

BULK WATER AGREEMENT

This BULK WATER AGREEMENT ("Agreement") made this ___ day of June 2022, by and between LIBERTY UTILITIES (LITCHFIELD PARK WATER & SEWER) CORP., an Arizona corporation ("Liberty"), and the CITY OF GOODYEAR, an Arizona municipal corporation ("Goodyear") is for the provision of bulk water by Goodyear to Liberty on an annual basis. Liberty and Goodyear are individually referred to as a "Party" and collectively referred to as "Parties" below.

RECITALS

WHEREAS, Liberty is a public service corporation authorized by the Arizona Corporation Commission ("Commission") to provide water service within Liberty's Certificate of Convenience and Necessity ("CC&N") as approved by the Commission in the vicinity of Goodyear's corporate boundaries;

WHEREAS, Goodyear provides water to certain city residents within the corporate boundaries of Goodyear and outside the CC&N of Liberty;

WHEREAS, Liberty, as part of its water supply strategies, has requested that Goodyear provide up to one million gallons per day of potable water to Liberty pursuant to the terms of this Agreement.

WHEREAS, Goodyear presently has sufficient water production capacity to provide Liberty with up to one million gallons per day of potable water. The Parties understand and agree, however, that the amount of water available to Liberty under this Agreement is intended to be a temporary arrangement and that the amount may be decreased depending on demands for water by customers within Goodyear's service area.

WHEREAS, Liberty shall, at its sole cost and expense, design and construct all infrastructure improvements identified by Goodyear as being needed for Goodyear to deliver to Liberty the potable water pursuant to the terms of this agreement which may include, but is not limited to, meter(s), pump(s), back-flow prevention devices, and pipes. Goodyear shall determine the location of the Interconnect Improvements.

AGREEMENT

NOW, THEREFORE, in consideration of the promises and mutual covenants of the Parties hereto, the Parties agree as follows:

1. RECITALS. The recitals set forth above are incorporated by this reference as if fully set forth herein and are acknowledged and agreed to by the Parties.

2. TERM. The initial term of this Agreement shall be three years from the later of (i) the date executed by both Parties; and (ii) the date the Arizona Department of Water Resources

Director provides written approval of the Agreement per A.R.S. § 45-492. This Agreement may be extended on an annual basis upon the mutual written agreement of Goodyear and Liberty for up to two (2) years or twenty-four (24) months.

3. DEFINITIONS. Capitalized Terms not defined in the foregoing Recitals are defined as follows:

a. “Interconnection Facilities” means all infrastructure improvements identified by Goodyear as being needed for Goodyear to deliver water from Site 21 to the Liberty Connection Point, which improvements may include, but are not limited to meters, pumps, water lines, back flow prevention devices, pressure valves and the like.

b. “Liberty Connection Point” means the water line located within McDowell Road at the intersection of Sarival Avenue and McDowell Road.

c. “Monthly Water Delivery Costs” means the monthly fee Liberty is required to pay Goodyear for the water delivered to Liberty pursuant to the terms of this Agreement. It shall consist of the following charges: (i) a monthly meter fee for each meter installed, which fee shall be based on the size of the meter(s) installed (the “Monthly Meter Fee”) and (ii) a monthly fee for the water delivered to Liberty based on the volume of the delivery (the “Monthly Water Fee”). The monthly fees referred to herein shall be based on the water rates and charges included in the Five-Year Water Wastewater and Solid Waste Rate Structures adopted by Goodyear in Resolution 2021-2112. The Monthly Water Fee shall be based on the rates charged for irrigation water within the City. Liberty understands and agrees that water rates and charges are subject to change at the sole discretion of Goodyear subject to Goodyear’s compliance with the statutory requirements for increasing such fees.

d. “Site 21” means the City of Goodyear property at 1280 N. Sarival Avenue, Goodyear, AZ 85538, as legally described in that certain special warranty deed recorded as instrument 2006-0313707 in the official records or Maricopa County Recorder.

4. CONSTRUCTION OF INTERCONNECTION FACILITIES: Liberty shall, at its sole cost and expense, construct and install all Interconnection Facilities.

