

**AGREEMENT FOR TRANSFER AND SALE OF REAL PROPERTY**

**BETWEEN**

**THE FLOOD CONTROL DISTRICT OF MARICOPA COUNTY**

**AND**

**THE CITY OF GOODYEAR**

**IGA FCD2016A012**

**FCD Agenda: C-69-16-037-3-00**

THIS AGREEMENT FOR TRANSFER AND SALE OF REAL PROPERTY ("Agreement") is entered into on \_\_\_\_\_, 2016, between the FLOOD CONTROL DISTRICT OF MARICOPA COUNTY, a political subdivision of the State of Arizona ("District") and the CITY OF GOODYEAR, a municipal corporation of the State of Arizona ("Goodyear").

**RECITALS**

The District is the owner of real property("Property") which is located north of the I-10, south of Cornerstone Boulevard and west of Dysart Road in the City of Goodyear, Maricopa County, Arizona, containing approximately 129.2 acres +/- . The Property is comprised of six (6) parcels, three (3) of which are described on Exhibit A (the "Excess Property") and three of which are described on Exhibit B (the "Basin Property"). The word "Property" as used herein refers to all of the parcels that are the subject of this Agreement. The Property is located in Flood Insurance Rate Map (FIRM) AE, inside the 100year delineated floodplain.

The Property was acquired by the District as part of a larger assemblage of basins from the Arizona Department of Transportation. Currently, the larger assemblage of basins has excess capacity beyond what is required to sufficiently ensure flood control purposes.

The Board of Directors of the District has declared the Excess Property A to be surplus to the District's needs and are to be sold to Goodyear at fair market value. The Excess Property is being purchased by Goodyear in fee, subject to the existing restrictions of record. Said purchase shall be consistent with and comply with all federal, state, city, county and municipal regulations, including but not limited to, A.R.S. 48-3603 (I), which states that "if any property sold by the district to a political subdivision without complying with § 9-402 is subsequently sold by the political subdivision as undeveloped property for a price exceeding the original sale price the district shall be paid the difference between the original price and the subsequent sale price."

Basin Properties were investigated by the staff of the District, which recommended to the Board of Directors that these parcels be transferred without cost and with use restrictions sufficient to ensure

flood control purposes. By resolution duly adopted, the Board of Directors determined that said Basin Properties should be transferred subject to use restrictions and authorized the District to prepare the Agreement. The Basin Properties are being acquired by Goodyear for use as city sponsored or affiliated recreation and wellness use area and the City of Goodyear or affiliated third parties may utilize the Basin Properties for this or another public or quasi-public purposes including but not limited to parks, active and passive recreation and activities related to general wellness; provided, however, that the Basin Properties shall only be used in such a manner as not to interfere with flood control purposes. The deed from the District to Goodyear for the Basin Properties shall contain the use restriction. Any modifications to the Basin Property, including the placing of any fill to remove the property from the regulated floodplain, will be the sole responsibility of Goodyear and will require engineering design and construction of any necessary drainage features to accommodate off-site drainage to the remaining basins and flow routing between the remaining basins, including the obligation to Arizona Department of Transportation (ADOT) to accommodate Interstate Highway 10 (I-10) drainage.

The Property is encumbered by two lease agreements between the District and Crane Co., a Delaware corporation (the "Leases"). The Leases will be assigned by the District, and assumed by Goodyear, at the time the Property is transferred. The Property is to be in "as-is" conditions. The Property is subject to existing flowage easements from Goodyear, Avondale, and Litchfield Park, and the need to satisfy the ADOT requirement to accommodate drainage from I-10 ("Flowage Easements").

