

ACCESS AGREEMENT ENVIRONMENTAL ACTIVITIES

PREAMBLE

THIS ACCESS AGREEMENT ("**Agreement**") is made and entered into this ____ day of _____, 20__ ("**Effective Date**"), by and between the City of Goodyear, an Arizona municipal corporation (the "**City**") and the United States of America, acting by and through the Secretary of the Air Force or his or her authorized delegate ("**Government**"). The City and Government are sometimes collectively referred to herein individually as a "**Party**" or collectively as the "**Parties**."

RECITALS

A. The City has jurisdiction over the Public Right-of-Way in the City of Goodyear, Maricopa County, Arizona, known as West Charles Boulevard, West Camelback Road and North 152nd Avenue (the "**City Right-of-Way**"); and

B. The purpose of this Agreement is for the City to grant the Government, its employees, agents, authorized representatives, and contractors, (each an "**Authorized Party**") access to a portion of City's Right-of-Way for the activities and purposes described herein.

C. The Government is conducting a groundwater investigation near Luke Air Force Base ("**Luke AFB**"). Groundwater immediately south of Luke AFB is known to be impacted by perfluorinated compounds ("**PFAS**"). The groundwater south of Luke AFB in the vicinity of Camelback Road needs to be evaluated to fully understand the extent of PFAS impacts. The Government needs access to a portion of the City's Right-of-Way to: (i) survey for, drill, construct, and develop two underground monitoring wells and associated equipment known as "MW07005" and "MW07007" ("**Monitor Wells**") at the locations identified in Exhibit A (the "**Access Areas**"); (ii) periodically sample the Monitor Wells; (iii) when such evaluation is concluded and/or this Agreement has expired or been terminated abandon the wells; and (iv) perform all related Government actions. These activities are collectively referred to as "**Permitted Activities**."

D. The Permitted Activities are being taken by the Government under its Defense Environmental Restoration Program ("**DERP**") pursuant to applicable environmental laws and requirements.

E. The locations of the Permitted Activities within the City Right-of-Way, including the approximate locations of any equipment or structures, if installed, are depicted in **Exhibit A**. The City is willing to grant the Government and any Authorized Party a temporary limited license to access the City's Right-of-Way to construct two underground monitoring wells.

AGREEMENTS

NOW, THEREFORE, in consideration of the mutual promises, covenants and undertakings set forth in this Agreement, City and the Government agree as follows:

1. Agreement Term.

1.1. Term and Renewal. The term of this Agreement shall be for one (1) year commencing on the Effective Date, with the option for the Government, at its discretion, to exercise nine (9) annual renewal options, not to exceed a total of ten (10) years, unless otherwise agreed by the Parties. Each exercise of a renewal option shall be in writing and prepared by the Government at least thirty (30) days in advance of each annual expiration date ("**Renewal Notice**"). The Renewal Notice shall be sent to the address provided in Section 11.

1.2. Termination Notice. Notwithstanding Section 1.1, both of the Parties shall have the right to terminate this Agreement by providing ninety (90) days written notice to the other Party at the address provided in Section 11 ("**Termination Notice**").

2. Access.

2.1. Permitted Activities. Subject to the terms of this agreement the Government shall be entitled to conduct the Permitted Activities within the Licensed Property. Within sixty (60) days after the completion of the installation of the Monitor Well, the Government shall provide the City as-builts for the Monitor Well installed and the latitude and longitude of the Monitor Well installed location. Unless agreed to by the City in writing, Permitted Activities shall not be conducted on weekdays between 6:00 p.m. and 6:00 a.m. or at any time on weekends.

2.2. Notice of Entry. An Authorized Party may enter upon the Licensed Property at mutually agreed times to perform the Permitted Activities. The Government will provide City at least forty-eight (48) hours prior notice of its intention to enter the Licensed Property in written format and personally delivered or sent via regular mail to the address described in Section 11, unless the Government determines the immediate entry is required for safety, environmental, operational, or security purposes requiring such immediate entry. Upon conclusion of any Permitted Activities the Authorized Party will restore the Licensed Property and any other portion of the City Property impacted by the Permitted Activities to the City's reasonable satisfaction.