- a. The Interconnection Facilities shall include a water meter that measures the volume of water being delivered from Site 21 to the Liberty Connection Point. Such water meter shall not exceed 12 inches in diameter and shall be constructed inside the perimeter wall around Site 21. If Goodyear determines that a pump is required to be installed to provide the pressure needed for the delivery of water from Site 21 to the Liberty Connection Point, such pump (the “Additional Pump”) shall be installed inside the perimeter wall around Site 21. All other Interconnection Facilities shall be located within existing public utility easements or City of Goodyear right-of-way, as determined by the Goodyear City Engineer or his designee.
- b. Liberty shall comply with all of Goodyear’s requirements for the construction of improvements within the City of Goodyear, including, but not limited to, compliance with all applicable requirements set forth in the City of Goodyear Engineering Design

Standards, obtaining all required permits and providing required financial assurances. All improvements shall be constructed in accordance with plans approved by the Goodyear City Engineer or his designee.

- c. Goodyear shall provide permits needed for construction, operation, maintenance, repair, and removal of Interconnection Facilities.
- d. Except as otherwise provided herein, following the completion of the Interconnection Facilities, Liberty shall, at no cost to Goodyear, convey to Goodyear all of the Interconnection Facilities that are located inside the perimeter walls around Site 21. Goodyear shall accept, subject to completion of a two-year warranty period, the conveyance of such Interconnection Facilities upon the satisfaction of all of the following: (i) determination by Goodyear that the Interconnection Facilities were completed per the approved plans; completion of all punch list items; and submittal of as-builts of the Interconnection Facilities constructed pursuant to the approved plans to the Goodyear City Engineer or his designee. In the event that the Additional Pump is installed as set forth in section 4(a) above, Liberty shall retain ownership to the Additional Pump referenced in section 4(a) above, but Goodyear shall maintain the Additional Pump. Upon the expiration or earlier termination of this Agreement, Liberty shall, within sixty (60) days of the date the Agreement expires or is terminated, either remove the Additional Pump at Liberty's sole cost or shall convey ownership of the Additional Pump to Goodyear at no cost to Goodyear. If Liberty removes the Additional Pump, Liberty agrees to take it on an as-is basis and waives any and all claims it may have against Goodyear related to the condition of the Additional Pump.
- e. Liberty shall be responsible for all repairs required to the Interconnection Facilities located inside the perimeter walls around Site 21 for a two-year period beginning on the date such improvements are accepted by the Goodyear City Engineer or his designee subject to the completion of the two-year warranty period. Should Liberty fail to timely make any necessary repairs during the two-year warranty period after being notified by Goodyear of the need for such repairs, Goodyear shall be entitled to make the necessary repairs and bill Liberty for the costs Goodyear incurred in making such repairs.
- f. Liberty shall own all Interconnection Facilities located outside of the perimeter walls around Site 21, including all delivery lines connecting Site 21 to the Liberty Connection Point.

5. MAINTENANCE OF INTERCONNECTION FACILITIES. Liberty shall, at its sole cost and expense, maintain all Interconnection Facilities located outside the perimeter walls around Site 21. Goodyear shall, at its sole cost and expense, maintain all Interconnection Facilities located inside the perimeter walls around Site 21.

6. DELIVERY OF WATER: The obligation of Goodyear to deliver water to Liberty under this Agreement is subject to Liberty's compliance with this Agreement, the availability of water, peak flow rates, and the physical deliverability of water to Liberty as determined solely by

Goodyear. Upon completion of the Interconnection Facilities and Goodyear's acceptance of the Interconnection Facilities constructed inside the perimeter walls around Site 21, and except as otherwise provided herein and subject to availability of water in a given month, Goodyear shall deliver a maximum of one million gallons per day (MGD) at a flow rate not to exceed 700 gallons per minute.

