

RESOLUTION NO. 2024-2421

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, COMMITTING SUPPORT FOR THE FUTURE APPLICATION FOR THE ACTIVATION AND INCLUSION WITHIN THE BOUNDARIES OF THE FTZ NO. 277 WESTERN MARICOPA COUNTY, OF CERTAIN PROPERTY GENERALLY LOCATED AT THE SOUTHWEST CORNER OF CAMELBACK ROAD AND COTTON LANE AS A SINGLE-USER, USER DRIVEN FOREIGN TRADE ZONE SITE FOR THE OPERATION OF A MANUFACTURING FACILITY BY SUB-ZERO GROUP INC. SUBJECT TO CONDITIONS; PROVIDING AUTHORITY AND DIRECTION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS Sub-Zero Group, Inc. is continuing its commitment to the City of Goodyear through the development of another manufacturing facility it will operate on approximately 32 acres generally located at the southwest corner of Camelback Road and Cotton Lane that it will operate (the "Sub-Zero Facility"); and

WHEREAS, the development of the Sub-Zero Facility will require substantial capital expenditures and when operational, will create a substantial number of higher-wage manufacturing jobs within the City of Goodyear; and

WHEREAS, the development and subsequent operation of the Sub-Zero Facility within the City of Goodyear will result in significant benefits to the City that include, among others, taxes collected for capital expenditures for the development of the Sub-Zero Facility, the creation of higher-wage manufacturing jobs within the City, and the benefits to local restaurants and businesses that accrue from having a local employment base that can frequent their establishments during the day; and

WHEREAS, the City of Goodyear has supported the inclusion of private property within the boundaries of the FTZ No. 277 Western Maricopa County and the activation of those sites as a means of attracting desired businesses to the City of Goodyear; and

WHEREAS, because of the benefits that will accrue from the development and operation of the Sub-Zero Facility in the City of Goodyear, the Mayor and Council of the City of Goodyear find that it is in the best interests of the City of Goodyear and its residents to commit to the approval of an application for the activation and inclusion within the boundaries of FTZ No. 277 Western Maricopa County, the property described in Exhibit 1 attached hereto as a single-user driven foreign trade zone site for the operation of a manufacturing facility operated by Sub-Zero Group, Inc. subject to satisfaction of the terms and conditions set forth herein.

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 agree to and support an application for the activation and inclusion within the boundaries of FTZ No. 277 Western Maricopa County, the property described in Exhibit 1 attached hereto as a single-user driven foreign trade zone site for the operation of a manufacturing facility operated by Sub-Zero Group, Inc. (the "FTZ Application") subject to satisfaction of all of the following conditions:

- a) A Foreign Trade Zone Agreement (Payment in Lieu of Tax Fee (PILOT FEE)) in the form attached hereto as Exhibit 2 has been fully executed

by the parties and attested to by the Greater Maricopa Foreign Trade Zone, Inc., the Grantee of FTZ No. 277 Western Maricopa County, when the FTZ Application requesting concurrence from the Grantee as required under 19 CFR Part 146 is submitted; and

- b) The FTZ Application is submitted to the Grantee within five years of the date this Resolution is approved.

SECTION 2. Subject to the satisfaction of all the conditions set forth in Section 1 of this Resolution, the City Manager is hereby authorized and directed to approve and execute all documents necessary to support an application for the activation and inclusion of the Sub-Zero Facility within FTZ No. 277 Western Maricopa County.

SECTION 3. The City Manager or his/her designee is hereby authorized and directed to take any and all actions and to execute all documents necessary to carry out the intent of this Resolution, the Foreign Trade Zone Policies adopted by the Mayor and Council of the City of Goodyear, and the Foreign Trade Zone Agreement (Payment in Lieu of Tax Fee (PILOT FEE)), that is to be executed pursuant to the terms of this Resolution.

SECTION 4. This Resolution shall be effective upon its passage and 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_____.