## AGREEMENT

NOW THEREFORE, for good and valuable consideration, and in consideration of the mutual covenants and promises herein contained, the District and Goodyear agree as follows:

1. **Contract:** This Agreement shall constitute a contract between the District and Goodyear wherein the District agrees to sell, and Goodyear agrees to purchase, the Excess Property as described in Exhibit "A" and any improvements thereon, and to complete the purchase on or before August 31, 2016 as provided herein. In addition, the District agrees to transfer without fee, and Goodyear agrees to accept, the Basin Properties as described in Exhibit "B" and any improvements thereon, and to complete the transfer on or before August 31, 2016. In addition, the District shall assign, and Goodyear shall assume, the Leases on or before August 31, 2016.
2. **Purchase Price for Excess Properties:** The Purchase Price for the Excess Property shall be \$233.00 which has been established as the value for the Excess Property based upon an appraisal by an independent fee appraiser with an adjustment for the net present value for other valuable consideration received by the District from Goodyear. The Purchase Price shall be due and payable in lawful U.S. funds in one payment which shall be paid no later than ten days after the expiration of the City's review period provided in Section 3(a) below.
3. Federal Rule 49 CFR Part 24 The Parties mutually acknowledge that this purchase was negotiated as an arms-length transaction in compliance with Federal Rule 49 CFR Part 24. Goodyear hereby notifies the District that it believes the fair market value of the

Property is \$233.00 and will not pursue an action in eminent domain for the acquisition of the Property, should this negotiation and purchase not be completed.

4. **Conditions:** Goodyear's obligations hereunder shall be conditioned upon:

(a) Approval of Condition of Title. Goodyear's approval of the District's condition of title as evidenced by an updated title report issued by North American Title together with legible copies of all documents and matters disclosed thereon, which shall be delivered to Goodyear within ten days of the date this Agreement is fully executed; Goodyear shall have twenty (20) days following receipt of the preliminary title report and copies of all documents and matters disclosed thereon in which to notify the District in writing of its approval or objection to the condition of the District's title as disclosed by the title report. Failure to notify the District of disapproval shall be deemed to be approval. If Goodyear objects to the condition of the District's title, Goodyear may at Goodyear's option, allow the District an additional time to cure any such objection. If the District is unable to so cure within the additional period, the District shall notify Goodyear thereof and Goodyear, at its election, may: (i) terminate this agreement, or (ii) elect in writing to waive the uncured objections.

(b) Title Insurance Policy. Issuance to Goodyear of an owner's standard coverage title insurance policy in favor of Goodyear, from a Title Company licensed to do business in Arizona, insuring title to the Property for the full amount of the purchase price in the name of Goodyear, subject to those exceptions to title as approved by Goodyear in the updated title report as provided in Section 7.

(c) Approval of the Special Warranty Deed for the Basin Property, which Special Warranty Deed shall contain a use restriction as mutually agreed to by the Parties, that provides said property shall continue to serve as permanent flood control features with sufficient capacity to accommodate I-10 drainage and 500-year 24-hour storm drainage volume from the watershed.

5. **Goodyear's Representations and Warranties:** Goodyear hereby warrants, represents and covenants that:

(a) Goodyear has full power and authority to enter into and perform its obligations hereunder. The persons executing this agreement on behalf of Goodyear have full power and authority to do so and to perform every act and to execute and deliver any and all documents and instruments necessary or appropriate to consummate the transactions contemplated herein.

(b) This Agreement and any and all documents and/or instruments delivered by Goodyear, constitute a legal, valid and binding obligation to Goodyear, enforceable in accordance with the terms herein.

6. **District's Representations and Warranties:** The District hereby warrants, represents and covenants that:

- (a) Title. Other than the matters set forth on the updated title report, there exist no agreements of sale, leases, occupancy agreements, right-of-way, rights of first refusal, options to purchase, maintenance agreements, or irrigation agreements or any other oral or written agreements in any manner pertaining to the Property except:
- i. the Leases described herein;
  - ii. the Flowage Easements described herein; and
  - iii. the water right associated with the approximate 1 acre parcel purchased by the District from SunCor was not transferred by SunCor to the District while SunCor was an operating entity.
- (b) The District will convey to Goodyear approximately 387 acre-feet of Type 1 non-irrigation grandfathered groundwater rights associated with approximately 129 acres of the properties.
- (c) Authority. The District has full power and authority to enter into and perform this Agreement in accordance with its terms. The individuals executing the Agreement on behalf of the District are authorized to do so and, upon their executing this Agreement, this Agreement shall be binding and enforceable upon the District in accordance with its terms.
- (d) Hazardous Materials. To the best of the District's knowledge, there has been no production, disposal, transport, treatment or storage at the Property of any hazardous waste, hazardous materials or extremely hazardous materials other than the material indicated in the Phase I mailed separately to the City of Goodyear; the Property is not now being used and has not been used for the manufacture, processing, distribution in commerce, use or disposal of any toxic substance subject to federal, state or local regulation; and there is no proceeding or inquiry pending or anticipated by any governmental agency with respect to any of the foregoing.
- (e) No Mechanics Liens. No person or entity has the right to impose a claim, a mechanics lien or material men's lien upon the Property, and all labor previously or presently performed upon and/or materials furnished to the Property have been paid, and District shall hold Goodyear harmless and agree to indemnify Goodyear with respect to any claims made by virtue of said labor performed and/or materials provided.

