

RESOLUTION NO. 2024-2410

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, APPROVING THE DEVELOPMENT AGREEMENT (WATER SERVICE) WITH OLAM PHOENIX, ARIZONA, LLC.; PROVIDING DIRECTION AND AUTHORIZATION, AND AN EFFECTIVE DATE.

WHEREAS, Olam Phoenix Arizona, LLC, a Delaware limited liability company (“Owner”), owns of approximately 42.11 acres generally located at the southeast corner of Citrus and McDowell RD adjacent to the Interstate 10 and near the Loop 303 highway (the “Property”); and

WHEREAS, the Property is located within the city’s water service area, but the Owner asked the city to allow EPCOR Water Arizona, Inc. (“EPCOR”) to provide water service, so Owner could avoid the additional expense of constructing the infrastructure required for the city to provide water service to the Property; and

WHEREAS, city staff understand that EPCOR is willing to extend permanent water service to the Property without also extending EPCOR sewer service, so long as EPCOR is provided with 114.5 acre-feet of a non-groundwater source of water acceptable to EPCOR; and

WHEREAS, city staff supports the relinquishment of its rights to provide water services to EPCOR and the transfer to EPCOR a one-time quantity of 114.5 acre-feet of Central Arizona Project Long-Term Storage Credits (“LTSCs”) stored in the Maricopa County Municipal Water Conservation District No. 1 Groundwater Savings in exchange for Owner’s payment to the city for the paying the city for the value of the LTSCs; and

WHEREAS, the Development Agreement (Water Service) by and between Olam Phoenix Arizona LLC, a Delaware limited liability company and the City of Goodyear (the “Water Service Development Agreement”) sets forth Owner’s and the city’s responsibilities related to the EPCOR’s extension of its CC&N to provide water service to the Property; and

WHEREAS, The Water Service Development Agreement is a “development agreement” within the meaning of Arizona Revised Statutes section 9-500.05, and is being entered to facilitate the development of the Property.

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 find the approval of the Development Agreement (Water Service) by and between Olam Phoenix Arizona LLC, a Delaware limited liability company and the City of Goodyear, a copy of which is attached hereto as Exhibit 1 and incorporated herein by this reference, to be in the best interest of the City of Goodyear, and hereby approve said agreement.

SECTION 2. The City Manager or her designee is hereby authorized and directed to execute the Development Agreement (Water Service) by and between Olam Phoenix Arizona LLC, a Delaware limited liability company and the City of Goodyear.

SECTION 3. The City Manager or her designee is hereby authorized and directed to take any and all actions and to execute all the documents necessary to carry out the intent of this Resolution and the terms of the Development Agreement (Water Service) by and between Olam Phoenix Arizona LLC, a Delaware limited liability company and the City of Goodyear.

SECTION 4. Following its execution by all parties, the Development Agreement (Water Service) by and between Olam Phoenix Arizona LLC, a Delaware limited liability company and the City of Goodyear shall be recorded with the Maricopa County Recorder's Office.

SECTION 5. Unless referred to the voter as provided by law, Resolution 2024-2410 shall be effective thirty (30) days after 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 _____, 2024.

Joe Pizzillo, Mayor

Date: _____

ATTEST:

APPROVED AS TO FORM:

Darcie McCracken, City Clerk

Roric Massey, City Attorney

EXHIBIT “1”

**DEVELOPMENT AGREEMENT (WATER SERVICE) BY AND BETWEEN OLAM PHOENIX
ARIZONA LLC, A DELAWARE LIMITED LIABILITY COMPANY AND
THE CITY OF GOODYEAR**

On the following pages

WHEN RECORDED, RETURN TO:

City of Goodyear, Arizona
Office of the City Clerk
1900 N. Civic Square
Goodyear, Arizona 85395

DEVELOPMENT AGREEMENT (WATER SERVICE)

THIS DEVELOPMENT AGREEMENT (WATER SERVICE) (the “**Agreement**”) is entered into this _____ day of _____ 2024 by and between OLAM PHOENIX ARIZONA, LLC, a Delaware limited liability company (“**Owner**”) and the CITY OF GOODYEAR, an Arizona municipal corporation in the State of Arizona (the “**City**”). The City and Owner may hereinafter be collectively referred to as the “**Parties**” and, individually, as a “**Party**.”