Joe Pizzillo, Mayor

Date: _____

ATTEST:

APPROVED AS TO FORM:

Darcie McCracken, City Clerk

Roric Massey, City Attorney

EXHIBIT '1'

(LEGAL DESCRIPTION – THE PROPERTY)

Lot 1 of the Final Plat of Camelback 303 recorded in the official records of Maricopa County, Arizona Recorder at Book 1732 page 40.

EXHIBIT '2'

Sub-Zero Group, Inc. Foreign Trade Zone Agreement
(Payment in Lieu of Tax Fee (PILOT FEE))

On the following pages

**FOREIGN TRADE ZONE AGREEMENT
(PAYMENT IN LIEU OF TAX FEE (PILOT FEE))**

This Foreign Trade Zone Agreement (Payment in Lieu of Tax Fee (PILOT Fee)) (the “Agreement”) is made by and between Sub-Zero Group, Inc., a Wisconsin corporation (“Operator”), and the City of Goodyear, an Arizona municipal corporation (“City”). Operator and the City are sometimes referred to collectively as the Parties and individually as a Party.

R E C I T A L S

A. Operator leases or will lease certain real property located within the boundaries of the City of Goodyear, as more particularly described in Exhibit A attached hereto (the “Property”), and seeks to have the Property included within the boundaries of the FTZ No. 277 Western Maricopa County (the “GMFTZ”) and activated under applicable federal and Arizona state laws.

B. Operator will operate a manufacturing facility on the Property, which is zoned I-1 (Light Industrial), and which is a permitted use in the I-1 (Light Industrial) zoning district.

C. The City’s support for the inclusion of property within the GMFTZ is a requirement of Greater Maricopa Foreign Trade Zone, Inc., the Grantee of the GMFTZ (“Grantee”).

D. The City is willing to cooperate with Operator in having the Property included in the GMFTZ as a “User Driven Site,” as that term is defined in the Foreign Trade Zone Policy of the City of Goodyear dated August 28, 2023 adopted by Resolution 2023-2339 (“2023 Goodyear FTZ Policy”).

E. The City will support the reclassification of the Property to the classification applicable to property within an activated Foreign Trade Zone site or subzone (“FTZ Property Tax Classification”) for any operator qualified to be an “activating operator” under the Federal guidelines of 19 CFR Part 146, administered by U.S. Customs and Border Protection (CBP) (“Qualified Activated FTZ Operator”) subject to the Operator’s compliance with Arizona’s statutory requirements for property located within a foreign trade zone and subject to the terms set forth in this Agreement

F. The FTZ Property Tax Classification applies only while the Operator is conducting operations within the Property, while the Property is included within the boundaries of the GMFTZ as a User Driven Site as described in the 2023 Goodyear FTZ Policy, while the Property is Activated as described in the 2023 Goodyear FTZ Policy, and while Operator’s operations meet the requirements for an activated FTZ activated operator (a “Qualified Activated FTZ Operator”). In all other cases, the statutory property tax classification otherwise applicable applies to the Property (or portion thereof) operated by anyone other than Operator.

THEREFORE, the parties agree to the following terms and conditions:

1. INCORPORATION OF RECITALS. The foregoing Recitals are incorporated herein as though fully set forth.
2. EFFECTIVE DATE. This Agreement shall become effective upon the later of the following: (a) the date the Agreement is fully executed by the City and Operator or (b) the date Operator acquires its interest in the Property.
3. TERMINATION. This Agreement shall terminate if any of the following occurs:
(i) the Property loses its status as a User Driven Site; or (ii) Operator is no longer a Qualified

Activated FTZ Operator with respect to the Property; or (iii) Operator ceases its operations on the Property or its operations change so that it no longer meets the requirements for a Qualified Activated FTZ Operator; or (iv) Operator's lease on the Property expires or is terminated, and Operator has not purchased the Property or entered into a new lease, or (v) the City terminates this Agreement because Operator fails to comply with the requirements in this Agreement. Grantee shall deactivate the Property if this Agreement is terminated.

