

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE
CITY OF GLENDALE, ARIZONA
AND THE CITY OF GOODYEAR, ARIZONA**

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is entered into by and between the City of Glendale, an Arizona municipal corporation (“Glendale”), and the City of Goodyear, an Arizona municipal corporation (“Goodyear”), hereinafter referred to collectively as “the Parties”, or individually as “Party”. This Agreement shall become effective when the last Party signs and the Permit (defined below) is issued (“the Effective Date”).

Recitals

- A. Potable water in Arizona has long been an extraordinarily valuable resource and the Parties are cognizant of the severe drought affecting Arizona and the Colorado River watershed system from which Arizona also draws a portion of its water.
- B. By agreement, the Parties desire to optimize water usage, increase efficiency in transporting water within the Phoenix Metro area, and more efficiently manage the costs of transporting and treating Colorado River water in the Glendale-Goodyear area.
- C. The purpose of this Agreement is to memorialize in writing the arrangement between the Parties regarding the exchange of (1) one or more types of Glendale’s Salt River Project (SRP) Association surface water, New Conservation Space water, Flood Control Space water, and recovered CAP long-term storage credits for an equal amount of (2) Goodyear’s Central Arizona Project Municipal and Industrial water allocation (Goodyear’s CAP water).
- D. The Parties are authorized to enter into this Agreement by A.R.S. §11-952.

Agreement

The Parties agree as follows:

- 1. Incorporation of Recitals.** The Recitals set forth above are incorporated into this Agreement by this reference.
- 2. The Exchange.** Beginning as soon after the Effective Date as the Permit (defined below) has been issued and such exchange water can be reasonably ordered from and delivered by both the Central Arizona Water Conservation District (CAWCD) and SRP in the same quantity by and to both Parties for the then-current calendar year. Additional details of the exchange are set forth in the attached Exhibits A and B.
 - a. Quantity to be Exchanged.** Subject to the annual delivery plan agreement of the parties for each year per the next subsection, for calendar years 2024 and 2025, the

exchanged amount will be up to 7,000 acre-feet of water per year. In the following years, the exchanged amount will be up to 8,500 acre-feet of water per year.

- b. Annual Delivery Plan.** Each year prior to placing water orders, the Parties will meet and confirm in writing to each other the amount of water each Party will order for delivery to the other Party each month in a calendar year, respectively. Nothing in this Agreement binds either Party to agree to exchange water in any quantity for a particular month or water year if there is a good faith reason for the Party to reduce or increase such amount. If extraordinary circumstances arise after the annual delivery plan is agreed upon, which includes: timing issues with approvals of the exchange volumes; shortage calls on the Colorado River beyond the control of the Parties; infrastructure problems; and other circumstances mutually agreed upon by the Parties that adversely impacts a Party's ability to meet its delivery commitments, the Parties will meet and confer to re-evaluate and renegotiate the annual delivery plan, and no liability shall attach to the Party who is unable to honor its annual delivery commitment because of such extraordinary circumstances or to the Party who is unwilling to increase the quantity of water for a particular month or water year in response to a request for such an increase.
 - c. Equal Exchange.** The quantity of exchanged water will be equal each calendar year.
 - d. Goodyear's CAP Water.** Goodyear will order Goodyear's CAP water through CAWCD, to be delivered to Glendale at the turnout for Glendale's Pyramid Peak Water Treatment Plant in accordance with the Parties' annual written delivery plan.
 - e. Glendale's Water.** Glendale will order Glendale's water through SRP for delivery through the SRP canal system to the Goodyear Surface Water Treatment Facility intake. Glendale's water may consist of one or any combination of Glendale's SRP Association surface water, New Conservation Space water, and Flood Control Space water, and recovered CAP long-term storage credits, so long as such water is delivered to Goodyear in an annual quantity equal to the Goodyear CAP water ordered by Goodyear for delivery to Glendale.
 - f. Exchange Permit.** The water exchange in this Agreement requires a permit under A.R.S. section 45-1041 *et seq.* ADWR's issuance of the permit is a condition precedent to the effectiveness of this Agreement. Glendale will submit an application for a general use water exchange permit to the ADWR. The permit application shall specify that Goodyear and Glendale will each be able to use the water exchanged in any manner authorized by law. Glendale shall pay all permit application and publication fees.
- 3. Water Costs.** Goodyear will be responsible to timely pay all capital and operational and other costs due for Goodyear's CAP water pursuant to Goodyear's subcontract with CAWCD. Glendale will reimburse Goodyear for the SRP CSIF-costs for delivery of Glendale's water to Goodyear (the "Goodyear CSIF Costs"). Glendale will reimburse

Goodyear for the Goodyear CSIF Costs for the exchanged volume promptly. The Goodyear CSIF Costs are defined as those costs described in paragraph 13.1 and 13.2 of the CAP/SRP Interconnection Facility Lease and Water Transportation Agreement among Goodyear and SRP dated February 7, 2017, as amended and as such costs are adjusted annually, for the quantity of water taken by Goodyear pursuant to this exchange Agreement, plus 10% of the administrative fee per year as annually adjusted in paragraph 13.3.