RECITALS

A. Owner owns real property within the City consisting of approximately 42.11 acres located at the southeast corner of Citrus Road and McDowell Road, and more particularly described in Exhibit A attached hereto and made a part hereof (the “**Property**”). The Property is located adjacent to Interstate I-10 near the intersection of I-10 and the Loop 303 highway.

B. The Property was rezoned by the City per Ordinance No. 2023-1578 (the “**Ordinance**”) on September 25, 2023. Although the Property is located within the City’s water service area, Owner asked the City to allow EPCOR Water Arizona, Inc. (“**EPCOR**”) to provide water service so Owner could avoid the additional expense of constructing the infrastructure required for the City to provide water service to the Property.

C. The City in the Ordinance conditioned the rezoning of the Property on, among other things, the approval or authorization of the Arizona Corporation Commission (the “**ACC**”) to extend EPCOR’s nearby water service Certificate of Convenience and Necessity (the “**CC&N**”) to include the Property.

D. The City understands that EPCOR is willing to extend permanent water service to the Property without also extending EPCOR sewer service so long as EPCOR is provided with 114.5 acre-feet of a non-groundwater source of water acceptable to EPCOR. The City will provide sewer service to the Property and agrees to provide to EPCOR 114.5 acre-feet of a non-groundwater source of water acceptable to EPCOR comprising a portion of the water used by EPCOR in its water service to the Property.

E. In furtherance of the foregoing, the City is willing to transfer to EPCOR a one-time quantity of 114.5 acre-feet of Central Arizona Project Long-Term Storage Credits (“**LTSCs**”) stored in the Maricopa County Municipal Water Conservation District No. 1 Groundwater Savings Facility under the terms of this Agreement to support EPCOR’s agreement to provide permanent

water service the Property, thus relieving the City of the burden to operate and manage water distribution facilities to the Property.

F. Owner and the City desire to enter into this Agreement to set forth their understanding as to each Party's responsibility for certain actions regarding the arrangement of EPCOR potable and fire water service to the Property. This Agreement is not intended to supersede or waive any rezoning condition or stipulation contained in the Ordinance, or any other development requirement not specifically addressed herein regarding water service for the Property.

G. The Parties understand and acknowledge that this Agreement is a "Development Agreement" within the meaning of and entered into pursuant to the terms of Arizona Revised Statutes section 9-500.05, to facilitate the proper municipal zoning designation and development of the Property by providing for, among other things, conditions, terms, restrictions and requirements related to infrastructure improvements. The terms of this Agreement shall constitute covenants running with the Property as more fully described in this Agreement.

H. The City's governing body has authorized execution of this Agreement by Resolution No. 2024-2410, to which this Agreement is attached.

AGREEMENT

NOW THEREFORE, in consideration of the promises and mutual obligations set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged:

1. Recitals and Exhibits. The Recitals stated above and the Exhibits attached hereto are incorporated into this Agreement as if restated in full below.

2. Term. This Agreement shall become effective upon the last to occur of all of the following conditions precedent: (i) execution of this Agreement by all the Parties; (ii) the approval of this Agreement by Resolution of the City Council, and (iii) all appeal and referendum periods with respect to this Agreement have expired without any such appeal or referendum having been filed, (the "**Effective Date**"). If this Agreement is subject to a referendum that is certified to appear on a City election ballot, Owner may elect to terminate this Agreement by written notice to City. This Agreement will expire upon the sooner of (a) the Parties' completion of all obligations hereunder, or (b) June 30, 2027.

3. Water Service Arrangements for Property. Promptly after the Effective Date, Owner shall request that EPCOR extend EPCOR's CC&N to service the Property, and shall timely cooperate with EPCOR's reasonable requirements for such water service extension.

3.1. City Support. Promptly upon request therefor by either Owner or EPCOR, the City will provide a letter of support for the CC&N extension for submission to the ACC so long as the proposed CC&N extension application and proposed ACC order is consistent with this Agreement.

3.2. CC&N Notice. Owner will notify the City promptly after EPCOR receives the ACC's written approval of the CC&N extension to the Property under Arizona Administrative Code subsection R14-2-402.B.

