

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
THE CITY OF GOODYEAR
FOR
CONSTRUCTION INSPECTION SERVICES**

THIS INTERGOVERNMENTAL AGREEMENT (this "Agreement") is made as of February ____, 2013, between the City of Avondale, an Arizona municipal corporation ("Avondale") and the City of Goodyear, an Arizona municipal corporation ("Goodyear"). Avondale and Goodyear are referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

A. Avondale desires to have Goodyear perform horizontal construction related inspection services for Avondale and Goodyear has agreed to provide trained and qualified personnel to inspect street and utility construction projects in Avondale.

B. Avondale is authorized to enter into this Agreement pursuant to ARIZ. REV. STAT. §§ 11-951 and 11-952 and Article I, Section 3 of the Avondale City Charter.

C. Goodyear is authorized to enter into this Agreement pursuant to ARIZ. REV. STAT. §§ 11-951 and 11-952 and Article I, Section 2 of the Goodyear City Charter.

D. Avondale and Goodyear desire to enter into this Agreement to establish the Parties' rights and responsibilities with respect to Goodyear providing Avondale with the services described in Subsection 1.4 below.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions.

1.1 "After Hours" means the hours outside of Regular Inspection Hours.

1.2 "Inspector" means a City of Goodyear Construction Inspector II or the equivalent.

1.3 "Regular Hours" means the prevailing Goodyear inspection hours; currently Monday through Friday from 5:30 a.m. to 3:00 p.m., excluding holidays.

1.4. “Services” means collectively, the horizontal construction related street and utility inspections (the “Inspections”) and other related services, including travel to and from job sites, attending pre-construction meetings, providing inspection reports, coordinating required testing, and other services that are typically performed by an inspector.

2. Term. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until June 30, 2014 (the “Initial Term”), unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement. After the expiration of the Initial Term, this Agreement may be renewed for up to two successive one-year terms (each, a “Renewal Term”) if (i) each Party deems the Agreement to be in the best interests of such Party, subject to availability and appropriation of funds for renewal in each subsequent year, (ii) at least 30 days prior to the end of the then-current term of the Agreement, either Party requests, in writing, to extend the Agreement for an additional one-year term and (iii) each Party approves the additional one-year term in writing (including any cost adjustments approved as part of this Agreement), as evidenced by the signature thereon of each Party’s City Manager, which approval may be withheld by either Party for any reason. Either Party’s failure to seek a renewal of this Agreement shall cause the Agreement to terminate at the end of the then-current term of this Agreement; provided, however, that either Party may, with the agreement of the other Party, elect to waive this requirement and renew this Agreement. The Initial Term and any Renewal Term(s) are collectively referred to herein as the “Term.” Upon renewal, the terms and conditions of this Agreement shall remain in full force and effect.

3. Goodyear Obligations. Goodyear shall:

3.1 Coordination and Management. Authorize its City Engineer or his authorized designee to coordinate with the Avondale Assistant City Engineer and Avondale Construction Manager to perform the Services. Goodyear will use good faith efforts to schedule Services during Regular Hours, with understanding that Goodyear inspections take priority and may result in Services taking place After Hours. In such cases, After Hour fees will apply. Both Parties shall collectively establish the procedures for the Services.

3.2 Personnel. Provide Inspector(s) to perform Services for Avondale as provided in this Agreement.

3.3 Budget. Maintain an account of personnel hours expended for the Services provided pursuant to this Agreement.

3.4 Recordkeeping. Keep an accurate account of the Services performed under this Agreement and provide Avondale with inspection logs and testing information on a weekly basis. Provide Avondale with an accurate invoice on or before the 15th of each month. All invoices shall document and itemize all Services performed since the last invoice. The invoice statement shall include a record of time expended and work performed in sufficient detail to justify payment.

4. Avondale Obligations. Avondale shall:

4.1 Construction Plans and Specifications. Provide Goodyear with maps, construction plans, specifications, construction schedules for assigned projects and all other documents required for Goodyear to complete the Services.

4.2 Budget. Maintain a budget to pay Goodyear for the Services provided under this Agreement, subject to subsection 13.3 below.

4.3 Standards; Training. Provide Goodyear with Avondale's construction standards and, if required, train Goodyear Inspector(s) on Avondale-specific construction standards.

4.4 Reimbursement of Costs. Reimburse Goodyear for the Services at the rates as set forth in Section 5 below.

5. Rates.

5.1 Regular Hourly Rates. Avondale shall pay Goodyear a rate of \$63.57 per hour for personnel time, overhead and vehicle usage for Services conducted during Regular Hours.

5.2 After Hours Rate. Avondale shall pay Goodyear a rate of \$79.25 per hour for personnel time, overhead and vehicle usage for Services conducted during After Hours.