4. RELEASE. Operator shall and hereby does release and forever discharge and hold the City and Grantee harmless from any and all Customs, Grantee and/or FTZ Board-related fees, penalties, liquidated damages, 592 penalty actions, fines, bond losses, or other Federal actions that may be imposed by a third party on Operator, the City, or the Grantee because of regulatory infractions that may result from or arise out of the deactivation of the Property due to Owner's default or a required termination under this Agreement. Notwithstanding the termination of this Agreement, and regardless of when such property taxes are billed, Operator shall remain responsible for the payment of the PILOT fee for each tax year (or portion thereof) Operator leased the Property during which the classification applicable to property located within an approved and activated Foreign Tax Zone was applied to the Property.

5. CITY OBLIGATIONS. Provided an application for the Activation of the Property as a User Driven Site, as those terms are defined in the 2023 Goodyear FTZ Policy, is submitted to the Grantee within five (5) years of the date Resolution 2024-2421 was approved by the Council of the City of Goodyear, and subject to Operator's compliance with the terms and conditions set forth in Resolution 2024-2421, the 2023 Goodyear FTZ Policy and this Agreement, the City agrees as follows:

a. **SUPPORT FOR USER DRIVEN SITE.** City agrees to cooperate with Operator in having the Property included in the GMFTZ as a “User Driven Site” as that term is defined in the 2023 Goodyear FTZ Policy and in having the Property “activated” provided Operator complies with the 2023 Goodyear FTZ Policy.

b. **SUPPORT FOR RECLASSIFICATION.** City agrees to support the reclassification of the property taxes applicable to the Property to the FTZ Property Tax Classification, for a Qualified Activated FTZ Operator subject to Operator’s compliance with Arizona’s statutory requirements for FTZ Property Tax Classification.

6. **PILOT FEE.** Subject to the terms and conditions herein and except as otherwise provided in section 7 below, Operator agrees to pay the City an annual PILOT Fee if the Property has been reclassified pursuant to A.R.S. § 42-12006 (2), as Class 6 property applicable to real and personal property located within a foreign trade zone or subzone that has been Activated for foreign trade zone use by the Bureau of Customs and Border Protection (“CBP”) and the Property is taxed as real and personal property located within a foreign trade zone or subzone. The PILOT Fee shall be calculated as set forth in Section 9 below.

7. **PILOT FEE EXEMPTION.** No annual PILOT Fee shall be owed if Operator qualifies as a Qualified High Wage Manufacturer Employer, as that term is defined in the 2023 Goodyear FTZ Policy. To qualify for this exemption, Operator shall satisfy all of the following requirements:

a. The Property is located within property zoned I-1 (Light Industrial), or is located within a zoning district other than I-1 but the actual use of the Property (the operation of a manufacturing facility) is a permitted use under the Property’s zoning; and

b. Operator provides documentation demonstrating a capital expenditure of at least \$25,000,000 in development and equipping of the manufacturing facility; and

c. Operator continuously employed at least 100 Full-Time Employees at the manufacturing facility during the year the property taxes were assessed. For purposes of this Agreement, the term “Full Time Employee” means permanent employee whose normal work week would result in the employee working a minimum of 1,750 hours per year; and

d. At least 51% of the Full-Time Employees were paid at least 125% of the median annual wage computed annually by the Arizona Department of Commerce during the year the property taxes were assessed; and

e. All Full Time Employees were offered health insurance for which Operator paid at least 65% of the premium or membership costs of such insurance during the year the property taxes were assessed.

8. OPERATOR SUBMITTAL REQUIREMENTS. By January 31st of each year, Operator shall submit the following to the City:

a. Annual property tax statement for the Property issued by the Maricopa County Treasurer’s Office for the prior year, which statements are generally mailed in September of the prior year; and

b. If Operator is claiming it is exempt from paying an annual PILOT Fee because it is a Qualified High Wage Manufacturer Employer as that term is defined in the 2023 Goodyear FTZ Policy, Operator shall provide documentation reasonably satisfactory to the City that demonstrates that during the calendar year for which the property taxes are assessed,

Operator has satisfied all of the requirements for the exemption to apply, as set forth above in Section 7 and all subsections thereof; and

c. All separate agreements Operator has with local taxing jurisdictions regarding payments of fees.