4. Transfer of 114.5 Acre-Feet of LTSCs to EPCOR. Upon the latter to occur of (1) City's receipt of the Purchase Price (defined below in paragraph 5) in good and sufficient funds, and (2) City receiving Owner's notice of the ACC's approval of the CC&N extension, the City will promptly start and pursue to completion a one-time transfer (the "**Transfer**") to EPCOR of 114.5 acre-feet of Central Arizona Project water stored underground as LTSCs in the Maricopa County Municipal Water Conservation District No. 1 Groundwater Savings Facility.

4.1. Notification of Completion. Following notice from the City that the Transfer has been completed, Owner shall request EPCOR's written confirmation that such Transfer has been completed, and Owner will provide a copy of such written confirmation to the City promptly following receipt thereof.

4.2. Alternate Water Source. The City may convey an alternate water source to EPCOR without the requirement for a further written amendment of this Agreement, so long as such alternate water source is approved in writing in advance by EPCOR and EPCOR agrees in writing to issue written confirmation of such conveyance following the completion thereof directly to Owner and the City.

5. Purchase Price. The purchase price that Owner will pay to City for the LTSCs is \$500 per acre-foot, for a total purchase price of Fifty-Seven Thousand Two Hundred Fifty Dollars (\$57,250.00) ("**Purchase Price**").

6. Release of City Water Supply and Water Service Obligations. Upon EPCOR's written confirmation that the LTSC transfer is completed, or EPCOR's written confirmation to both Owner and the City that an alternate water source has been transferred as provided in Section 4, the City shall have no further obligation to provide to Owner or to the Property any amount of water supply or water service.

7. Disclaimer of Warranty. City makes absolutely no warranty, express or implied, to Owner or to EPCOR regarding the quality of the water, or the quality and quantity of water service, to be transferred to and provided by EPCOR, its fitness or sufficiency thereof.

8. City Permits. No permits shall be issued for any work within the Property except for mass grading until all applicable conditions of the Ordinance have been satisfied.

GENERAL TERMS

9. Entire Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, are hereby superseded and merged herein.

10. Amendments. This Agreement may be amended only by a written agreement fully executed by the Parties and approved by the City Council in the same manner as this Agreement was approved.

11. Notices. All notices, demands or requests made pursuant to, under or by virtue of this Agreement shall be in writing and shall be deemed to have been given, received and become effective: (i) if personally delivered, on the date of personal delivery; (ii) if delivered by express mail, FedEx or other nationally recognized overnight courier service, on the next business day if designated for overnight delivery; or (iii) if mailed to the party by certified or registered mail, postage prepaid, return receipt requested, on the date that is three (3) days after deposit in the mail. Notices shall be addressed to the parties as follows or to any other addresses as the Parties may from time to time designate in writing and deliver in a like manner:

City: City of Goodyear
Attn: City Manager
1900 N. Civic Square
Goodyear, AZ 85338

with a copy to:

City of Goodyear
Attn: Water Services Director
4980 S. 157th Avenue
Goodyear, AZ 85395
and with a copy to:

City of Goodyear
Attn: City Attorney
1900 N. Civic Square
Goodyear, AZ 85338

Owner: Olam Phoenix Arizona, LLC
Attn: Rowland Howard
85 2nd Street, 4th Floor
San Francisco, CA 94105

With a copy to:

Baker Development Corporation
Attn: Daniel J. Slack
2222 North Elston Avenue #100
Chicago, Illinois 60614

Berry Riddell, LLC
Attn: Wendy Riddell

6750 East Camelback Road, Suite 100
Scottsdale, Arizona 85251

12. Covenants Running with the Land. The rights and duties under this Agreement shall be for the benefit of, and a burden upon, the Property, and they shall be covenants running with the land. The provisions of this Agreement are binding upon and shall inure to the benefit of the Parties and their successors and assigns.
13. Cooperation. The City and Owner hereby acknowledge and agree that they shall cooperate in good faith with each other and use best efforts to pursue the economic development of the Property as contemplated by this Agreement.
14. No Partnership. It is not intended by this Agreement to, and nothing contained in this Agreement shall create any partnership, joint venture or other arrangement between the Parties.
15. Third Party Rights. No term or provision of this Agreement is intended to, or shall be for the benefit of any person, land, firm, organization or corporation not a Party hereto, and no such other person, land, firm, organization or corporation shall have any right or cause of action hereunder.
16. Time of Essence. Time is of the essence in implementing the terms of this Agreement. If the time for performing any act hereunder falls on a day that is not a business day, it may be performed on the next succeeding business day. A "business day" is any day that is not a Saturday, Sunday, or legal holiday in the State of Arizona.
17. Waiver. No waiver by any Party of a breach of any of the terms, covenants or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or condition herein contained. Furthermore, no delay in exercising any right or remedy shall constitute a waiver thereof. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.
18. Right to Cure Default; Remedies. Any Party shall be in default under this Agreement ("**Default**") if it fails to satisfy any term or condition required under this Agreement within thirty (30) days following written notice from the other Party setting forth the specific reasons for the determination that the Party has failed to satisfy any term or condition in this Agreement; provided, however, that if the nature of the failure is such that more than thirty (30) days would reasonably be required to satisfy any such term or condition, the breaching Party shall not be in Default if the breaching Party commences to cure any deficiencies within the thirty- (30-) day period and diligently cures such deficiencies within a reasonable time thereafter. Upon the occurrence of a Default, then the non-Defaulting Party may pursue the remedy of specific performance or may terminate this Agreement.
19. Intentionally Deleted.