6. Compensation. For the Initial Term, Avondale shall pay Goodyear an amount not to exceed \$100,000.00 for the Services at the unit rates as set forth in Section 5 above. Thereafter, for each subsequent Renewal Term, if any, Avondale shall pay Goodyear an annual aggregate amount not to exceed \$100,000.00 for the Services at the unit rates as set forth in Section 5 above. The maximum aggregate amount for this Agreement shall not exceed \$300,000.00.

7. Payments. Avondale shall pay Goodyear monthly, based upon work performed and completed to date, and upon submission and approval of invoices.

8. Capital and Operating Expenditures; Budget. Nothing in this Agreement shall be construed as committing Avondale to incur capital expenditures for equipment, facilities, or otherwise, or to incur expenses not expressly set forth in this Agreement.

9. Oversight; Acceptance. All Services shall be subject to oversight and acceptance by Avondale at reasonable times during Goodyear's performance.

10. Materials. Avondale has no obligation to provide tools, equipment or materials to Goodyear, except as otherwise provided in this Agreement.

11. Performance Warranty. Goodyear warrants that the Services rendered will conform to the requirements of this Agreement and to the professional standards normally

employed by an Inspector conducting inspections on behalf of the City of Goodyear.

12. Insurance. The Parties agree to secure and maintain insurance coverage for any and all risks that may arise out of the terms, obligations, operations and actions as set forth in this Agreement, including but not limited to public entity insurance. The acquisition of insurance or the maintenance and operation of a self-insurance program may fulfill the insurance requirement.

13. Termination; Cancellation.

13.1 For Convenience. This Agreement may be terminated by either Party with or without cause upon 60 days' written notice to the other Party.

13.2 Conflict of Interest. This Agreement may be canceled by either Party for conflict of interest pursuant to ARIZ. REV. STAT. § 38-511.

13.3 Agreement Subject to Appropriation. This Agreement is subject to the provisions of ARIZ. CONST. ART. IX, § 5 and ARIZ. REV. STAT. § 42-17106. The provisions of this Agreement for payment of funds or the incurring of expenses by Avondale or Goodyear shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. Each Party shall be the sole judge and authority in determining the availability of funds under this Agreement and each Party shall keep the other Party fully informed as to the availability of funds for the Agreement. The obligation of each Party to make any payment pursuant to this Agreement is a current expense of such Party, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of such Party. If the City Council of either Party fails to appropriate money sufficient to pay the amounts as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of the then-current fiscal year and each shall be relieved of any subsequent obligation under this Agreement.

14. Miscellaneous.

14.1 Independent Contractor. Goodyear acknowledges and agrees that the Services provided under this Agreement are being provided as an independent contractor, not as an employee or agent of Avondale, except as provided in Section 14.13 below. Goodyear, its employees and subcontractors are not entitled to workers' compensation benefits from Avondale. Avondale does not have the authority to supervise or control the actual work of Goodyear, its employees or subcontractors. Goodyear, and not Avondale, shall determine the time of its performance of the Services provided under this Agreement so long as Goodyear meets the requirements set forth herein. Avondale and Goodyear do not intend to nor will they combine business operations under this Agreement. Goodyear is advised that taxes or Social Security payments will not be withheld from any Avondale payment issued hereunder and Goodyear agrees to be fully and solely responsible for the payment of such taxes or any other tax applicable to this Agreement.

14.2 Applicable Law; Venue. This Agreement shall be governed by the laws of the State of Arizona and suit pertaining to this Agreement may be brought only in courts in

Maricopa County, Arizona.

14.3 Laws and Regulations. Both Parties shall keep fully informed and shall at all times during the performance of its duties under this Agreement ensure that it and any person for whom the Parties are responsible for abides by, and remains in compliance with, all rules, regulations, ordinances, statutes or laws affecting the Services, including, but not limited to, the following: (A) existing and future city and county ordinances and regulations, (B) existing and future state and federal laws and (C) existing and future Occupational Safety and Health Administration standards. Avondale shall notify the Goodyear City Engineer of any changes to any Avondale ordinance, standard, regulation or other requirements which may affect the Services conducted by the Inspector(s).

14.4 Amendments. This Agreement may be modified only by a written amendment approved by the Parties' respective City Councils and signed by persons duly authorized to enter into contracts on behalf of Avondale and Goodyear. Any attempt at oral modification of this Agreement shall be void and of no effect.

14.5 Provisions Required by Law. Each and every provision of law and any clause required by law to be in this Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either Party, this Agreement will promptly be physically amended to make such insertion or correction.

14.6 Entire Agreement; Interpretation; Parol Evidence. This Agreement represents the entire agreement of the Parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by any of the Parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the Party drafting the Agreement. The Parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.