9. ANNUAL PILOT FEE. If Operator fails to demonstrate it is exempt from paying a PILOT Fee pursuant to the terms set forth above in Section 7 and all subsections thereof in a given tax year, Operator shall pay the City a PILOT Fee.

a. CALCULATION OF PILOT FEE. The City shall calculate the PILOT Fee that is owed for the calendar year for which the property taxes are assessed as follows:

i. First, the difference between the real and personal property taxes that would have been owed had property not be classified as property within the boundaries of the GMFTZ and the amount billed for the real and personal property taxes. If Operator has a separate agreement with any of the taxing jurisdictions and Operator provides the City a copy of such agreement, the foregoing calculation shall be modified to exclude the taxes for such taxing jurisdiction. This amount is the annual PILOT Fee that will be owed if Operator fails to satisfy all of the requirements for the PILOT Fee exemption to apply as set forth above in Section 7 and all subsections therein during the entire calendar year for which the taxes were assessed.

ii. Second, if Operator satisfied all of the requirements for the PILOT Fee exemption to apply as set forth above in Section 7 and all subsections thereof during a portion of the calendar year for which the real and personal property taxes are assessed, the amount calculated above shall be adjusted so that the PILOT Fee applies only during the period of non-compliance. For example, if Operator satisfied the requirements for the PILOT Fee

exemption for 4 months, the amount calculated above would be adjusted to reflect an 8-month period of non-compliance (i.e. the amount of the PILOT Fee owed would be calculated by multiplying the amount calculated above by 8/12 or 2/3). Non-compliance exists for any month in which the requirements for the PILOT Fee exemption were not satisfied for the entire month.

b. BILLING AND PAYMENT. The City shall bill Operator for any PILOT Fee owed, and Operator shall pay the PILOT Fee within thirty (30) days of the date the PILOT Fee is invoiced. The billings for any PILOT Fee owed shall be mailed by first class mail to the addresses for Operator set forth in Section 19 below.

c. DISTRIBUTION. Within 60 days of receipt of payment of the PILOT Fee, the City shall distribute the appropriate portion of the PILOT Fee collected to the taxing jurisdictions, as applicable.

10. DEFAULT EVENTS OF NON-PERFORMANCE BY OPERATOR. An “Event of Non-Performance” or “Non-Performance” by Operator under this Agreement shall mean one or more of the following: Operator fails to comply with the 2023 Goodyear FTZ Policy or to pay any PILOT Fee owed under the terms of this Agreement. Upon the occurrence of an Event of Non-Performance by Operator, Operator shall, upon written notice from the City, cure or remedy such Non-Performance within thirty (30) days of the date of the City’s written notice. Whenever any Event of Non-Performance occurs and is not timely cured by Operator, the City may take any of one or more of the following actions:

a. the City may require Grantee to remove the Property from the boundaries of the GMFTZ; and/or

b. the City may require Grantee to deactivate the Property as an Activated foreign trade zone site; and/or

c. Seek, through court action, the recovery of any accrued but unpaid PILOT Fee; provided, however, that in no event shall Operator be liable for consequential, special, exemplary, punitive, treble, or other multiple damages as a result of an Event of Non-Performance described in this Section 10.

11. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the Parties regarding the subject matter hereof, and all prior and contemporaneous agreements, representations, negotiations, and understanding of the Parties, oral or written, are hereby superseded and merged herein. The Parties expressly acknowledge that there are no other agreements or understandings in regard to this transaction other than as set forth herein.

12. AMENDMENT OF THE AGREEMENT. This Agreement may be amended or canceled, in whole or in part, only by a written agreement or amendment fully executed by the Parties.