20. WAIVER OF JURY TRIAL. UNLESS EXPRESSLY PROHIBITED BY LAW, EACH OF THE CITY AND OWNER KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY AND ALL ACTIONS OR OTHER LEGAL PROCEEDINGS AGAINST THE OTHER PARTY, ARISING OUT OF OR RELATING TO THIS AGREEMENT AND/OR THE TRANSACTIONS IT CONTEMPLATES, AND AGREES THAT ANY AND ALL ACTIONS OR OTHER LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE TRANSACTIONS IT CONTEMPLATES, AND/OR THE WORK PERFORMED PURSUANT TO THIS AGREEMENT SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. THIS WAIVER APPLIES TO ANY ACTION OR OTHER LEGAL PROCEEDING, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. EACH PARTY ACKNOWLEDGES THAT IT HAS RECEIVED THE ADVICE OF COMPETENT COUNSEL. The terms of this Section 20 waiving the right to a jury trial shall survive the expiration or earlier termination of this Agreement.

21. LIMITATION ON CLAIMS. IN NO EVENT SHALL CONSEQUENTIAL DAMAGES, EXPECTATION DAMAGES, AND/OR INCIDENTAL DAMAGES, WHICH INCLUDE, BUT ARE NOT LIMITED, CLAIMS FOR LOST PROFITS, BE AWARDED AS DAMAGES FOR A BREACH OF THIS AGREEMENT, AND THE PARTIES EXPRESSLY WAIVE ANY RIGHT TO CONSEQUENTIAL DAMAGES, EXPECTATION DAMAGES, AND/OR INCIDENTAL DAMAGES IN THE EVENT OF A BREACH OF THIS AGREEMENT. The terms of this Section 21 limiting the remedies available to the Parties in the event of a breach of the Agreement shall survive the expiration or earlier termination of this Agreement.

22. Liability and Indemnification. Owner shall indemnify, protect, defend and hold harmless the City, its Council members, officers, employees, and agents from any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, out of this Agreement or the exercise of any right in this Agreement by Owner. The terms of this Section 22 shall survive the expiration or earlier termination of this Agreement.

23. Choice of Law, Venue, and Attorneys' Fees. In any dispute under this Agreement, the successful Party shall be entitled to collect from the other Party its reasonable attorneys' fees, and other costs as determined by a court of competent jurisdiction. The Parties agree that any dispute, controversy, claim or cause of action arising out of or related to this Agreement shall be governed by the laws of the State of Arizona. The Parties further agree that the venue for any dispute, controversy, claim or cause of action arising out of or related to this Agreement shall be Maricopa County and that any action filed shall be heard in a court of competent jurisdiction located in Maricopa County. The Parties expressly waive the right to object, for any reason, to the venue of Maricopa County. The terms of this Section 23 shall survive the expiration or earlier termination of this Agreement.

24. Severability. In the event any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement shall become illegal, null or void or against public policy for any reason,

or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in force and effect so long as the remaining terms can be construed consistent with the Parties' original intent.

25. Force Majeure. If either Party hereto is actually prevented from performing any of its obligations under this Agreement by reason of natural disasters, wars, insurrections, strikes, acts of government (excluding the City) or any other circumstances beyond its control, the particular failure or failures occasioned thereby shall be waived during such period of prevention and shall not be considered breaches of this Agreement.