NOTE: The foregoing warranties, representations, and covenants shall be true as of the date hereof. The District does not warrant the condition of any existing improvements on the Property after the effective date of this Agreement and Goodyear accepts these improvements in an "as is" condition.

7. **Title Company:** The District shall cause a Title Company, after full payment has been made by Goodyear pursuant to Section 2, to issue an owner's standard title policy in favor of Goodyear pursuant to the District's obligation as conditionally established in Section 3(b) above. The District's obligation herein created in Section 3(b) shall be satisfied if, after full payment to the District has been made by Goodyear as prescribed in Section 2, the Title Company has issued a binding commitment to issue a policy in the form required by this Section, and if said policy is delivered within a reasonable time following the final payment

to the District.

The City of Goodyear agrees to pay all closing costs associated with the acquisition of the property including the standard title policy.

8. **Additional Documents:** The parties shall execute and provide any other documents reasonably required by the Title Company as a condition to the issuance of the owner's standard title insurance policy as provided for in Sections 3(b) and 7.
9. **Utility:** No buildings, structures or other improvements of any kind, other than fencing which may be necessary to protect the Property, shall be constructed, erected or brought onto the Property by the City of Goodyear until the City has fully paid the purchase price and the deed conveying title to the City has been delivered.
10. **Acknowledgments and Obligations:** Goodyear:
  - (a) Acknowledges the Basin Property is currently being used as a storm water retention basin and shall do nothing to interfere with any flood control purpose to which the Basin Property is being put. Goodyear, at Goodyear's sole risk and sole responsibility, and/or its affiliates may make modifications to the Basin Property consistent with their use of the Basin Property as long such use is consistent with the flood control purpose of the Basin Property. Goodyear shall indemnify District and hold District harmless for any modifications Goodyear and/or its affiliates make to the Basin Property.
  - (b) Will maintain surface flow of water across the Basin Property as the new land owner.
  - (c) Acquire the Property with the existing Flowage Easements in place or to obtain the easements releases at their own expense.
11. **Indemnity:** Each party to this Agreement agrees to indemnify the other party and hold it harmless for, from and against all claims, damages, costs and expenses, including attorney's fees, attributable, directly or indirectly, to the breach by such indemnifying party of any obligation hereunder, or the inaccuracy of any representation or warranty made by such indemnifying party herein, or in any instrument delivered pursuant thereto, or any activity related to the performance of this Agreement to the extent that such claims are caused by the act, omission, negligence, misconduct, or other fault of the indemnifying party.
12. **Form of Deed:** The District shall transfer title to the Property by Special Warranty Deeds, one for the Excess Property and one for the Basin Property, subject only to those exceptions as outlined in this Agreement or as shown in the preliminary title report approved by Goodyear. The District shall convey title after final payment is made pursuant to Paragraph 2 of this Agreement and the District Board of Directors has processed the Special Warranty Deeds.
13. **No Real Estate Commission:** Goodyear and the District warrant and represent to each other that no real estate broker or agent is entitled to a commission in connection with this Agreement. In the event it is determined that any real estate commission is due and owing, the party whose actions result in the obligation to pay such real estate commission shall be solely and exclusively liable for such payment.