- a. Goodyear shall not be obligated to deliver water to Liberty to the extent such deliveries to Liberty may negatively impact the delivery of water to customers located within Goodyear's service area as determined by Goodyear. Goodyear may reduce or suspend water deliveries to Liberty until the conditions causing the need for the reduction or suspension of water deliveries have been resolved, which conditions Goodyear shall resolve as soon as practicable. Notwithstanding the foregoing, if the condition causing the need for the reduction or suspension of water deliveries is the result of some failure of any Interconnection Facilities located outside the perimeter walls around Site 21 or a failure of any other Liberty improvements, such as damage to Liberty's water line within McDowell Road, Goodyear shall have no obligation to deliver water to Liberty until Liberty has repaired such improvements and notified Goodyear that the improvements are operational and deliveries can be resumed.
- b. Except in the event of an emergency, Goodyear shall, prior to reducing or suspending water deliveries to Liberty, notify Liberty of the reduction or suspension of water deliveries by calling (602) 757-2607 or (480) 748-5339, or such other phone number as provided to Goodyear by Liberty in writing. In the event of an emergency that causes the reduction or suspension of water deliveries to Liberty without prior written notice, the city shall, as soon as reasonably practicable, provide Liberty notice of the reductions or suspension of water deliveries by calling (602) 757-2607 or (480) 748-5339, or such other phone number as provided to Goodyear by Liberty in writing. Once the conditions causing the need for the reduction or suspension of water deliveries under this Agreement have been resolved, Goodyear shall notify Liberty by calling (602) 757-2607 or (480) 748-5339, or such other phone number as provided to Goodyear by Liberty in writing, that the conditions causing the need for the reduction or suspension of water deliveries have been resolved and deliveries will be resumed.
- c. If Liberty does not want to take delivery of all or part of the one (MGD) Goodyear has committed, subject to the terms and conditions of this Agreement, to deliver, Liberty shall notify the city at least twenty-four (24) hours in advance, that its water deliveries are to be suspended or reduced by calling the City of Goodyear Public Works on-Call Production Line at (623) 606-4163 or such other phone number as provided to Liberty by Goodyear in writing.

7. INVOICE AND PAYMENT. On a monthly basis, Goodyear shall send a utility bill to Liberty at 14920 W. Camelback Road, Litchfield Park, Arizona 85340 for the Monthly Water Delivery Costs, as defined in 3(c) above. Liberty shall pay the amount billed within thirty (30) days of the date of the utility bill. Any failure by Liberty to pay such amounts when due shall entitle Goodyear to immediately suspend water deliveries under this Agreement.

8. WATER RIGHTS. Liberty shall not have any right, title, and/or interest in any of Goodyear's water rights or withdrawal authority under state law.

9. TYPE OF WATER DELIVERED; REPORTING REQUIREMENTS; CREDITS. All water delivered under this Agreement shall be reported as recovered effluent to ADWR, by Goodyear on its Annual Report for the year in which the water was delivered to Liberty. Prior to December 1 of each year in which water deliveries are made under this Agreement, Liberty shall assign to Goodyear a sufficient number of long-term storage credits to equal or exceed the amount of water delivered by Goodyear to Liberty under this Agreement. The long-term storage credits shall be effluent, or Central Arizona Project water stored underground in Liberty's underground storage facilities, or at another location acceptable to Goodyear at Goodyear's sole discretion. If the number of long-term storage credits assigned to Goodyear by Liberty exceeds actual water deliveries under this Agreement, then Goodyear may retain the credits for use in the subsequent year of deliveries under this Agreement. If the number of long-term storage credits assigned to Goodyear by Liberty is less than the actual amount of water delivered to Liberty, then Liberty shall before January 15 of the year after the delivery year, assign additional credits to Goodyear to remedy such deficit. If Liberty fails to timely assign long-term storage credits as required in this paragraph, Goodyear may terminate this Agreement with thirty (30) days advance written notice to Liberty. Long term storage credits shall be deemed assigned upon the completion of the following: (1) both parties have approved a form of assignment application for transfer of the credits, (2) both parties have executed the assignment application form, and (3) the original executed form and sufficient application fees have been delivered to the Arizona Department of Water Resources. Liberty shall pay all application fees for such assignments. If the Arizona Department of Water Resources fails to assign the agreed credits, the parties will work cooperatively to complete the assignment of credits consistent with the intent of this paragraph.

10. REGULATORY REQUIREMENTS. Goodyear will comply with the requirements of all applicable regulatory agencies regarding the provision of potable water to Liberty, including regularly scheduled water quality testing, which testing shall be performed at EPDS #21 as identified in Goodyear's Public Water System permit. The test results shall be available to Liberty upon reasonable request during normal business hours. However, due to the intervening factor of Liberty providing service to its customers through Liberty's distribution facilities over which Goodyear has no control or responsibility, Goodyear cannot, and does not, make any warranty or representation as to the quality of the water once the water leaves Site 21. Liberty shall be solely and exclusively responsible for the delivery of water of appropriate water quality to Liberty's customers after it has taken possession of the water from Goodyear at the point of delivery. Liberty acknowledges and agrees that Goodyear shall not have any duties or responsibilities relating to the delivery of water to or use of water by Liberty's customers.