26. Counterparts and Page Numbering. 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. The signature pages from one or more counterparts may be removed from the counterparts and the signature pages all attached to a single instrument so that the signatures of all Parties may be physically attached to a single document. The page numbering of this Agreement is exclusive of the Exhibits attached hereto.

27. Conflict of Interest. This Agreement may be cancelled without penalty pursuant to A.R.S. § 38-511 in the event of a conflict of interest as described therein.

28. Recordation. This Agreement shall be recorded in the Office of the County Recorder of Maricopa County within ten (10) calendar days of execution. If City fails or refuses to record this Agreement, Owner may cause this Agreement to be recorded.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by and through their authorized representatives the day and year first above written.

[Signatures and Exhibit continue on following pages.]

CITY:

CITY OF GOODYEAR

By: _____

Wynette Reed
ITS: City Manager

Date: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

This Development Agreement (Water Service) by and between OLAM PHOENIX ARIZONA, LLC, a Delaware limited liability company and the CITY OF GOODYEAR, an Arizona municipal corporation in the State of Arizona was acknowledged before me this day of _____, 2024, by Wynette Reed, the City Manager of the CITY OF GOODYEAR, an Arizona municipal corporation, for and on behalf thereof.

Notary Public

Attest:

Darcie McCracken, City Clerk

Approved as to Form:

Roric Massey, City Attorney

[Signatures and Exhibit continue on following pages.]

OWNER:

OLAM PHOENIX ARIZONA, LLC,
a Delaware limited liability company

By: _____

Name: _____

Its: _____

ACKNOWLEDGMENT BY NOTARY PUBLIC

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) §
COUNTY OF _____)

On _____, 2024, before me, _____, NOTARY PUBLIC, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity as the _____ of OLAM PHOENIX ARIZONA, LLC, a Delaware limited liability company, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

My Commission Expires _____

[Exhibit continues on following pages]

Exhibit A

Property Description

The Land referred to herein below is situated in the County of Maricopa, State of Arizona, and is described as follows:

[See attached legal description]

EXHIBIT A

PROPOSED OVERALL PARCEL

THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 2, TOWNSHIP 1 NORTH, RANGE 2 WEST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 2, BEING A FOUND BRASS CAP IN HANDHOLE, FROM WHICH THE NORTH QUARTER CORNER OF SAID SECTION 2, BEING A FOUND IRON BAR, BEARS SOUTH 89°26'15" EAST, A DISTANCE OF 2644.92 FEET;

THENCE SOUTH 89°26'15" EAST, ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 2, A DISTANCE OF 90.32 FEET;

THENCE SOUTH 00°33'45" WEST, A DISTANCE OF 65.00 FEET, TO A POINT 65 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 2;

THENCE SOUTH 89°26'15" EAST, ALONG SAID PARALLEL LINE, A DISTANCE OF 2554.91 FEET, TO A POINT ON A LINE 65 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 2;

THENCE SOUTH 89°54'01" EAST, ALONG SAID PARALLEL LINE, A DISTANCE OF 331.92 FEET;

THENCE SOUTH 00°05'40" WEST, A DISTANCE OF 454.40 FEET, TO A POINT ON THE NORTH RIGHT OF WAY LINE OF INTERSTATE 10;

THENCE, ALONG THE NORTH RIGHT OF WAY LINE OF SAID INTERSTATE 10 FOR THE FOLLOWING 5 CALLS:

THENCE SOUTH 75°20'46" WEST, A DISTANCE OF 794.81 FEET;

THENCE NORTH 89°43'13" WEST, A DISTANCE OF 2022.26 FEET

THENCE NORTH 00°00'57" EAST, A DISTANCE OF 26.63 FEET;

THENCE NORTH 89°59'03" WEST, A DISTANCE OF 26.96 FEET;

THENCE NORTH 01°14'16" WEST, A DISTANCE OF 226.28 FEET;

THENCE SOUTH 89°33'17" WEST, A DISTANCE OF 99.99 FEET, TO A POINT ON A LINE 55 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SAID NORTHWEST QUARTER;

THENCE NORTH 00°16'59" EAST, ALONG SAID PARALLEL LINE, A DISTANCE OF 384.53 FEET;

THENCE NORTH 45°25'22" EAST, A DISTANCE OF 49.38 FEET TO THE POINT OF BEGINNING;

SAID DESCRIPTION CONTAINING 42.112 ACRES, MORE OR LESS.