14. **Condemnation:** In the event of condemnation or inverse condemnation of all or any portion of the Property during the term of this Agreement, Goodyear shall have the right, at Goodyear's option, to cancel this Agreement at any time within thirty (30) days after notice from the District of such condemnation and receive a full refund of all monies paid to the District as of the date of the cancellation. If Goodyear does not elect to cancel, the District and Goodyear shall amend this Agreement to provide for an equitable reduction in the purchase price to reflect the reduced size of the Property, if any.
15. **Notice:** Any notices hereunder must be hand-delivered or mailed by certified mail, return receipt requested, postage prepaid, addressed to the following addresses or at such other address as a party may designate by written notice:

City of Goodyear  
Attn: City Manager  
190N Litchfield Road  
Goodyear, Arizona 85338

Flood Control District of Maricopa  
ATTN: Property Management Branch  
2801 W. Durango Street  
Phoenix, Arizona 85009

The effective date of any notice shall be the date of hand-delivery or three (3) business days following the date of mailing.

16. **Representatives and Assigns:** This Agreement shall be binding upon and inure to the benefit of the parties hereto, their officials and employees, and their respective successors.
17. **Conflict:** This Agreement is subject to cancellation by any party pursuant to the provisions of Arizona Revised Statutes Section 38-511.
18. **Approval of Counsel:** Attached to this Agreement or contained herein are the written determinations by the appropriate attorneys for the parties to this Agreement, that these agencies are authorized under the laws of the State of Arizona to enter into this Agreement and that it is in proper form.
19. **Singular to Include Plural:** Wherever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.
20. **Entire Agreement:** The Agreement represents the entire Agreement between the parties covering everything agreed upon or understood in this transaction. There are no oral promises, conditions, representations, understandings, interpretations, or terms of any kind as conditions or inducements to the execution hereof or in effect between the parties, except as may otherwise be provided herein. No change or addition is to be made to this Agreement except by a written statement executed by the both parties,

subject to City Council and Board of Directors approval.

21. **Time Periods:** Except as expressly provided for herein, the time for performance of any obligation or taking any action under this Agreement shall be deemed to expire at 5:00 p.m. (Phoenix time) on the last day of the applicable time period provided herein. If the time for the performance of any obligation or taking any action under this Agreement expires on a Saturday, Sunday or legal holiday, the time for performance or taking such action shall be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday.
22. **Cancellation:** City of Goodyear may terminate their intent to purchase Property by a written notice sent to Public Works Real Estate Division at the address set forth in Section 15.
23. **Construction:** This Agreement shall be subject to, and construed according to, the laws of the State of Arizona without the application of any principles or conflicts of law that would require or permit the application of the laws of any other jurisdiction.
24. **Miscellaneous:** This Agreement shall be construed in accordance with the laws of the State of Arizona. All of the agreements, representations, warranties, obligations, and liabilities made or undertaken by Goodyear or the District in this Agreement or pursuant hereto shall be continuing until final payment is made by Goodyear and the deed is delivered by the District as provided herein. Time is of the essence hereof. This Agreement has been reached by negotiation and shall therefore not be construed against either party hereto.

**FLOOD CONTROL DISTRICT OF MARICOPA COUNTY**  
**A political subdivision of the State of Arizona**

Recommended by:

\_\_\_\_\_  
William D. Wiley, P.E.                      Date  
Chief Engineer and General Manager

Approved and Accepted:

By: \_\_\_\_\_  
Chairman, Board of Directors      Date

Attest:

By: \_\_\_\_\_  
Clerk of the Board                      Date

The foregoing Intergovernmental Agreement FCD 2016A012 has been reviewed pursuant to Arizona Revised Statutes 11-952, as amended, by the undersigned General Counsel, who has determined that it is in proper form and within the powers and authority granted to the Flood Control District of Maricopa County under the laws of the State of Arizona.

\_\_\_\_\_  
Flood Control District General Counsel      Date

**City of GOODYEAR**  
**A Municipal Corporation,**

By: \_\_\_\_\_  
Mayor Date

Attest:

By: \_\_\_\_\_  
City Clerk Date

The foregoing Intergovernmental Agreement IGA FCD 2016A012 has been reviewed pursuant to Arizona Revised Statutes 11-952, as amended, by the undersigned attorney who has determined that it is in proper form and within the power and authority granted to the City of GOODYEAR under the laws of the State of Arizona.

