operations**—Costs associated with the purchase of multi-use equipment and operations used by both law enforcement and non-law enforcement personnel. Examples include 911 call center equipment, defibrillators, search and rescue boats, aircraft, and diving equipment. These expenditures are exempt from the pro-rata calculation. This provision does not include equipment to be used solely by non-law enforcement personnel, such as fire and EMS vehicles.
- f. **Contracts for services**—Costs associated with a contract for a specific service that supports or enhances law enforcement is permitted. Examples include translation and language assistance services, staffing and feasibility studies, auditor to perform an audit of equitable sharing funds, subject matter expert, grant writer, or software developer. Employment-related contracts or contracts involving inherently law enforcement functions are prohibited. Examples include hiring an attorney, investigator, or civilian personnel to perform tasks typically or previously performed by agency or jurisdiction personnel. Under no circumstances should a contract for service be entered into where the payment of that service is based on a percentage of the seizures and forfeitures of the law enforcement agency.
- g. **Law enforcement travel and per diem**—Costs associated with travel and transportation to perform or in support of law enforcement duties and activities. All related costs must be in accordance with the jurisdiction's per diem policy and must not create the appearance of extravagance or impropriety.
- h. **Law enforcement awards and memorials**—Costs associated with the purchase of plaques, certificates, and challenge coins for law enforcement personnel in recognition of a law enforcement achievement, activity, or training. Shared funds may not be used to pay awards in the form of cash or cash equivalents or stored value cards.

Shared funds may be used to pay the costs for commemorative plaques, displays, or memorials on law enforcement property that serve to recognize or memorialize a law enforcement officer's contributions, such as a memorial plaque or stone in honor of an agency's officers killed in the line of duty. The plaque, display, or memorial must not create the appearance of extravagance.
- i. **Drug, gang, and other prevention or awareness programs**—Costs associated with conducting law enforcement agency awareness programs. Examples include public service announcements, meeting costs, motivational speakers, and items used or distributed by the agency such as child identification kits and anti-crime items, literature, or software. See Section V.B.1.k for supporting non-law enforcement agency community-based programs.

- j. **Matching grants**—Costs associated with paying a state or local law enforcement agency's matching contribution or share in a state or federal grant program for items other than salaries, provided that the grant funds are used for a permissible law enforcement purpose in accordance with this *Guide* and the grant provision permits matching with federal funds. See Section V.B.3 for information regarding the use of equitable sharing funds to match federal salary grants.
- k. **Support of community-based organizations**—Transfers of shared funds from a state or local law enforcement agency to community based non-profit organizations (501(c)(3) or (4)) whose stated missions are supportive of and consistent with a law enforcement effort, policy, and/or initiative. An agency may expend up to a total of \$25,000 annually to transfer to such organizations. Examples include a drug treatment facility, job skills program, or a youth program with drug and crime prevention education. The following requirements apply:
 - 1. Law enforcement agency head must approve the transfer and must ensure the recipient is a qualified entity;
 - 2. Agency must ensure that all transferred funds are spent permissibly in accordance with this *Guide*; and
 - 3. Agency's jurisdiction must perform applicable sub-recipient monitoring requirements pursuant to the OMB *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*.

This community-based organization provision **does not** apply to Department of the Treasury equitable sharing funds; therefore agencies may not use Department of the Treasury funds to support community-based organizations.

2. Impermissible Uses

- a. **Use of forfeited property by non-law enforcement personnel**—Personnel from non-law enforcement agencies are not permitted to use shared vehicles, forfeited property, or items retained for official use or purchased with shared funds unless the property is purchased for joint law enforcement/public safety use. See Sections V.B.1.c and e for joint public safety facilities and equipment.
- b. **Creation of endowments or scholarships**—Shared funds may not be used to create or establish endowments or scholarships.
- c. **Uses contrary to state or local laws**—Shared funds and property may not be used for any purpose that would constitute an illegal or improper use of state or local law enforcement funds or property under the laws, rules, regulations, and orders of the state or local jurisdiction of which the agency is a part.

Compliance with state or local legislation addressing federal equitable sharing is the responsibility of the Program participant. The Department of Justice and the Department of the Treasury reserve the right to suspend agencies where compliance with both state and local laws and Program guidelines is not possible.

- d. **Personal or political use of shared assets**—Shared funds may not be used for any purpose that creates the appearance that shared funds are being used for political gain or personal benefit. Examples include campaign paraphernalia, gym memberships, commercial driver's licenses, passports, non-uniform clothing, and bar, union, or other individual dues or membership fees.
- e. **Purchase of food and beverages**—Shared funds may not be used to pay for food and beverages (alcoholic and non-alcoholic) except for meals for officers engaged in local emergency operations such as an earthquake or hurricane.
- f. **Extravagant or wasteful expenditures and entertainment**—Agencies should use federal sharing funds prudently and in such a manner as to avoid any appearance of extravagance, waste, or impropriety. In addition, funds may not be used for entertainment expenditures. Examples include tickets to social events, hospitality suites at conferences, entertainers, or meals or travel in excess of the per diem.
- g. **Cash on hand, secondary accounts, and stored value cards**—Shared funds may not be used to establish cash accounts, purchase prepaid credit cards, or used in any other type of transaction where expenditures are not managed or monitored by the jurisdiction and tracked to ensure permissibility in accordance with this *Guide*. See Section VI.A.1.
- h. **Transfers to other law enforcement agencies**—Shared funds may not be transferred to another state or local law enforcement agency. In limited circumstances, MLARS and TEOAF may consider a waiver upon concurrence from both the transferring and recipient agency heads, governing body heads, and jurisdiction chief financial officers to ensure applicable sub-recipient monitoring requirements pursuant to the *OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* are met.
- i. **Purchase of items for other law enforcement agencies**—Shared funds may not be used to purchase equipment or other permissible items for other law enforcement agencies. Equipment purchased for use by officers assigned to a task force must remain titled to and inventoried with the purchasing agency. See Section II.D for task force operations.
- j. **Costs related to lawsuits**—Shared funds may not be used to pay attorney fees, settlement payments, or any other related costs of lawsuits involving the agency or governing body or their employees.
- k. **Loans**—Shared funds may not be used as advance payment for expenditures being reimbursed or paid by other funds or to reimburse the jurisdiction for expenses already purchased with general funds. Examples include task force overtime or equipment reimbursements or appropriated funds used for permissible expenditures in advance of receipt of sharing revenue.
- l. **Money laundering operations**—Shared funds may not be used to support state and local undercover money laundering operations that are not part of an approved federal undercover money laundering investigation.

3. Salaries

Equitable sharing funds may not be used to pay the salaries and benefits of sworn or non-sworn law enforcement personnel. The purpose of this rule is to protect the integrity of the Asset Forfeiture and Equitable Sharing Programs so that the prospect of receiving equitable sharing funds does not influence, or appear to influence, law enforcement decisions.

Exceptions: Equitable sharing funds may be used to pay the salaries and benefits of current law enforcement officers and personnel in the limited situations listed below.⁵

- (1) **Matching federal grants**—Shared funds may be used to pay the match requirement for the salaries and benefits of current sworn and non-sworn law enforcement personnel funded by federal grant programs provided the grant provision permits matching with federal funds.
- (2) **Overtime**—Shared funds may be used to pay the overtime and related benefits of current sworn and non-sworn law enforcement personnel involved in law enforcement operations.
- (3) **Federal task force replacement salary**—Shared funds may be used to pay the salary and benefits of current, sworn and non-sworn law enforcement personnel hired to fill vacancies created when a law enforcement agency assigns personnel to a federal task force. If the vacated position was sworn, the backfill position must also be sworn. If the vacated position was non-sworn, the backfill position must also be non-sworn. The replacement personnel cannot engage in the seizure of assets or narcotics as a principal law enforcement duty. A principal duty is a duty that the personnel is expected to perform regularly.

When such personnel return from the federal task force, the law enforcement agency may continue to use forfeited funds to pay for the salary and benefits of the replacement personnel for a period not to exceed six months.

- (4) **Specialized programs**—Shared funds may be used pay the salary and benefits of current, sworn law enforcement officers assigned to specialized programs which do not generally involve traditional law enforcement functions, such as school resource officers (SRO) or officers assigned to programs such as DARE. SROs and other officers assigned to specialized programs must be employed by the law enforcement agency. If the officer does not serve in this position on a full-time basis, only the pro-rata portion of the salary and benefits covering the time worked in the specialized position may be paid with shared funds.

C. Transfer of Forfeited Tangible and Real Property through Equitable Sharing

In certain instances, a participating state or local law enforcement agency may request the transfer of tangible or real property in lieu of proceeds for official law enforcement use. MLARS and TEOAF must approve all property transfers. If approved, the recipient agency is responsible for reimbursing the federal government for costs and expenses, the federal share, and for tracking the property in its inventory.

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1. Tangible Property

Any tangible property transferred to a state or local law enforcement agency must be used for law enforcement purposes only. Transferred property is subject to the rules applicable to similar property purchased by a state or local agency with appropriated funds. Agencies must provide a justification and approval from the governing body to MLARS or TEOAF when requesting tangible property for official use. Agencies must include the asset identification number, intended use, funding source for the federal share and potential storage fees, and approval from the governing body. MLARS and TEOAF will review the request to ensure the agency has a demonstrated need for the item, is able to maintain the property for its intended use for the required two-year period, and is able to pay all liens and storage fees.

a. Two-Year Use Requirement

Transferred tangible property must be used for at least two years by the recipient agency. If, however, the property becomes unsuitable for law enforcement use before the end of the two-year period, it may be sold with approval from MLARS or TEOAF. To the extent practicable and if consistent with the agency's procurement and disposal policies, agencies must deposit proceeds from the sale of such property into the agency's sharing account or accounting code. If the item has minimal or no value, the agency may donate the item to a recipient of its choice if permitted under the agency's disposal policies.

b. Reimbursement of Federal Costs

Agencies that receive tangible property must pay for any liens, costs related to storage or maintenance, and the federal share. If the agency is unable to pay these expenses with appropriated or equitably shared funds, MLARS or TEOAF may permit an offset against approved sharing that has not yet been disbursed.

Payment must be made within 30 calendar days of notification of the total expenses. If the requesting agency has no pending sharing or is unable or unwilling to pay the balance within 30 calendar days, the property will be disposed and an equitable share of the proceeds, if any, may be equitably disbursed to the agency in lieu of transfer.

2. Real Property

Real property may be transferred to a state or local law enforcement agency that substantially participated in the investigation that led to the seizure of the property. The agency must demonstrate a compelling law enforcement need for the property and outline its intended use through correspondence to the federal seizing agency. In addition, the property must be used for the designated law enforcement purpose for at least five years. If sold after five years, the proceeds must be deposited in the agency's equitable sharing account.

The agency must also sign an MOU outlining the agency's responsibilities with regard to the use of the property. The agency must agree to pay any federal costs/expenses, including liens, environmental assessments, or taxes, as well as the federal share before the transfer will be approved. Real property transfers must be approved by the Criminal Division in Department of Justice forfeitures and by TEOAF in Department of the Treasury forfeitures before title is transferred or funds expended to improve the property.

D. Return of Equitably Shared Funds

On occasion, a criminal conviction or forfeiture order may be reversed, or victims and third parties may be identified after equitable sharing payments have been disbursed. Victim compensation remains one of the Department of Justice's and the Department of the Treasury's top priorities and must take place prior to equitable sharing. In those instances, agencies will be required to return previously disbursed equitable sharing. If the agency has approved sharing that has not yet been disbursed, MLARS or TEOAF may permit the agency to offset the amount due against future sharing.

E. Treasury Offset Program

The Treasury Offset Program (TOP) offsets federal payments, including equitable sharing payments, to collect delinquent nontax debts owed to the United States, as required by the Debt Collection Improvement Act of 1996. On occasion, an agency's equitable sharing disbursement may be offset to satisfy a debt from another entity sharing its Tax Identification Number (TIN). Agencies whose funds have been offset should first contact the USMS to determine the TIN listed on the ACH form. Next, agencies should contact the TOP call center at 800-304-3107 to determine the amount of and reason for the debt. Agencies should seek reimbursement for the offset funds from the delinquent entity to ensure that funds are used for law enforcement purposes in accordance with this *Guide*.

VI. What Are the Accounting Procedures and Requirements for Shared Cash, Proceeds, and Tangible Property?

All participating state and local law enforcement agencies must implement standard accounting procedures and internal controls that are consistent with the guidelines set forth below to track equitably shared funds and tangible property. At any time, the Department of Justice or the Department of the Treasury may request documents related to equitable sharing, conduct an audit or compliance review, or implement additional reporting requirements and spending plans. Department of Justice and Department of the Treasury equitable sharing funds must be tracked and maintained separately.

A. Bookkeeping Procedures and Internal Controls

The state or local participating law enforcement agency must:

1. Maintain equitable sharing funds with the same entity that maintains the agency's appropriated funds and administers procurement actions. Bank accounts, checkbooks, purchase cards, and other financial instruments or documents must be maintained in the same manner as appropriated funds.
2. Establish separate Department of Justice and Department of the Treasury accounts or accounting codes to track both revenues and expenditures for each respective Program. No other funds may be commingled in these accounts or with these accounting codes.
3. Process all expenditures and payments in the same manner as appropriated funds, including procurement and payment transactions.
4. Deposit all interest earned on equitable sharing funds into the respective account or accounting code. All interest is subject to the same use restrictions as equitable sharing funds. Losses to funds maintained in investment accounts in accordance with the jurisdiction's policies may not be allocated to or deducted from the equitable sharing account.
5. Maintain and follow written policies for accounting, bookkeeping, inventory control, and procurement that comply with the applicable provisions of the OMB *Uniform Administrative Requirements, Costs, Principles, and Audit Requirements for Federal Awards* or any subsequent updates and jurisdiction policies. Ensure distribution of relevant policies to all appropriate personnel.
6. Maintain records of all revenue and expenditures posted to the account or accounting code—to include bank/ledger statements, invoices, receipts, required jurisdiction approvals, or any other documents used or created during the procurement process.
7. Report all transactions using cash-based accounting methods.

8. Dispose of items purchased with shared funds in accordance with the agency's disposal policies. To the extent practicable and if consistent with the agency's procurement and disposal policies, deposit proceeds from the sale of such property into the agency's sharing account or accounting code. If an item has minimal or no value, an agency may donate the item to a recipient of its choice if permitted under the agency's disposal policies.
9. Ensure the law enforcement agency head, or designee, authorizes all expenditures from the sharing accounts.
10. Obtain approval for expenditures from the governing body, such as the town council or city manager's office, when required.

VII. What Are the Reporting and Audit Requirements?

To ensure effective management, promote public confidence in the integrity of the Program, and protect the Asset Forfeiture Program against potential waste, fraud, and abuse, the Department of Justice and the Department of the Treasury have established reporting requirements that include the annual submission of the ESAC form. The ESAC includes the agency's annual Affidavit and details an agency's receipts and expenditures of equitably shared funds for both the Department of Justice and the Department of the Treasury Equitable Sharing Programs. A state or local law enforcement agency must be compliant with the use and reporting requirements set forth in this *Guide* to receive any distribution of funds or property. An agency is considered compliant once the ESAC is received, reviewed, and approved by MLARS. Because the ESAC captures both Department of Justice and Department of the Treasury equitable sharing receipts and expenditures, submission of the ESAC to MLARS constitutes submission to the Department of the Treasury.

The eShare Portal is a Department of Justice online tool that allows agencies to obtain information regarding equitable sharing requests and distributions made by the Department of Justice. This information assists with reconciling deposits to the agency's Department of Justice equitable sharing account, as well as tracking and obtaining the status of pending Department of Justice sharing requests. At this time, the Department of the Treasury does not have a similar online tool; however, distribution reports are available by contacting TEOAF.

A. Federal Equitable Sharing Agreement and Certification Form

Agencies must annually submit an ESAC in the eShare portal, regardless of whether funds were received or maintained during the fiscal year, in order to maintain compliance. The ESAC must be reviewed and approved by the head of the law enforcement agency and a designated official of the governing body prior to submission. For the purposes of the Program, the governing body is the governmental entity that allocates appropriated funding to the law enforcement agency. In no instance can any individual from the law enforcement agency sign as the governing body head. By approving the ESAC, the signatories agree to be bound by the statutes and guidelines that regulate the Program and certify that the law enforcement agency will comply with these guidelines and statutes.

Agencies must submit the ESAC within two months after the end of their fiscal year. No extensions to this deadline will be granted. Agencies will remain non-compliant until all paperwork is received and approved. For example, if the agency's fiscal year ends September 30, the ESAC must be filed, reviewed, and accepted by November 30 for the agency to remain compliant.

B. Extinguishment of Funds

An agency that remains non-compliant for more than one year will have all approved sharing pending disbursement extinguished. Such extinguishments are final and the previously approved funds will remain in the Department of Justice Assets Forfeiture Fund or the Department of the Treasury Forfeiture Fund.

C. Audit Requirements

State and local law enforcement agencies that receive equitable sharing must comply with the applicable Single Audit Act Amendments of 1996 and *OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* or any subsequent updates to this guidance. Per those guidelines, state or local governments that expend more than the applicable threshold in federal

funds (e.g., Department of Justice and/or Department of the Treasury equitable sharing funds, grants, cooperative agreements) per fiscal year are required to conduct an independent audit.

Department of Justice and Department of the Treasury equitable sharing funds are direct payments for specified use. Auditors should consult the Catalog of Federal Domestic Assistance (CFDA) number 16.922 for Department of Justice equitable sharing funds and CFDA number 21.016 for Department of the Treasury equitable sharing funds to determine applicable audit guidance. Expenditures of these funds must be included on the jurisdiction's Schedule of Expenditures of Federal Awards (SEFA) as federal financial assistance.

Approved transfers to other participating law enforcement agencies and transfers to qualifying community-based organizations are subject to various subparts of the Code of Federal Regulations (CFR). The CFR requires sub-recipient monitoring to be performed by the transferring entity. The recipient entity must adhere to all sub-recipient monitoring requirements imposed on by the transferring agency. Sub-recipient monitoring includes, but is not limited to, issuing award letters to the recipient, monitoring the recipient's expenditures for permissibility, and ensuring the recipient agency reports the received and expended funds on its annual ESAC and its jurisdiction reports the agency's expended funds on its Single Audit. A comprehensive list of requirements are posted in the eShare Portal.

On occasion, agencies may be selected by the Department of Justice or the Department of the Treasury Office of Inspector General, MLARS, TEOAF, or other federal entities, to undergo an audit or other form of review. Agencies must comply with all requests for documents and information. Failure to comply with these requests or failure to implement corrective measures may result in temporary or permanent exclusion from the Program.

D. Record Retention

State and local law enforcement agencies must retain all documents and records pertaining to their participation in the Program for a period of at least five years. Such documentation includes, but is not limited to, receipts and procurement documentation for all expenditures of shared funds, bank statements, Forms DAG-71 and TD F, ESACs, accounting and bookkeeping documents, logs and records, bank records and statements, and audit reports.

All records may be subject to release under applicable federal, state, and local Freedom of Information Act laws and regulations.

VIII. How Does an Agency Terminate Program Participation?

When an agency ends participation in the Program, it must notify MLARS and TEOAF of its decision. MLARS and TEOAF will coordinate with the agency on the disbursement of the agency's remaining funds. The agency will be required to file a final ESAC form showing a zero balance. Any pending sharing requests will be extinguished and retained by the Department of Justice or the Department of the Treasury.

IX. What If Agencies Do Not Comply with Program Requirements?

The policies contained in this *Guide* are binding upon all state and local agencies participating in the Program. No equitable sharing funds or property will be distributed to any state or local law enforcement agency that is not a compliant Program participant.

Failure to comply with the policies in this *Guide* may subject recipient agencies to sanctions such as:

1. Denial or extinguishment of sharing requests;
2. Temporary or permanent exclusion from the Program;
3. Freeze on receipt and/or expenditure of shared funds;
4. Return of funds or offsets from future sharing;
5. Civil enforcement actions in U.S. District Court; or
6. Federal criminal prosecution for false statements under 18 U.S.C. § 1001, fraud involving theft of federal program funds under 18 U.S.C. § 666, or other sections of the criminal code, as applicable.

An agency or governing body head, or designee, is required to immediately notify MLARS and TEOAF of any allegations or theft, fraud, waste, or abuse involving federal equitable sharing funds.



U.S. Department of Justice
Criminal Division
Money Laundering and Asset Recovery Section
1400 New York Avenue, N.W.
10th Floor
Washington, D.C. 20005
Phone: (202) 514-1263
Fax: (202) 616-1344



U.S. Department of the Treasury
Executive Office for Asset Forfeiture
1341 G Street, N.W.
Suite 900
Washington, D.C. 20220
Phone: (202) 622-9600
Fax: (202) 622-9610

ITEM #: 6.
DATE: 12/06/2021
AI #:560



CITY COUNCIL ACTION REPORT

SUBJECT: FY2022 PAVEMENT MANAGEMENT PROJECTS

STAFF PRESENTER(S): Hugh Bigalk, P.E., City Traffic Engineer; Brian Harvel, Pavement Management Coordinator

OTHER PRESENTER(S):

Brian Harvel, Pavement Management Coordinator

SUMMARY

Request City Council approve expenditures up to \$3,293,000 for FY2022 pavement management projects.

Recommendation

Approve expenditures in the amount of \$3,293,000 to complete pavement management projects in various locations throughout the city. (Hugh Bigalk, P.E., City Traffic Engineer)

FISCAL IMPACT

The FY2022 pavement management budget includes \$3,479,000 in HURF and General Funds in the Engineering Operating budget. Identified in Table 1 below are the FY2022 pavement management projects.

Table 1: FY2022 Pavement Management Projects

Item	TOTAL
Asphalt Micro Surfacing	\$1,715,000
Asphalt Slurry Seal Application	\$1,063,000
Surface Seal	\$265,000
ADA Ramp Improvements	\$250,000
Total	\$3,293,000

BACKGROUND AND PREVIOUS ACTIONS

On March 17, 2014 and August 25, 2014, the city's pavement management consultant, APT, presented an update on their pavement management project at which time treatment strategies and funding recommendations were discussed. During those presentations, the City's Pavement Condition Index (PCI) of 68.1 was presented to Council. The city's PCI has increased by 6.8 points from 68.1 in FY2014 to 74.9 in FY2021 from the inventory of all city maintained streets. We anticipate the PCI will remain stable in future years based on the pavement management program, the Capital Improvement Program, and the continued development of unimproved roads in the city.

STAFF ANALYSIS

Proposed FY2022 pavement management projects total 92.12 lane-miles of pavement preservation projects.

A description of each preservation type is provided below, followed by a list of roadways or neighborhoods recommended for the designated pavement treatment:

1. Micro Surfacing – A product that is commonly used on arterial and collector roads, and is effective at correcting or inhibiting raveling and oxidation of the pavement surface, improving surface friction, sealing the pavement surface, and filling minor surface irregularities and wheel ruts up to 1.25 inches deep. Micro-surfacing typically lasts 5 - 7 years.

- 159th Ave from McDowell Rd To Monte Vista Rd
- Indian School Rd from Citrus Rd to Perryville Rd
- Cotton Ln from McDowell Rd to Thomas Rd
- Thomas Rd from Cotton Ln to ADOT ROW
- Sarival / Virginia Ave from McDowell Rd to Pebble Creek Pkwy
- Monte Vista Rd from Sarival Rd to 150th Dr
- Central Ave Van Buren St to EOP
- 158th Ave from Van Buren St to Harrison St (South Bound Only)
- Elwood St from 159th Ave Alignment to Sarival Ave (West Bound Only)
- Elwood St from Sarival Ave to Cotton Ln
- Commerce Dr from Sarival Ave to Cotton Ln
- Cotton Lane from MC-85 to Estrella Pkwy
- Goodyear Blvd from Yuma Rd to Sherman St
- Goodyear Blvd from Estrella Pkwy to Yuma Rd
- 150th Dr from Encanto Blvd to McDowell Rd
- Estrella Pkwy from Lavender Ln alignment to EOP
- Willis Rd from Estrella Pkwy to Mountain Vista Dr

2. Slurry Seal – A mixture of crushed, well graded aggregate (fine sand and mineral filler) and an asphalt emulsion that is spread over the entire pavement with a spreader box attached to the back of a truck. Slurry seals are commonly used in neighborhoods and are effective in sealing low-severity surface cracks, waterproofing the pavement surface, and improving skid resistance at speeds below 30 MPH. Slurry seal typically lasts 5 to 7 years.

- Wildflower Ranch
- Legacy Ranch
- Curtis Commons

- North Subdivision
- Tranquility @ EMR
- Serenity @ EMR

3. Guard Top Ultra Sealcoat – A high performance mineral and fiber reinforced asphalt emulsion blended with polymers and special additives. Guard Top Ultra sealcoats are commonly used on residential streets with minimal aggregate loss and cracking. Provides a long lasting rich black color while waterproofing the surface. Typically lasts 5 to 7 years.