2.3. Ingress and Egress from other Land. The right given to the Government by this Agreement does not include the right of ingress and egress from any existing City right-of-way onto the City Property. The Government is responsible for obtaining an access easement or other such permission, to access the Licensed Property. The City has no responsibility for obtaining or granting such access from third parties and is not liable if Government is unable to obtain access to the City Property because of Governments inability to acquire access from a third party.

2.4. Interference/Conveyance/Transfer. The City will provide notice to the Government either verbally or in writing, of any activities of the City which may interfere with or preclude Government from the performance of any of the Permitted Activities within the Licensed Property. If the City

intends to convey any interest in the Licensed Property to a third party, the City shall notify the Government at least ninety (90) days prior to such conveyance and the need for the Government to remove the Monitor Well from the Licensed Property. Within ninety (90) days of the date of the City's notice advising the Government of its intent to convey the Licensed Property, the Government shall, at the Government's sole expense, remove the Monitor Well, which includes all associated equipment such as underground facilities and structures, systems and structures used or installed within the Licensed Property, and restore the Licensed Property and any other portion of the City Property impacted by the Government's activities to the reasonable satisfaction of the City.

2.5. Equipment Protection. If needed, the Government may place a protective structure on the Licensed Property to house the equipment that will be installed as part of the Permitted Activities. Any protective structure installed must be approved by the City prior to installation and after approval by the City the protective structure shall be installed entirely on the Licensed Property.

2.6. Relocation. If at any time, the City determines that the Monitor Well installed within the Licensed Property will interfere with City approved development plans, the City shall provide written notice to the Government of such interference and the need to terminate this Agreement and remove the Monitor Well. Within ninety (90) days of the date of such written notice or such later time frame agreed to by the City, the Government shall, at the Government's sole expense, remove the Monitor Well, which includes all associated equipment such as underground facilities and structures, systems and structures used or installed within the Licensed Property, and restore the Licensed Property and any other portion of the City Property impacted by the Government's activities to the reasonable satisfaction of the City. Subject to the City's approval in a writing executed by the City Manager and the Government securing an access easement to do so, the Government may relocate the Monitor Well to a different location within the City Property at the Government's sole expense. In the event of a relocation, this Agreement shall be terminated and a new agreement entered into to reflect the new location of the Licensed Property.

3. Costs and Expenses. The Government shall have sole responsibility for all costs and expenses relating to the Permitted Activities.

4. Sampling Results.

4.1. The Government will send City the results of any verified water or soil sampling it performs on the Licensed Property to the address provided in Section 11.

4.2. In signing this Agreement, City understands that geographical information in the form of latitude and longitude coordinates of sampling location on this property will be associated with specific sampling results shared with regulatory agencies supporting the Government's cleanup efforts and may become publicly available. Agency or company names and addresses associated with sampling data taken from government-owned or commercial property may be shared with regulatory agencies and may become publicly available.

5. Property Ownership. All tools, equipment, structures and personal property taken or placed upon the City Property by or for the benefit of an Authorized Party shall remain the personal property of that Authorized Party, unless an alternative disposition of such tools, equipment, structures and other personal property is agreed to by the Parties. Such disposition shall be in

compliance with applicable laws. Neither the City nor its affiliates shall have any liability or responsibility for any equipment, supplies or personal property of the Government or Authorized Party that are taken onto or located within the City Property.

6. Restoration of Property. Unless otherwise agreed by the Parties as provided in a writing approved by the City Manager, the Government shall remove the Monitor Well, which includes all associated equipment such as underground facilities and systems and structures used or installed within the Licensed Property, upon expiration of the Agreement or earlier termination and restore the Licensed Property and any other portion of the City Property impacted by the Government's activities to the reasonable satisfaction of the City. The provisions in this Section 6 shall survive the expiration or earlier termination of this Agreement, and the Government shall have the ability to undertake activities needed to restore the Licensed Property as described herein until the Licensed Property and any other portion of the City Property impacted by the Government's activities has been restored to the reasonable satisfaction of the City.