By: \_\_\_\_\_  
City Attorney Date

EXHIBIT "A"  
EXCESS PROPERTY

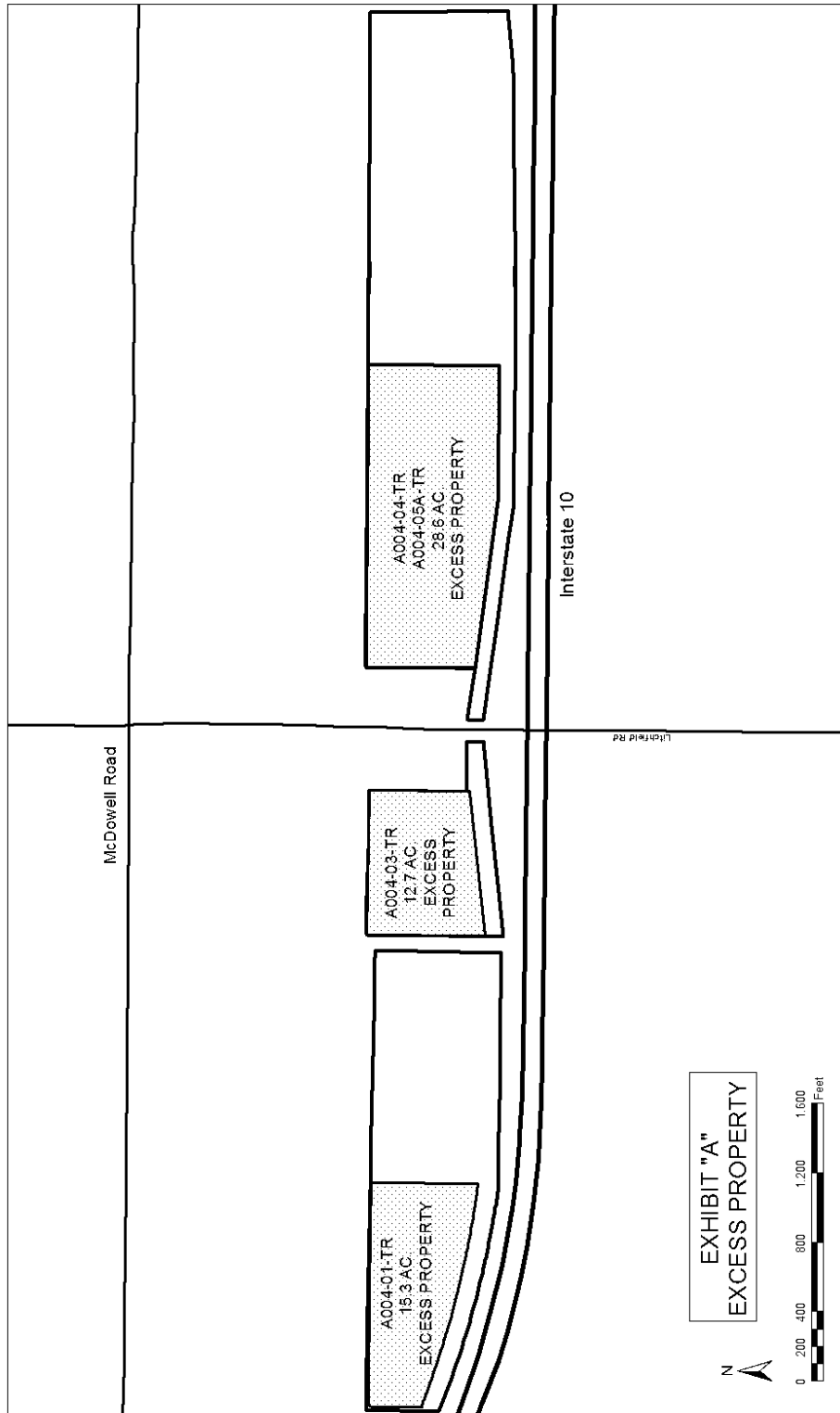


EXHIBIT "B"  
BASIN PROPERTY