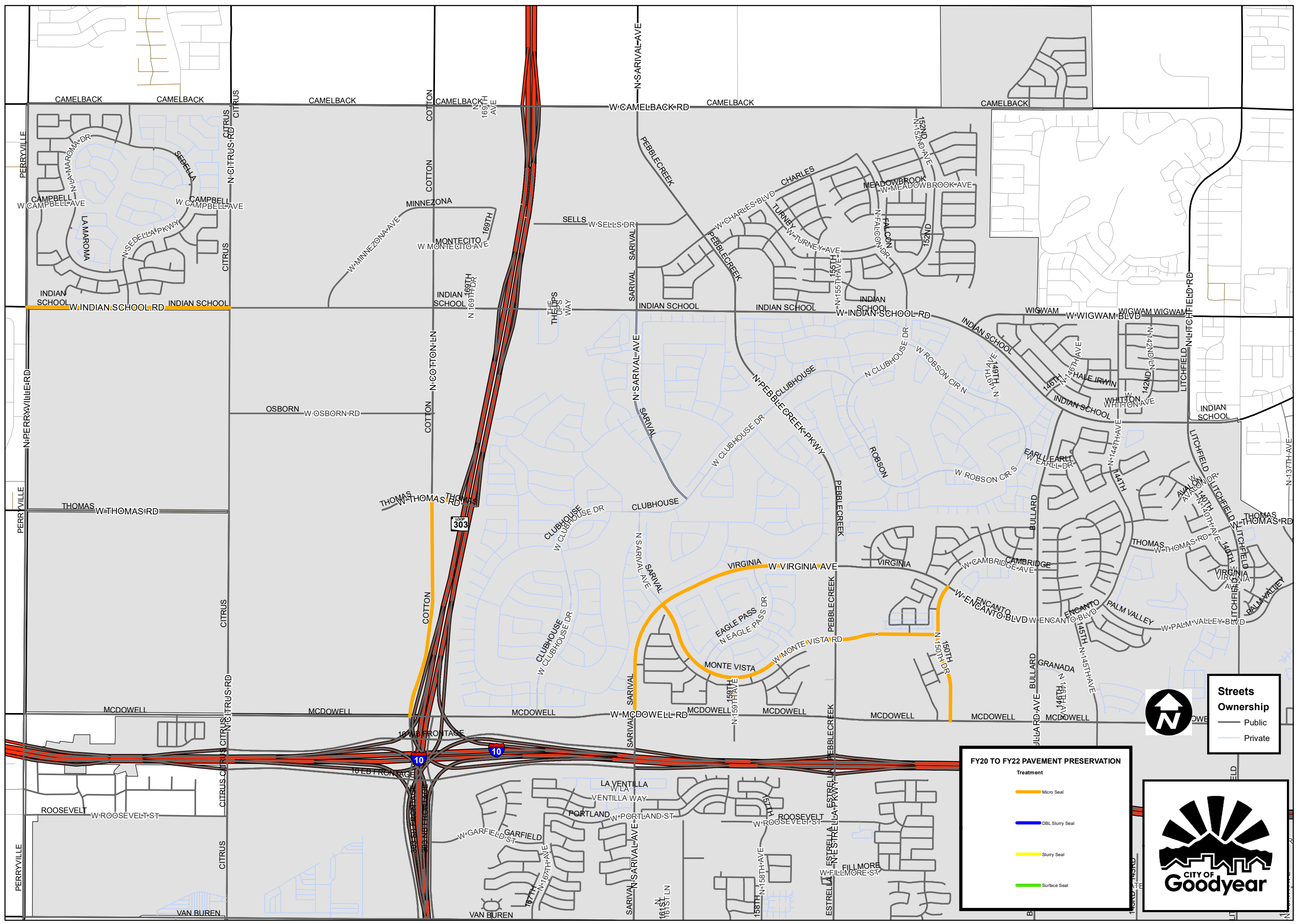
- Centerra
- Medina @ EMR
- Stone Canyon @ EMR
- Terrata @ EMR

Existing city contracts with the following companies will be used for pavement treatments and ADA ramp repairs and replacements:

Viasun Corporation
Southwest Slurry Seal Inc.
Sunland Asphalt
Bunney's Inc

Attachments

Exhibit A
Presentation



Streets Ownership

- Public
- Private

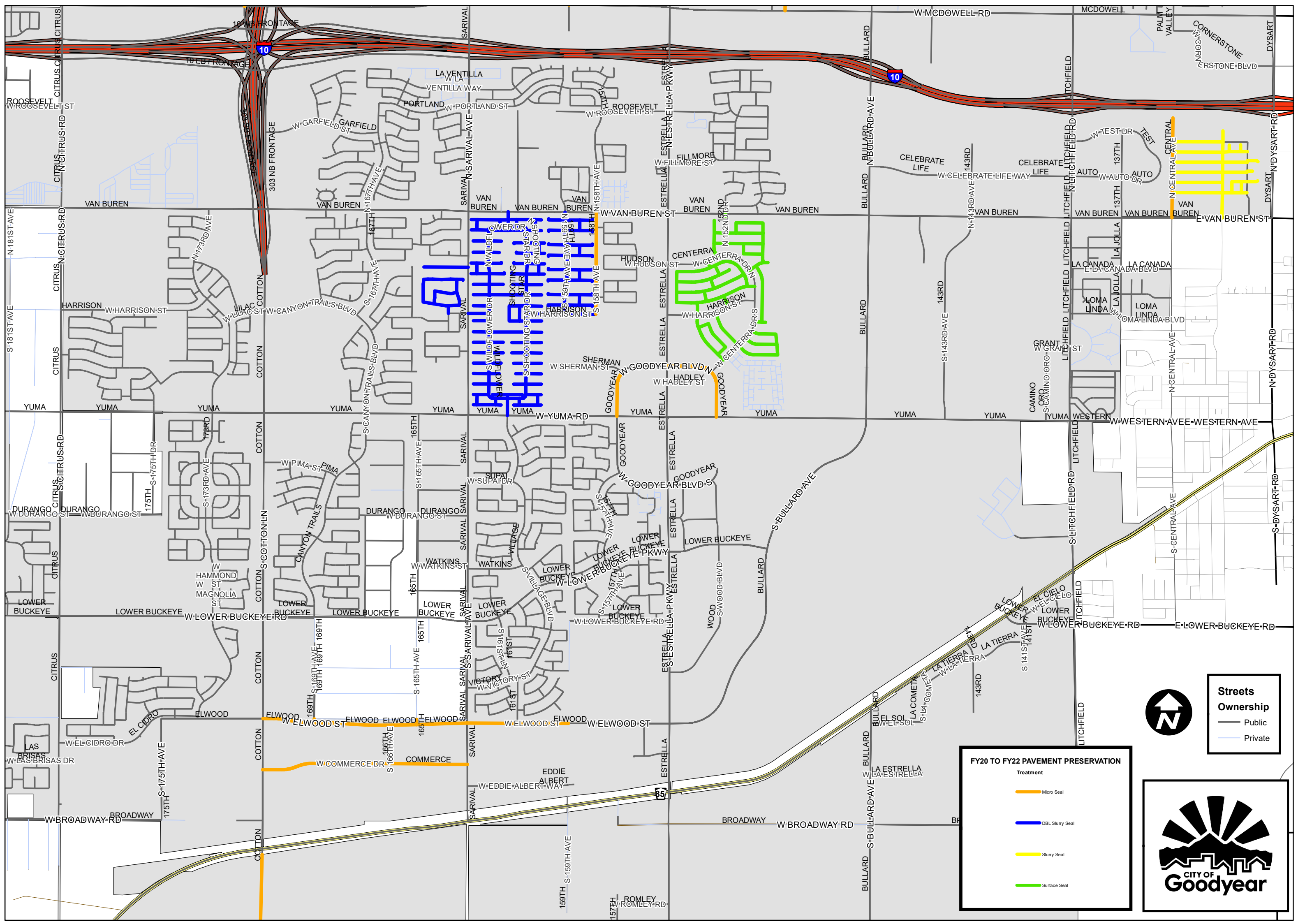


FY20 to FY22 PAVEMENT PRESERVATION

Treatment

- Micro Seal
- DBL Slurry Seal
- Slurry Seal
- Surface Seal





Streets Ownership

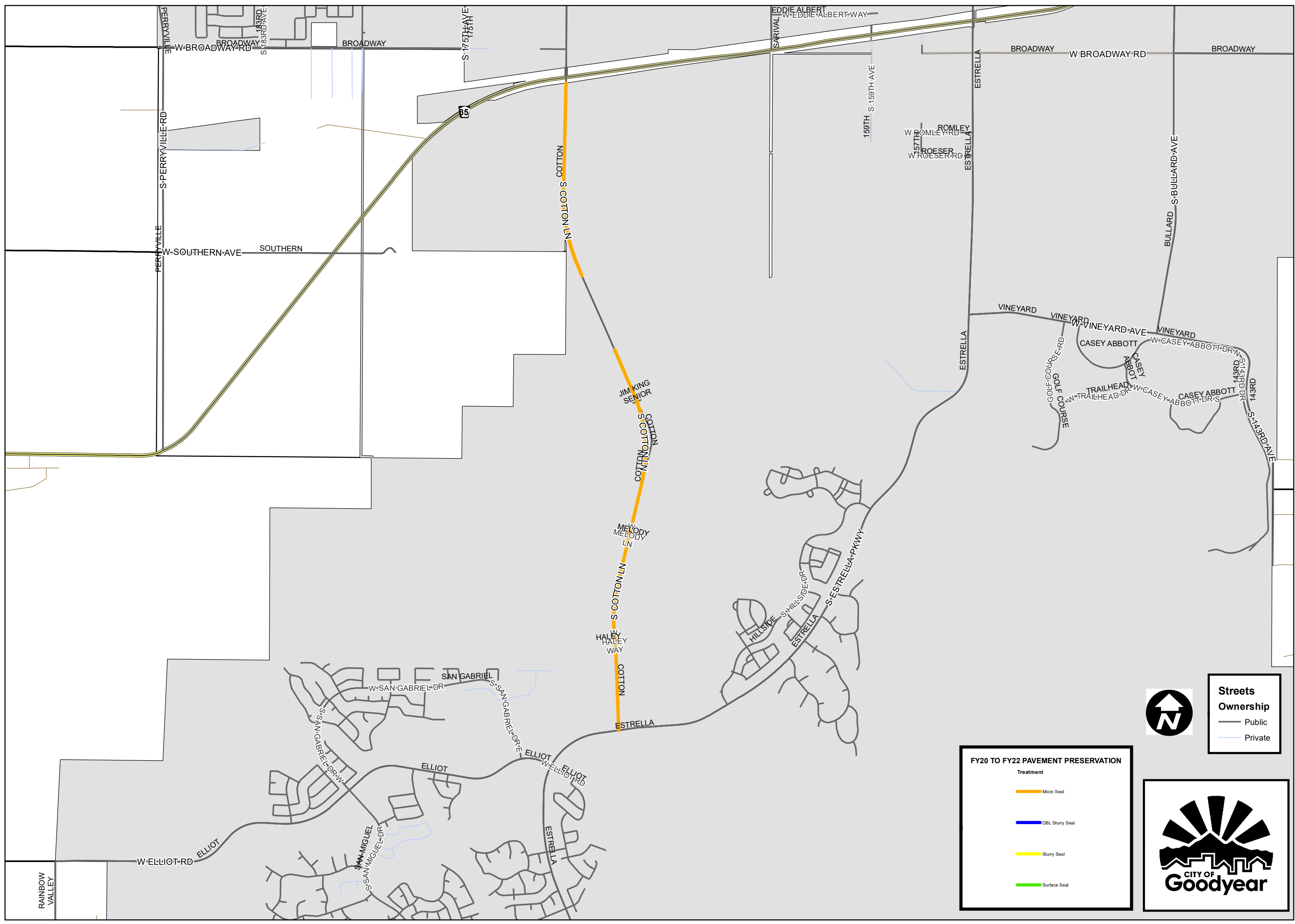
- Public
- Private

FY20 TO FY22 PAVEMENT PRESERVATION

Treatment

- Micro Seal
- DBL Slurry Seal
- Slurry Seal
- Surface Seal







FY2022 Pavement Management Projects

December 6, 2021

FY2022 PAVEMENT MANAGEMENT



AGENDA

- Pavement Condition Results
- Treatments for FY2022
- Treatment Locations
- Recommendation



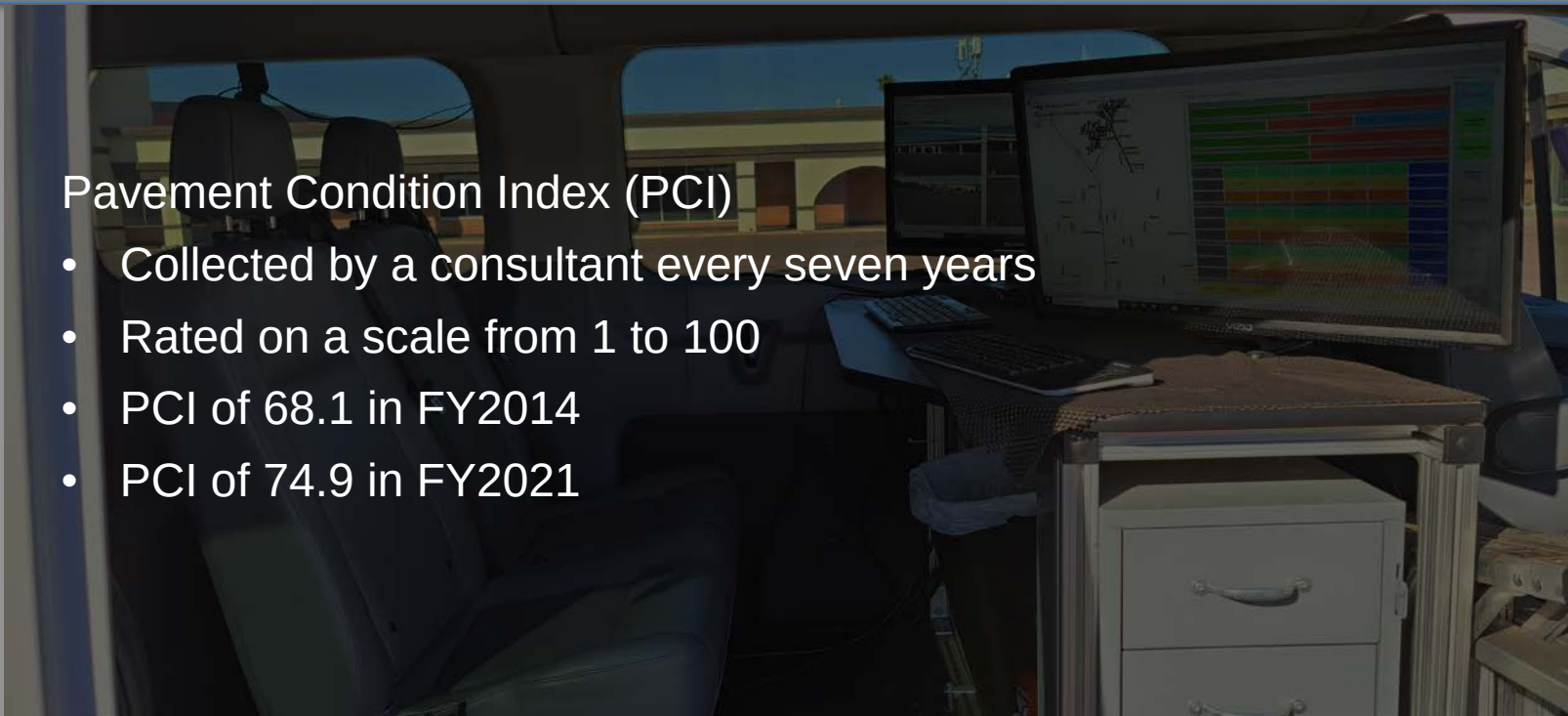
FY2022 PAVEMENT MANAGEMENT



PAVEMENT CONDITION INDEX

Pavement Condition Index (PCI)

- Collected by a consultant every seven years
- Rated on a scale from 1 to 100
- PCI of 68.1 in FY2014
- PCI of 74.9 in FY2021



FY2022 PAVEMENT MANAGEMENT



MICRO SURFACING – BULLARD AVE

BEFORE TREATMENT



AFTER TREATMENT



FY2022 PAVEMENT MANAGEMENT



SLURRY SEAL

BEFORE TREATMENT



AFTER TREATMENT



FY2022 PAVEMENT MANAGEMENT



SURFACE SEAL (GUARD TOP)

BEFORE TREATMENT



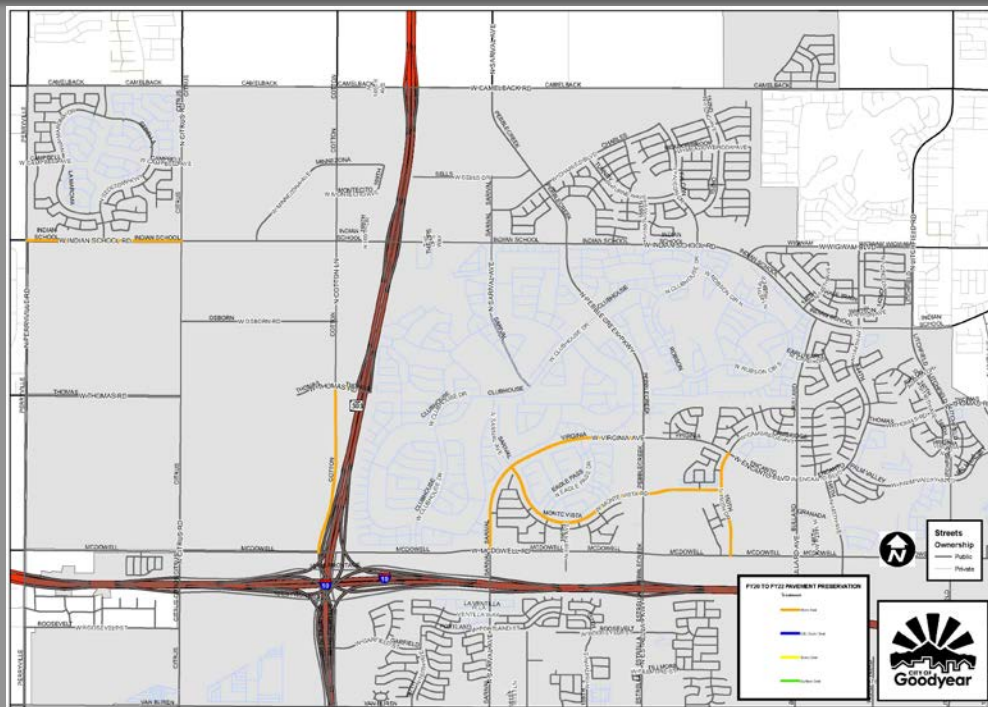
AFTER TREATMENT



FY2022 PAVEMENT MANAGEMENT



PROJECT MAP - NORTH



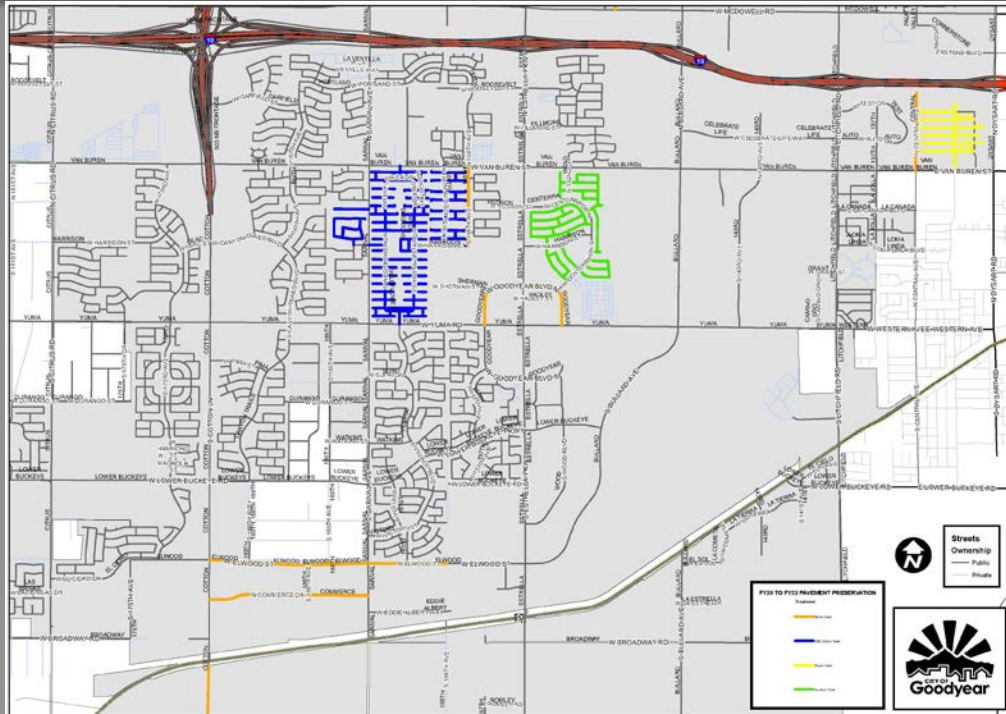
MICRO SURFACING

- INDIAN SCHOOL RD
- COTTON LN
- THOMAS RD
- SARIVAL AVE/VIRGINIA AVE
- MONTE VISTA AVE
- 150TH DR

FY2022 PAVEMENT MANAGEMENT



PROJECT MAP - CENTRAL



MICRO SURFACING

- 158TH AVE
- GOODYEAR B
- CENTRAL AVE
- COMMERCE AVE
- ELWOOD ST

DOUBLE SLURRY SEAL

- WILDFLOWER RANCH
- LEGACY RANCH
- CURTIS COMMONS

SLURRY SEAL

- NORTH SUBDIVISION

SURFACE SEAL

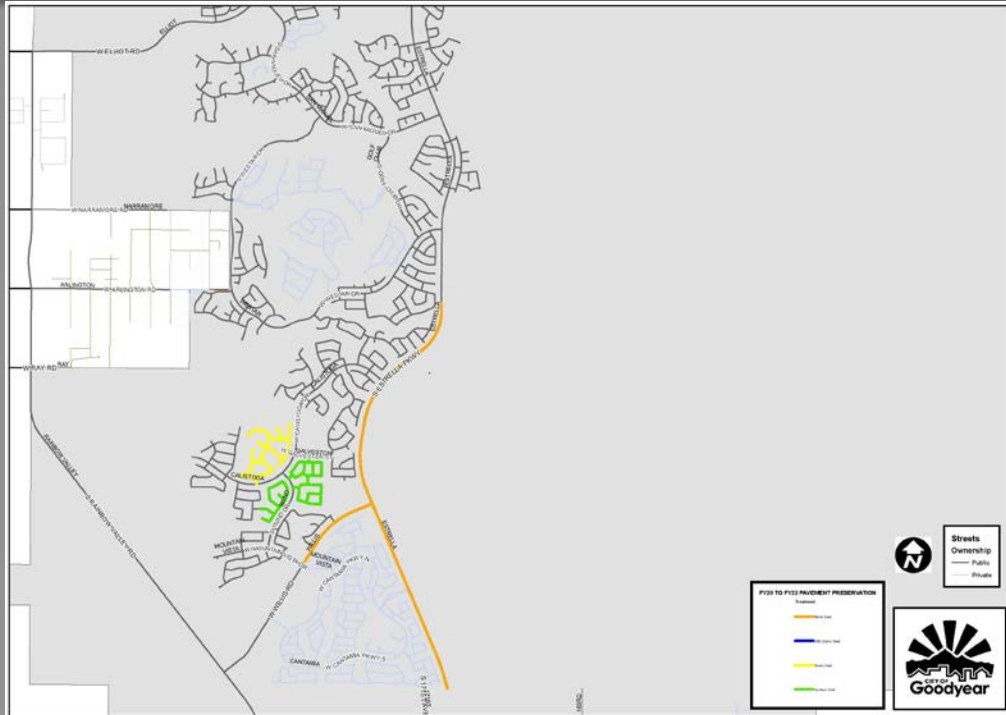
- CENTERRA

The map displays the City of Goodyear, Arizona, with a focus on the proposed FY2019 FY22 pavement reconstruction project. The project area is highlighted in orange along the main road corridor, specifically between the intersection of W Elwood Rd and W Broadway Rd. The map includes a legend for street ownership (Public, Private) and pavement type (Asphalt, Concrete, etc.). The project area is highlighted in orange along the main road corridor, specifically between the intersection of W Elwood Rd and W Broadway Rd. The map includes a legend for street ownership (Public, Private) and pavement type (Asphalt, Concrete, etc.).

FY2022 PAVEMENT MANAGEMENT



PROJECT MAP - SOUTH



MICRO SURFACING

- ESTRELLA PKWY
- WILLIS RD

SLURRY SEAL

- TRANQUILITY
- SERENITY

SURFACE SEAL

- STONE CANYON
- MEDINA
- TERRATA

FY2022 PAVEMENT MANAGEMENT



COST SUMMARY

A wide-angle photograph of a newly paved asphalt road stretching into the distance under a clear sky. The road is flanked by dry, yellowish-brown grass and some sparse trees. In the far distance, a range of mountains is visible.

Asphalt Micro Surfacing:	\$1,715,000
Asphalt Slurry Seal:	\$1,063,000
Asphalt Surface Seal:	\$265,000
ADA Ramp Improvements	250,000
FY2021 Project Total:	\$3,293,000



FY2022 PAVEMENT MANAGEMENT



RECOMMENDATION

Approve expenditures in the amount of \$3,293,00 to complete FY2022 pavement management projects in various locations throughout the city.



ITEM #: 7.
DATE: 12/06/2021
AI #:559



CITY COUNCIL ACTION REPORT

SUBJECT: AGREEMENT TO SHARE COSTS FOR THE FEASIBILITY STUDY OF BARTLETT DAM MODIFICATION ALTERNATIVES AMONG COST-SHARE PARTNERS AND SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT AND RELATED BUDGET TRANSFER

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

SUMMARY

The Salt River Project (SRP), U.S. Bureau of Reclamation (Reclamation), and participating Parties propose to move forward with a Feasibility Study to assess the recommended alternatives (Bartlett Dam Modification) to restore and enhance water storage due to lost capacity in the Verde River reservoirs. This Agreement sets the terms and conditions for 1) the estimated annual costs the Parties expect to pay in support of the Bartlett Dam Modification Feasibility Study; 2) how the costs will be shared among the Parties; 3) the process to remit payment; 4) the process for the formation of and participation in the Steering Committee; and 5) the process for voluntary departure, removal, and addition of the Cost-Share Partners and Steering Committee Members.

Recommendation

Authorize the City Manager or her designee to take any and all actions to execute the agreement and approve related budget transfer. (Gretchen Erwin, Water Resources and Sustainability Manager)

FISCAL IMPACT

The initial annual contribution level is \$100,000 per year over a four-year period beginning in Calendar Year 2022. Funding is being requested to be transferred from the Water Operating Fund balance for the first payment due in FY2022. This action will also authorize an ongoing \$100,000 in the Water base budget for the next three years, through FY2025. Water operations has sufficient funds to cover the amount of this transfer.

BACKGROUND AND PREVIOUS ACTIONS

Reclamation, in partnership with SRP, conducted an appraisal level investigation called the Verde Reservoirs Sediment Mitigation Study to evaluate options to restore capacity lost in SRP's Verde River reservoirs due to sediment accumulation, which impacts critical water supplies for central Arizona. Reclamation issued a draft report entitled "Verde Reservoirs Sediment Mitigation Study Appraisal Report" in May 2021 ("Draft Appraisal Report") recommending that Reclamation initiate a feasibility study.

Two options were selected, both involving raising of Bartlett Dam. If feasible, this could allow for new storage space for Verde River water in addition to the lost capacity. This water could be available to Goodyear as an additional renewable water supply. The city has the infrastructure in place to take delivery of the new water due to our partnership and previous agreements with SRP.

The Bartlett Dam Modification Feasibility Study is to determine the technical, environmental, economic, and financial feasibility of implementing one of two Bartlett Dam modification alternatives to enable central Arizona to adapt water management to changing climate conditions.

On August 30, 2021, Council approved the City Manager to take action to execute the Memorandum of Understanding to Support the Bartlett Dam Modification Feasibility Study Among Various Participating Entities, Salt River Valley Water Users' Association, and Salt River Project Agricultural Improvement and Power District.

STAFF ANALYSIS

Verde River water could be a new source of water for growth and an important component to the city's water supply portfolio. Verde River water is considered a "renewable" supply and therefore does not require replenishment. This would lessen the city's dependence on groundwater and future dependence on the Central Arizona Groundwater Replenishment District.

Previous agreements with SRP for wheeling our Central Arizona Project (CAP) water through canals and the city's construction of the pumping plant, transmission line, and water treatment facility would facilitate the use of the water.

Being a member of the Steering Committee will allow the city to participate in the development of the criteria which will determine an entities' need for the additional water. Additionally, as a member of the Steering Committee, Goodyear would be one of the entities that shall be responsible for developing the preferred allocation of the available water among the project beneficiaries.

Attachments

Agreement

**AGREEMENT TO SHARE COSTS FOR THE FEASIBILITY STUDY OF BARTLETT DAM
MODIFICATION ALTERNATIVES
AMONG COST-SHARE PARTNERS
AND
SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT**

1. PARTIES:

This Agreement to Share Costs for the Feasibility Study of Bartlett Dam Modification Alternatives (“Agreement”), entered into this ____ day of _____, 2021 is by and among those entities listed in Exhibit A (“Cost-Share Partners”) and the Salt River Project Agricultural Improvement and Power District (“SRP”). SRP and the Cost-Share Partners are referred to collectively as “Parties” and individually as “Party”.

2. RECITALS:

This Agreement is made with regard to the following:

- 2.1. The Salt River Valley Water Users’ Association (“Association”) and Salt River Project Agricultural Improvement and Power District (“District”) operate the Salt River Federal Reclamation Project, including Bartlett and Horseshoe reservoirs on Verde River, and have rights to storage of waters of the Verde River. The City of Phoenix has a stored water right resulting from construction of spillway gates at Horseshoe Dam. As of 2012, SRP estimates that Horseshoe Reservoir had lost 45,749 AF of conservation capacity to sedimentation that is shared between the Association and District and the City of Phoenix.
- 2.2. The United States Department of the Interior’s Bureau of Reclamation (“Reclamation”), in partnership with SRP, conducted the Verde Reservoirs Sediment Mitigation Study to investigate options to restore capacity lost in SRP’s Verde River reservoirs due to sediment accumulation, which impacts critical water supplies for central Arizona.
- 2.3. Reclamation issued a draft Verde Reservoirs Sediment Mitigation Study Appraisal Report (“Draft Appraisal Report”) in May 2021 recommending that Reclamation:
 - 2.3.1. Seek/confirm authority to initiate a feasibility study to determine the technical, environmental, economic, and financial feasibility of implementing one of two Bartlett Dam modification alternatives to enable

central Arizona to adapt water management to changing climate conditions (“Bartlett Dam Modification Feasibility Study”);

- 2.3.2. Address topics identified in the Verde Reservoirs Sediment Mitigation Study during the feasibility study process; and
- 2.3.3. Develop cost-share agreements between Reclamation and potential beneficiaries for completing the Bartlett Dam Modification Feasibility Study.
- 2.4. The Parties support Reclamation’s recommendations in the Draft Appraisal Report and the initiation of the Bartlett Dam Modification Feasibility Study to further evaluate alternatives for modification of Bartlett Dam to improve management of water supplies of the Verde River, reduce reliance on groundwater, and help position central Arizona to manage extended droughts and shortages created by climate change impacts on the Colorado, Salt, and Verde River watersheds.
- 2.5. SRP and various participating entities signed a memorandum of understanding (“SRP-Participating Entities MOU”) attached hereto as Exhibit B to describe the cooperative efforts and roles and responsibilities of those parties related to supporting Reclamation in completing the Bartlett Dam Modification Feasibility Study including the development and execution of a cost-share agreement and the formation of a steering committee (“Steering Committee,” as described in Paragraph 10) to provide timely and effective feedback and guidance to support Reclamation in achieving the milestones necessary to complete the Bartlett Dam Modification Feasibility Study. This Agreement is the cost-share agreement described in Paragraph 5 of the MOU.
- 2.6. SRP and the Fort McDowell Yavapai Nation signed a memorandum of understanding (“SRP-FMYN MOU”) attached hereto as Exhibit C to describe the cooperative efforts and roles and responsibilities of SRP and the Fort McDowell Yavapai Nation related to supporting Reclamation in completing the Bartlett Dam Modification Feasibility Study including the development and execution of a cost-share agreement and participation in the Steering Committee to provide timely and effective feedback and guidance to support Reclamation in achieving the milestones necessary to complete the Bartlett Dam Modification Feasibility Study.
- 2.7. SRP and Reclamation have signed or will sign a cost-share agreement (“SRP-Reclamation Cost-Share Agreement”) as a mechanism to provide the non-federal cost share required for completing the Bartlett Dam Modification Feasibility

Study, including the funds collected under this Agreement, for completing the Bartlett Dam Modification Feasibility Study.

