

When recorded please return to:

Jake D. Curtis  
Burch & Cracchiolo, P.A.  
P.O. Box 16882  
Phoenix, AZ 85011

**PERPETUAL AGREEMENT  
FOR ACCESS ON CITY OF GOODYEAR LAND**

THIS AGREEMENT OF PERPETUAL ACCESS ON CITY OF GOODYEAR LAND is made between THE ROOSEVELT IRRIGATION DISTRICT, an Arizona municipal corporation (hereinafter the "DISTRICT") and THE CITY OF GOODYEAR, an Arizona municipal corporation (hereinafter "GRANTOR").

**"DISTRICT"**

Name: ROOSEVELT IRRIGATION DISTRICT  
Address: 103 West Baseline Road, Buckeye, Arizona 85326  
Phone: (623) 386-2046 Fax: (623) 386-4360  
Representative: Mr. Donovan Neese, Superintendent

**"GRANTOR"**

Name: CITY OF GOODYEAR  
Address: 190 North Litchfield Road  
Goodyear, Arizona 85338  
Phone: (623) 932-3910  
Representative: Brian Dalke, City Manager

**CITY OF GOODYEAR LAND (the "PROPERTY"):**

A portion of that certain real property described in Warranty Deeds Numbers 20120825153 and 20150072235; recorded respectively in the Official Records of the Maricopa County Recorder on 11 September 2012 and 2 February 2015.

**RECITALS:**

- A. The GRANTOR holds title to certain real PROPERTY located in Maricopa County, Arizona.
- B. The DISTRICT holds certain BLANKET EASEMENTS across said property described in Book 220 Page 362 and in Book 220 Page 373 in the Official Records of the Maricopa County Recorder on 19 April 1928 and 28 September 1927 respectively (hereinafter the "BLANKET EASEMENTS"). The PROPERTY may be used by the DISTRICT as the

Lateral 4WW or for other irrigation-related uses and may contain various facilities, utilities and improvements related thereto as provided in the BLANKET EASEMENT referred to herein.

- C. A portion of the Property has been developed as public safety facilities and certain of the District's facilities are located within a secured area, which is more particularly shown in Exhibit "A" (hereinafter the "ACCESS AREA").
- D. The Parties acknowledge that the general purpose of this AGREEMENT is to grant the DISTRICT access to its facilities within the ACCESS AREA for the purpose of using, operating, maintaining and/or repairing of irrigation ditches, pipelines and other appurtenances and fixtures for use in connection therewith for the transmission and distribution of water, and for all other purposes connected therewith, together with the right of ingress and egress to, from, across and along the GRANTOR's PROPERTY in accordance with the terms and conditions of this AGREEMENT. Nothing contained herein affects the validity or terms of the BLANKET EASEMENTS.
- E. Privileges granted by this AGREEMENT apply only within the specific and limited area defined by this AGREEMENT.

**NOW, THEREFORE,** for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**AGREEMENT:**

1. The GRANTOR hereby grants to the DISTRICT, its contractors, successors, assigns, lessees, invitees and agents perpetual access upon, in, over and across a portion of the PROPERTY (hereinafter "ACCESS AREA") which is more particularly shown in Exhibit "A" attached hereto and incorporated herein by this reference for the purpose of allowing the DISTRICT, its successors, assigns and/or designees to maintain and repair irrigation facilities in the ACCESS AREA; and for other purposes reasonably related thereto. All costs incurred in performing such irrigation maintenance and/or repair shall be borne solely by the DISTRICT, its successors and/or assigns, and the DISTRICT, its successors and/or assigns shall have no right to recover such costs from the GRANTOR. The cost of restoring all non-irrigation facility improvements will be borne solely by the GRANTOR. This AGREEMENT is created solely for the consideration and values set forth above and reserves the ownership of the fee simple estate to the GRANTOR, its successors and/or assigns.
2. The GRANTOR hereby bestows to DISTRICT a non-exclusive license for ingress and egress upon the PROPERTY in accordance with the existing DISTRICT BLANKET EASEMENTS, shown in Exhibit "A" as is deemed necessary for the construction, maintenance and operation of its irrigation facilities.
3. The Parties agree that the GRANTOR or its successor and/or assign may use the ACCESS AREA for all lawful uses, in any manner not inconsistent with the GRANTOR's rights under this AGREEMENT. Such uses may include, but are not limited to, placement

of asphalt, cement curbing, appropriate landscaping, decomposed granite, structures, wells, utilities and other facilities and fixtures for municipal purposes.