13. GOVERNING LAW. This Agreement shall be construed according to the laws of the State of Arizona applicable to contracts made and to be performed in Arizona. Exclusive jurisdiction and venue for any dispute hereunder shall be in Maricopa County, Arizona.

14. REPRESENTATION OF COUNSEL. The City and Operator acknowledge that they were each represented by legal counsel in connection with the drafting of this Agreement, that each of them and their respective counsel reviewed and revised this Agreement, that each of them and their respective counsel have independently reached their own conclusions as to the enforceability of this Agreement, that any rule of construction to the effect that ambiguities are to

be resolved against the drafting Party shall not be employed in the interpretation of this Agreement, and that the language in all parts of this Agreement shall in all cases be construed as a whole and in accordance with its fair meaning.

15. WAIVER. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the Parties of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same, or of any other provision of this Agreement.

16. NO THIRD-PARTY BENEFICIARIES. This Agreement is made and entered into for the sole protection and benefit of the Parties and their respective successors and assigns. No person other than the Parties and their respective successors and assigns has any right of action based upon any provision of this Agreement.

17. ATTORNEYS' FEES AND COSTS. If either Party brings a legal action, either because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing Party will be entitled to reimbursement of its reasonable attorneys' fees and court costs.

18. AUTHORITY. The undersigned represent to each other that they have full power and authority to enter into this Agreement, and that all necessary actions have been taken to give full force and effect to this Agreement. The Operator represents and warrants that it is duly formed and validly existing under the laws of the State of Wisconsin and that it is duly qualified to do business in the State of Arizona and is in good standing under applicable state laws. The Operator and the City warrant to each other that the individuals executing this Agreement on behalf of their respective parties are authorized and empowered to bind the Party on whose behalf each individual is signing.

19. NOTICES. All notices and communications provided for herein, or given in connection with this Agreement, shall be validly made if in writing and delivered personally or sent by registered or certified United States Postal Service mail, return receipt requested, postage prepaid to:

The City:	City of Goodyear Attn: City Manager 1900 N. Civic Square Goodyear, Arizona 85395 And City of Goodyear Attn: City Attorney 1900 N. Civic Square Goodyear, Arizona 85395
Operator	Sub-Zero Group, Inc. Attn: Senior Vice President - Operations P.O. Box 44130 Madison, Wisconsin 53744 And Sub-Zero Group, Inc. Attn: Plant Manager 4295 North Cotton Lane Goodyear, Arizona 85395 And Sub-Zero Group, Inc. Attn: General Counsel P.O. Box 44130 Madison, Wisconsin 53744

Notice of address may be changed by either Party by giving notice to the other Party in writing of a change of address. Such change will be deemed to be effective five days after date the written notice of change of address is personally delivered to the other Party or as of the seventh

business day after mailing the written notice of change of address to the other Party by certified United States Postal Service mail, return receipt requested, postage prepaid.

20. COUNTERPARTS. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one agreement, binding on the Parties. Further, this Agreement may be executed and delivered by electronic transmission. A manually signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement provided however, Operator shall deliver an original to the City to be maintained by the City Clerk for the City of Goodyear.

IN WITNESS WHEREOF, and agreeing to be bound by the terms of this Agreement, the Parties have caused this Agreement to be executed by their duly appointed representatives.

**CITY OF GOODYEAR, an
Arizona municipal corporation**

**OPERATOR:
SUB-ZERO GROUP, INC.,
a Wisconsin Corporation**

By: _____

Name: Wynette Reed

Title: City Manager

Date

APPROVED AS TO FORM:

City Attorney for City of Goodyear

By: _____

Name: _____

Title: _____

Date

ATTEST:

City Clerk for City of Goodyear

ATTEST:
**GRANTEE OF FTZ NO. 277 WESTERN MARICOPA
GREATER MARICOPA FOREIGN TRADE ZONE, INC.**

By:_____

Name:_____

Title:_____

Date

EXHIBIT A
(Legal Description – the Property)

Lot 1, Camelback 303, according to Book 1732 of Maps, page 40, records of Maricopa County, Arizona.