3. AGREEMENT:

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

4. INCORPORATION OF RECITALS:

The recitals listed above are hereby incorporated into and expressly made part of this Agreement.

5. SCOPE:

This Agreement sets terms and conditions for (1) the estimated annual costs the Parties expect to pay in support of the Bartlett Dam Modification Feasibility Study, (2) how the costs will be shared among the Parties, (3) the process to remit payment, (4) the process for formation of and participation in the Steering Committee, and (5) the process for voluntary departure, removal, and addition of Cost-Share Partners and Steering Committee Members.

6. EFFECTIVE DATE AND TERM OF AGREEMENT:

6.1. For SRP and City of Phoenix, this Agreement is effective and binding upon the execution by SRP and City of Phoenix. For any Party other than SRP and City of Phoenix, this Agreement is effective and binding upon execution by that Party. This Agreement remains effective until terminated as provided in Subparagraphs 6.2 or 6.3.

6.2. This Agreement terminates when both of the following have occurred: (1) a final Bartlett Dam Modification Feasibility Study is issued by Reclamation, and (2) when all funds required to be transferred under this agreement are transferred from the Cost-Share Partners to SRP or refunded to the Cost-Share Partners as provided in Paragraph 12.

6.3. This Agreement may terminate as provided in this Subparagraph 6.3 in the event that Reclamation determines it will not proceed with the Bartlett Dam Modification Feasibility Study. In such an event, SRP shall meet and confer with the Cost-Share Partners on such determination and whether the Parties have

exhausted their reasonable options to support Reclamation in proceeding with a Bartlett Dam Modification Feasibility Study. After such meeting, SRP may terminate this Agreement by providing written notice to the Cost-Share Partners of such termination. In such an event, this Agreement will terminate when both of the following have occurred: (1) SRP sends the written notice of termination under this Subparagraph 6.3 and (2) all appropriate payments and refunds have been issued.

7. ADMINISTRATIVE REPRESENTATIVES:

Within thirty (30) calendar days after execution of this Agreement, each Party shall designate in writing to the other Parties or by electronic mail with read receipt to the other Parties, an Administrative Representative and an Administrative Alternate to administer this Agreement on behalf of the designating Party. Written notice of a change of an Administrative Representative or Administrative Alternate shall be provided within thirty (30) calendar days of such change. The Administrative Alternate shall act only in the absence of the Administrative Representative. Neither the Administrative Representatives nor the Administrative Alternates shall have authority to amend, modify, or supplement this Agreement. Decisions of the Administrative Representatives pursuant to this Agreement shall be in writing and signed by them.

8. ESTIMATED COSTS:

- 8.1. The Parties plan to contribute funding towards the estimated nonfederal share of costs ("Nonfederal Cost-Share Estimate") for the Bartlett Dam Modification Feasibility Study. The initial Nonfederal Cost-Share Estimate is \$5,000,000. The Nonfederal Cost-Share Estimate may increase or decrease based on federal appropriations and as project plans are developed.
- 8.2. With respect to issues related to the estimated costs for funding the Bartlett Dam Modification Feasibility Study the Parties shall convene the Steering Committee on an annual basis ("Annual Cost Assessment Meeting") to discuss and assess such issues. At the Annual Cost Assessment Meeting, the Parties shall make determinations on issues including but not limited to: (1) adjustment of the Nonfederal Cost-Share Estimate, (2) identification of federal funding availability, and (3) the annual contribution level of each Party ("Annual Contribution Level"). SRP will notify the Steering Committee of any identified change in total project cost that exceeds ten percent of the then-budgeted project cost at the next scheduled Steering Committee meeting.

- 8.3. At the Annual Cost Assessment Meeting, SRP shall present updates to the Steering Committee regarding: (1) information relevant to the Nonfederal Cost-Share Estimate, (2) availability of federal funding, and (3) anticipated adjustments to the Annual Contribution Level of each Party. These updates will be provided based on information and analysis developed by SRP in consultation with Reclamation. Prior to the Annual Cost Assessment Meeting, SRP shall develop and send for approval of the Steering Committee a report for the Annual Cost Assessment Meeting (“Annual Cost Assessment Report”). The Annual Cost Assessment Report will include: (1) the proposed Nonfederal Cost-Share Estimate and (2) the proposed Annual Contribution Levels of each Party for the following year. Consistent with Subparagraph 9.5, Fort McDowell Yavapai Nation and Buckeye Water Conservation and Drainage District will not be required to contribute any funding under this Agreement. The Steering Committee may vote on such approval of the Annual Cost Assessment Report at the Annual Cost Assessment Meeting but shall do so no later than thirty (30) calendar days after such Annual Cost Assessment Meeting.
- 8.4. Each Party shall contribute an annual amount equal to its Annual Contribution Level and remit payment for its Annual Contribution Level as described in Paragraph 12. The Annual Contribution Level as defined in this Agreement includes the option for a Party to elect to budget and appropriate the full amount of \$400,000 to participate in this Agreement as a Voting Member at the time of the Effective Date of the Agreement for that Party. Payment will be made pursuant to Section 12 of this Agreement. The Parties’ Annual Contribution Levels are summarized in Exhibit D. The Steering Committee shall update Exhibit D in accordance with the Annual Cost Assessment Report upon approval of the Annual Cost Assessment Report by the Steering Committee. In the event that the Nonfederal Cost-Share increases above a total of \$1,250,000 in any one year, or is projected to be above a total of \$5,000,000 for the entire study, the Parties shall discuss whether to incur such increased costs at the next Annual Cost Assessment Meeting. If the Steering Committee agrees to incur such increased costs, each Party will seek any necessary spending authority or appropriations for any increase in its then-current Annual Contribution Level. In the event that spending authority is not granted, or funds are not appropriated beyond the amounts necessary to fulfill a Party’s then-current Annual Contribution Level, a Party has the right to terminate this Agreement without obligation for the increased Annual Contribution Level. However, the terminating Party shall comply with Subparagraph 11.1 with regard to its then-current Annual Contribution Level.

9. PARTIES' COST SHARE CONTRIBUTIONS:

- 9.1. SRP's initial Annual Contribution Level shall be \$250,000.
- 9.2. City of Phoenix's initial Annual Contribution Level shall be \$150,000.
- 9.3. The initial Annual Contribution Levels are identified in Exhibit D. Unless otherwise stated in Exhibit D, a Party with an initial Annual Contribution Level of \$100,000 or greater will be a voting member of the Steering Committee ("Voting Member") with respect to decisions that the Steering Committee makes related to the Bartlett Dam Modification Feasibility Study. Voting Members commit to supporting the Bartlett Dam Modification Feasibility Study to completion at the Annual Contribution Level identified in Exhibit D but not to exceed a period of four years. If the Bartlett Dam Modification Feasibility Study exceeds four years, the Parties shall convene the Steering Committee to discuss contribution towards the nonfederal portion of funding required for completion. The Annual Contribution Level as defined in this Agreement includes the option for a Party to elect to budget and appropriate the full amount of \$400,000 to participate in this Agreement as a Voting Member at the time of the Effective Date of the Agreement for that Party. Payment will be made pursuant to Section 12 of this Agreement.
- 9.4. Unless otherwise stated in Exhibit D, a Party with an initial Annual Contribution Level of \$30,000 will be a nonvoting member of the Steering Committee ("Nonvoting Member").
- 9.5. The Fort McDowell Yavapai Nation, as a federally recognized tribe with a direct interest in water stored in Bartlett Reservoir, will be a Voting Member of the Steering Committee irrespective of its Annual Contribution Level. Buckeye Water Conservation and Drainage District will be a Voting Member of the Steering Committee irrespective of its Annual Contribution Level due to its interest under the stipulation between Buckeye Irrigation Company and Salt River Valley Water Users' Association entered September 7, 1944.
- 9.6. As described in Subparagraph 8.2, Annual Contribution Levels may be adjusted at the Annual Cost Assessment Meeting based on the Nonfederal Cost-Share Estimate as described in Subparagraph 8.1. Adjustments to Annual Contribution Levels will be made in proportion to the initial Annual Contribution Levels and will increase or decrease in proportion to the Nonfederal Cost-Share Estimate. Except as provided under circumstances noted in Subparagraph 11.3, the standing of each Party as a Voting Member or Nonvoting Member of the Steering Committee

is established by each Party's initial Annual Contribution Level, as described in Subparagraphs 9.3 and 9.4, and will not be impacted by adjustments made under Subparagraph 8.2, Subparagraph 8.4, or this Subparagraph 9.6.

10. STEERING COMMITTEE:

- 10.1. Within thirty (30) calendar days after execution of this Agreement, each Party shall designate in writing or electronic mail with read receipt to SRP a representative to serve on the Steering Committee ("Steering Committee Representative") and an alternate to serve on the Steering Committee ("Steering Committee Alternate"). Written notice of a change of a Steering Committee Representative or Steering Committee Alternate shall be provided within thirty (30) calendar days of such change. The Steering Committee Alternate shall act only in the absence of the Steering Committee Representative. Unless otherwise authorized by the Steering Committee, each Party shall ensure that only its Steering Committee Representative or Steering Committee Alternate participates in meetings of the Steering Committee. Steering Committee Representatives and Steering Committee Alternates are expected to be individuals with senior positions within the organizational structure of each Party, such as director-level positions, and may be the same or different from the Administrative Representatives and Administrative Alternates identified in Paragraph 7.
- 10.2. The Parties shall convene the Steering Committee within thirty (30) calendar days after this Agreement is effective as provided in Subparagraph 6.1 and develop roles, responsibilities, meeting schedules, and other guidelines to govern the Steering Committee within sixty (60) calendar days after this Agreement is effective as provided in Subparagraph 6.1.
- 10.3. The Steering Committee shall be responsible for developing criteria for assessing the need of any potential beneficiary to obtain a right to use a portion of the water to be stored in the new conservation storage capacity created from the modifications at Bartlett Dam. The new conservation storage capacity includes the volume of water above the combined original constructed capacity of both Horseshoe and Bartlett Reservoirs including the capacity added by installation of the Horseshoe Dam spillway gates ("New Conservation Capacity"). The criteria shall be developed and approved by the Steering Committee during development of feasibility cost estimates and designs of dam facilities required for the Bartlett Dam Modification Feasibility Study and may be similar to those identified in Exhibit E.

- 10.4. The Steering Committee shall be responsible for developing the preferred allocation of available New Conservation Capacity among potential project beneficiaries using the criteria for assessing need identified in Subparagraph 10.3 to provide to Reclamation for study purposes.
- 10.5. Nothing contained in this Agreement shall be construed as to (1) create any right to new or existing capacity in Bartlett or Horseshoe Reservoirs or (2) alter any existing rights to water stored in Bartlett or Horseshoe Reservoirs in a modified Bartlett Dam if a project to modify Bartlett Dam is constructed.
- 10.6. SRP shall chair the Steering Committee and all Steering Committee decisions will be made by majority vote of the Voting Members described in Subparagraph 9.3 with the exception of issues identified in Subparagraph 11.2. The votes of all Voting Members will be of equal weight. In the event of an even split during a Steering Committee vote, SRP shall act as the tie-breaking vote.

11. VOLUNTARY DEPARTURE; REMOVAL; AND ADDITION OF PARTIES, COST SHARE PARTNERS, AND STEERING COMMITTEE MEMBERS

- 11.1. A Party that no longer wishes to be a Party to this Agreement and participate in the Steering Committee may leave by giving the other Parties thirty (30) calendar days written notice under Paragraph 15 ("Voluntary Departure"). Parties that voluntarily depart this Agreement and Steering Committee under this Subparagraph 11.1 shall not be refunded any previous financial contributions. Any Voting Member that voluntarily departs this Agreement and Steering Committee shall pay the remaining balance that would be due based on that Voting Member's Annual Contribution Level for the period of time required to support completion of the Bartlett Dam Modification Feasibility Study but not to exceed a period of four years. The remaining balance will be based on the number of months projected to remain on the Bartlett Dam Modification Feasibility Study, multiplied by the Party's initial Annual Contribution Level, not to exceed a total of four years from the start of the non-federal contributions for the feasibility study. Upon the Voluntary Departure of a Party to this Agreement under this Subparagraph 11.1, the SRP shall update Exhibits A, D, and F accordingly.
- 11.2. The Steering Committee may remove a Party from the Agreement and membership on the Steering Committee if the Voting Members of the Steering Committee determine by a vote of at least 2/3 of Voting Members that the Party is not acting in good faith or otherwise unnecessarily interfering with making progress towards completion of the Bartlett Dam Modification Feasibility Study.

Any Party that is removed from the Agreement and the Steering Committee under this Subparagraph 11.2 shall not be refunded any previous financial contributions. Upon removing a Party to this Agreement under this Subparagraph 11.2, the SRP shall update Exhibits A, D, and F accordingly.

- 11.3. The Steering Committee, by majority vote of the Steering Committee, may add a Party to the Agreement as a Voting or Nonvoting member of the Steering Committee upon request from an entity to support the Bartlett Dam Modification Feasibility Study. Prior to adding a Party to the Agreement and Steering Committee, the Steering Committee shall determine the Annual Contribution Level of the entity to be added in a manner consistent with Paragraphs 8 and 9, provided that, the Steering Committee will not unreasonably withhold a participant's ability to join the Steering Committee if that participant is willing to work in good faith and bring appropriate resources in support of the goals of the Bartlett Dam Modification Feasibility Study. Upon adding a Party to this Agreement under this Subparagraph 11.3, the SRP shall update Exhibits A, D, and F accordingly. Should a Party be added to the Steering Committee as a Voting Member, that Party shall pay the Annual Contribution Level identified in Subparagraph 9.3 for the time period between the Steering Committee's inception and the Party's addition. Should an existing Nonvoting Member become a Voting Member, that Party will be responsible for paying the difference between their actual contributions and the Annual Contribution Level identified in 9.3 for the time period between the Steering Committee's inception and the Party becoming a Voting Member. Any new Voting Member or Nonvoting Member becoming a Voting Member will be subject to all conditions as outlined in Subparagraph 11.1

12. PAYMENT:

- 12.1. SRP shall invoice each Party at its initial Annual Contribution Level as identified in Exhibit D within 90 days of execution of this Agreement.
- 12.2. Following approval of the Annual Cost Assessment Report by the Steering Committee, SRP shall invoice the Cost-Share Partners in the amounts identified in the Annual Cost Assessment Report. The Cost-Share Partners shall pay such invoices within thirty (30) calendar days after SRP sends such invoices. SRP shall remit payments made under Paragraph 12 to Reclamation or consultants as contributions towards the nonfederal portion of costs for the Bartlett Dam Modification Feasibility Study under the SRP-Reclamation Cost-Share Agreement. In the event that funds paid to SRP will not be remitted to Reclamation or

consultants, SRP shall refund the Cost-Share Partners for any amount paid to SRP under Paragraph 12 that will not be remitted to Reclamation or consultants.

- 12.3. Any invoices not paid when due shall be delinquent and shall bear interest at the Wall Street Journal Prime Rate, on the date the invoice was due plus 5% (Wall Street Journal Prime Rate plus 5%) per annum from the date when the bill was due until the bill is paid in full (including any accrued interest). In the event the Wall Street Journal no longer publishes the Wall Street Journal Prime Rate, a majority of the Administrative Representatives shall select an appropriate substitute.
- 12.4. In the event any portion of any bill is disputed, to the extent the disputing Party has the legal authority to pay, the disputed amount shall be paid under protest when due and shall be accompanied by a written statement indicating the basis for the protest. If the protest is found to be valid, the Cost-Share Partners shall be refunded any overpayment plus interest, accrued at the rate set forth in Subparagraph 12.3, prorated by days from the date payment was credited to the Cost-Share Partners to the date the refund check is mailed.
- 12.5. In the event that this Agreement is terminated under Subparagraph 6.3, SRP shall refund the Cost-Share Partners for any amount paid to SRP under Paragraph 12 that will not be remitted to Reclamation or consultants for services approved prior to termination of this Agreement.

13. DISPUTE RESOLUTION; RECORDS INSPECTION; CHOICE OF LAW:

- 13.1. Any dispute under this Agreement shall first be submitted to the Steering Committee for resolution. The Steering Committee shall make all reasonable efforts to resolve the dispute. If the matter cannot be resolved by the Parties' authorized representatives, any Party may submit the matter to the SRP General Manager and the Party's chief operating officer. If the matter cannot be resolved by the SRP General Manager and the Party's chief operating officer, any Party may bring suit upon the matter, provided however, that it is expressly agreed that the venue shall only be in Maricopa County Superior Court or its successor court.
- 13.2. This Agreement shall be governed and construed in accordance with the laws of the State of Arizona and any applicable federal law. In the event a dispute arises wherein the Fort McDowell Yavapai Nation is a party, the Parties agree the venue will be in a court of competent jurisdiction other than Tribal court.

- 13.3. In the event of any future dispute or action arising under this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs incurred therein, including expert witness fees.
- 13.4. Pending the resolution of a dispute, the Parties shall proceed, to the extent legally permissible, in a manner consistent with this Agreement, and shall make payments required in accordance with the applicable provisions of this Agreement. Amounts paid by a Party under Paragraph 12 during the pendency of such dispute shall be subject to refund and adjustment upon a final resolution of any dispute involving an amount due.

14. UNCONTROLLABLE FORCES:

No Party shall be considered to be in default in the performance of any of its obligations hereunder if failure of performance is due to an uncontrollable force. The term "uncontrollable force" shall mean any cause beyond the control of the party affected, including but not limited to failure of facilities, flood, earthquake, tornado, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, and action or nonaction by or failure to obtain the necessary authorizations or approvals from any governmental agency or authority or the electorate, labor or material shortage, sabotage and restraint by court order or public authority, which by exercise of due diligence and foresight such party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Nothing herein shall be construed so as to require any Party to settle any strike or labor dispute in which it is involved. Any party rendered able to fulfill any obligation hereunder by reason of an uncontrollable force shall exercise due diligence to remove such inability.

15. NOTICE; CHANGE OF NAME OR ADDRESS:

- 15.1. All notices, requests, demands, and other communications under this Agreement shall be in writing or by electronic mail with read receipt and shall be deemed to have been received either when delivered or on the fifth business day following mailing, by registered or certified mail, postage prepaid, return receipt requested, whichever is earlier, addressed as set forth in Exhibit F.
- 15.2. Any Party may change the addressee or address to which communications or copies are to be sent by giving notice of such change under Subparagraph 15.1.

16. SEVERABILITY:

Should any part of this Agreement be declared, in a final decision by a court or tribunal of competent jurisdiction, to be unconstitutional, invalid, or beyond the authority of a Party to enter into or carry out, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect and reformed, provided that the remainder of this Agreement, absent the excised portion, can be reasonably interpreted to give effect to the intentions of the Parties.

17. WAIVER:

The failure of any Party to insist on any one or more instances upon strict performance of any of the obligations of the other pursuant to this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of the performance of any such obligation or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect.

18. BINDING AGREEMENT:

All of the provisions of this Agreement shall be binding upon, and inure to the benefit of, the Parties and their heirs, successors and assigns; provided, however, that no Party shall assign its rights and obligations under this Agreement to another entity without the written consent of the other Parties. Such consent to assignment shall not, however, be unreasonably withheld, conditioned, or delayed.

19. 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 to any third party. No third party may enforce the terms and conditions of this Agreement.

20. NO PARTNERSHIP AND NO JOINT VENTURE:

Nothing contained in this Agreement shall be construed as creating a partnership or joint venture between the Parties hereto. The covenants, obligations, and liabilities contained in this Agreement are intended to be several and not joint or collective, and nothing contained herein shall be construed to create an association, joint venture, agency, trust, or partnership, or to impose a trust or partnership covenant, obligation, fiduciary duty, or liability between the Parties. Each Party shall be individually responsible for its own covenants, obligations, and liabilities as provided herein.

21. AUTHORITY:

The undersigned representative of each Party certifies that he or she is fully authorized by the Party whom he or she represents to enter into the terms and conditions of this Agreement and to legally bind the Party to it.

22. CONFLICT OF INTEREST:

Pursuant to A.R.S. § 38-511, a Party who is a political subdivision of the State may cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of a Party is, at any time while this Agreement is in effect, an employee of another Party in any capacity, or a consultant to another Party with respect to the subject matter of this Agreement. The cancellation shall be effective when written notice is received unless the notice specifies a later time.

23. ENTIRE AGREEMENT; MODIFICATION; COUNTERPARTS:

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. 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.

[signatures on the following pages]

IN WITNESS WHEREOF, this Agreement was executed by the Parties and is effective on the date described in Subparagraph 6.1 of this Agreement.

**SALT RIVER PROJECT AGRICULTURAL
IMPROVEMENT AND POWER DISTRICT**

By: _____

Name: David C. Roberts

Title: Associate General Manager
Water Resources

APPROVED AS TO FORM

By: _____

Name: Patrick B. Sigl

Title: Supervising Attorney, Environment, Land
& Water Rights

ARIZONA WATER COMPANY

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

**APACHE JUNCTION WATER UTILITY
COMMUNITY FACILITIES DISTRICT**

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

CITY OF AVONDALE

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

CITY OF BUCKEYE

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

**BUCKEYE WATER CONSERVATION AND
DRAINAGE DISTRICT**

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

**CENTRAL ARIZONA WATER CONSERVATION
DISTRICT (FOR CENTRAL ARIZONA
GROUNDWATER REPLENISHMENT DISTRICT)**

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM

By: _____
Name: _____
Title: _____

CITY OF CHANDLER

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

CITY OF EL MIRAGE

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

EPCOR, USA, INC.

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

FORT MCDOWELL YAVAPAI NATION

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

TOWN OF GILBERT

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

CITY OF GOODYEAR, ARIZONA,
an Arizona municipal corporation

By: _____

Julie Karins
City Manager

Date: _____

ATTEST:

By: _____

Darcie McCracken
City Clerk

Date: _____

APPROVED AS TO FORM:

By: _____

Roric Massey
City Attorney

Date: _____

CITY OF GLENDALE

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

CITY OF MESA

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

CITY OF PEORIA

By: _____

Name: _____

Title: _____

ATTEST

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

CITY OF PHOENIX, ARIZONA,
a municipal corporation

Troy Hayes
Director, Water Services Department

ATTEST:

– Jeffrey J. Barton
City Manager City Clerk

APPROVED AS TO FORM:

Cris Meyer
City Attorney

TOWN OF QUEEN CREEK

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

ROOSEVELT WATER CONSERVATION DISTRICT

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

CITY OF SCOTTSDALE

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

CITY OF SURPRISE

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

CITY OF TEMPE

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

**AGREEMENT TO SHARE COSTS FOR THE FEASIBILITY STUDY OF BARTLETT DAM
MODIFICATION ALTERNATIVES
AMONG COST-SHARE PARTNERS
AND
SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT**

EXHIBIT A

COST-SHARE PARTNERS

Arizona Water Company	City Goodyear
Apache Junction Water Utility Community Facilities District dba Apache Junction Water District	City of Glendale
City of Avondale	City of Mesa
City of Buckeye	City Peoria
Buckeye Water Conservation and Drainage District	City of Phoenix
Central Arizona Groundwater Replenishment District	Town of Queen Creek
City of Chandler	Roosevelt Water Conservation District
City of El Mirage	City of Scottsdale
EPCOR, USA, Inc.	City of Surprise
Fort McDowell Yavapai Nation	City of Tempe
Town of Gilbert	

**AGREEMENT TO SHARE COSTS FOR THE FEASIBILITY STUDY OF BARTLETT DAM
MODIFICATION ALTERNATIVES
AMONG COST-SHARE PARTNERS
AND
SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT**

EXHIBIT B

**MEMORANDUM OF UNDERSTANDING TO SUPPORT THE BARTLETT DAM MODIFICATION
FEASIBILITY STUDY AMONG VARIOUS PARTICIPATING ENTITIES AND SALT RIVER PROJECT
AGRICULTURAL IMPROVEMENT AND POWER DISTRICT**

MEMORANDUM OF UNDERSTANDING
TO SUPPORT THE BARTLETT DAM MODIFICATION FEASIBILITY STUDY
AMONG VARIOUS PARTICIPATING ENTITIES,
SALT RIVER VALLEY WATER USERS' ASSOCIATION,
AND
SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT

August 31, 2021

1. PARTIES:

This nonbinding memorandum of understanding (“MOU”) to support the Bartlett Dam Modification Feasibility Study is entered into by those entities listed in the Contact List of Exhibit A (“Participating Entities”), the Salt River Valley Water Users' Association (“Association”), and the Salt River Project Agricultural Improvement and Power District (“District”). The Association and District are referred to collectively as “SRP.” SRP and the Participating Entities are referred to collectively as “Parties.”

2. BACKGROUND AND PURPOSE:

- a. The United States Department of the Interior’s Bureau of Reclamation (“Reclamation”), in partnership with SRP, conducted an appraisal level investigation called the Verde Reservoirs Sediment Mitigation Study to evaluate options to restore capacity lost in SRP’s Verde River reservoirs due to sediment accumulation, which impacts critical water supplies for central Arizona.
- b. Reclamation issued a draft report entitled “Verde Reservoirs Sediment Mitigation Study Appraisal Report” in May 2021 (“Draft Appraisal Report”) recommending that Reclamation:
 - i. Seek/confirm authority to initiate a feasibility study to determine the technical, environmental, economic, and financial feasibility of implementing one of two Bartlett Dam modification alternatives to enable central Arizona to adapt water management to changing climate conditions (“Bartlett Dam Modification Feasibility Study”);

- ii. Address topics identified in the Verde Reservoirs Sediment Mitigation Study during the feasibility study process; and
 - iii. Develop cost-share agreements necessary to support the successful completion of the Bartlett Dam Modification Feasibility Study.
- c. Reclamation is expected to release a final appraisal report by the end of calendar year 2021. The Parties support Reclamation's recommendations as identified in Subparagraph 2(b) and the initiation of the Bartlett Dam Modification Feasibility Study to further evaluate alternatives for modification of Bartlett Dam to improve management of water supplies of the Verde River, reduce the reliance on groundwater, and help position central Arizona to manage extended droughts and shortages created by climate change impacts on the Colorado, Salt, and Verde River watersheds.
- d. The purpose of this MOU is to describe the cooperative efforts and roles and responsibilities of the Parties related to supporting Reclamation in completing the Bartlett Dam Modification Feasibility Study as recommended in the Draft Appraisal Report. As described below, included in those cooperative efforts is the formation and participation in a steering committee as described in Paragraph 5(d) ("Steering Committee"), and development of the following agreements: (1) a cost-share agreement among the Participating Entities and SRP as described in Paragraph 5(a) ("Nonfederal Participating Entities Cost-Share Agreement"), and (2) the development of a cost-share agreement among SRP and Reclamation as described in Paragraph 4(b)(i) ("SRP-Reclamation Cost-Share Agreement").

3. TERM AND TERMINATION:

- a. This MOU will become effective upon execution by the Parties and, unless terminated under Subparagraph 3(b), will remain in effect until Reclamation issues a final report for the Bartlett Dam Modification Feasibility Study.
- b. This MOU will terminate in the event that Reclamation issues a final Verde Reservoirs Sediment Mitigation Study Appraisal Report that does not include a recommendation to study the feasibility of Bartlett Dam modification alternatives.
- c. This MOU and the provisions of this MOU may only be modified upon mutual written consent of the Parties.