11. NOTICES. All notices, payments, consents, approvals, or other communications required or permitted to be given hereunder shall be in writing and shall become effective immediately upon receipt, if personally delivered 24 hours after such are deposited in the United States Mail, postage prepaid, addressed as shown below or to such other address as either party hereto may designate from time to time in writing:

To Liberty:

Crystal Greene, Secretary/Treasurer
Liberty Utilities (Litchfield Park Water & Sewer) Corp.
14920 W. Camelback Rd.
Litchfield Park, AZ 85340

To City of Goodyear:

City Manager
City of Goodyear
190 N. Litchfield Road
Goodyear, Arizona 85333

Copy to:

City Attorney
City of Goodyear
190 N. Litchfield Road
Goodyear, Arizona 85333

12. INDEMNIFICATION. Notwithstanding anything to the contrary in this Agreement, and to the extent permitted by law, Liberty shall defend, indemnify, and hold harmless Goodyear for, from, and against any and all claims, penalties, costs, damages, or losses of any kind including reasonable attorneys' fees arising directly as a result of the negligent acts or omission of Liberty, its employees or agents related to its use of water delivered pursuant to this Agreement. The Parties understand and agree that this indemnity clause is limited to the extent any such claims, penalties, costs, damages, or losses are caused by the actions or inaction of Liberty.

13. CONFLICT OF INTEREST. This Agreement is subject to the provisions of A.R.S. § 38-511, as amended.

14. E-VERIFY REQUIREMENTS. To the extent applicable under A.R.S. § 41-4401, as amended, and solely related to the services provided under this Agreement, the Parties warrant compliance, on behalf of themselves and any and all subcontractors, if any, with all federal immigration laws and regulation that relate to their employees and compliance with the E-Verify requirements under A.R.S. § 23-214(A). A Party's breach of the above-mentioned warranty shall be deemed a material breach of this Agreement and the non-breaching Party may terminate this Agreement. The Parties retain the legal right to inspect the papers of the other Party to ensure that the Party is complying with the above-mentioned warranty under this Agreement.

15. NON-DISCRIMINATION. The Parties agree not to discriminate against any person on the basis of race, color, religion, age, gender, or national origin in the performance of this Contract and shall comply with the terms and intent of Title VI of the Civil Rights Act of 1964, P.L. 88-354.

16. GOVERNING LAW, JURISDICTION, AND VENUE. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the laws of the state of Arizona, without regard to choice of law or conflicts of laws principles thereof. Any action

arising out of this Agreement shall be commenced and maintained in the Superior Court of the state of Arizona in and for the county of Maricopa.

17. MODIFICATION OR WAIVER. This Agreement shall not be modified, extended, or waived in whole or in part except by written instrument executed by both Parties and adopted in the manner in which this Agreement was adopted.

18. NO WAIVER. No waiver by a Party of any breach by the other party of any provision of this Agreement shall in any way be construed to be a waiver of any future or subsequent breach by the Party or bar the right of that Party to insist on strict performance by the other Party of any provisions of this Agreement in the future.

19. ASSIGNMENT. This Agreement shall not be assigned.

20. ENTIRE AGREEMENT. The Parties agree that this document contains the entire Agreement between the Parties and supersedes any previous agreement, written or oral, between the Parties. The Parties have not relied on any representations other than those which are set forth in this Agreement.

21. EFFECTIVE DATE. This Agreement shall become effective and binding upon execution by the Parties. This Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof and expressly supersedes and revokes all other prior or contemporaneous promises, representations, and assurances of any nature whatsoever with respect to the subject matter hereof.

22. Authorizations. The signatories to this Agreement represent that they have been appropriately authorized to enter into this Agreement on behalf of the Party for which they sign and that no further action or approvals are necessary before the execution of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and year first above written.

LIBERTY UTILITIES (LITCHFIELD PARK WATER & SEWER) CORP.	CITY OF GOODYEAR
By: _____	By: _____
Matthew Garlick Its: President	Julie Karins Its: City Manager
Date Signed: _____	Date Signed: _____

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
Goodyear City Attorney