7. Damages. The Government shall be responsible for damages to the City Property which may arise from or be directly attributable or incidental to the Permitted Activities other than damages to the City Property caused by the negligence or wrongful act or omission of the City's officers, members, partners, agents, employees, sublessees, licensees, invitees, and contractors who may be on the Licensed Property. When the Government is responsible for damages it may, at its option, either repair such damage to the reasonable satisfaction of City or make an appropriate settlement with the City. Nothing contained in this Agreement is intended to limit or waive the Government's protections or defenses under the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680. The provisions of this Section 7 shall survive the expiration or earlier termination of this Agreement.

8. Governing Law. This Agreement shall be governed and construed, and the rights and obligations of the Government and City hereunder shall be determined in accordance with applicable federal law and, in the case where such federal law does not exist, in accordance with applicable Arizona law. Provided however, that nothing in this Agreement shall be construed to constitute a waiver of federal supremacy or federal sovereign immunity.

9. Government Obligations. Consistent with the Anti-Deficiency Act, 31 U.S.C. §§ 1517, 1541-1542, any payment of funds by the Government in connection with this Agreement shall be subject to the availability of appropriated funds and shall not be interpreted as creating an obligation or payment of funds in violation of the Anti-Deficiency Act or other applicable law respecting federal funding, including but not limited to any commitment of future funding or payment. Additionally, nothing contained in this Agreement may be considered as implying that Congress would appropriate funds sufficient to meet any funding deficiencies.

10. Amendments. This Agreement may be amended at any time by mutual agreement of the Parties in writing and signed by a duly authorized representative of each Party.

11. Notices. Unless otherwise agreed in writing by the City and the Government, any notice or request given pursuant to this Agreement may be given by personal delivery or by mailing the same by regular mail, addressed as follows:

If to the City: City of Goodyear
1900 North Civic Square
Goodyear Arizona, 85395
Attn: City Manager

With a copy to: City of Goodyear
1900 North Civic Square
Goodyear, AZ 85395
Attn: City Attorney

If to the Government: Department of the Air Force
Attn: Dr. Kimberly Horsley,
AFCEC/CZOW
Organization: 56 CES/CEIE
Mailing Address: 13970 Gillespie Dr., Bldg. 302
Luke AFB, AZ 85309-1149
Email: kimberly.horsley@us.af.mil
Telephone: (623) 856-9645

Or to such other address or addresses as the City or the Government may from time to time designate in writing.

12. **Representation of City.** The signatory who signs this Agreement for the City is authorized to do so on behalf of all individuals or entities that have an ownership interest in the City Property.

13. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

14. **Electronic Signatures.** Intentionally omitted.

15. **List of Exhibits.** Exhibits are attached hereto and made a part of this Agreement:

Exhibit A – City Property Legal Description

Exhibit B – Depiction of Location of Permitted Activities on Property

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

[SIGNATURES APPEAR ON THE FOLLOWING TWO PAGES.]

Government Signature Page to the foregoing Access Agreement

GOVERNMENT:

UNITED STATES OF AMERICA,
acting by and through the Secretary of the Air Force

By:


KATY E. BREYER, GS-15, DAF
Chief, Environmental Operations Division
Air Force Civil Engineer Center

City's Signature Page to the foregoing Access Agreement

CITY:

CITY OF GOODYEAR, an Arizona municipal
corporation

By: _____

Wynette Reed

City Manager

Date: _____

ATTEST:

Darcie McCracken, City Clerk

APPROVED AS TO FORM:

City Attorney

EXHIBIT A
PROPERTY LEGAL DESCRIPTION

The land affected by this access agreement is located in the State of Arizona in the County of Maricopa. It's legal description as stated on the Quitclaim Deed recorded in the official records of the Maricopa County, Arizona Recorder as document #2010-0800791 is:

Parcel 1 of the Minor Land Division Phase IX Cell Tower according to the plat thereof recorded on August 19, 2009, in Book 1037 of Maps, Page 20 of the official records of the Maricopa County, Arizona Recorder as document #2009-0771531.

DEPICTION OF PROPOSED LOCATION OF PERMITTED ACTIVITIES ON PROPERTY