4. RESPONSIBILITIES:

a. Mutual Responsibilities:

- i. The Parties will work cooperatively to develop the Nonfederal Participating Entities Cost-Share Agreement.
- ii. The Parties will work cooperatively to form and participate in the Steering Committee that is identified in Subparagraph 5(d) and will be further described by the Nonfederal Participating Entities Cost-Share Agreement.
- iii. The Parties will support and assist Reclamation to conduct the Bartlett Dam Modification Feasibility Study in the event that Reclamation has/obtains authority to conduct this study as identified in the recommendations noted in Subparagraph 2(b). This support and assistance is expected to include funding of the Bartlett Dam Modification Feasibility Study by some or all of the Participating Entities, as will be specified by the Nonfederal Participating Entities Cost-Share Agreement. The Parties will provide data and information relevant to analyses that may include but are not limited to assessments of hydrology and climate change, demand for use of water supplies, environmental and cultural resources, economics, engineering, dam safety and flood control, and recreation.

b. SRP Responsibilities:

- i. SRP will work with Reclamation to develop the SRP-Reclamation Cost-Share Agreement as a mechanism for SRP to pay the nonfederal cost-share required for completing the Bartlett Dam Modification Feasibility Study in the event that Reclamation has/obtains authority to conduct this study, including the funds collected under the Nonfederal Participating Entities Cost-Share Agreement, for completing the Bartlett Dam Modification Feasibility Study.
- ii. SRP will consult with the Participating Entities on substantive decisions related to Reclamation developing a plan of study for the Bartlett Dam Modification Feasibility Study while it finalizes the Draft Appraisal Report.

SRP will be the single point of contact with Reclamation on behalf of the Parties and will lead communications with Reclamation related to the Bartlett Dam Modification Feasibility Study until the Nonfederal Participating Entities Cost-Share Agreement is executed.

iii. SRP will serve as chair of the Steering Committee.

c. Participating Entities Responsibilities:

- i. Participating Entities will provide relevant data, information, opinions, and analyses related to the Bartlett Dam Modification Feasibility Study as reasonably requested by SRP or Reclamation in the event that Reclamation has/obtains authority to conduct the Bartlett Dam Modification Feasibility Study.
- ii. Participating Entities will serve on the Steering Committee as appropriate to engage in collaboration and coordination with SRP to support Reclamation's completion of the Bartlett Dam Modification Feasibility Study as will be further defined in the Nonfederal Participating Entities Cost-Share Agreement.
- iii. Participating Entities will coordinate and collaborate with SRP in efforts to communicate information related to the Bartlett Dam Modification Feasibility Study with elected officials and other relevant stakeholders on the project.

5. DEVELOPMENT OF THE NONFEDERAL PARTICIPATING ENTITIES COST-SHARE AGREEMENT:

- a. The Parties will collaborate to develop the Nonfederal Participating Entities Cost-Share Agreement with a goal of execution in Fall 2021. The Nonfederal Participating Entities Cost-Share Agreement will describe how nonfederal costs will be allocated among SRP and any Participating Entities agreeing to share those costs to provide nonfederal funding to Reclamation and any appropriate contractors to conduct the Bartlett Dam Modification Feasibility Study in the event that Reclamation has/obtains authority to conduct this study.

- b. As part of the process to develop the Nonfederal Participating Entities Cost-Share Agreement, SRP and any Participating Entities agreeing to share the nonfederal costs will collaborate to determine the relative shares of the non-federal cost contribution in support of the Bartlett Dam Modification Feasibility Study in the event that Reclamation has/obtains authority to conduct this study as recommended in the Draft Appraisal Report. The Parties understand that any cost-share contribution under the Nonfederal Participating Entities Cost-Share Agreement does not guarantee capacity in a future Modified Bartlett Dam in the event such a facility is constructed.
- c. The Nonfederal Participating Entities Cost-Share Agreement will be among SRP and any Participating Entities agreeing to share the nonfederal costs and will require those Participating Entities to submit funds to SRP for SRP to remit such funds to any necessary contractors or to Reclamation through the separate Reclamation-SRP Cost-Share Agreement.
- d. As part of the Nonfederal Participating Entities Cost-Share Agreement, the Parties will establish the Steering Committee chaired by SRP to provide timely and effective feedback and guidance to support Reclamation and any necessary contractors in achieving the milestones necessary to complete the Bartlett Dam Modification Feasibility Study in the event that Reclamation has/obtains authority to conduct this study and to facilitate coordination in communications with elected officials and other relevant stakeholders.

6. AUTHORIZED REPRESENTATIVES:

Within thirty (30) days after execution of this MOU, SRP and each Participating Entity shall designate in writing to the other Parties an Authorized Representative and an Alternate to administer this MOU on behalf of the designating party. 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, modify, or supplement this MOU. Agreements of the Authorized Representatives pursuant to this MOU shall be in writing and signed by them.

7. ADDITION AND WITHDRAWAL OF PARTICIPATING ENTITIES:

- a. Any Participating Entity may voluntarily withdraw from this MOU by providing thirty (30) days written notice to the other Parties as provided in Paragraph 8.
- b. Additional Participating Entities may be added to this MOU by the Steering Committee. Such additional Participating Entities may or may not (1) be parties to the Nonfederal Participating Entities Cost-Share Agreement, or (2) participate in the Steering Committee.

8. ADDRESSES FOR COMMUNICATIONS:

- a. All notices and communications under this MOU shall be addressed to the contacts set forth in Exhibit A. In the event Participating Entities are added to this MOU by the Steering Committee as described in Subparagraph 7(b), the Authorized Representatives shall update Exhibit A accordingly and distribute the updated Exhibit A to all of the Parties.
- b. The Parties may change the addressee or address to which communications or copies are to be sent by giving notice of such change of addressee.

[signatures on the following pages]

9. SIGNATURES:

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

**SALT RIVER VALLEY WATER USERS'
ASSOCIATION**

By: 

Name: David C. Roberts

Title: Associate General Manager
Water Resources

APPROVED AS TO FORM

By: 

Name: Patrick B. Sigl

Title: Supervising Attorney, Environment, Land
& Water Rights

**SALT RIVER PROJECT AGRICULTURAL
IMPROVEMENT AND POWER DISTRICT**

By: 

Name: David C. Roberts

Title: Associate General Manager
Water Resources

APPROVED AS TO FORM

By: 

Name: Patrick B. Sigl

Title: Supervising Attorney, Environment, Land
& Water Rights

ARIZONA WATER COMPANY

By: 

Name: Fredrick K. Schneider

DA000792

Title: President

APPROVED AS TO FORM

By: 

Name: E. Robert Spear

Title: Vice President and General Counsel

CITY OF APACHE JUNCTION

By: 

Name: Michael Loggins

Title: Water District Director

APPROVED AS TO FORM

By:  8-19-21

Name: R. Joel Stern

Title: District Counsel

[PARTICIPATING ENTITY]

By: *Cherlene Penilla*
Name: for Charles A. Montoya
Title: City Manager

APPROVED AS TO FORM

By: *Nicholle Harris*
Name: Nicholle Harris
Title: City Attorney

ATTEST: *Linda Mendenhall*
Linda Mendenhall (Aug 5, 2021 10:44 PDT)



**CITY OF BUCKEYE, an Arizona municipal
Corporation,**

By: 

Name: Eric W. Orsborn

Title: Mayor

ATTEST

By: 

Name: Lucinda J. Aja

Title: City Clerk

APPROVED AS TO FORM:

Shiela B. Schmidt

Name: Shiela B. Schmidt

Title: City Attorney

**BUCKEYE WATER CONSERVATION AND
DRAINAGE DISTRICT**

By: Noel Carter

Name: Noel Carter

Title: General Manager

APPROVED AS TO FORM

By: Michael Pearce

Name: Michael Pearce

Title: District Attorney, Water Rights

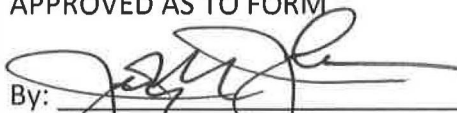
**CENTRAL ARIZONA WATER CONSERVATION
DISTRICT**

By:  _____

Name: Theodore C. Cooke, D.B.A.

Title: General Manager

APPROVED AS TO FORM

By:  _____

Name: Jay M. Johnson

Title: General Counsel

CITY OF CHANDLER

By: _____

John Knudson

Director, Public Works & Utilities

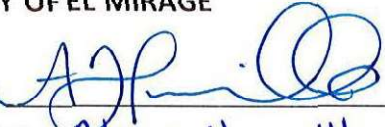
APPROVED AS TO FORM

By: _____

Jenny J. Winkler

Assistant City Attorney

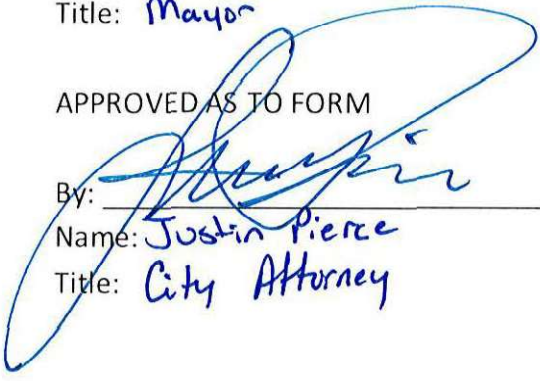
CITY OF EL MIRAGE

By: 

Name: Alexis Hermosillo

Title: Mayor

APPROVED AS TO FORM

By: 

Name: Justin Pierce

Title: City Attorney

EPCOR USA, INC.

By: _____

Name: Joe Gysel

Title: President

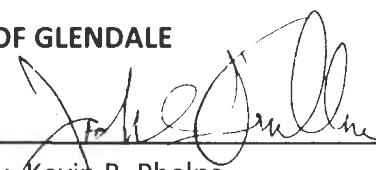
APPROVED AS TO FORM

By: _____

Name: Dan Holwerda

Title: Associate General Counsel

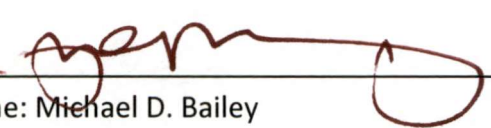
CITY OF GLENDALE

By: 

^{FJR}
Name: Kevin R. Phelps

Title: City Manager

APPROVED AS TO FORM

By: 

Name: Michael D. Bailey

Title: City Attorney

ATTEST: 

By: _____

Name: Julie K. Bower

(SEAL)

Title: City Clerk

CITY OF GOODYEAR

By: _____

Name: Julie Karins

Title: City Manager

APPROVED AS TO FORM

By: _____

Name: Roric Massey

Title: City Attorney

CITY OF MESA

By: _____

Name: Jake West

Title: Water Resources Department Director

CITY OF PEORIA

By: [Signature]
Name: Katie Gregory
Title: Deputy City Manager

APPROVED AS TO FORM

By: [Signature]
Name: Vanessa Hickman
Title: City Attorney

ATTEST

By: [Signature]
Name: Rhonda Germinsky
Title: City Clerk



City of Phoenix

By:  _____
Name: Cynthia Campbell _____
Title: Water Resources Management Advisor

APPROVED AS TO FORM

By: _____
Name: _____
Title: _____

TOWN OF QUEEN CREEK

By: 
[John Kross \(Aug 9, 2021 08:40 PDT\)](#)

Name: John Kross

Title: Town Manager

APPROVED AS TO FORM


[Scott A. Holcomb \(Aug 10, 2021 10:13 PDT\)](#)

Name: Scott Holcomb

Title: Town Attorney

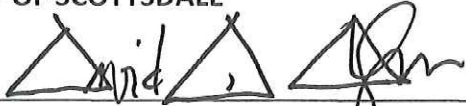
Roosevelt Water Conservation District

By: 
Name: Shane M. Leonard
Title: General Manager

APPROVED AS TO FORM

By: _____
Name: _____
Title: _____

CITY OF SCOTTSDALE

By: 

Name: DAVID D. ORTEGA

Title: MAYOR OF SCOTTSDALE

APPROVED AS TO FORM

By: 

Name: Janis L. Bladine

Title: Jr. Asst. City Attorney

ATTEST



CITY CLERK

CITY OF SURPRISE

By: 

Name: Skip Hall

Title: Mayor

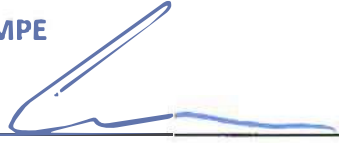
APPROVED AS TO FORM

By: 

Name: Robert Wingo

Title: City Attorney

CITY OF TEMPE

By: 

Name: Corey D. Woods

Title: Mayor

APPROVED AS TO FORM

By: 

Name: Judith R. Baumann

Title: City Attorney

MEMORANDUM OF UNDERSTANDING

TO SUPPORT THE BARTLETT DAM MODIFICATION FEASIBILITY STUDY

AMONG VARIOUS PARTICIPATING ENTITIES,

SALT RIVER VALLEY WATER USERS' ASSOCIATION,

AND

SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT

Exhibit A

Parties Contact List

Table 1 – Parties

Arizona Water Company	City of Glendale
City of Apache Junction	City of Mesa
City of Avondale	City of Peoria
City of Buckeye	City of Phoenix
Buckeye Water Conservation and Drainage District	Town of Queen Creek
Central Arizona Groundwater Replenishment District	Roosevelt Water Conservation District
City of Chandler	Salt River Valley Water Users' Association
City of El Mirage	Salt River Project Agricultural Improvement and Power District
EPCOR, USA, Inc.	City of Surprise
Town of Gilbert	City of Tempe
City of Goodyear	

Table 2 – Contacts

Party	Contact
Arizona Water Company	Arizona Water Company c/o President 3805 N. Black Canyon Highway Phoenix, AZ 85015 <u>Copy to:</u> Terri Sue Rossi, Water Resources Manager Arizona Water Company 3805 N. Black Canyon Highway Phoenix, AZ 85015
City of Apache Junction	City of Apache Junction c/o Michael Loggins 300 E. Superstition Blvd. Apache Junction, AZ 85119 <u>Copy to:</u> Bryant Powell 300 E. Superstition Blvd. Apache Junction, AZ 85119
City of Avondale	
City of Buckeye	Alisha Solano, Water Resources Director 21749 W. Yuma Road, Suite 107 Buckeye, AZ 85326 <u>Copy to:</u> Sheila B. Schmidt, City Attorney Gust Rosenfeld 1 East Washington, Suite 1600 Phoenix, AZ 85004 sschmidt@gustlaw.com

Table 2 – Contacts

Party	Contact
Buckeye Water Conservation and Drainage District	
Central Arizona Groundwater Replenishment District	Theodore C. Cooke, General Manager Central Arizona Water Conservation District P.O. Box 43020 Phoenix, AZ 85080-3020 <u>Copy to:</u> Chris Brooks, Senior Analyst Laura Grignano, Manager Central Arizona Groundwater Replenishment District P.O. Box 43020 Phoenix, AZ 85080-3020
City of Chandler	John Knudson, Director, Public Works & Utilities City of Chandler P.O. Box 4008, MS 403 Chandler, AZ 85244-4008 <u>Copy to:</u> Kelly Schwab, City Attorney City of Chandler P.O. Box 4008, MS 602 Chandler, AZ 85244-4008
City of El Mirage	

Table 2 – Contacts

Party	Contact
EPCOR USA, Inc.	EPCOR USA, Inc c/o Joe Gysel President 2355 W. Pinnacle Peak Road, Suite 300 Phoenix, AZ 85027 <u>Copy to:</u> EPCOR USA, Inc c/o General Counsel 2355 W. Pinnacle Peak Road, Suite 300 Phoenix, AZ 85027
Town of Gilbert	
City of Goodyear	
City of Glendale	City of Glendale c/o City Clerk-Julie K. Bower 5850 W. Glendale Ave. Glendale, AZ 85301 <u>Copy to:</u> City of Glendale Drew Swieczkowski 7070 W. Northern Ave. Glendale, AZ 85303

Table 2 – Contacts

Party	Contact
City of Mesa	City of Mesa c/o City Manager's Office P.O. Box 1466 Mesa, Arizona 85211-1466 <u>Copy to:</u> Brian Draper Water Resources Advisor City of Mesa P.O. Box 1466 Mesa, Arizona 85211-1466
City of Peoria	
City of Phoenix	
Town of Queen Creek	John Kross Paul Gardner 22358 S. Ellsworth Road Queen Creek, AZ 85142
Roosevelt Water Conservation District	

Table 2 – Contacts

Party	Contact
Salt River Valley Water Users' Association And Salt River Project Agricultural Improvement and Power District	Salt River Project c/o Corporate Secretary P.O. Box 52025 Phoenix, AZ 85072-2205 <u>Copy to:</u> Ronald J. Klawitter Water System Projects Principal Salt River Project P.O. Box 52025 Phoenix, AZ 85072-2205
City of Scottsdale	City of Scottsdale – Scottsdale Water c/o Executive Director 9312 N. 94 th Street Scottsdale, AZ 85258 <u>Copy to:</u> City of Scottsdale – City Attorney 3939 N. Drinkwater Blvd. Scottsdale, AZ 85251
City of Surprise	
City of Tempe	

**AGREEMENT TO SHARE COSTS FOR THE FEASIBILITY STUDY OF BARTLETT DAM
MODIFICATION ALTERNATIVES
AMONG COST-SHARE PARTNERS
AND
SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT**

EXHIBIT C

**MEMORANDUM OF UNDERSTANDING TO SUPPORT THE BARTLETT DAM MODIFICATION
FEASIBILITY STUDY AMONG THE FORT MCDOWELL YAVAPAI NATION AND SALT RIVER
PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT**

MEMORANDUM OF UNDERSTANDING
TO SUPPORT THE BARTLETT DAM MODIFICATION FEASIBILITY STUDY
BETWEEN FORT MCDOWELL YAVAPAI NATION,
SALT RIVER VALLEY WATER USERS' ASSOCIATION,
AND
SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT

October 12, 2021

1. PARTIES:

This nonbinding memorandum of understanding (“MOU”) to support the Bartlett Dam Modification Feasibility Study is entered into by the Fort McDowell Yavapai Nation (“Nation”), the Salt River Valley Water Users' Association (“Association”), and the Salt River Project Agricultural Improvement and Power District (“District”). The Association and District are referred to collectively as “SRP.” SRP and the Nation are referred to collectively as “Parties.”

2. BACKGROUND AND PURPOSE:

- a. The United States Department of the Interior’s Bureau of Reclamation (“Reclamation”), in partnership with SRP, conducted an appraisal level investigation called the Verde Reservoirs Sediment Mitigation Study to evaluate options to restore capacity lost in SRP’s Verde River reservoirs due to sediment accumulation, which impacts critical water supplies for central Arizona.
- b. Reclamation issued a draft report entitled “Verde Reservoirs Sediment Mitigation Study Appraisal Report” in May 2021 (“Draft Appraisal Report”), the Executive Summary is attached to this MOU as Exhibit A, recommending that Reclamation:
 - i. Seek/confirm authority to initiate a feasibility study to determine the technical, environmental, economic, and financial feasibility of implementing one of two Bartlett Dam modification alternatives to enable central Arizona to adapt water management to changing climate conditions (“Bartlett Dam Modification Feasibility Study”);

- ii. Address topics identified in the Verde Reservoirs Sediment Mitigation Study during the feasibility study process; and
 - iii. Develop cost-share agreements necessary to support the successful completion of the Bartlett Dam Modification Feasibility Study.
- c. Reclamation is expected to release a final appraisal report by the end of calendar year 2021. The Parties support Reclamation's recommendations as identified in Subparagraph 2(b) and the initiation of the Bartlett Dam Modification Feasibility Study to further evaluate alternatives for modification of Bartlett Dam to improve management of water supplies of the Verde River, reduce the reliance on groundwater, and help position central Arizona to manage extended droughts and shortages created by climate change impacts on the Colorado, Salt, and Verde River watersheds.
- d. The purpose of this MOU is to describe the cooperative efforts and roles and responsibilities of the Parties related to supporting Reclamation in completing the Bartlett Dam Modification Feasibility Study as recommended in the Draft Appraisal Report. As described below, included in those cooperative efforts is the formation and participation in a steering committee as described in Paragraph 5(d) ("Steering Committee"), and development of the following agreements: (1) a cost-share agreement as described in Paragraph 5(a) ("Nonfederal Participating Entities Cost-Share Agreement"), and (2) a cost-share agreement among SRP and Reclamation as described in Paragraph 4(b)(i) ("SRP-Reclamation Cost-Share Agreement").
- e. SRP has executed, or will be executing, a similar nonbinding MOU to Support the Bartlett Dam Modification Feasibility Study with some or all of the following entities: Arizona Water Company, Buckeye Water Conservation and Drainage District, Central Arizona Groundwater Replenishment District, City of Apache Junction, City of Avondale, City of Buckeye, City of Chandler, Town of Gilbert, City of El Mirage, City of Glendale, City of Goodyear, City of Mesa, City of Peoria, City of Phoenix, City of Scottsdale, City of Surprise, City of Tempe, EPCOR, Roosevelt Water Conservation District and Town of Queen Creek. The listed entities will be referred to as ("Participating Entities").

3. TERM AND TERMINATION:

- a. This MOU will become effective upon execution by the Parties and, unless terminated under Subparagraph 3(b), will remain in effect until Reclamation issues a final report for the Bartlett Dam Modification Feasibility Study.
- b. This MOU will terminate in the event that Reclamation issues a final Verde Reservoirs Sediment Mitigation Study Appraisal Report that does not include a recommendation to study the feasibility of Bartlett Dam modification alternatives.
- c. This MOU and the provisions of this MOU may only be modified upon mutual written consent of the Parties.

4. RESPONSIBILITIES:

- a. Mutual Responsibilities:
 - i. The Nation will work cooperatively together with the Participating Entities and SRP to develop the Nonfederal Participating Entities Cost-Share Agreement although the Parties agree that the Nation will not be required to contribute any funding towards the Bartlett Dam Modification Feasibility Study.
 - ii. The Nation will work cooperatively with the Participating Entities and SRP to form and participate in the Steering Committee that is identified in Subparagraph 5(d) and will be further described by the Nonfederal Participating Entities Cost-Share Agreement.
 - iii. The Parties will support and assist Reclamation to conduct the Bartlett Dam Modification Feasibility Study in the event that Reclamation has/obtains authority to conduct this study as identified in the recommendations noted in Subparagraph 2(b). This support and assistance is expected to include funding of the Bartlett Dam Modification Feasibility Study by some or all of the Participating Entities, as will be specified by the Nonfederal Participating Entities Cost-Share Agreement. The Parties may provide data and information relevant to analyses that may include but are not limited to assessments of hydrology and climate change, demand for use of water supplies, environmental and cultural

resources, economics, engineering, dam safety and flood control, and recreation.

b. SRP Responsibilities:

- i. SRP will work with Reclamation to develop the SRP-Reclamation Cost-Share Agreement as a mechanism for SRP to pay the nonfederal cost-share required for completing the Bartlett Dam Modification Feasibility Study in the event that Reclamation has/obtains authority to conduct this study, including the funds collected under the Nonfederal Participating Entities Cost-Share Agreement, for completing the Bartlett Dam Modification Feasibility Study.
- ii. SRP will communicate with the Nation on a regular basis on all substantive decisions related to Reclamation developing a plan of study for the Bartlett Dam Modification Feasibility Study while it finalizes the Draft Appraisal Report.
- iii. SRP will serve as chair of the Steering Committee.

c. The Nation's Responsibilities:

- i. The Nation may provide relevant data, information, opinions, and analyses related to the Bartlett Dam Modification Feasibility Study as reasonably requested by SRP or Reclamation in the event that Reclamation has/obtains authority to conduct the Bartlett Dam Modification Feasibility Study.
- ii. The Nation will serve on the Steering Committee as appropriate to engage in collaboration and coordination with SRP to support Reclamation's completion of the Bartlett Dam Modification Feasibility Study as will be further defined in the Nonfederal Participating Entities Cost-Share Agreement.
- iii. The Nation may coordinate and collaborate with SRP in efforts to communicate information related to the Bartlett Dam Modification Feasibility Study with elected officials and other relevant stakeholders on the project.

- iv. Nothing in this MOU prevents the Nation from consulting with Reclamation on a formal or informal basis on any matter, including regarding the Bartlett Dam Modification Feasibility Study.

5. DEVELOPMENT OF THE NONFEDERAL PARTICIPATING ENTITIES COST-SHARE AGREEMENT:

- a. The Nation will collaborate with the other Participating Entities and SRP to develop the Nonfederal Participating Entities Cost-Share Agreement with a goal of execution in Fall 2021. The Nonfederal Participating Entities Cost-Share Agreement will describe how nonfederal costs will be allocated among SRP and any entities agreeing to share those costs to provide nonfederal funding to Reclamation and any appropriate contractors to conduct the Bartlett Dam Modification Feasibility Study in the event that Reclamation has/obtains authority to conduct this study.
- b. As part of the process to develop the Nonfederal Participating Entities Cost-Share Agreement, SRP and any entities agreeing to share the nonfederal costs will collaborate to determine the relative shares of the non-federal cost contribution in support of the Bartlett Dam Modification Feasibility Study in the event that Reclamation has/obtains authority to conduct this study as recommended in the Draft Appraisal Report. The Parties understand that any cost-share contribution under the Nonfederal Participating Entities Cost-Share Agreement does not guarantee capacity in a future Modified Bartlett Dam in the event such a facility is constructed.
- c. The Nation recognizes that the Nonfederal Participating Entities Cost-Share Agreement will be among SRP and any entity agreeing to share the nonfederal costs and will require those entities to submit funds to SRP for SRP to remit such funds to any necessary contractors or to Reclamation through the separate Reclamation-SRP Cost-Share Agreement.
- d. As part of the Nonfederal Participating Entities Cost-Share Agreement, the Participating Entities and the Parties will establish the Steering Committee chaired by SRP to provide timely and effective feedback and guidance to support Reclamation and any necessary contractors in achieving the milestones necessary to complete the Bartlett Dam Modification Feasibility Study in the event that

Reclamation has/obtains authority to conduct this study and to facilitate coordination in communications with elected officials and other relevant stakeholders.

- e. The Nation reserves the right to consult with Reclamation regarding cost-sharing for the Bartlett Dam Modification Feasibility Study.

6. AUTHORIZED REPRESENTATIVES

Within thirty (30) days after execution of this MOU, SRP and the Nation shall designate in writing an Authorized Representative and an Alternate to administer this MOU on behalf of the designating party. 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, modify, or supplement this MOU. Agreements of the Authorized Representatives pursuant to this MOU shall be in writing and signed by them.

7. ADDITION AND WITHDRAWAL OF PARTICIPATING ENTITIES:

- a. SRP or the Nation may voluntarily withdraw from this MOU by providing thirty (30) days written notice to the other Party as provided in Paragraph 8.

8. ADDRESSES FOR COMMUNICATIONS:

- a. All notices and communications under this MOU shall be addressed to the following addresses:

If to SRP:

Salt River Project
c/o Corporate Secretary
P.O. Box 52025
Phoenix, AZ 85072-2205

with a copy to:

Ronald J. Klawitter
Water System Projects Principal

Salt River Project
P.O. Box 52025
Phoenix, AZ 85072-2205

If to Fort McDowell Yavapai Nation:

Fort McDowell Yavapai nation
c/o Office of the President
PO Box 17779
Fountain Hills, AZ 85269

with a copy to:

Fort McDowell Yavapai Nation
Office of General Counsel
PO Box 17779
Fountain Hills, AZ 85269

- b. The Parties may change the addressee or address to which communications or copies are to be sent by giving notice of such change of addressee.