4. GRANTOR hereby releases the DISTRICT and agrees to indemnify, defend and hold the DISTRICT harmless for, from and/or against any and all claims for damages arising from or in any way incident to the occupation of, construction on, maintenance of, or repair of the ACCESS AREA by the GRANTOR or its respective successors, assigns, licensees, invitees, contractors, employees or agents. The DISTRICT hereby releases GRANTOR and agrees to indemnify, defend and hold GRANTOR harmless for, from and/or against any and all claims for damages that are proximately caused by the DISTRICT's gross negligence, willful misconduct, fraud or the breach by the DISTRICT of the terms of this AGREEMENT.
5. GRANTOR understands, acknowledges, and agrees that there may be no practical means and/or method available for the DISTRICT to accommodate an interruption of water with the DISTRICTS facilities except during the DISTRICT'S scheduled annual dry-up period. GRANTOR further acknowledges and agrees that any and all decisions regarding the alteration and/or cessation of flow within the DISTRICT facilities are solely at the discretion of the DISTRICT. In the event that the construction, maintenance and/or repair of the irrigation facilities within the ACCESS AREA requires an alteration and/or cessation of flow within the DISTRICT facilities, GRANTOR acknowledges that such work may need to be completed only during the DISTRICT'S annual dry-up period.
6. GRANTOR understands, acknowledges and agrees that while not anticipated, the GRANTOR's site improvements located within the ACCESS AREA may be damaged or need to be removed in order for the DISTRICT to use, operate, maintain and/or repair their facilities with the PROPERTY. In the event of non-emergency repairs or replacement of any DISTRICT irrigation facilities within the PROPERTY, the DISTRICT will provide GRANTOR with reasonable notice of its need to impact the GRANTOR's site improvements. The DISTRICT shall further, to the extent possible, endeavor to effect repairs to the DISTRICT irrigation facilities in such a manner as to not alter, relocate or remove any site improvements installed for the benefit of the GRANTOR within the PROPERTY.
7. The parties through this AGREEMENT acknowledge and agree that the DISTRICT shall not be responsible for any repairs and/or replacement of any of the GRANTOR'S site improvements that are removed and/or damaged as a result of the DISTRICT's use, operation, maintenance and/or repair of the DISTRICT's irrigation facilities. Upon completion of the required use, operation, maintenance and/or repair work, the DISTRICT will leave the worksite within the PROPERTY in a clean and well-graded condition.
8. The DISTRICT shall have the right (but not the obligation) to trim, cut, and clear away trees, brush or other vegetation on the PROPERTY whenever in its judgment the same shall be necessary for the convenient and safe exercise of the DISTRICT's rights to enjoy the use of the PROPERTY.
9. GRANTOR understands and agrees that in the event of an emergency or routine operations and maintenance, the DISTRICT shall have the right to alter, relocate or remove any facilities installed for the benefit of GRANTOR. In such event, the DISTRICT shall have no obligation to reinstate or reconstruct such facilities. To the extent possible, the DISTRICT shall notify GRANTOR of any such event and the need to alter, relocate or

remove any facilities installed for the benefit of GRANTOR. The DISTRICT shall further, to the extent possible, endeavor to effect repairs to DISTRICT facilities in such a manner as to not alter, relocate or remove any facilities installed for the benefit of GRANTOR. Notwithstanding anything in this Section to the contrary, GRANTOR shall have the right to reconstruct such facilities in either the original location or at such reasonable alternative location designated by the DISTRICT, immediately upon the cessation of the emergency.