4. **Term.** The term of this Agreement shall be ten (10) years, beginning with the calendar year 2024. This Agreement may be extended for additional calendar years by the mutual written agreement of the Parties starting January 1, 2034. This Agreement may be terminated earlier upon the mutual written consent of the Parties.
5. **Indemnification.** Each Party (as “indemnitor”) agrees to indemnify, defend and hold harmless the other Party (as “indemnitee”) from and against any and all claims, losses, liability, costs or other expenses including reasonable attorney’s fees (hereinafter collectively referred to as “claims”) arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct or other fault of the indemnitor, its officers, officials, agents, employees or volunteers.
6. **Default, Breach, Remedies and Premature Termination.** If either Party fails to perform any of its obligations under this Agreement, such failure shall constitute a default. The non-defaulting Party shall give the defaulting Party written notice of the default. The defaulting Party shall have thirty (30) days after the receipt of such notice in which to cure the default, provided however, that if the default reasonably cannot be cured in thirty (30) days, then if the defaulting Party begins action to cure the default within thirty (30) days and expeditiously proceeds to complete such action, the time for curing the default shall be extended for the amount of time which is reasonably needed to cure the default. Failure to timely cure the default shall constitute a breach of this Agreement. In the event of a breach, the non-breaching Party may terminate this Agreement and obtain any remedy provided by law.
7. **Severability and Premature Termination.** If a court of competent jurisdiction holds, or if the Attorney General of Arizona opines in a written opinion, that any provision of this Agreement is invalid, then the invalid provision shall be stricken from this Agreement, and the Parties shall negotiate in good faith using their best efforts to revise this Agreement so that the Party that benefitted by the invalid provision receives the benefit of its bargain. At the conclusion of such negotiations, the Party that benefitted by the invalid provision may elect to continue this Agreement in force, with or without additional modification, or may elect to terminate this Agreement.
8. **Premature Termination for Other Reasons.** Either Party may terminate this Agreement for the reasons stated in A.R.S. § 38-511. If a court of competent jurisdiction holds, or if the Attorney General of Arizona opines in a written opinion, that the duration of this

Agreement is unlawful, then the duration of this Agreement shall extend for the longest period of time which is permissible by law, at the end of which time this Agreement shall terminate; provided however, that prior to such termination the Parties shall use their best efforts in good faith to negotiate a lawful extension of this Agreement.

- 9. Assignment and Delegation Prohibited.** Neither Party may assign any of its rights nor delegate any of its duties under this Agreement without the prior written consent of the other Party which may be withheld for any reason or for no reason.
- 10. No Third-Party Beneficiaries.** Only the Parties may enforce this Agreement. The Parties do not intend through this Agreement to confer enforceable rights on any non-party and do not intend to create any third-party beneficiaries to this Agreement.
- 11. Governing Law; Choice of Forum.** This Agreement shall be construed in accordance with and shall be governed by the laws of the State of Arizona. 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.
- 12. Fair Interpretation.** The Parties have been represented by counsel in negotiation and drafting this Agreement, and this Agreement shall be construed to the fair meaning of its language. The rule of construction that ambiguities shall be resolved against the party who drafted a provision shall not be employed in interpreting this Agreement.
- 13. Entire Agreement.** This Agreement, including the attached Exhibits, constitutes the complete, exclusive, and final expression of the Parties' intent, and as such, supersedes all previous communications, representations, or agreements, written or verbal with respect to its subject matter.
- 14. Section Heading.** The section headings used herein are for reference only and shall not be used to construe, define, extend, or describe the scope or intent of this Agreement.
- 15. Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all so executed shall constitute one agreement, binding on the Parties.
- 16. Notice.** Except as otherwise required by law, all notices given pursuant to the terms of this Agreement shall be in writing and shall further be deemed received upon personal delivery or transmission via telecopy thereof or if mailed, five (5) business days after deposit in the United States mail, postage prepaid, certified or registered mail, return receipt requested, to the Parties at the addresses set out below, or at such other address as either Party may designate in writing:

If to Goodyear: City of Goodyear
 1900 North Civic Square
 Goodyear, Arizona 85395
 Attn: Water Resources Director

with a copy to: City of Goodyear
1900 North Civic Square
Goodyear, Arizona 85395
Attn: City Attorney

If to Glendale: City of Glendale
7070 West Northern Avenue
Glendale, Arizona 85303
Attn: Water Resources Director

with a copy to: City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301
Attn: City Attorney

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

CITY OF GLENDALE

CITY OF GOODYEAR

By: _____
Mayor

By: _____
Mayor

Dated: _____

Dated: _____

ATTESTED BY

ATTESTED BY

City Clerk

City Clerk

ATTORNEY CERTIFICATION

In accordance with A.R.S. § 11-952, the undersigned certify that the foregoing Amendment has been reviewed by the undersigned attorneys who have determined that the Agreement as amended is in proper form and is within the powers and authority granted to the public body represented by each attorney.

Attorney for City of Goodyear

Attorney for City of Glendale

Exhibit A

Exchange Details

Ordering Process:

Glendale will request the monthly and annual volume of the water exchange by notifying Goodyear's Water Resource Director before September 1st of the year preceding the year of the exchange. Glendale will deliver Glendale's written request to Goodyear, SRP, and CAWCD for approval. If approved or revised, the agreed amount of the exchange will be ordered by Goodyear for delivery to Glendale for the following year.

Changes may be made to the annual order if extraordinary circumstances arise. Extraordinary circumstances include: timing issues with approvals of the exchange volumes; shortage calls on the Colorado River beyond the control of the Parties; infrastructure problems; and other circumstances mutually agreed by the Parties.

No water orders were placed for calendar year 2024. If ADWR issues the Permit in 2024, then the Parties will confer with SRP and CAWCD to determine the amount of water that can be exchanged and mutually delivered in calendar year 2024.

Type of Water:

The type(s) of water and associated volumes (in acre-feet) will be listed on the order request in priority of use in the exchange. The type of water for the exchange can be adjusted during the year if agreed upon by the Parties. No unrecovered water held as long-term storage credits will be part of the exchange.

Availability of CAP and SRP Supplies for the Order:

During each year of exchange, if a Party becomes aware of a shortage in the Party's water available to complete the exchange, the Party will promptly notify the other Party, and the Parties will modify the exchange orders to reflect the unforeseen circumstances. It is mutually understood by the Parties that the quantity of CAP water is subject to shortage declarations outside Goodyear's control.

Exhibit B

Exchange Cost Estimates

Estimated Costs

Goodyear will pay all costs assessed for delivery of the Goodyear CAP water by CAWCD.

Glendale will pay all costs of the recovery and delivery of Glendale's water to Goodyear. Glendale will reimburse Goodyear for the cost of SRP CSIF charges paid by Goodyear for the volume of exchanged water given by Goodyear to Glendale (defined in the Agreement as the "Goodyear CSIF Costs"). Estimated total costs are listed in the table below:

	Exchange Volume (acre-feet)	Estimated Cost to Glendale¹	Estimated Total Cost to Glendale² (2024)
2024	7,000	\$112,700	\$113,013
2025	7,000	\$116,306	\$116,629
2026	8,500	\$145,749	\$146,082
2027	8,500	\$150,413	\$150,757
2028	8,500	\$155,226	\$155,581
2029	8,500	\$165,319	\$165,685
2030	8,500	\$170,609	\$170,987
2031	8,500	\$176,069	\$176,459
2032	8,500	\$181,703	\$182,105
2033	8,500	\$187,518	\$187,947

¹ – Calculated by multiplying Goodyear's CSIF per acre-foot use fee (2024) of \$16.10 by the maximum exchanged volume per year. After 2024 there is an added estimated annual inflationary increase of 3.2%.

² – Includes 10% of Goodyear's CSIF Administrative Fee per year. As of 2024, the CSIF Administrative Fee is \$3,127.91 and after 2024, the fee will be adjusted by an annual inflationary increase of 3.2%.

All permitting and associated fees for the exchange permit application and additional costs of the exchange shall be the responsibility of Glendale.

Invoices

Goodyear will invoice Glendale by January 30th for the Goodyear CSIF costs incurred for the exchanged water in the preceding year.

Glendale will pay the invoice sent by Goodyear 30 days after receipt of invoice.