[signatures on the following pages]

9. SIGNATURES:

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

**SALT RIVER VALLEY WATER USERS'
ASSOCIATION**

By: 

Name: David C. Roberts

Title: Associate General Manager
Water Resources

APPROVED AS TO FORM

By: 

Name: Patrick B. Sigl

Title: Supervising Attorney, Environment, Land
& Water Rights

**SALT RIVER PROJECT AGRICULTURAL
IMPROVEMENT AND POWER DISTRICT**

By: 

Name: David C. Roberts

Title: Associate General Manager
Water Resources

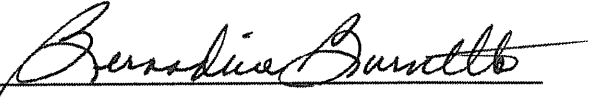
APPROVED AS TO FORM

By: 

Name: Patrick B. Sigl

Title: Supervising Attorney, Environment, Land
& Water Rights

FORT MCDOWELL YAVAPAI NATION

By: 

Name: Bernadine Burnette

Title: President

APPROVED AS TO FORM

By: 

Name: Diandra D. Benally

Title: General Counsel

**AGREEMENT TO SHARE COSTS FOR THE FEASIBILITY STUDY OF BARTLETT DAM
MODIFICATION ALTERNATIVES
AMONG COST-SHARE PARTNERS
AND SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT**

**EXHIBIT D
ANNUAL CONTRIBUTION LEVELS***

Party	Annual Contribution to Nonfederal Cost- Share 2022	Annual Contribution to Nonfederal Cost-Share 2023	Annual Contribution to Nonfederal Cost-Share 2024	Annual Contribution to Nonfederal Cost-Share 2025
Arizona Water Company				
Water Utility Community Facilities District (Apache Junction Water District)				
City of Avondale				
City of Buckeye				
Buckeye Water Conservation and Drainage District**				
Central Arizona Groundwater Replenishment District				
City of Chandler				
City of El Mirage				
EPCOR USA, Inc.				
Fort McDowell Yavapai Nation**				
Town of Gilbert				
City of Glendale				
City of Goodyear				
City of Mesa				
City of Peoria				
City of Phoenix				
Town of Queen Creek				
Roosevelt Water Conservation District				
City of Scottsdale				
SRP				
City of Surprise				
City of Tempe				

* The Annual Contribution Level as defined in this Agreement includes the option for a Party to elect to budget and appropriate the full amount of \$400,000 to participate in this Agreement as a Voting Member at the time of the Effective Date of the Agreement for that Party. Payment will be made pursuant to Section 12 of this Agreement.

** These Parties are Voting Members of the Steering Committee irrespective of their Annual Contribution Levels.

**AGREEMENT TO SHARE COSTS FOR THE FEASIBILITY STUDY OF BARTLETT DAM
MODIFICATION ALTERNATIVES
AMONG COST-SHARE PARTNERS
AND
SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT**

**EXHIBIT E
POTENTIAL CRITERIA FOR ASSESSING NEED FOR WATER**

The parties ("Parties") to the Agreement to Share Costs Associated with the Feasibility Study of Bartlett Dam Modification Alternatives Among Cost-Share Partners and Salt River Project Agricultural Improvement and Power District ("Agreement") will work together to develop criteria for evaluating the need of interested parties in gaining access to new conservation storage capacity and associated water supplies made possible by construction of a modified Bartlett Dam. The steering committee established by the Agreement ("Steering Committee") will develop the evaluation criteria that will be used to determine a beneficiary's extent and urgency of need. The following provides examples of the type of information and criteria that the Steering Committee may consider when developing the criteria.

The Steering Committee may consider criteria similar to the following to evaluate if a beneficiary should be recommended for gaining access to water supplies provided by any new conservation storage space added on the Verde River as a result of potential modifications to Bartlett Dam:

- Whether a reduction in non-renewable groundwater use would result from access to the supplies
- Whether access to the supplies would result in increase in the physical availability of water in areas without current access to renewable water supplies
- Whether a beneficiary interested in gaining access to supplies is able to demonstrate or outline a plan (with reasonable investment, agreement, or exchange) to directly use, store and recover, or replenish groundwater with the supplies in a manner consistent with water management goals of the AMA in which the beneficiary operates and existing law
- Whether access to water supplies made possible aids in meeting demands of existing water providers on an identified time horizon to-be determined by the Steering Committee
- Whether access to water supplies aids in mitigating effects of shortages from other supplies in causing service disruptions to existing customers
- Whether access to water supplies would help resolve an immediate, short term or long-term need.

Information that may be Considered to Evaluate Participant's Need:

- Applicable ADWR approved Designations of Assured Water Supply, ADWR approved groundwater modeling in support of a Physical Availability Determination, and ADWR approved Certificates of Assured Water Supply
- Annual Water Withdrawal and Use Reports
- Community Water System Annual Reports
- System Water Plans/Water, Wastewater, Water Resource Master Plans modeled and completed by each MOU Partner within identified time horizon during the feasibility study process to-be determined by Steering Committee
- Other data and information as identified by the Steering Committee

**AGREEMENT TO SHARE COSTS FOR THE FEASIBILITY STUDY OF BARTLETT DAM
MODIFICATION ALTERNATIVES
AMONG COST-SHARE PARTNERS
AND
SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT**

EXHIBIT F

CONTACT LIST

Party	Contact
Arizona Water Company	Arizona Water Company c/o President 3805 N. Black Canyon Highway Phoenix, AZ 85015 <u>Copy to:</u> Terri Sue Rossi, Water Resources Manager Arizona Water Company 3805 N. Black Canyon Highway Phoenix, AZ 85015
Water Utility Community Facilities District (Apache Junction Water District)	Water Utility Community Facilities District (dba Apache Junction Water District c/o Michael Loggins 300 E. Superstition Blvd. Apache Junction, AZ 85119 <u>Copy to:</u> Bryant Powell 300 E. Superstition Blvd. Apache Junction, AZ 85119
City of Avondale	

Party	Contact
City of Buckeye	Alisha Solano, Water Resources Director 21749 W. Yuma Road, Suite 107 Buckeye, AZ 85326 <u>Copy to:</u> Sheila B. Schmidt, City Attorney Gust Rosenfeld 1 East Washington, Suite 1600 Phoenix, AZ 85004 sschmidt@gustlaw.com
Buckeye Water Conservation and Drainage District	
Central Arizona Groundwater Replenishment District	Theodore C. Cooke, General Manager Central Arizona Water Conservation District P.O. Box 43020 Phoenix, AZ 85080-3020 <u>Copy to:</u> Chris Brooks, Senior Analyst Laura Grignano, Manager Central Arizona Groundwater Replenishment District P.O. Box 43020 Phoenix, AZ 85080-3020

Party	Contact
City of Chandler	John Knudson, Director, Public Works & Utilities City of Chandler P.O. Box 4008, MS 403 Chandler, AZ 85244-4008 <u>Copy to:</u> Kelly Schwab, City Attorney City of Chandler P.O. Box 4008, MS 602 Chandler, AZ 85244-4008
City of El Mirage	
EPCOR USA, Inc.	EPCOR USA, Inc c/o Joe Gysel President 2355 W. Pinnacle Peak Road, Suite 300 Phoenix, AZ 85027 <u>Copy to:</u> EPCOR USA, Inc c/o General Counsel 2355 W. Pinnacle Peak Road, Suite 300 Phoenix, AZ 85027
Ff. McDowell Yavapai Nation	
Town of Gilbert	Town of Gilbert c/o Town Manager 50 E. Civic Center Drive Gilbert, AZ 85296

Party	Contact
	<u>Copy to:</u> Town of Gilbert Lauren Hixson 50 E. Civic Center Drive Gilbert, AZ 85296
City of Goodyear	
City of Glendale	City of Glendale c/o City Clerk-Julie K. Bower 5850 W. Glendale Ave. Glendale, AZ 85301 <u>Copy to:</u> City of Glendale Drew Swieczkowski 7070 W. Northern Ave. Glendale, AZ 85303
City of Mesa	City of Mesa c/o City Manager's Office P.O. Box 1466 Mesa, Arizona 85211-1466 <u>Copy to:</u> Brian Draper Water Resources Advisor City of Mesa P.O. Box 1466 Mesa, Arizona 85211-1466
City of Peoria	City of Peoria c/o City Attorney's Office P.O. Box 4038 Peoria, AZ 85380-4038

Party	Contact
	<u>Copy to:</u> City of Peoria c/o Water Services Director 8401 W Monroe St Peoria, AZ 85345-6560
City of Phoenix	City of Phoenix Water Services Department 200 West Washington, 9th Floor Phoenix, AZ 85003 Attn: Water Services Director Copy to: City of Phoenix Law Department 200 West Washington, 13th Floor Phoenix, AZ 85003 Attn: City Attorney
Town of Queen Creek	John Kross Paul Gardner 22358 S. Ellsworth Road Queen Creek, AZ 85142 <u>Copy to:</u> _____ _____ _____ _____
Roosevelt Water Conservation District	

Party	Contact
Salt River Project Agricultural Improvement and Power District	Salt River Project c/o Corporate Secretary P.O. Box 52025 Phoenix, AZ 85072-2205 <u>Copy to:</u> Ronald J. Klawitter Water System Projects Principal Salt River Project P.O. Box 52025 Phoenix, AZ 85072-2205
City of Scottsdale	City of Scottsdale – Scottsdale Water c/o Executive Director 9312 N. 94th Street Scottsdale, AZ 85258 <u>Copy to:</u> City of Scottsdale – City Attorney 3939 N. Drinkwater Blvd. Scottsdale, AZ 85251
City of Surprise	
City of Tempe	

ITEM #: 8.
DATE: 12/06/2021
AI #:570



CITY COUNCIL ACTION REPORT

SUBJECT: APPROVE CIVIC SQUARE PARKING RIGHTS AGREEMENT AND NON-DISTURBANCE AGREEMENT

STAFF PRESENTER(S): Roric Massey, City Attorney

SUMMARY

These two agreements govern the operation of the new Civic Square at GSQ Parking Garage currently being constructed in conjunction with the new Goodyear City Hall and Globe Class A Office Building.

Recommendation

ADOPT RESOLUTION NO. 2021-2194 APPROVING THE CIVIC SQUARE PARKING RIGHTS AGREEMENT AND THE NON-DISTURBANCE AGREEMENT, PROVIDING AUTHORIZATION AND DIRECTION FOR EXECUTION AND PROVIDING AN EFFECTIVE DATE. (Roric Massey, City Attorney)

FISCAL IMPACT

The Parking Rights Agreement will formalize the \$5 million contribution towards the cost of the parking garage previously agreed to in the Development Agreement for the Civic Square at GSQ project.

Initial estimates for the annual operations costs for the parking garage range from approximately \$34,000 to \$68,000 depending on the final staffing levels selected for the garage. Under the terms of the Parking Rights Agreement, the City would pay for half of those costs.

The full year operating costs of the building and the garage have been programmed into public works - facilities operational budget.

BACKGROUND AND PREVIOUS ACTIONS

On August 19, 2019, Council previously approved a Development Agreement between the City of Goodyear and Globe Corporation, under which Globe Corp. would develop the Civic Square at GSQ project, which included the new Goodyear City Hall, Civic Square Park, Globe's Class A Office building, and a shared Parking structure for the development. Under the terms of the Development Agreement, the City would fund \$5 million toward the cost of the Parking Garage and receive allocated parking in the structure, on a pro-rata share, based on

the final cost of the structure. The original Development Agreement contemplated that the parties would subsequently enter into this Parking Rights Agreement to govern the operations of the parking structure.

STAFF ANALYSIS

Under the terms of the proposed Parking Rights Agreement, Globe Corporation through its subsidiary, GSQ Goodyear Parking Garage, LLC (collectively "Globe"), will be responsible for the construction and operation of an approximate 912 stall parking garage adjacent to the new City Hall and Globe Class A Office Building. Through the proposed Parking Rights Agreement, the parties have agreed to the following general terms regarding the operation of the Parking Garage:

- Globe will own and be responsible for operating the Garage
- The City will be granted a perpetual easement in the Garage for its allocated parking stalls.
- The parties will administratively enter into an annual operations plan for the general operation of the Garage.
- The City shall have 24-hour exclusive use of its 327 allocated parking stalls, and the remainder of the Garage shall generally be available for general public use on nights and weekends (although Globe shall have the right to reserve certain spots for dedicated tenant use).
- The Garage shall initially be operated in a non-gated manner, but Globe, with City input, shall have the right to convert the garage to a gated parking garage with any reduction of spaces being proportionally allocated between the parties.
- The parties shall share the annual operations and maintenance costs on an equal basis with any parking revenues generated to be applied to the operations and maintenance budget to equally benefit both parties.

In addition to the Parking Rights Agreement and due to the financing Globe has in place for the construction of the Parking Garage, Enterprise Bank & Trust has requested the City enter into a Non-Disturbance Agreement (attached as Exhibit B to the Resolution). The Non-Disturbance Agreement recognizes that Enterprise Bank & Trust has certain secured rights on the Parking Garage related to the financing they have provided. The Agreement states that the bank recognizes the easements and rights the City has in the Garage and the Bank will honor the Parking Rights Agreement and the City's right to the use the Garage under that Agreement, should the bank ever become a successor owner of the garage.

Attachments

Resolution 2021-2194

RESOLUTION NO. 2021-2194

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, APPROVING THE CIVIC SQUARE PARKING RIGHTS AGREEMENT AND THE NON-DISTURBANCE AGREEMENT, PROVIDING AUTHORIZATION AND DIRECTION FOR EXECUTION AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on August 19, 2019 Council approved a Development agreement between the City of Goodyear and Globe Corporation which provided for the development of approximately 46 acres near 150th Drive and Monte Vista Road; and

WHEREAS, the Development Agreement provided that Globe Corporation would construct the new Goodyear City Hall, a 2-acre Civic Square Park, a 100,000 square-foot Class A office building, and an adjacent parking structure for the development; and

WHEREAS, through the Development Agreement, the City agreed to fund \$5 million towards the cost of the Parking Garage in return for a dedicated allocation of parking stalls on a pro-rata share based on the total cost of construction; and

WHEREAS, the Development Agreement contemplated that the parties would subsequently enter into a Parking Rights Agreement to outline the operations and maintenance of the parking structure;

WHEREAS, Enterprise Bank & Trust has provided funding towards the construction of the Parking Garage and has a secured interest in the parking structure; and

WHEREAS, the City of Goodyear and Enterprise Bank & Trust wish to enter into a Non-Disturbance Agreement which would recognize and protect the City's rights, obligations and interests in the Parking Garage, should the bank ever become a successor owner of the parking structure;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:

SECTION 1. Approve the Civic Square Parking Agreement attached as Exhibit "A" and Non-Disturbance Agreement attached as Exhibit "B."

SECTION 2. Authorize and direct the City Manager or her designee to sign and execute the Civic Square Parking Agreement and future annual operations plans, and to execute the Non-Disturbance Agreement, to make non-substantive changes in furtherance of the agreements, and to take all actions necessary to carry out the intent of this Resolution and the Agreements.

SECTION 3. This Resolution shall become effective upon its adoption by the Mayor and Council of the City of Goodyear.

PASSED AND ADOPTED by the Mayor and Council of the City of Goodyear, Maricopa County, Arizona, by a _____ vote, this _____ day of _____, 20_____.

Georgia Lord, Mayor

Date: _____

ATTEST:

APPROVED AS TO FORM:

Darcie McCracken, City Clerk

Roric Massey, City Attorney

EXHIBIT 'A'

PARKING RIGHTS AGREEMENT

[On the following pages]

When recorded, return to:
City of Goodyear
190 North Litchfield Road
Goodyear, Arizona 85338
Attn: City Manager

PARKING RIGHTS AGREEMENT

THIS PARKING RIGHTS AGREEMENT (this “**Agreement**”) is made as of the ____ day of December, 2021 (the “**Effective Date**”), by and between the **CITY OF GOODYEAR, ARIZONA**, an Arizona municipal corporation (the “**City**”), **GSQ GOODYEAR PARKING GARAGE, LLC**, an Arizona limited liability company (“**Owner**”), and **GLOBE CORPORATION**, an Illinois corporation (“**Globe**”). The City, Owner and Globe are sometimes referred to herein collectively as the “**Parties**”, or, individually, as a “**Party**”. Other capitalized terms used in this Agreement shall have the meanings ascribed to them parenthetically throughout this Agreement (inclusive of the Recitals below) or as specifically defined in Section 2 of this Agreement.

RECITALS

A. The City, Globe Land Investors, LLC, a Delaware limited liability company (“**GLI**”), and Globe are parties to that certain Development Agreement dated as of August 19, 2019 and recorded on August 23, 2019 as Document No. 2019-0652583 of the Official Records of Maricopa County, Arizona (the “**Development Agreement**”).

B. Pursuant to the Development Agreement, GLI has agreed to convey certain real property to the City, as legally described and depicted on Exhibit A hereto (the “**City Property**”).

C. Pursuant to Section 4.1(b)(i) of the Development Agreement, Globe is obligated to construct on certain real property owned by Owner legally described and depicted in Exhibit B hereto (the “**Property**”) an above-ground parking structure (the “**Garage**”), in which Garage 327 parking spaces in the locations set forth in Exhibit D attached hereto (subject to (i) any changes to such locations mutually agreed upon by Globe and the City after the completion of the Garage, it being acknowledged that neither Party has any obligation to so agree to a change of location of the City Spaces except as provided in Section 7(e) hereof, and (ii) the provisions of Section 7(e) hereof) (the “**City Spaces**”), are required to be subject to the easement granted in Section 3 hereof by Owner in favor of the City for off-street public parking for the benefit of the City Property and for use by the City and the general public at large. The Parties acknowledge and agree that Globe will solely perform, or cause to be performed, the construction and development activities described in this Agreement relating to the Garage, and Owner will not perform any such activities.

D. Pursuant to Section 14.27 of the Development Agreement, the City and Owner, as the successor owner to GLI of the Property, are obligated to enter into a parking rights agreement to govern the rights of the City and Owner with respect to the Garage and the City Spaces, and the Parties acknowledge and agree that this Agreement is the required parking rights agreement referenced in, and that this Agreement satisfies in full the requirements of, Section 14.27 of the Development Agreement. For the avoidance of doubt, the Parties acknowledge and agree that the City has no rights in, and has no control over, the Garage or the parking spaces in the Garage except only with respect to the express rights and obligations set forth in this Agreement.

E. The Parties desire to enter into this Agreement to set forth the Parties' rights and obligations with respect to the Garage and the City Spaces.

AGREEMENTS

Now, therefore, in consideration of the foregoing recitals and the representations and mutual promises contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of all of which is hereby acknowledged, the Parties agree as follows:

1. **INCORPORATION OF RECITALS.** The accuracy of the above Recitals is confirmed and all of the above-mentioned Recitals are incorporated herein and are hereby made substantive provisions of this Agreement.

2. **DEFINITIONS.** In this Agreement:

(a) **"Access Facilities"** means as defined in Section 6.

(b) **"Access Rights"** means as defined in Section 3.

(c) **"Agreement"** means this agreement and all Exhibits hereto, as amended and restated or supplemented by the Parties in writing from time to time. References to Sections or Exhibits are to this Agreement unless otherwise qualified. The Recitals set forth in Recitals A through E, inclusive, are incorporated herein by reference and form a part of this Agreement.

(d) **"Allocable Share"** means fifty percent (50%), the Parties acknowledging that the City has agreed to contribute toward the Operating Expenses for the Garage in a percentage greater than the proportionate share that would result from dividing the number of City Spaces by the total number of parking spaces in the Garage to reflect the additional maintenance burden resulting from the requirement that the Garage be open for public parking during the Public Parking Times.

(e) **"Applicable Laws"** means the federal, state, county and local laws (statutory and common law) and ordinances, including the City Code, which apply to the development of the Property from time to time.

(f) **"Approved Plans"** means as defined in Section 6.

(g) “**A.R.S.**” means the Arizona Revised Statutes as now or hereafter enacted or amended.

(h) “**Business Day**” means any day other than a Saturday, a Sunday or a public or bank holiday or the equivalent for banks generally under the laws of the State of Arizona. Use of the word “day,” as opposed to “Business Day,” means calendar day.

(i) “**City**” means the Party designated as City on the first page of this Agreement.

(j) “**City Code**” means the Code of the City of Goodyear, Arizona, as amended from time to time, including, without limitation, the City of Goodyear Zoning Ordinance of May, 1999, as amended from time to time.

(k) “**City Council**” means the City Council of the City.

(l) “**City Property**” means as defined in Recital B.

(m) “**City Spaces**” means as defined in Recital C.

(n) “**City Spaces Easement**” means as defined in Section 3.

(o) “**Commencement of Construction**” means the date on which both of the following have occurred: (a) any building permit necessary to undertake the construction of the Garage (exclusive of interim permits, such as “hauling” permits, issued in the ordinary course of construction) has been issued and (b) Globe has entered into a binding construction contract with a qualified and licensed contractor to construct the Garage authorized by the building permit, and such contractor has either (i) commenced preliminary grading of the Property, (ii) placed any construction materials, supplies or equipment on the Property, (iii) placed construction offices (including trailers and temporary offices) on the Property and erected necessary fencing, or (iv) otherwise mobilized construction on the Property for the Garage as authorized by the building permit.

(p) “**Completed**” means as defined in Section 24.26.

(q) “**Completion of Construction**” means the date on which a certificate of occupancy or other appropriate approval has been issued by the City for the Garage enabling the use thereof for the purposes set forth herein.

(r) “**Deed of Trust**” means as defined in Section 22.

(s) “**Denial**” means as defined in Section 21.3(e).

(t) “**Designated Lenders**” means as defined in Section 24.21.

(u) “**Defaulting Party**” means as defined in Section 21.3

(v) **“Development Agreement”** means as defined in Recital A.

(w) **“Effective Date”** means the date on which this Agreement has been adopted and approved by the City Council and executed by duly authorized representatives of all Parties.

(x) **“Enforced Delay”** means as defined in Section 21.3(e).

(y) **“Event of Default”** means as defined in Section 21.

(z) **“Failure”** means as defined in Section 21.3(e).

(aa) **“Garage”** means as defined in Recital C.

(bb) **“Garage Payment”** means as defined in Section 12.

(cc) **“Garage Plans”** means as defined in Section 6.

(dd) **“Globe”** means the Party designated as Globe on the first page of this Agreement, and its successors and assigns.

(ee) **“Governmental Authority”** means the City.

(ff) **“Holder”** means as defined in Section 22.

(gg) **“Insurance Requirements”** means as defined in Section 17.

(hh) **“Lender”** and **“Lenders”** mean as defined in Section 24.21.

(ii) **“Non-Defaulting Party”** means as defined in Section 21.3.

(jj) **“Non-Disturbance Agreement”** means as defined in Section 22.

(kk) **“Non-Performing Party”** means as defined in Section 21.2.

(ll) **“Operating Expenses”** means as defined in Section 13.

(mm) **“Order”** means as defined in Section 21.3(e).

(nn) **“Owner”** means the Party designated as Owner on the first page of this Agreement, and its successors and assigns.

(oo) **“Parking Control Improvements”** means as defined in Section 7(e)

(pp) **“Parking Control Plans”** means as defined in Section 7(e).

(qq) **“Party”** or **“Parties”** means as designated on the first page of this Agreement.

(rr) **“Paying Party”** means as defined in Section 21.1.

(ss) **“Permits”** means all permits, consents, approvals, authorizations, waivers, certificates and approvals from the Governmental Authority that are required for the planning, design, construction, completion and occupancy of the Garage.

(tt) **“Person”** means any individual, general partnership, limited partnership, firm, association, corporation, limited liability company, trust or any other form of business or governmental entity.

(uu) **“Private Thoroughfares”** means all streets, roads, passageways, driveways, curb cuts, bridges, sidewalks and rights of way, now or hereafter constructed within the Property, together with all accompanying surface improvements thereon, as the same may be modified, relocated or reconfigured by Globe, subject to and in accordance with the provisions of this Agreement, from time to time; provided, however, any streets, roads or rights of way located within the Property which are publicly dedicated shall not be deemed to be Private Thoroughfares.

(vv) **“Property”** means as defined in Recital C.

(ww) **“Required Modifications”** means as defined in Section 12.

(xx) **“Taxes”** means as defined in Section 16.

(yy) **“Third Party”** means any Person other than a Party or an affiliate of any Party.

(zz) **“Transient Revenue”** means all revenue generated daily from the use, occupancy or lease of parking spaces in the Garage that is paid or payable to Owner, City or Globe, other than revenue that is generated by Owner or Globe from its or their issuance of parking permits or other parking rights, or designations of reserved, exclusive or restricted parking rights, that allow the possessors of those permits or rights to access the non-City Spaces without having to pay a visitor, an hourly and/or an event pay to park fee.

(aaa) **“Use and Operations Plan”** means a plan to be mutually agreed upon by Owner or Globe and the City for the use and operation of the Garage, to include such matters as the Parties deem to be appropriate for inclusion in such plan.

3. EASEMENTS IN FAVOR OF CITY. Subject to (i) the Completion of Construction of the Garage, (ii) the terms of this Agreement and (iii) Owner’s right to limit or prohibit access to Owner’s portions of the Garage that are not City Spaces or Access Facilities (such Owner’s portions include parking spaces that are not City Spaces and entrances, exits, driveways, drive aisles and sidewalks that are not needed for access to and from the City Spaces) that may be used solely by Owner’s tenants, visitors, licensees, guests or designees, Owner hereby grants to the City, and the City hereby accepts from Owner, (a) a perpetual and irrevocable, exclusive right and easement, appurtenant to and for the benefit of the City Property, upon the terms and conditions set forth in this Agreement, for the use of the City, the City Spaces

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on the terms set forth in this Agreement (the “**City Spaces Easement**”), (b) a perpetual and irrevocable, non-exclusive right and easement, appurtenant to and for the benefit of the City Property, for the City and the general public at large to use certain entrances, exits and driveways, other paved drive aisles and sidewalks and elevators and stairwells from time to time located in the Garage necessary and appropriate for reasonable access to and from the City Spaces, but such right and easement shall not include any such driveways, paved drive aisles, sidewalks, elevators or stairwells accessing the non-City Spaces in the Garage which have been designated by Owner for use solely with respect to the non-City Spaces and which are not necessary or appropriate for access to the City Spaces (the “**Access Rights**”) and (c) a perpetual and irrevocable, non-exclusive right and easement, appurtenant to and for the benefit of the City Property, to utilize the Private Thoroughfares now existing or hereafter constructed on the Property that are reasonably necessary or appropriate for vehicular and pedestrian access to and from the City Spaces and any public streets providing access to the Garage so as to provide for the passage of motor vehicles and pedestrians to and from the City Spaces to such public streets; provided, however, no easement is granted over those portions of the Garage or the Private Thoroughfares which are not reasonably necessary or reasonably appropriate for access from public streets to and from the City Spaces. The easements granted by Owner to the City pursuant to this Agreement are perpetual and run with the land as a burden on the Property in favor of the City, the City Property and the City’s successors and assigns.

4. **TERM.** This Agreement shall be effective upon execution by the Parties. The term of this Agreement shall be perpetual.

5. **SOUTH GARAGE.** In the event that Owner or an affiliate of Owner, including GLI, hereafter contemplates constructing an above-ground parking structure in the location specified on Exhibit C hereto (the “**South Garage**”) immediately south of West Plaza View on the northernmost portion of Lot 2 of the Final Plat Goodyear Civic Square Parcel “A” at Estrella Falls, recorded March 5, 2021, in Book 1577, Page 1, of Official Records of the County Recorder of Maricopa County, Arizona, the City shall have the right to approach Globe and request the right to negotiate for parking spaces in such contemplated South Garage; for the avoidance of doubt, such right shall only apply to a parking garage if it is located immediately south of and adjacent to West Plaza Drive in the location shown on Exhibit C hereto, the Parties acknowledging that such right does not apply to any other parking garage that may be constructed on said Lot 2. Notwithstanding the foregoing, neither Owner nor the City shall have any rights or obligations with respect to the other Party relating to the South Garage or any parking spaces constructed therein unless the Parties hereafter agree in writing, without any obligation so to do. In no event shall the City have any rights whatsoever to relocate any of the City Spaces into the South Garage.