14.7 Assignment; Delegation. No right or interest in this Agreement shall be assigned by a Party to this Agreement without prior, written permission of the other Party signed by the City Manager, or authorized designee, and no delegation of any duty of any Party shall be made without prior, written permission of the other Party signed by the City Manager, or authorized designee. Any attempted assignment or delegation by either Party in violation of this provision shall be a breach of this Agreement.

14.8 Subcontracts. Goodyear shall not enter into any subcontract with any other party to furnish any of the Services specified herein without the prior written approval of Avondale.

14.9 Rights and Remedies. No provision in this Agreement shall be construed, expressly or by implication, as waiver by Avondale of any existing or future right and/or remedy

14.12 Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid or unenforceable by a court of competent jurisdiction shall not affect any other provision or application of the Agreement which may remain in effect without the invalid provision or application.

14.13 Worker's Compensation. An employee of either Party shall be deemed to be an "employee" of both public agencies while performing pursuant to this Agreement solely for purposes of ARIZ. REV. STAT. § 23-1022 and the Arizona Workers' Compensation laws. The primary employer shall be solely liable for any workers' compensation benefits, which may accrue. Each Party shall post a notice pursuant to the provisions of ARIZ. REV. STAT. § 23-1022 in substantially the following form:

"All employees are hereby further notified that they may be required to work under the jurisdiction or control or within the jurisdictional boundaries of another public agency pursuant to an intergovernmental agreement or contract, and under such circumstances they are deemed by the laws of Arizona to be employees of both public agencies for the purposes of worker's compensation."

14.14 Counterparts. This Agreement may be executed in any number of counterparts, all such counterparts shall be deemed to constitute one and the same instrument, and each of said counterparts shall be deemed original hereof.

14.15 Captions. Captions and section headings used herein are for convenience only and are not a part of this Agreement and shall not be deemed to limit or alter any provisions hereof and shall not be deemed relevant to construing this Agreement.

15. E-verify, Records and Audits. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Parties and their respective subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). The Parties' or a subcontractor's breach of the above-mentioned warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by either Party under the terms of this Agreement. The Parties each retain the legal right to randomly inspect the papers and records of the other Party and the other Party's subcontractors who work under this Agreement to ensure that the other Party and its subcontractors are complying with the above-mentioned warranty. The Parties warrant to keep their respective papers and records open for random inspection during normal business hours by the other Party. The Parties and their respective subcontractors shall cooperate with the other Party's random inspections including granting the inspecting Party entry rights onto their respective properties to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

16. Scrutinized Business Operations. Pursuant to ARIZ. REV. STAT. §§ 35-391.06 and 35-393.06, the Parties each certify that they do not have scrutinized business operations in Sudan or Iran. For the purpose of this Section, the term "scrutinized business operations" shall have the meanings set forth in ARIZ. REV. STAT. § 35-391 or 35-393, as applicable. If either Party

determines that the other Party submitted a false certification, the Party making such determination may impose remedies as provided by law including terminating this Agreement.

17. Indemnification. Unless federal or state law prohibits such indemnification, each Party shall indemnify, defend and hold harmless the other Party and each council member, officer, employee or agent thereof (the Party being indemnified and any such person referred to herein as an “Indemnified Party”), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys’ fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever (“Claims”), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the negligent acts, intentional misconduct, errors, mistakes or omissions, in connection with the work or services of the other Party, its officers, employees, agents or any tier of subcontractor in the performance of this Agreement, provided, however, with respect to the performance of the Inspections by Goodyear, Avondale shall indemnify Goodyear for, from and against any and all Claims, insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the negligent acts, intentional misconduct, errors, mistakes or omissions in connection with the work or services of Goodyear in performance of the Inspections. The indemnification provided hereunder shall not extend to Claims arising out of, or recovered under Arizona Worker’s Compensation Law or the failure of Goodyear to conform to any applicable and appropriate federal, state or local law, statute, ordinance, rule, regulation or court decree. The amount and type of insurance coverage secured by the indemnifying Party will in no way be construed as limiting the scope of the indemnity in this Section.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date of the last signature set forth below.

“Avondale”

“Goodyear”

CITY OF AVONDALE, an Arizona
municipal corporation

CITY OF GOODYEAR, an Arizona
municipal corporation

Charles McClendon, City Manager

Brian Dalke, City Manager

ATTEST:

ATTEST:

Carmen Martinez, City Clerk

Maureen Scott, City Clerk

In accordance with the requirements of ARIZ. REV. STAT. § 11-952(D), the undersigned City Attorneys acknowledge that (i) they have reviewed the above agreement on behalf of their respective clients and (ii) as to their respective clients only, each attorney has determined that this Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

Andrew J. McGuire
Avondale City Attorney

Roric Massey
Goodyear City Attorney