6. **PLANS FOR THE GARAGE AND ACCESS RIGHTS.** With regard to the Garage, Globe shall work closely with the City Manager, or the City Manager's designee, to develop the plans for the Garage. The City shall have the right to timely provide information regarding the Garage to Globe. Prior to or concurrently with submitting any application for a building permit from the City for the Garage, Globe shall prepare, based on the plans developed pursuant to the second preceding sentence, and submit to the City Manager plans and specifications for (i) the Garage, including the location of the City Spaces therein, (ii) the

entrances, exits, driveways and other paved areas proposed to be subject to the Access Rights (collectively, the “**Access Facilities**”), (iii) the other entrances, exits, driveways and parking areas proposed to be constructed by Globe in connection with the Garage, and (iv) the initially contemplated signage on the Property relating to the City Spaces and to the other parking spaces in the Garage (collectively, the “**Garage Plans**”). The Garage Plans shall show the proposed initial location of the City Spaces and the Access Facilities. The City Spaces shall have a width (in respect of non-handicapped parking spaces) of not less than 9 feet and in respect of handicapped parking spaces, in the size legally required. The Parties acknowledge that submittal of the Garage Plans to the City Manager is for the sole purpose of providing the City Manager information relating to the proposed Garage for purposes of the City Manager determining that Globe has satisfied its obligations under Sections 4.7 and 14.27 of the Development Agreement and this Agreement. Accordingly, the City Manager shall give approval of the Garage Plans if said plans (i) contain the required number of City Spaces in accordance with Recital C of this Agreement and Section 4.1(b)(i) of the Development Agreement; (ii) locate the City Spaces as required pursuant to Exhibit D attached hereto; (iii) identify Access Facilities providing reasonable access to the City Spaces; (iv) include reasonable signage identifying the City Spaces; and (v) do not violate the provisions of this Agreement and Section 14.27 of the Development Agreement. The City Manager shall approve or disapprove the Garage Plans within twenty (20) days after the City Manager’s receipt of the Garage Plans. The City Manager’s disapproval shall include the specific reasons for such disapproval and shall specify the changes required to obtain approval. In the event of the City Manager’s disapproval, Globe shall revise the Garage Plans and submit the revised Garage Plans to the City Manager for the City Manager’s review and approval as provided above. The City Manager shall approve or disapprove the revised Garage Plans in writing within fifteen (15) days after the City Manager’s receipt of such revised Garage Plans, which approval or disapproval shall be given in accordance with the requirements of the preceding sentences, and if the City Manager determines that the revised Garage Plans still do not satisfy the requirements of Section 14.27 of the Development Agreement and this Agreement, then any such disapproval of the City Manager shall include the specific reasons for disapproval and shall specify the changes required to obtain approval. Upon the City Manager’s subsequent disapproval, Globe shall further revise the then current Garage Plans and shall submit the further revised Garage Plans to the City Manager for the City Manager’s review and approval pursuant to the foregoing provisions of this paragraph. If at any time the City Manager does not timely indicate its approval or disapproval of the submitted Garage Plans within the specified timeframe set forth in this Section 6, then the City Manager shall be deemed to have approved such Garage Plans. The Garage Plans submitted by Globe and approved by the City Manager pursuant to this Section 6 are hereinafter called the “**Approved Plans**”. The City Manager’s review and approval of the Approved Plans, which shall be separate from and in addition to all other necessary City approvals, is intended solely to enable the City to protect its interests as user of the City Spaces and Access Facilities. Such right shall not be construed to create any obligation on the part of the City to review and/or approve the Garage or Access Facilities on behalf of the general public or any Person other than the City. In the event the City Manager disapproves Globe’s plans and specifications for the Garage or Access Facilities after Globe has submitted plans and specifications to the City Manager as provided above, and if Globe believes such disapproval was not reasonable or not otherwise permitted by this Agreement, then either

the City or Globe shall have the right to submit the matter to the dispute resolution provisions as set forth in Section 13 of the Development Agreement for resolution.

Notwithstanding the foregoing, the Garage Plans have been approved by the Parties prior to the execution of this Agreement, and thus the Parties acknowledge and agree that such approved Garage Plans satisfy the requirements of this Section 6 and constitute the Approved Plans for purposes of this Agreement.

7. RELOCATION OR ALTERATION OF CITY SPACES OR ACCESS FACILITIES. Owner hereby retains, and shall have the right, from time to time, to:

(a) change the location of any portion of the Access Facilities to another similar area shown on the Approved Plans, so long as the change of location does not unreasonably interfere with the access of the City and the general public at large to the City Spaces and the Access Facilities and to continuously provide the City and the general public at large with reasonably convenient access to and from the City Spaces, as they may currently exist or as they may be relocated pursuant to the terms of this Agreement; provided, however, the Parties acknowledge that, if a location is changed, or if repair, maintenance or replacement of the City Spaces and/or the Access Facilities is being undertaken, Owner or its designee shall have the right to perform such work, and in such event, Owner or its designee shall reasonably attempt to minimize the inconvenience resulting therefrom to the use of the City Spaces or the Access Facilities;

(b) grant additional non-exclusive easements and other similar rights with respect to the Access Facilities, including without limitation utility easements and licenses, as Owner may reasonably deem necessary or appropriate, provided that such additional easements and rights do not materially adversely affect the use by the City and/or the general public of the Access Facilities and the City Spaces;

(c) temporarily close or restrict some portions of the City Spaces and/or the Access Facilities, at reasonable times and for reasonable periods, for the purpose of performing, or having performed, repairs to and/or maintenance of the City Spaces and/or the Access Facilities; provided, however, that any physical change to the site plan for the Garage shall be approved by the City's Development Services Department if such approval is required pursuant to the Goodyear City Code; and expressly provided, further, that: (i) at least one method of vehicular and pedestrian access to the City Spaces shall be maintained at all times except as may be due to Enforced Delay (as defined in Section 21.3(e) below); (ii) Owner shall provide written notice to the City no less than ten (10) Business Days in advance of any such planned restriction or closure, unless in the case of an emergency in which event subsequent notice shall be provided as soon as reasonably possible thereafter; and (iii) Owner shall use commercially reasonable efforts to minimize such restriction or closure to only that extent reasonably necessary for the repairs and/or maintenance;

(d) designate non-City Spaces as reserved, exclusive or restricted parking spaces within the Garage for the exclusive use of Owner's designees, or for visitor parking, so

long as the City Spaces remain available in the Garage as required pursuant to the terms of this Agreement; and

(e) Notwithstanding anything to the contrary in this Agreement, on sixty (60) days' prior notice to the City, elect to change, or elect to cause Globe to change, the number and location of the City Spaces and the non-City Spaces, and the accompanying Access Facilities and Access Rights, in the Garage so as to provide and allow for parking control equipment, facilities, gates and related items (the "**Parking Control Improvements**"). The plans for the installation of the Parking Control Improvements, and for the change in location of the City Spaces and Access Facilities (the "**Parking Control Plans**") must be submitted to the City for review and approval in the same manner as set forth in Section 6 with respect to the Garage Plans; provided, however, that the City's rights of approval or disapproval with respect to the Parking Control Plans shall not be limited to the matters set forth in Section 14.27 of the Development Agreement, but rather shall be limited only to the City's exercise of its commercially reasonable discretion as to such approval or disapproval. Upon the City's approval of the Parking Control Plans, Owner shall proceed to implement, or cause Globe to proceed to implement, the Parking Control Improvements and the change in location of the City Spaces and the Access Facilities in strict accordance with the approved Parking Control Plans. The parties acknowledge that parking spaces will be lost as a result of the installation of the Parking Control Improvements. In the event that the number of parking spaces in the Garage is reduced due to adding such Parking Control Improvements, then notwithstanding anything to the contrary in this Agreement, the number of parking spaces in the Garage to which each of Owner and the City would thereafter be entitled would be determined by (i) taking the total cost of the Garage (which the parties agree is deemed to be \$13,933,827) and dividing such number by (ii) the reduced number of parking spaces in the Garage, in order to then determine the revised cost of each parking space in the Garage. The number of City Spaces would then be determined by dividing (y) the City's contribution to the cost of the Garage (which is \$5,000,000) by (z) such revised cost of each parking space in the Garage, and then the number of the non-City Spaces to which Owner shall be entitled shall equal the difference between the then total number of parking spaces in the Garage and subtracting therefrom the number of parking spaces to which the City is entitled pursuant to this sentence. Therefore, notwithstanding anything to the contrary in this Agreement, from and after the date of installation of the Parking Control Improvements (I) the references in this Agreement to City Spaces, Access Facilities, Access Rights and the remaining parking spaces to which Globe is entitled shall be changed accordingly, and (II) notwithstanding anything to the contrary in Recital C of this Agreement, the number of City Spaces shall be reduced to the amount calculated pursuant to the preceding sentence; provided, however, that in no event shall the number of City Spaces be reduced below 300 without the City's prior written consent, which consent may be granted or withheld in the City's sole and absolute discretion. The costs associated with installing the Parking Control Improvements shall be deemed to be Operating Expenses during the year incurred. In the event the Parking Control Improvements installed by Owner include any access gate, vehicle identification system, key or card entry system, or other restraints on access over, across or upon the Access Facilities or the City Spaces, Owner shall provide to the City the combination and/or one (1) key, sticker or access card for each of the City Spaces located on or within such restricted area, as are necessary to provide access to and from the Access Facilities and the City Spaces.

Except as expressly provided in Section 7(e) above, neither Party shall have any right to change the location of the City Spaces without the prior written consent of the other Party, which consent may be granted or withheld in such other Party's sole and absolute discretion.

8. USE OF CITY SPACES. The City shall have the right to use the City Spaces for the purpose of providing vehicle parking for the City and the general public at large, in accordance with the terms of this Agreement. The City acknowledges and agrees that the use of the unreserved City Spaces for vehicle parking for the general public at large shall, without limitation, include the use of the unreserved City Spaces by guests, customers, vendors and suppliers of the facilities Owner intends to cause Globe to construct on the Property or on real property near or adjacent to the Property. The City further acknowledges and agrees that the use of the unreserved City Spaces by such guests, customers, vendors and suppliers may from time-to-time result in all of the unreserved City Spaces being used by such guests, customers, vendors and suppliers. Consistent with Recital D, the Parties acknowledge and agree that, except as otherwise expressly provided in this Agreement, the City has the right to designate the users of the City Spaces and to make all decisions with respect to the designation of the City Spaces as exclusive to the City's designees or otherwise available to the public, as it deems appropriate, including, without limitation, designating all or any portion of the City Spaces as reserved or exclusive spaces and/or to designate any City Space as a visitor space, so long as the non-City Spaces remain available in the Garage as required pursuant to the terms of this Agreement.

9. CHARGE FOR USE OF CITY SPACES; GARAGE REVENUE. Unless approved by the City, neither Owner nor the City shall charge the general public at large for any use of the City Spaces pursuant to this Agreement. Nothing contained herein shall limit or restrict Owner from charging for any designated, reserved or otherwise restricted parking spaces within the Garage that are not City Spaces, and to install, operate and maintain such parking gates, barriers or other facilities which Owner may desire or which may be necessary in order to ensure the designated reserved and/or restricted nature of such parking spaces, so long as such measures do not materially restrict, impede or interfere with the reasonable use of the City Spaces or Access Facilities. Owner shall retain all revenue, including Transient Revenue, received by Owner or by the City generated from fees charged by Owner or the City for the use, occupancy or lease of the parking spaces in the Garage; provided, however, that all Transient Revenue received by Owner or the City shall be paid to Owner and shall be used and applied by Owner solely toward the payment of the Operating Expenses, so as to reduce the Operating Expenses payable by the Parties pursuant to Section 13 below; and provided further, however, for the avoidance of doubt, if the City receives any Transient Revenue, all such Transient Revenue shall be paid to Owner and shall be used and applied by Owner solely toward the payment of the Operating Expenses.

10. USE OF ACCESS FACILITIES. The City shall have the right to use the Access Facilities for the purpose of access by vehicles operated by the general public or by City employees, guests, customers, vendors and suppliers to and from the City Spaces, in accordance with the terms of this Agreement.

11. PUBLIC PARKING. Subject to the City's compliance with its obligations in Section 13 below and to the duties of Owner to cause the timely maintenance, repair or

replacement of the Garage and/or the Access Facilities as required in this Agreement, Owner must make the Garage available for public parking use, and the Access Facilities available for public access, during weekends and official State holidays, and on Mondays through Fridays, during hours that will be agreed upon by the City and Owner from time to time and set forth in the Use and Operation Plan (the "**Public Parking Times**"); provided, however, that such public parking and public access shall not conflict with the parking rights of third parties that have been granted reserved, exclusive or restricted use of parking spaces on the Property, including, without limitation, any rights to reserved parking spaces granted by Owner.

12. CONSTRUCTION OF GARAGE. Owner shall, at Owner's sole cost and expense, and without any contribution by the City other than the amount the City is required to pay towards the cost of construction of the Garage pursuant to Section 6.7 of the Development Agreement (the "**Garage Payment**"), cause Globe to construct or cause to be constructed the Garage, the City Spaces and the Access Facilities substantially in accordance with the Approved Plans. The Parties acknowledge that Globe has caused the Commencement of Construction to occur with respect to the Garage prior to the Effective Date. Globe shall cause Completion of Construction of the Garage to occur on or before June 30, 2022, or by such later date as may be mutually approved by the City and Globe, which approval shall not be unreasonably withheld. Globe shall use reasonable efforts to secure any necessary construction easements, licenses or permits required in connection with the construction of the Garage. If any code, law, rule or regulation of general application requires any change to or modification of the Garage or the Access Facilities, the City shall so advise Owner thereof, and Owner shall thereafter use reasonable efforts to promptly cause Globe to make or cause to be made such change or modification (the "**Required Modifications**"); provided, however, Owner shall first have the right to cause Globe or a third party to challenge, by appropriate legal and administrative actions and proceedings, the validity or applicability of any such code, law, rule or regulation to the Garage and/or the Access Facilities. Owner expressly acknowledges and agrees that any City approval provided pursuant to this Agreement, including but not limited to the City Manager's approval of plans and specifications for the Garage pursuant to Section 6 above and the City Manager's approval of the Parking Control Plans pursuant to Section 7 above, shall be given by the City acting in a proprietary capacity as the owner and user of the City Spaces, and shall be in addition to and not in substitution for or satisfaction of any other approval required to be obtained by Owner from the City pursuant to any applicable ordinance, code, law, rule or regulation. The City shall pay directly, or if requested by Owner shall reimburse Owner for, an amount equal to the City's Allocable Share of the cost of the Required Modifications, at the same time that Owner pays its share of the cost of such Required Modifications.

13. OPERATION, MAINTENANCE AND REPAIR. Subject to the City's compliance with its obligations set forth below in this Section 13, Owner shall, or Owner shall cause its designee to, at all times during the term of this Agreement, operate the Garage and maintain the Garage and the Access Facilities in good order, condition and repair and in accordance with the practices prevailing in the operation of similar parking facilities in the metropolitan Phoenix, Arizona area. The City acknowledges that a portion of the City Spaces may occasionally be temporarily unavailable for use during the performance of routine maintenance and repair activities. Without limiting the generality of the foregoing, Owner or a management company or other third party hired by Owner shall:

(a) maintain the surface of the Garage and the Access Facilities in a smooth condition, evenly covered with the type of surfacing described in the Approved Plans, or with a substitute that is in all respects substantially similar in quality, appearance and durability to the surfacing material described in the Approved Plans;

(b) promptly remove all paper, refuse and debris from, periodically wash and thoroughly sweep the Garage and the Access Facilities;

(c) maintain such appropriate entrance, exit and directional signs, markers and lights as are reasonably required for the Garage and the Access Facilities, and clean, maintain, repair and replace such signs, markers and lights;

(d) clean and relamp lighting fixtures in the Garage and on the Access Facilities;

(e) maintain, repair and replace striping delineating the individual City Spaces and the Access Facilities; and

(f) maintain, repair and replace landscaping and irrigation systems adjacent to the Garage and the Access Facilities.

The City shall pay to Owner or its designee the City's Allocable Share of all maintenance costs, repair costs, fees paid to the property management or parking management firm operating the Garage and the Access Facilities, costs of work performed by or for Owner pursuant to this Section 13, Taxes, costs associated with the Insurance Requirements, costs of all work associated with having the Garage and the Access Facilities and their operations comply with law, cost of the work contemplated in Section 7(e) if Owner makes the election described therein, costs of any future improvements agreed upon by the Parties pursuant to Section 20, signage costs, and all other costs and expenses incurred by Owner in connection with the Garage and the Access Facilities, and associated facilities, which are incurred after the Garage has been constructed (collectively, the "**Operating Expenses**"). For the avoidance of doubt, and notwithstanding anything to the contrary in this Agreement except the provisions of the following paragraph, any and all costs and expenses associated with the ownership, operation, maintenance, repair or use of the Garage (and the underlying real property associated therewith) shall be shared by Owner and the City, such that the City shall be responsible and timely pay for its Allocable Share thereof and Owner shall be responsible for the remaining portion of all such costs. The Parties acknowledge that the City has agreed to contribute toward the Operating Expenses for the Garage in a percentage greater than the proportionate share that would result from dividing the number of City Spaces by the total number of parking spaces in the Garage to reflect the additional maintenance burden resulting from the requirement that the Garage be open for public parking during the Public Parking Times.

Notwithstanding anything to the contrary contained in this Agreement, Operating Expenses shall not include any of the following: (i) any costs incurred in connection with or directly related to the original construction of the Garage and Access Facilities; (ii) principal and/or interest payments on any financing relating to the Garage and/or Access Facilities; (iii) expenses in connection with the services or other benefits of a type which are not provided to the

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City Spaces but which are provided to other parking spaces in the Garage, including, without limitation, costs associated with any gates or other security devices used only for parking spaces that do not include any City Spaces (and, for the avoidance of doubt, the City agrees that it shall timely pay itself any expenses incurred in connection with services or other benefits of a type which are not provided to the non-City Spaces but which are provided to the City Spaces only, including, without limitation, costs associated with any gates or other security devices used only for the City Spaces that do not include any non-City Spaces, and all such expenses to be paid by the City shall not constitute Operating Expenses hereunder); (iv) except as may be required to be paid by the management agreement for the manager of the Garage and the Property, salaries and bonuses of officers and executives of Owner or its affiliates and any compensation paid to employees of Owner or its affiliates not directly attributable to services rendered solely in connection with the operation and maintenance of the Garage and Access Facilities and any administrative costs of Owner not directly attributable to services rendered solely in connection with the operation and maintenance of the Garage and Access Facilities; (v) except as may be required to be paid by the management agreement for the manager of the Garage and the Property, any costs representing an amount paid to a person, firm, corporation or other entity related to Owner which is in excess of the amount which would have been paid in the absence of such relationship; (vi) Owner's general overhead, salaries and benefits of personnel or any other administrative charges in excess of a market rate management fee paid to Owner or its designee in connection with the management of the Garage and Access Facilities; (vii) any utility charges for the Garage that are not separately metered for just the Garage such that the charges are commingled with utility charges relating to other improvements that are not part of the Garage; and (viii) any property taxes levied against the Garage (over and above its pro rata share thereof) if the Garage is not then a separate tax parcel and for which the County Assessor does not make available a determination of the value of the improvements constituting the Garage and Access Facilities separate from the value of all other land and improvements included within the tax parcel.

Prior to December 1 of the year before a calendar year, commencing after completion of the Garage, Owner shall prepare an estimated annual budget for the contemplated Operating Expenses expected to be incurred, including a then estimated amount of Transient Revenue expected to be received, during such calendar year, and Owner shall furnish such estimated annual budget to the City for its review; if the City does not agree with Owner's estimated annual budget of the Operating Expenses for such calendar year, the Parties shall meet to attempt to agree thereon. If the Parties agree thereon, then on or before the first day of each month of the applicable calendar year, the City shall pay to Owner the City's monthly Allocable Share of the difference between the estimated Operating Costs and the estimated Transient Revenue, as set forth on the approved estimated annual budget; if the Parties fail to agree on such estimated annual budget, then the amount to be paid by the City to Owner in advance on the first day of each month of the applicable calendar year shall equal the City's Allocable Share of 103% of the actual Operating Expenses incurred less Transient Revenue received (as appropriately adjusted for a full calendar year) for the preceding calendar year. If the City prefers, it may pay its estimated Allocable Share annually in advance. Within sixty (60) days after the end of each calendar year, (a) Owner or its management company shall provide to the City a statement, setting forth the actual Operating Expenses incurred during the preceding calendar year, the amount of Transient Revenue received by Owner and applied toward the cost of the Operating

Expenses, the amount paid by the City during such calendar year for the City's Allocable Share of Operating Expenses, and a reconciliation of the share of the Operating Expenses required to be paid by Owner and the City during such calendar year, and (b) the City shall provide to Owner a statement setting forth the amount of Transient Revenue received by the City. The City shall pay to Owner, or Owner shall pay to the City, within thirty (30) days of the City's receipt of the Maintenance Expense statement, any sums due from one Party to the other Party as a result of such reconciliation so that the City pays an amount equal to its Allocable Share of the Operating Expenses and Owner pays the remaining amount of such Operating Expenses.

Owner shall instruct its management company or other third party to maintain accurate books and records of the Operating Expenses and the Transient Revenue, and the City shall have the right to inspect and audit such books and records applicable to each calendar year, so long as such audit is made and completed within six (6) months after the end of the applicable calendar year. Such inspection and audit shall be conducted at the City's expense, during regular business hours at a location designated by Owner and not more than once in any calendar year. The City shall give Owner not less than twenty (20) days' prior notice of its intention to conduct such audit. If the audit concludes that the City has overpaid or underpaid its Allocable Share of the Operating Expenses, the applicable Party shall promptly reimburse the other Party directly for such overpayment, which reimbursement shall be made no later than thirty (30) days after the Parties' approval of such audit.

14. MANAGEMENT. Subject to the requirements of this Agreement, including without limitation the provisions of Section 11, Owner shall have and retain the power and authority, for itself or its designees, to establish and consistently apply and enforce reasonable, lawful and non-discriminatory rules and regulations governing the use of the Garage; provided that such rules shall not unreasonably impair the use and enjoyment of the easements created pursuant to Section 3 hereof. Without limiting the generality of the foregoing, the rules and regulations adopted by Owner or its designee pursuant to this Section 14 shall include rules and regulations that:

(a) prohibit the use of the City Spaces or the Access Facilities for the parking of any vehicle overnight except as authorized by the Parties from time to time;

(b) prohibit the use of the Garage or the Access Facilities for the parking of any inoperable vehicle, any vehicle not displaying a current license plate or any vehicle which has one or more tires that are not inflated;

(c) provide for the removal or exclusion from the Garage or the Access Facilities of any Person or vehicle creating a nuisance or unreasonable disturbance or using or attempting to use the Garage or the Access Facilities in violation of any applicable rule or regulation adopted by Owner pursuant to this Section 14 or any Applicable Law;

(d) provide for Owner's removal of any vehicle parked or placed in the Garage or any of the Access Facilities in violation of any rule or regulation adopted by Owner pursuant to this Section 14 or any Applicable Law; and

(e) provide for the designation of the business hours of the Garage, which shall initially be 6:00 a.m. – 6:00 p.m. Monday through Friday and 6:00 a.m. – 12:00 p.m. Saturday; provided, however, the Parties shall have the right to mutually agree to change such business hours from time to time.

Notwithstanding anything to the contrary in this Agreement, neither Owner, Globe nor any third party shall have any liability or obligation whatsoever if any third party (including the City or its employees, tenants, visitors or invitees) does not comply with any rules and regulations adopted by Owner or its designees. In addition, such rules and regulations may include, and are expected to include, the right of Owner to designate reserved, exclusive or restricted parking spaces in non-City Spaces, which reserved, exclusive or restricted spaces shall be exclusive to the designated party 24 hours a day, 7 days a week, for parking by such designated party. All responsibility for damage to or theft of any vehicles or any contents thereof are expressly assumed by the owners of such damaged or stolen vehicles, and no bailment of any kind shall be assumed or implied by the terms of this Agreement. Neither Owner, Globe nor the City shall have any liability whatsoever for any damage or theft to any vehicles or any contents thereof.

15. OPERATIONS STANDARDS. Owner shall comply with all local, state or federal codes, laws, rules and regulations applicable to its actions in the Garage and the Access Facilities, and the City shall comply with all local, state or federal codes, laws, rules and regulations applicable to its actions in the Garage and the Access Facilities. Owner shall use commercially reasonable efforts to cause the operations of the Garage to comply with applicable local, state or federal codes, laws, rules and regulations, but Owner shall have no liability if any third party violates any laws in the Garage, so long as Owner, after notice thereof, uses commercially reasonable efforts to attempt to cause such violations to cease. In addition, Owner shall operate and manage the Garage in a manner consistent with the operation of similar parking garages in the Phoenix, Arizona metropolitan area. Nothing in this Agreement, including, without limitation, the language set forth in Recital D, above, is intended to or shall be deemed to waive, limit, diminish or relinquish any eminent domain, police or taxing power of the City or any other governmental entity having jurisdiction over Owner or the Property, including without limitation any power of the City pertaining to the acceptance, processing or approval or disapproval of any application for any site plan, building, occupancy or other approval, certificate or permit relating to the Property or any portion thereof, including without limitation the Garage and the Access Facilities.

16. TAXES. During the term of this Agreement, and subject to the City's obligation to pay its Allocable Share of the Taxes pursuant to Section 13, Owner shall pay all Taxes with respect to the Property before the same become delinquent. "**Taxes**" shall mean all real property taxes, possessory interest taxes, government property lease excise taxes or personal property taxes assessed against the buildings and improvements within the Property, assessments, whether arising from any improvement or special taxing district, or otherwise, excises, levies, license and permit fees, and all other charges of whatsoever kind and nature and whether any of the foregoing be general or special, ordinary or extraordinary, foreseen or unforeseen, which at any time may be imposed upon the Property and/or the buildings or improvements thereon.

17. INSURANCE.

(a) During the term of this Agreement, and subject to the City's obligation to pay its Allocable Share thereof pursuant to Section 13, Owner shall at all times obtain and maintain in effect a property insurance policy that, at a minimum, covers the Garage (including the City Spaces) and the Access Facilities. To the extent that the policy covers improvements other than the Garage and the Access Facilities, the policy shall, by way of endorsement, expressly provide that any loss suffered under such policy as a result of any claim made with respect to improvements other than the Garage and the Access Facilities shall not cause any reduction in the coverage afforded with respect to the Garage (including the City Spaces) and the Access Facilities that are unrelated to any such claim. The insurance policy shall be issued in an amount not less than one hundred percent (100%) of full replacement cost for any fire loss of the Garage and the Access Facilities, on a broad form "All Risk" property policy with reasonably available sublimits available in the insurance marketplace for other losses such as flood, earthquake, rents, soft costs, landscaping, law and ordinance and such other coverages typically carried by owners of first class parking facilities in the greater Phoenix market, providing protection against any and all perils generally included within the "All Risk" classification, and which shall name Owner and the City as loss payees.

(b) In addition, during the term of this Agreement, and subject to the City's obligation to pay its Allocable Share thereof pursuant to Section 13, Owner shall at all times maintain, or cause to be maintained, commercial general liability insurance that covers the Garage (including the City Spaces) and the Access Facilities in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate, with an umbrella policy that follows the form of the governing policy of not less than Five Million Dollars (\$5,000,000) per occurrence, together with not less than One Million Dollars (\$1,000,000) combined single limit automobile liability. Such coverage amounts may be increased at the request of either Party if such coverage amounts are no longer consistent with typical coverage amounts maintained for general liability coverage with respect to parking facilities for similar mixed-use projects of similar condition in areas comparable to the area in which the Garage is located. The foregoing liability insurance policy (i) shall be written on an occurrence basis, (ii) shall name the City as "additional insured", (iii) shall be primary on a non-contributory basis, (iv) shall be issued by an insurer authorized to do business in the State of Arizona, with a financial rating of not less than A-VIII, as rated in the most current edition of Best's Key Rating Guide (or similar or better rating from a similar insurance rating agency, if Best's is no longer in existence), (v) shall not be cancelled or non-renewed, nor shall any material change be made to the policy, without at least thirty (30) days prior written notice to each Party, and (vi) shall have a deductible not in excess of \$50,000 (with respect to bodily injury and course of construction) and not in excess of \$100,000 (with respect to completed operations), or such other deductible as then is consistent with similar insurance policies for similar properties.

(c) The requirements for insurance set forth in Sections 17(a) and 17(b) shall be hereinafter referred to as the **"Insurance Requirements"**. The City shall not take any action, or allow to be taken any action, which would cause such insurance to be unavailable;

and, provided further, however, if any of the Insurance Requirements are not generally available and customarily acquired at such time, then such Insurance Requirements shall be deemed amended to conform with then generally available and customary insurance requirements. Upon request of the City at any time, including prior to the Completion of Construction of the Garage, Owner shall deliver to the City certificates of insurance evidencing that the insurance required by the Insurance Requirements is in full force and effect. Prior to the expiration of any such policy, Owner shall deliver to the City an updated certificate of insurance evidencing that the insurance coverage required by the then Insurance Requirements has been renewed and is in full force and effect; if Owner fails to timely do so, Owner shall not be in default or breach of this obligation so long as Owner, within twenty (20) days of receipt of written notice from the City of such failure, delivers to the City such a certificate of insurance. The Parties acknowledge that the Insurance Requirements may be satisfied by means of master policies; provided, however, the cost of insurance coverage under a master policy covering more than the Garage shall be Operating Expenses only to the extent of the premium equitably allocated to the Garage.

18. HAZARDOUS MATERIALS. Neither Owner nor the City shall produce, dispose, transport, treat, use or store any hazardous material or hazardous waste in the Garage or on the Access Facilities in violation of environmental laws; each Party understands and acknowledges that neither Party shall be responsible for the actions of any third party other than itself. For the purposes of this Agreement, the terms “**hazardous material**” and “**hazardous waste**” shall mean and include any material or substance that is subject to regulation, now or at any time during the term of this Agreement, under any local, state or federal code, law, rule, regulation, court order or decree, or administrative guideline, order or policy relating to the environment, natural resources, animal or human health, safety (occupational or otherwise) or industrial hygiene.

19. SIGNS. The City and Owner shall meet regarding signage to be constructed near or adjacent to the Garage indicating that those City Spaces that have not been designated by the City as reserved, exclusive or restricted spaces are “Public Parking” available for public use, which “Public Parking” signage shall located in accordance with the parties' reasonable agreement with respect thereto. Once so agreed upon and as reflected on the Garage Plans, Owner shall cause Globe to install such signage. Once such signage has been installed, except as may be required in connection with Owner’s election under Section 7(e), neither Owner nor Globe shall take any action to, or provide any consent or approval to, modify or relocate such signage without the City's prior written consent, which consent shall not be unreasonably withheld. Owner shall not erect or maintain signs at any location in the Garage or on the Property that state that the City Spaces are not available for use by the public.

20. FUTURE IMPROVEMENTS. No Party shall make any structural alterations to the City Spaces or the Access Facilities except as follows:

(a) Owner shall cause Globe to complete the Garage in accordance with the Development Agreement and this Agreement.

(b) Any other structural modifications shall require the consent of the other Parties.

(c) No Party has consented to or promised to consent to any other structural modifications.

(d) Except as described in Section 12, no Party is obligated to perform any other structural modifications.

21. EVENTS OF DEFAULT. Each of the following shall be an “Event of Default” under this Agreement:

21.1 Monetary Default. The failure by a Party hereto (the “**Paying Party**”) to make a payment of money due under this Agreement within fifteen (15) days after (i) such payment is due and payable under this Agreement and (ii) a Party has given the Paying Party written notice of such failure.

21.2 Non-Monetary Default. The failure, other than a failure described in Section 21.1 above, by a Party hereto (the “**Non-Performing Party**”) to observe or perform, in any material respect, any covenant, agreement or obligation under this Agreement within thirty (30) days after (i) such observance or performance is required under this Agreement and (ii) another Party hereto has given the Non-Performing Party written notice of such failure; provided, however, that if it is not reasonably possible to cure such failure within such thirty-day cure period, such cure period shall, if and so long as the Non-Performing Party has commenced a cure of such failure within such thirty-day period and thereafter diligently pursues such cure, be extended for the additional time reasonably required to complete such cure.

21.3 Remedies for Event of Default. Upon the occurrence of any Event of Default, and at any time thereafter while the Event of Default continues, a non-defaulting Party hereto (the “**Non-Defaulting Party**”) may, at the Non-Defaulting Party’s option and from time-to-time, exercise all, any or any combination of the following remedies, in any order and repetitively:

(a) Performance or Payment by Non-Defaulting Party. The Non-Defaulting Party may pay or perform, or cause to be paid or performed, for the account of the Non-Performing Party (the “**Defaulting Party**”) and at the Defaulting Party’s sole cost and expense, any or all payments or performance required under this Agreement to be paid or performed by the Defaulting Party, without any liability of the Non-Defaulting Party for any loss or damage that may be sustained or incurred by the Defaulting Party as a result of such payment or performance by the Non-Defaulting Party, and following which payment or performance by the Non-Defaulting Party the Defaulting Party shall immediately upon demand by the Non-Defaulting Party reimburse the Non-Defaulting Party for all such payments made by the Non-Defaulting Party and all costs and expenses incurred by the Non-Defaulting Party in connection with such performance, together with interest thereon at the rate of ten percent (10%) per annum from the date such payment was made or such cost or expense was incurred by the Non-Defaulting Party.

(b) Specific Performance. The Non-Defaulting Party may seek a court order compelling specific performance of the Defaulting Party's obligations under this Agreement.

(c) Actual Damages; Waiver of Consequential Damages. The Non-Defaulting Party may pursue an action for actual damages and all other remedies to which the Non-Defaulting Party may then be entitled at law, in equity or under the provisions of this Agreement; provided that all Parties hereto waive the right to recover consequential, special or punitive damages. The City hereby agrees that if an Event of Default occurs pursuant to Section 21.1 above on the part of the City, Owner shall have recourse against the City's Limited Sales Taxes (as defined below) for recovery of the monetary amounts due to Owner hereunder. The City's obligation to make payments of any amounts due under this Agreement, including amounts due after an Event of Default under Section 21.1 on the part of the City, is limited to payment from the Limited Sales Taxes and shall in no circumstance constitute a general obligation of, or a pledge of the full faith and credit of, the City, the State of Arizona, or any of its political subdivisions, or require the levy of, or be payable from the proceeds of, any ad valorem taxes. The City may, at the City's sole option, pay the amounts due under this Agreement from its other funds as permitted by law and as the City may determine from time to time, but Owner acknowledges that it has no claim hereunder to such other funds and that any recovery hereunder by Owner for an Event of Default by the City pursuant to Section 21.1 shall be limited to recovery from the Limited Sales Taxes. No payments payable by the City hereunder shall be payable out of any ad valorem taxes imposed by the City or from bonds or other obligations, the payment of which the City's general taxing authority is pledged, unless (i) the same shall have been duly budgeted by the City according to law, (ii) such payment or payments shall be within the budget limitations of the statutes of the State of Arizona, and (iii) any such bonded indebtedness or other obligation is within the debt limitations of the Constitution of the State of Arizona. For purposes of this Agreement, "**Limited Sales Taxes**" shall mean all of the City's unrestricted transaction privilege (sales) taxes which the City now or hereafter validly imposes, provided that the Mayor and City Council may impose other transaction privilege (sales) taxes in the future, the uses of revenue from which may be restricted, at the discretion of such City Council and which, if so restricted, will not be deemed Limited Sales Taxes for purposes of this Agreement. Revenues generated by the City from building permits and development impact fees will not be deemed Limited Sales Taxes for purposes of this Agreement. The City represents and warrants to Owner and to Globe that, as of the date hereof, the annual amount of Limited Sales Taxes, excluding any revenues of the City from building permits, development impact fees and restricted Limited Sales Taxes, was at least \$68,000,000 for the City's current fiscal year; such representation is made only as of the date hereof.

(d) Recovery of Amounts Due. The Non-Defaulting Party may pursue collection of any monetary amounts due under this Agreement.

(e) Enforced Delay in Performance for Causes Beyond Control of Parties. Whether stated or not, all periods of time in this Agreement are subject to this Section 21.3(e). Neither the City nor Owner, nor Globe, as the case may be, shall be considered not to have performed its obligations under this Agreement in the event of unavoidable delay (an

“**Enforced Delay**”) due to (1) causes beyond its control and without its fault, negligence or failure to comply with Applicable Laws, including, but not restricted to, acts of God, acts of public enemy, acts of the federal, state and local government (except the actions of the City shall not be considered an Enforced Delay), acts of the other Party, acts of a third party, litigation concerning the validity and enforceability of this Agreement or relating to transactions contemplated hereby (including the effect of petitions for initiative or referendum), fires, floods, epidemics, pandemics, quarantine, restrictions, strikes, embargoes, labor disputes, and unusually severe weather or the delays of subcontractors or materialmen due to such causes, act of a public enemy, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), nuclear radiation, declaration of national emergency or national alert, blockade, insurrection, riot, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain, condemnation, or other taking by the action of any governmental body on behalf of any public, quasi-public or private entity, or declaration of moratorium or similar hiatus directly affecting the Property (whether permanent or temporary) by any public, quasi-public or private entity; (2) the order, judgment, action, or determination of any court, administrative agency, governmental authority or other governmental body other than, in the case of the City, the City or the City Council or one of its departments, divisions, agencies, commissions or boards (collectively, an “**Order**”) which delays the completion of the work or other obligation of the Party claiming the delay; or the suspension, termination, interruption, denial or failure of removal (collectively, a “**Failure**”) of issuance of any permit, license, consent, authorization or approval necessary to Owner’s or Globe’s undertakings pursuant to this Agreement, unless it is shown that such Order or Failure is the result of the fault, negligence or failure to comply with Applicable Laws by the Party claiming the delay; provided, however, that the contesting in good faith of any such Order or Failure shall not constitute or be construed or deemed as a waiver by a Party of an Enforced Delay; (3) the denial of an application, failure to issue, or suspension, termination, delay or interruption (collectively, a “**Denial**”) in the issuance or renewal of any permit, approval or consent required or necessary in connection with Owner’s or Globe’s undertakings pursuant to this Agreement, if such Denial is not also the result of fault, negligence or failure to comply with Applicable Laws by the Party claiming the delay; provided that the contesting in good faith or the failure in good faith to contest any such Denial shall not constitute or be construed or deemed as a waiver by a Party of any Enforced Delay; (4) the failure of any contractor, subcontractor or supplier to furnish services, materials or equipment in connection with Owner’s or Globe’s undertakings pursuant to this Agreement, if such failure is caused by Enforced Delay, if and to the extent, and only so long as the Party claiming the delay is not reasonably able, after using its best efforts, to obtain substitute services, materials or equipment of comparable quality and cost; and (5) failure of a Party to meet any agreed upon milestones for the applicable task. Enforced Delay shall also include the discovery of differing subsurface site conditions or hazardous substances on, at or affecting the Property not disclosed by any applicable geotechnical report or environmental assessment or otherwise not known by or disclosed to the Party or Parties affected thereby; the discovery of funerary objects or archaeological resources or artifacts on, at or affecting the Property requiring repatriation, study, removal or further acts mandated by federal or state law; or the discovery of endangered species on, at or affecting the Property. In no event will Enforced Delay include any delay resulting from general economic or market conditions, nor from the unavailability for any reason of any particular contractors, subcontractors, vendors, investors or lenders desired by Owner or Globe

in connection with the applicable task. In the event of the occurrence of any such Enforced Delay, the time or times for performance of the obligations of the Party claiming delay shall be extended for a period of the Enforced Delay.

(f) Remedies Cumulative. The rights and remedies of the Parties hereto under this Agreement are intended to be and shall be cumulative, and the exercise or attempted exercise by a Party hereto of a given remedy shall not preclude or limit the right or ability of such Party to exercise, at the same or at any different time, any other remedy or remedies.

22. NON-DISTURBANCE, SUBORDINATION AND ATTORNMENT. In the event that, on the date of recordation of this Agreement, any deed of trust or mortgage (each a “**Deed of Trust**”) is recorded as a lien against all or any portion of the Garage by Owner, then Owner shall obtain a written agreement (the “**Non-Disturbance Agreement**”), in recordable form and with the provisions set forth below (with such provisions in a form reasonably satisfactory to the City), by which the beneficiary or mortgagee under such Deed of Trust (the “**Holder**”):

(a) recognizes this Agreement;

(b) agrees that in the event of any foreclosure or action under or pursuant to, or any acceptance of any conveyance or transfer in lieu of any such foreclosure or action under or pursuant to such Deed of Trust, the City’s ownership, possession and use of the City Spaces and the Access Rights shall not be disturbed;

(c) agrees that the City shall not, so long as there is no Event of Default by the City under this Agreement, be named as a defendant or other party in any action or proceeding brought by or for the benefit of such Holder under such Deed of Trust (except solely to the extent required to complete a judicial foreclosure, but such foreclosure would still otherwise be subject to this Non-Disturbance provision and in no event shall the City have any liability to such Holder); and

(d) agrees that, in the event the Holder acquires Owner’s interest in the Garage, the Holder and its successors and assigns with respect to the Garage shall recognize and accept the City’s rights to use the City Spaces and the Access Rights under this Agreement.

23. CONDEMNATION AND CASUALTY.

(a) In the event any governmental entity other than the City acquires the Garage by condemnation or right of eminent domain then, unless Owner elects, by notice to the City within thirty (30) days, to relocate the City Spaces elsewhere on the Property, this Agreement may thereafter be terminated by any Party, effective sixty (60) days after receipt of written notice to the other Parties unless, during such sixty (60) day period, Owner notifies the City of its election to relocate the City Spaces elsewhere on the Property. In the event of such termination, Owner shall, from the net proceeds of any condemnation award or payment in lieu of an award actually received by Owner with respect to such acquisition, pay to the City an amount equal to the Garage Payment.

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(b) If at any time during the term of this Agreement the Garage or any portion thereof shall be damaged or destroyed by fire or other occurrence of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, Owner shall immediately secure the Garage and undertake temporary repairs and work necessary to protect the public and to protect the Garage from further damage. Owner shall have a commercially reasonable time (at least 180 days) to decide whether or not to rebuild the damaged improvements. If Owner elects to rebuild the damaged improvements, Owner at its sole cost and expense, and whether or not the insurance proceeds, if any, shall be sufficient for the purpose, shall proceed with reasonable diligence to repair, alter, restore, replace or rebuild the same as nearly as possible to its value, condition and character immediately prior to such damage or destruction. In such event, all insurance proceeds on account of such damage or destruction under the policies of insurance required hereunder, less the cost, if any, incurred in connection with the adjustment of the loss and the collection thereof shall be paid to Owner. If Owner elects not to rebuild the City Spaces, then the City may terminate this Agreement upon sixty (60) days' written notice, unless Owner notifies the City during such sixty (60) day period of its intent to rebuild, and Owner shall pay to the City an amount equal to the Garage Payment.

24. MISCELLANEOUS PROVISIONS.

24.1 Governing Law; Choice of Forum. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa (or, as may be appropriate, in the Justice Courts of Maricopa County, Arizona, or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section 24.1.

24.2 Agreement Runs with Land. It is intended that each of the easements, covenants, conditions, restrictions, rights and obligations set forth herein shall run with the land, shall bind any Person now or hereafter acquiring any right, title or interest in or to the Property, and shall inure to the benefit of the respective Parties and their successors, assigns, heirs and personal representatives and any subsequent owner of the Property or the City Property. Upon any transfer of Owner's interest in the Garage, Owner's successors shall, without further action by any Party hereto, be bound by this Agreement and shall receive the rights of Owner hereunder, and upon the effectiveness of such transfer the then Owner shall, without further action by any Party hereto, be released and discharged from all obligations and liabilities of Owner under this Agreement with respect to the transferred property that arise after the effectiveness of such transfer or conveyance. Owner shall provide the City with written notice of transfer of its interest in the Property or any portion thereof.

24.3 No Merger. The ownership of the entirety of the City Property and the Property by the same Person shall not effect a termination of this Agreement.

24.4 Limited Severability. Each Party believes that the execution, delivery and performance of this Agreement are in compliance with all Applicable Laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring the City to do any act in violation of any Applicable Laws, constitutional provision, law, regulation, City code or City charter), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that, if and to the extent possible, this Agreement shall retroactively be reformed to the extent reasonably and legally possible, but in all events must be reformed, in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provides essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. The Parties further agree, in such circumstances, to do all acts and to execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

24.5 Construction. The terms and provisions of this Agreement represent the results of negotiations among the Parties, each of which has been or has had the opportunity to be represented by counsel of its own choosing, and none of which has acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings, and the Parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Agreement that ambiguous or conflicting terms or provisions contained in this Agreement shall be interpreted or construed against the Party who prepared or whose attorney prepared the executed Agreement or any earlier draft of the same.

24.6 Notices.

(a) Addresses. Except as otherwise required by law, any notice required or permitted under this Agreement shall be in writing and shall be given by personal delivery, or by deposit in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this Section, or by email or telecopy or telefacsimile machine, or by any nationally recognized express or overnight delivery service (e.g. Federal Express or UPS), delivery charges prepaid:

If to the City: City of Goodyear
190 North Litchfield Road
Goodyear, Arizona 85338
Attn: Ms. Julie Arendall, City Manager

With a required copy to: Gust Rosenfeld PLC
One East Washington, Suite 1600
Phoenix, Arizona 85004
Attn: Frank S. Tomkins, Esq.
Telephone: (602) 257-7476
Facsimile: (602) 254-4878

If to Owner or Globe:

GSQ Goodyear Parking Garage, LLC
c/o Globe Corporation
6730 North Scottsdale Road, Suite 250
Scottsdale, Arizona 85253
Attn: George Getz and Michael J. Olsen
Telephone: (480) 991-0500

With a required copy to:

Mast Law Firm, P.C.
2415 East Camelback Road, Suite 455
Phoenix, Arizona 85016
Attn: Gregory L. Mast
Telephone: (602) 852-5951

(b) Effective Date of Notices. Any notice sent by United States Postal Service certified or registered mail shall be deemed to be effective the earlier of the actual delivery, or three (3) Business Days after deposit in a post office operated by the United States Postal Service. Any notice sent by a recognized national overnight delivery service shall be deemed effective one (1) Business Day after deposit with such service. Any notice personally delivered or delivered through a same-day delivery/courier service shall be deemed effective upon its receipt (or refusal to accept receipt) by the addressee. Any notice sent by email shall be deemed effective if received during business hours in the recipient's location (and otherwise on the next Business Day), and any notice sent by telecopy or telefacsimile machine shall be deemed effective only upon confirmation of the successful transmission by the sender's telecopy or telefacsimile machine. Notwithstanding the foregoing, no payment shall be deemed to be made until actually received in good and available funds by the intended payee. Any Party may designate a different Person or change the place to which any notice shall be given as herein provided.

(c) Payments. Payments shall be made and delivered in the same manner as Notices; provided, however, that payments shall be deemed made only upon actual receipt, in good and available funds, by the intended recipient.

24.7 Time of Essence. Time is of the essence of this Agreement and each provision hereof.

24.8 Section Headings. The Section headings contained in this Agreement are for convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

24.9 Attorneys' Fees and Costs. In the event of a breach by any Party and commencement of a subsequent legal action in an appropriate forum, the prevailing Party or Parties in any such dispute shall be entitled to reimbursement of its reasonable attorneys' fees and court costs, including, but not limited to, its costs of expert witnesses, transportation, lodging and meal costs of the applicable Party and witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental costs of such dispute.

24.10 Waiver. Without limiting the provisions of Section 21.3(e) of this Agreement, the Parties agree that neither the failure nor the delay of any Party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver of such right, remedy, power or privilege, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

24.11 Third Party Beneficiaries. No Person shall be a third party beneficiary to this Agreement, except for transferees or assignees, or except for lenders under Section 24.21.

24.12 Exhibits. Without limiting the provisions of Section 2 of this Agreement, the Parties agree that all references to this Agreement include all Exhibits designated in and attached to this Agreement, such Exhibits being incorporated into and made an integral part of this Agreement for all purposes.

24.13 Integration. This Agreement constitutes the entire agreement among the Parties with respect to the subject matters hereof and supersedes any prior agreement, understanding, negotiation or representation regarding the subject matters covered by this Agreement; for the avoidance of doubt, the provisions of Sections 4.1(b)(i) and 14.27 of the Development Agreement have been integrated into this Agreement and shall be deemed superseded in full, and replaced by, the provisions of this Agreement.

24.14 Further Assurances. Each Party agrees to perform such other and further acts and to execute and deliver such additional agreements, documents, affidavits, certifications, acknowledgments and instruments as any other Party may reasonably require to consummate, evidence, confirm or carry out the matters contemplated by this Agreement or confirm the status of (a) this Agreement as in full force and effect and (b) the performance of the obligations hereunder at any time during its Term.

24.15 Third Party Legal Actions. The Parties agree to participate, at their own expense, and to cooperate in the defense of any action, referendum or other proceeding seeking to challenge, limit or invalidate any provision of this Agreement or which challenges the authority of any Party to enter into this Agreement or to perform any of its obligations hereunder. The severability and reformation provisions of Section 24.4 shall apply in the event of any successful challenge to this Agreement.

24.16 Business Days. If the last day of any time period stated in this Agreement or the date on which any obligation to be performed under this Agreement shall fall on a Saturday, Sunday or legal holiday, then the duration of such time period or the date of performance, as applicable, shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday or legal holiday.

24.17 Recordation. Within ten (10) days after this Agreement has been approved by the City and executed by the Parties, the City shall cause this Agreement to be recorded in the Official Records of Maricopa County, Arizona.

24.18 Amendment. No change or addition is to be made to this Agreement except by written amendment executed by all of the Parties. Within ten (10) days after any amendment to this Agreement, such amendment shall be recorded in the Official Records of Maricopa County, Arizona. Upon amendment of this Agreement as established herein, references to “Agreement” shall mean this Agreement as amended by any subsequent amendment. The effective date of any duly processed minor or major amendment shall be the date on which the last representative for the Parties executes such amendment. If, after the effective date of any amendment(s), the Parties find it necessary to refer to this Agreement in its original, unamended form, they shall refer to it as the “Original Parking Rights Agreement”. When the Parties mean to refer to any specific amendment to this Agreement which amendment is unmodified by any subsequent amendments, the Parties shall refer to it by the number of the amendment as well as its effective date.

24.19 Good Faith of Parties. Except where any matter is expressly stated to be in the sole discretion of a Party, in performance of this Agreement or in considering any requested extension of time, each Party agrees that it will act in good faith and will not act unreasonably, arbitrarily or capriciously and will not unreasonably withhold, delay or condition any requested approval, acknowledgment or consent.

24.20 Survival. All rights and obligations contained in this Agreement shall survive the term of this Agreement, and the rescission, cancellation, expiration or termination of this Agreement.

24.21 Rights of Lenders. The City is aware that Owner may obtain financing or refinancing for acquisition, development and/or construction of the real property and/or improvements to be constructed on the Property, in whole or in part, from time to time, by one or more third parties (individually a “**Lender**,” and collectively the “**Lenders**”). In the event of a breach or default by Owner, the City shall provide notice of such breach or default, at the same time notice is provided to Owner, to not more than two (2) of such Lenders as previously designated by Owner to receive such notice (the “**Designated Lenders**”) whose names and addresses were provided by written notice to the City in accordance with Section 24.6. The City shall give Owner copies of any such notice provided to such Designated Lenders and, unless Owner notifies the City that the Designated Lenders names or addresses are incorrect (and provides the City with the correct information) within three (3) Business Days after Owner receives its copies of such notice from the City, the City will be deemed to have given such notice to the Designated Lenders even if their names or addresses are incorrect. Owner may provide notices to other Lenders. Upon request by a Lender, the City will enter into a separate nondisturbance agreement with such Lender, consistent with the provisions of this Section 24.21. If a Lender is permitted, under the terms of its nondisturbance agreement with the City, to cure Owner’s breach or default and/or to assume Owner’s position with respect to this Agreement, the City agrees to recognize such rights of the Lender and to otherwise permit the Lender to assume all of the rights and obligations of Owner thereafter accruing under this Agreement. The City

shall, at any time upon reasonable request by Owner, provide to any Lender an estoppel certificate or other document evidencing that this Agreement is in full force and effect and that no breach or default by Owner exists hereunder (or, if appropriate, specifying the nature and duration of any existing Owner breach or default).

It is contemplated that Owner will obtain the original financing for the construction of the Garage from Enterprise Bank & Trust, a Missouri-chartered trust company, having an address at 3900 East Camelback Road, Suite 180, Phoenix, Arizona 85018. It is contemplated that the loan provided by such lender will be obtained either prior to or promptly after the execution and recordation of this Agreement. As a result, until such loan is paid in full, Enterprise Bank & Trust shall be deemed a Lender under this Section 24.21 and shall be deemed one of the Lenders designated by Owner to receive the notices referenced in the preceding paragraph.

24.22 Nonliability of City Officials, Etc., and of Employees, Members and Partners, Etc. of Owner. No member, official or employee of the City shall be personally liable to Owner or Globe, or any successor in interest of Owner or Globe, in the event of any breach or default by the City or for any amount which may become due to Owner or Globe or any successor in interest, or on any obligation, under the terms of this Agreement. No member, manager, officer or employee of Owner or Globe, and no member, manager, partner, stockholder, director, officer or employee of any manager or member of Owner or Globe or any successor to Owner or Globe, and no affiliate of any such persons or entities, shall be personally liable to the City in the event of any breach or default by Owner or Globe or for any amount which may become due to the City, or on any obligation, under the terms of this Agreement.

24.23 Conflict of Interest Statute. This Agreement is subject to, and may be terminated by the City in accordance with, the provisions of A.R.S. § 38-511.

24.24 Warranty Against Payment of Consideration for Agreement. Owner warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers, realtors and attorneys.

24.25 Waiver of Claims Pursuant to A.R.S. § 12-1134, et seq. Owner agrees, understands and acknowledges that the City is entering into this Agreement in good faith and at the specific request of Owner, and further with the understanding that, if the City acts consistently with the terms and conditions herein, it will not be subject to a claim for diminished value of the Property from the Owner. The Owner, on behalf of it and its successors and assigns, intends to encumber the Property with the following agreements and waivers. Owner agrees and consents to all the conditions imposed by this Agreement, Applicable Laws and all permits and approvals issued or granted by the City in furtherance thereof, and by signing this Agreement waives any and all claims, suits, damages, compensation and causes of action the Owner may have now or in the future under the provisions of A.R.S. §§ 12-1134 through and including 12-1136 (but specifically excluding any provisions included therein relating to eminent domain) and resulting from the development of the Property consistent with this Agreement, Applicable Laws and all permits and approvals issued or granted by the City in furtherance thereof or from any “land use law” (as such term is defined in the aforementioned statute paragraphs) permitted

by this Agreement to be enacted, adopted or applied by the City now or hereafter. Owner acknowledges and agrees that the terms and conditions set forth in this Agreement, Applicable Laws and all permits and approvals issued or granted by the City in furtherance thereof cause the fair market value of the Property to equal or exceed the fair market value of the Property in the absence of this Agreement, Applicable Laws and all permits and approvals issued or granted by the City in furtherance thereof, and such “land use laws.”

24.26 City Council Action Requirement. The City and Owner acknowledge that, notwithstanding any language of this Agreement or any subsequent additional document, no act, requirement, payment or other agreed-upon action to be done or performed by the City which would, under any federal, state or city constitution, statute, charter provision, ordinance or regulation, require formal action, approval or concurrence by the City Council, will be required to be done or performed by the City unless and until said formal City Council action has been taken and completed. “**Completed**” under this provision means that such City Council action is no longer subject to referendum action.

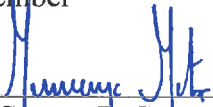
[SIGNATURES ON THE FOLLOWING PAGES – PARKING RIGHTS AGREEMENT]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

OWNER

GSQ GOODYEAR PARKING GARAGE, LLC,
an Arizona limited liability company

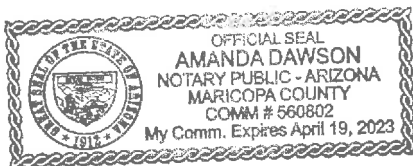
By: Globe Corporation,
an Illinois corporation
Its Sole Member

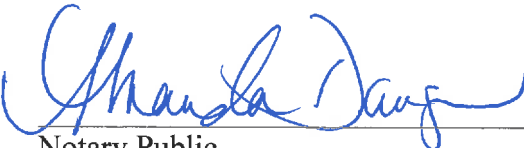
By: 
Name: George F. Getz
Title: President

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing Parking Rights Agreement, consisting of 39 pages, including this page and all exhibits, was acknowledged before me this 18th day of November, 2021, by George F. Getz, the President of Globe Corporation, an Illinois corporation, the Sole Member of GSQ Goodyear Parking Garage, LLC, an Arizona limited liability company, who acknowledged that he signed the foregoing instrument on behalf of the company.

WITNESS my hand and official seal.




Notary Public

[SIGNATURES CONTINUED FROM PRECEDING PAGE –
PARKING RIGHTS AGREEMENT]

CITY

CITY OF GOODYEAR, ARIZONA,
an Arizona municipal corporation

By: _____

Its: _____

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

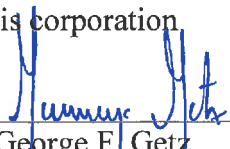
The foregoing Parking Rights Agreement, consisting of ____ pages, including this page and all exhibits was acknowledged before me this ____ day of _____, 2021, by _____, the _____ of the City of Goodyear, Arizona, an Arizona municipal corporation, who acknowledged that he/she signed the foregoing instrument on behalf of the City.

Notary Public

[SIGNATURES CONTINUED FROM PRECEDING PAGE –
PARKING RIGHTS AGREEMENT]

GLOBE

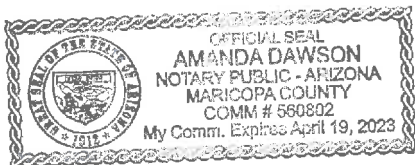
GLOBE CORPORATION,
an Illinois corporation

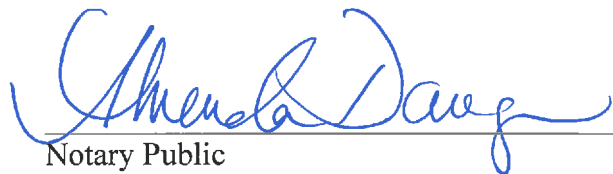
By: 
Name: George F. Getz
Title: President

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

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WITNESS my hand and official seal.




Notary Public

LIST OF EXHIBITS

- | | | |
|-----------|---|------------------------------------|
| Exhibit A | - | Legal Description of City Property |
| Exhibit B | - | Legal Description of Property |
| Exhibit C | - | Location of South Garage |
| Exhibit D | - | Initial Location of City Spaces |

EXHIBIT A
LEGAL DESCRIPTION OF CITY PROPERTY

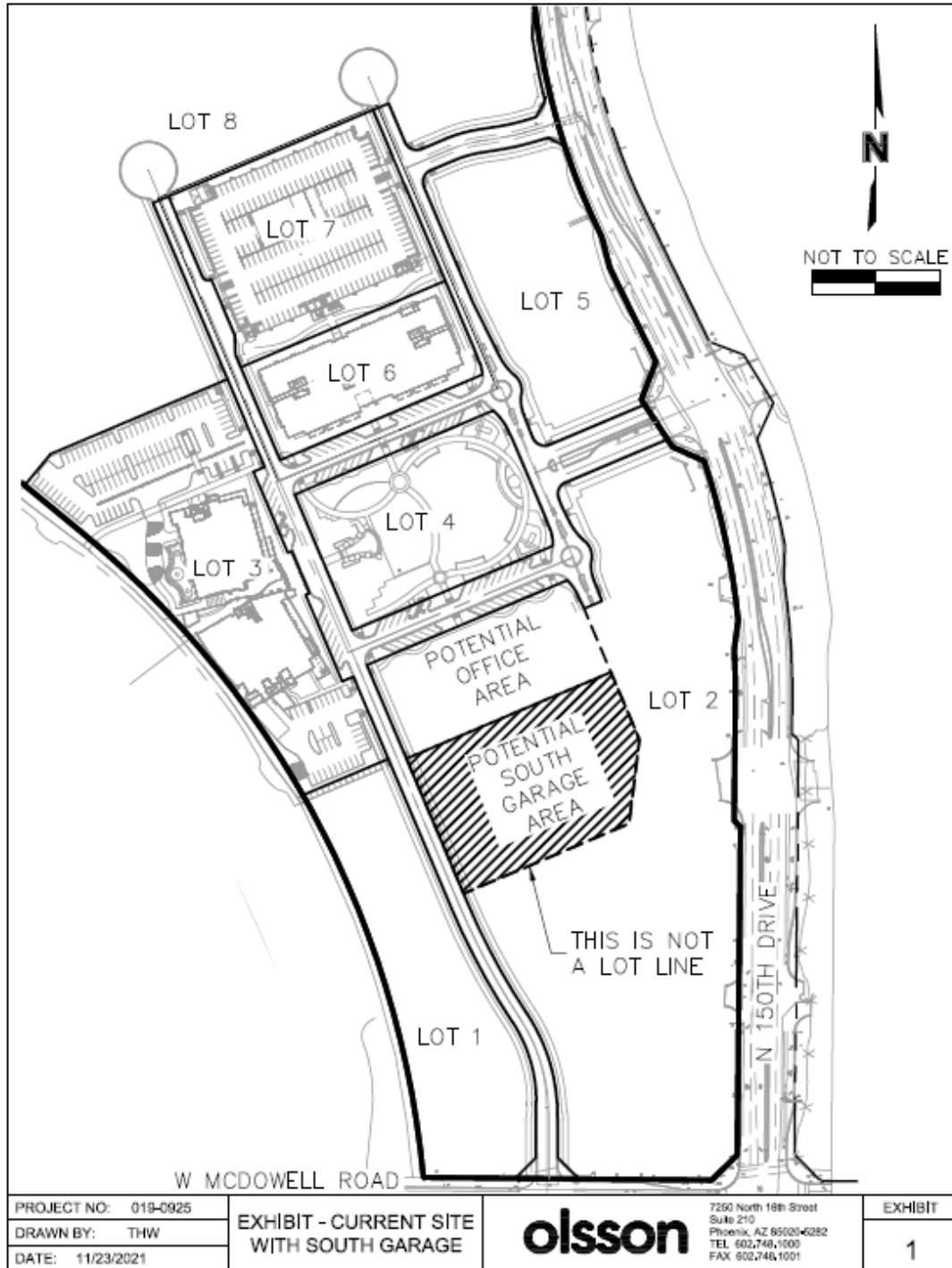
Lots 3 and 4 of the Final Plat Goodyear Civic Square Parcel "A" at Estrella Falls, recorded March 5, 2021, in Book 1577 of Maps, Page 1, of Official Records of the County Recorder of Maricopa County, Arizona.

EXHIBIT B

LEGAL DESCRIPTION OF PROPERTY

Lot 7 of the Final Plat Goodyear Civic Square Parcel "A" at Estrella Falls, recorded March 5, 2021, in Book 1577 of Maps, Page 1, of Official Records of the County Recorder of Maricopa County, Arizona.

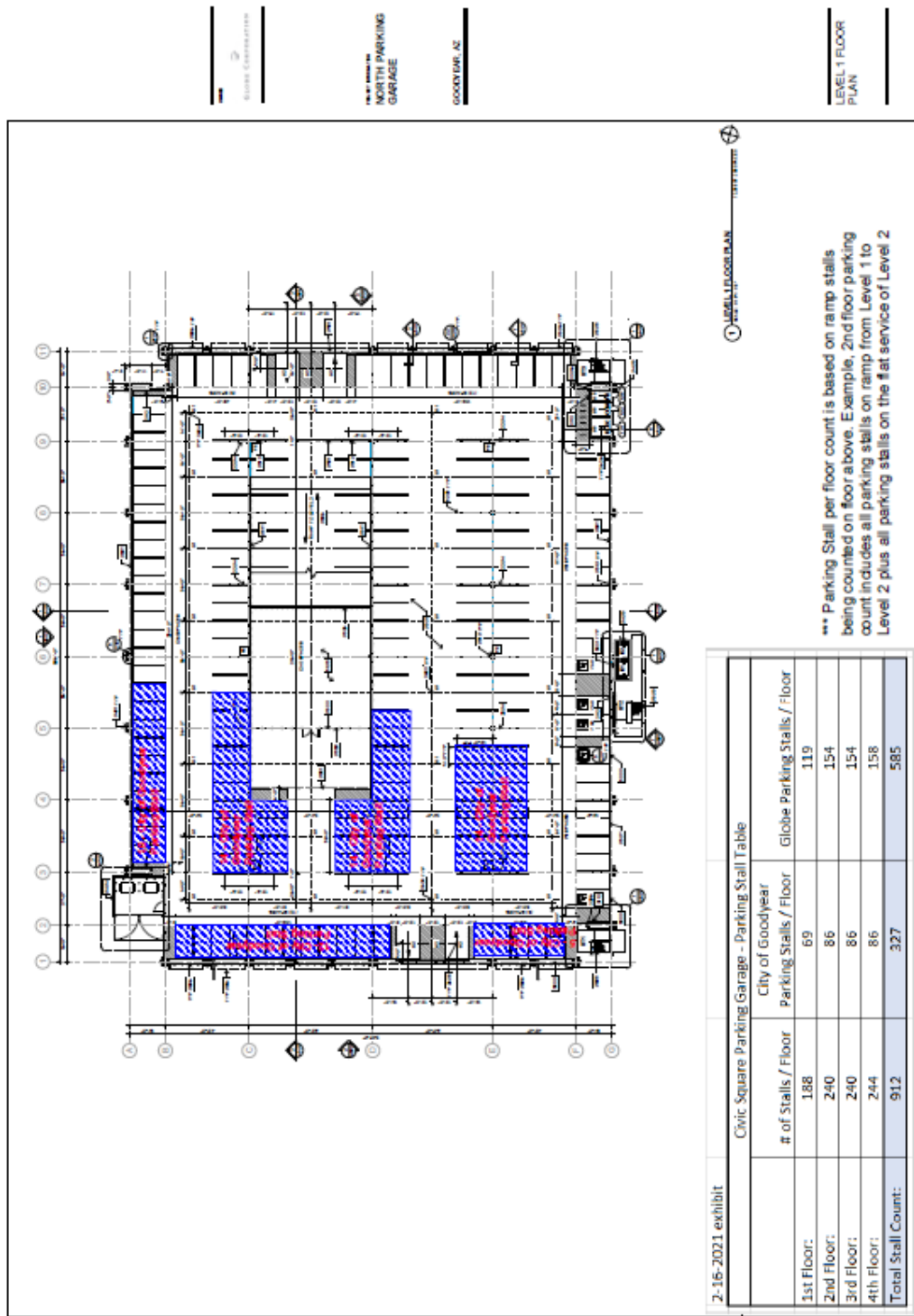
EXHIBIT C
LOCATION OF SOUTH GARAGE

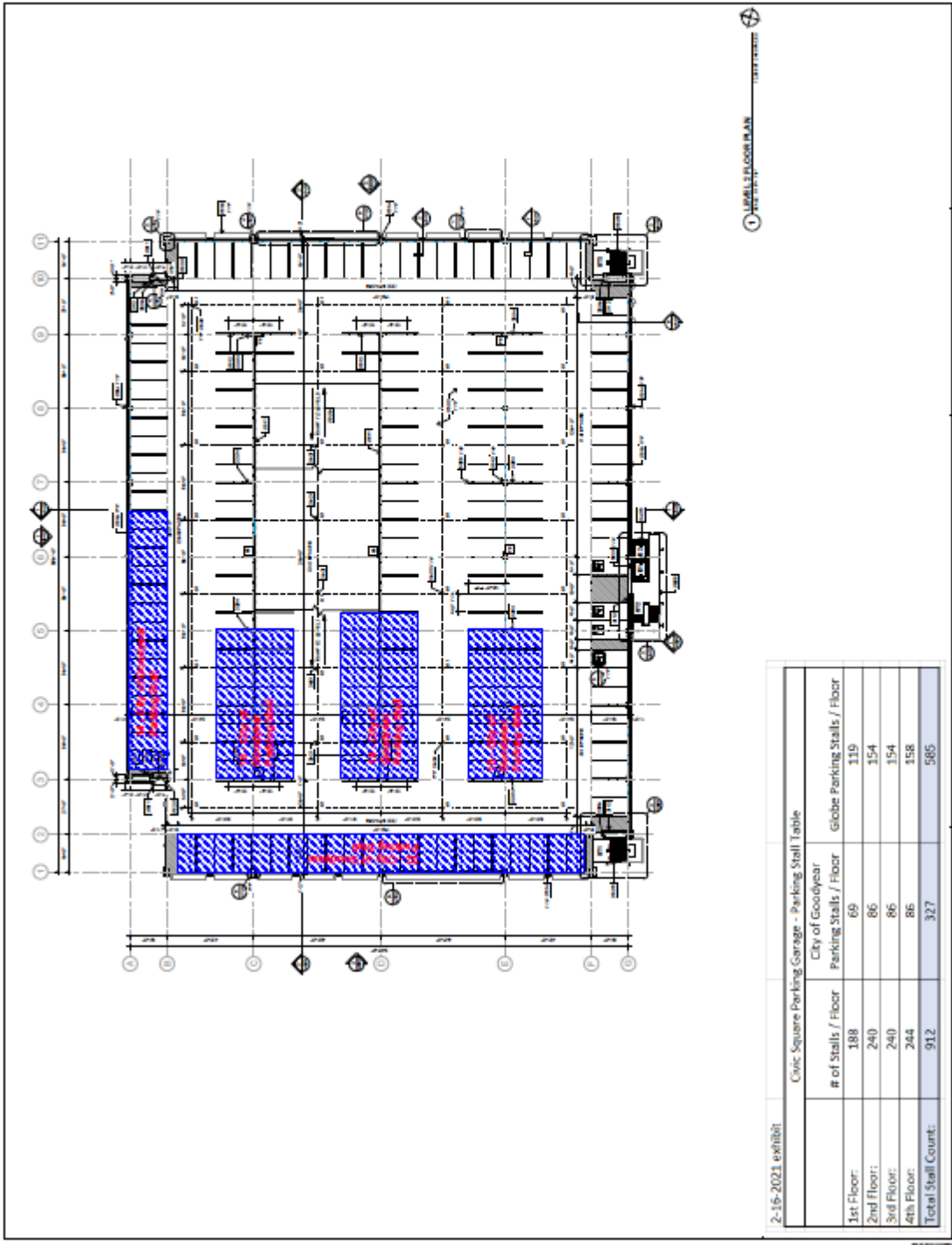


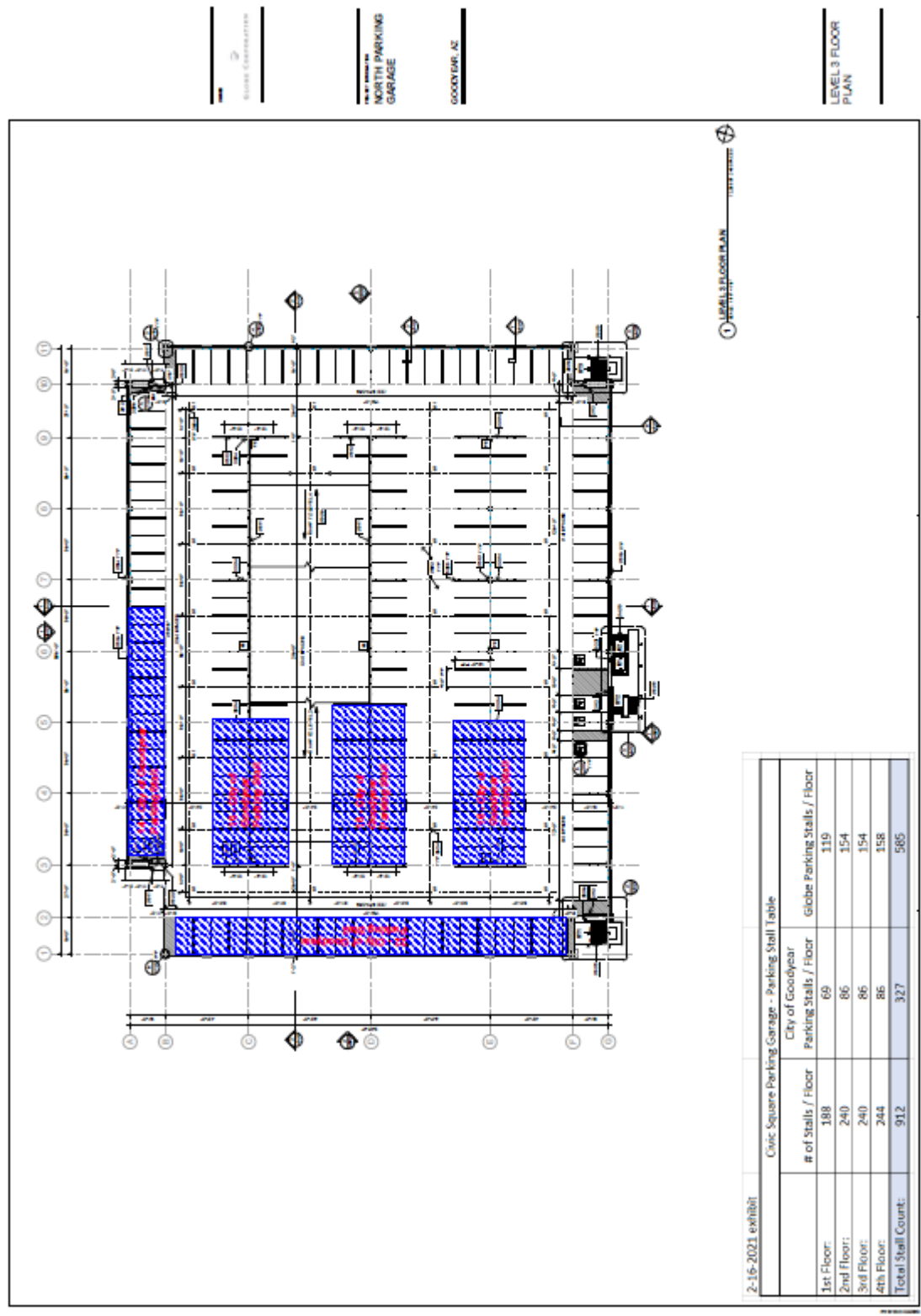
3618860.5
4813-4730-4109v14/9799-0111

EXHIBIT D

INITIAL LOCATION OF CITY SPACES







3618860.5
4813-4730-4109v14/9799-0111

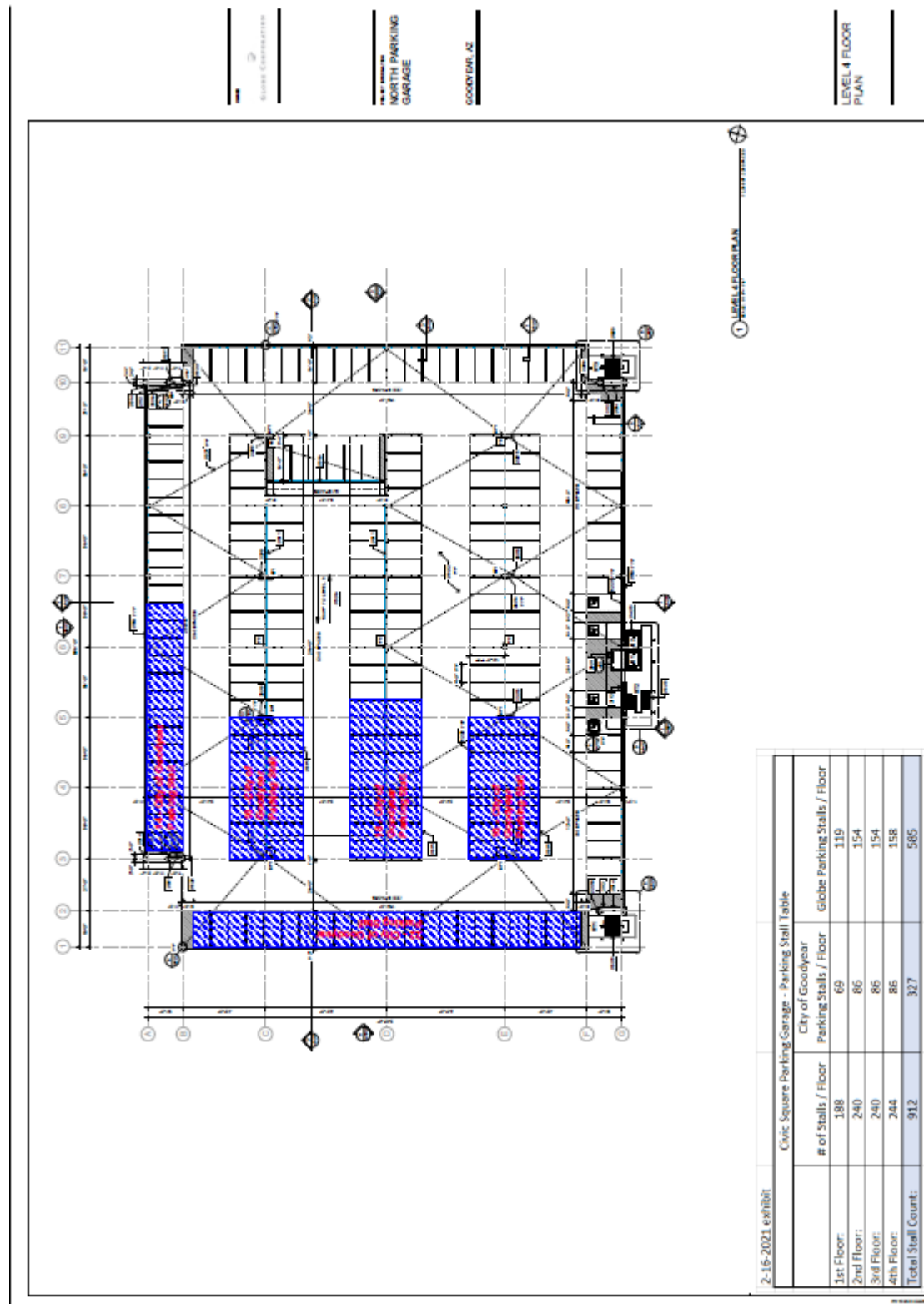


EXHIBIT 'B'

NON-DISTURBANCE AGREEMENT

[On the following pages]

This instrument prepared by
and after recording return to:

Kris M. Dekker, Esq.
Spencer Fane LLP
1000 Walnut Street, Suite 1400
Kansas City, Missouri 64106
(816) 292-8130

NON-DISTURBANCE AGREEMENT

THIS NON-DISTURBANCE AGREEMENT (“Agreement”), dated December 6, 2021, is made between CITY OF GOODYEAR, ARIZONA, an Arizona municipal corporation (the “City”), and ENTERPRISE BANK & TRUST, a Missouri chartered trust company (“Lender”).

RECITALS:

A. Lender has funded a commercial mortgage loan (the “Loan”) to GSQ Goodyear Parking Garage, LLC, Arizona limited liability company (“Owner”), and GSQ Goodyear Office, LLC, Arizona limited liability company, secured by a mortgage, deed of trust or other security instrument (the “Mortgage”) encumbering the land described on Exhibit A, attached hereto and incorporated herein by reference, together with improvements thereon (the “Property”) in addition to other property.

B. By a certain Parking Rights Agreement among Owner and City dated December 6, 2021 (together with all amendments, options, extensions and renewals, the “Parking Agreement”), Owner has granted to City certain parking and access rights with respect to portions of the Property (the “Parking Rights”).

C. City and Lender desire to agree upon the relative priorities of their interests in the Property and their rights and obligations if certain events occur.

NOW, THEREFORE, the parties hereto intending to be legally bound hereby, for and in consideration of the mutual covenants contained herein, the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

1. Recitals. All of the above Recitals are hereby incorporated herein by reference and are made a part hereof.

2. Non-Disturbance. Lender and City hereby agree that, so long as City complies with the terms, conditions and covenants of the Parking Agreement and performs its obligations under the Parking Agreement, (a) Lender will take no action that will interfere with or disturb City’s use of the Parking Rights or other rights under the Parking Agreement, and (b) in the event Lender or

other purchaser of the Property (each a “Successor Owner”) becomes the owner of the Property by foreclosure, conveyance in lieu of foreclosure or otherwise, (i) the Property shall remain subject to the Parking Agreement and Successor Owner shall recognize City as a holder of the Parking Rights for the remainder of the term of the Parking Agreement in accordance with the provisions thereof and shall perform and observe the obligations “Owner” thereunder, subject to the terms of this Agreement, and (ii) City shall recognize Successor Owner as the “Owner” under the Parking Agreement for the remainder of the term of the Parking Agreement, and continue to perform and observe its obligations thereunder. Subject to the foregoing, the Parking Agreement, together with all rights, remedies, options, liens and charges created thereby, now is and shall remain junior, inferior, subject and unconditionally subordinate to the lien, operation and effect of the Mortgage and the indebtedness secured thereby and to all renewals, modifications, consolidations, replacements, additional advances, future advances and extensions thereof.

3. Limitation of Liability. Notwithstanding any other provisions of this Agreement or the Parking Agreement to the contrary, Successor Owner shall not be (a) liable for any act or omission of any prior owner of the Property; (b) subject to any offsets or defenses which City might have against any prior owner of the Property; or (c) bound by any amendment or modification of the Parking Agreement, or any waiver of any of the terms thereof, made without Lender’s written consent.

4. Casualty; Condemnation. Notwithstanding anything to the contrary contained in the Parking Agreement, at Lender’s option, the provisions of the Loan Documents (as defined in the Mortgage) shall control the distribution and application for all insurance proceeds payable with respect to any casualty at the Property and of all awards or other compensation payable for the condemnation of all or any portion of the Property or any interest therein or by way of negotiated settlement or conveyance in lieu of condemnation; provided, however, nothing contained in this Agreement shall require City to pay Lender any proceeds that City separately receives for City’s separate claims due to such casualty or condemnation. Any right of the City to receive payment from Owner under Section 23 of the Parking Agreement as result of Owner’s election not to rebuild the Garage (as defined in the Parking Agreement) following a casualty or condemnation shall be subordinate to Lender’s right to receive full repayment of the Loan.

5. Lender’s Rights Under the Parking Agreement. City hereby acknowledges and agrees that so long as the Mortgage remains outstanding and unsatisfied, Lender shall constitute a “Lender” under the Parking Agreement.

6. Notices. Any and all notices, elections or demand permitted or required to be made under this Agreement shall be in writing, signed by the party giving such notice, election or demand and will be deemed delivered or made upon the earlier of actual receipt if sent by overnight courier or hand-delivered or three (3) days after same is mailed by registered or certified mail, return receipt requested, with sufficient postage affixed, and addressed to the parties as follows:

If to the City:

City of Goodyear
190 North Litchfield Road
Goodyear, Arizona 85338
Attn: Ms. Julie Arendall, City Manager

With a required copy to:

Gust Rosenfeld PLC
One East Washington, Suite 1600
Phoenix, Arizona 85004
Attn: Frank S. Tomkins, Esq.
Telephone: (602) 257-7476
Facsimile: (602) 254-4878

If to Lender at:

Enterprise Bank & Trust
Attn: Andrew Romano
3900 East Camelback Road, Suite 180
Phoenix, Arizona 85018

Such addresses may be changed by notice pursuant to this paragraph, but notice of change of address is effective only upon receipt.

7. Binding Effect. This Agreement shall be binding upon all the parties hereto, their heirs, successors and assigns and all of those holding title under any of them, and the pronouns herein shall include, where appropriate, either gender or both, singular or plural. If Lender assigns the Mortgage, all obligations and liability of Lender hereunder shall terminate as of the date of such assignment.

8. Non-Waiver. No indulgence, waiver, election or non-election by Lender under the Mortgage or any other Loan Documents shall affect this Agreement.

9. Modification of Agreement. The parties hereby agree that this document contains the entire agreement between the parties, and this Agreement shall not be modified, changed, altered or amended in any way except through written amendments signed by all of the parties hereto.

10. Governing Law. It is agreed that the laws of the State in which the Property is located shall govern the construction and interpretation of this Agreement and the rights and obligations set forth herein.

11. Attorneys' Fees. In the event of any legal or equitable action, including any appeals or bankruptcy proceedings, which may arise hereunder between or among the parties hereto, the prevailing party shall be entitled to recover its costs and its reasonable attorneys' fees and paralegal fees.

12. Severance. The invalidity or unenforceability of any portion of this Agreement shall not affect the remaining provisions and portions hereof.

13. Exculpation. In the event Lender or any affiliate of Lender (for purposes of this paragraph, the term "Lender" shall include any corporation, partnership or limited liability company owned or controlled by Lender) acquires title to the Property and succeeds to the interest of Owner under the Parking Agreement, then, anything in the Parking Agreement or this Agreement to the contrary notwithstanding, Lender shall have no personal liability for any damages resulting from its default under the terms of the Parking Agreement, and City agrees that it shall look solely to the estate and interest of Lender in the Property for the collection of any

judgment (or other judicial process) requiring the payment of money by Lender in the event of any default or breach by Lender with respect to any of the terms, covenants and conditions of the Parking Agreement to be observed and/or performed by Lender, and no other assets of Lender shall be subject to levy, execution or other procedures for the satisfaction of City's remedies.

14. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. The Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGES FOLLOW]**

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be duly executed as of the day and year first written above.

CITY:

CITY OF GOODYEAR, ARIZONA,
an Arizona municipal corporation

By: _____

Its: _____

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing Non-Disturbance Agreement, consisting of ____ pages, including this page and all exhibits was acknowledged before me this ____ day of _____, 2021, by _____, the _____ of the City of Goodyear, Arizona, an Arizona municipal corporation, who acknowledged that he/she signed the foregoing instrument on behalf of the City.

Notary Public

LENDER:

ENTERPRISE BANK & TRUST, a Missouri
chartered trust company

By: _____

Print Name: _____

Title: _____

ACKNOWLEDGMENT

STATE OF _____)
) ss:
COUNTY OF _____)

On this _____ day of _____, 2021, before me personally appeared _____, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the above document.

(seal)

Notary Public

EXHIBIT A

Lot 7, Final Plat of Goodyear Civic Square Parcel "A" at Estrella Falls, recorded March 5, 2021 in Book 1577, Page 1 (Instrument No. 2021-0249393), official records of Maricopa County Recorder, Arizona.