10. DISTRICT and GRANTOR shall keep the PROPERTY, including the ACCESS AREA, free and clear of any or all liens, including, but not limited to, mechanics and materialmen's liens relating to the work contemplated hereby.
11. The GRANTOR may install and maintain manned or locked gates in any wall and/or fence crossing the PROPERTY as set forth in Exhibit A attached hereto and shall provide 24-hour access to the DISTRICT for such manned or locked gates. DISTRICT acknowledges the ACCESS AREA is a secured site with 24-hour access. To access the site DISTRICT shall be required to pull up the access gate and provide credentials. Upon acceptance of the credentials DISTRICT shall be escorted onto the ACCESS AREA and shall be accompanied at all times while work is completed within the ACCESS AREA.
12. Notwithstanding anything contained herein to the contrary, nothing contained in this AGREEMENT shall be construed as consent by the DISTRICT to any expansion of the ACCESS AREA beyond the stated limits as set forth in Exhibit "A". Any such modification to, or enlargement of, the ACCESS AREA shall require a new AGREEMENT to be executed by the parties, which shall not be unreasonably withheld.
13. The DISTRICT and/or GRANTOR shall provide written notification of assignment of AGREEMENT to successors and/or assigns to the respective party. Assignment of AGREEMENT to successors and/or assigns includes, but is not limited to, the easements and maintenance/repair obligations contained herein. The DISTRICT and/or GRANTOR shall provide a copy of such assignment to the respective party. Upon the DISTRICT and/or GRANTOR's assignment of this AGREEMENT to its successors and/or assigns, its successors and/or assigns shall not transfer or assign any portion of this AGREEMENT to any person or entity without prior express written consent of the respective party. The successors and/or assigns may transfer or assign this AGREEMENT, including the respective rights and obligations created herein, to a related entity provided that notice of such transfer or assignment is provided to the other parties at least thirty (30) days prior to such transfer or assignment.
14. GRANTOR understands and acknowledges the DISTRICT'S, and all of its agents', right to construct, maintain, and operate irrigation facilities over and/or under the PROPERTY in accordance with the BLANKET EASEMENT.
15. This AGREEMENT granted herein shall run with the land and shall be perpetual in nature, and the benefits and burdens herein contained shall inure to and bind the Parties' respective successors, and assigns. Notwithstanding the foregoing, this AGREEMENT shall terminate with no further action if DISTRICT'S easement in the ACCESS AREA is terminated.
16. All notices, requests, demands or other communications ("Notices") required by this AGREEMENT shall be in writing and served by personal delivery or deposited with the

U.S. Postal Service, registered or certified mail, return receipt requested, with proper postage affixed, addressed and directed to the party to receive the same as follows:

If to the DISTRICT:   Roosevelt Irrigation District  
                                  Attn: Mr. Donovan Neese  
                                  103 W. Baseline Road  
                                  Buckeye, AZ 85326  
                                  Fax: (623) 386-4360

With a copy to:        Burch & Cracchiolo, P.A.  
                                  C/o: Jake D. Curtis  
                                  702 E. Osborn, Suite 200  
                                  Phoenix, AZ 85014  
                                  Fax: (602) 240-3823

If to GRANTOR:        City of Goodyear  
                                  Attn: City Manager  
                                  190 N. Litchfield Road  
                                  Goodyear, AZ 85338

All Notices shall be deemed effective on the date and time of actual receipt. Any party may designate a different person or entity or change the place to which any Notice shall be given as herein provided, which Notice shall be effective after the same is actually received by the other party. Any Notice to be given by any party herein may be given by the counsel for such party.

17. Any party may enforce this AGREEMENT by appropriate legal action and the prevailing party in such litigation may recover as part of its costs in such action reasonable attorneys' fees, costs and expenses of enforcing its rights hereunder. This AGREEMENT contains the entire AGREEMENT between the parties and any prior understanding or representation of any kind preceding the date of this AGREEMENT shall not be binding on either party except to the extent incorporated in this AGREEMENT. Any modification of this AGREEMENT or additional obligation assumed by either party in connection with this AGREEMENT shall be binding only if evidenced in writing and signed by each party. This AGREEMENT shall be construed in accordance with the laws of the State of Arizona. Each party to this AGREEMENT hereby consents to and subjects itself to the jurisdiction of the courts of competent jurisdiction of the State of Arizona with respect to any claim or proceeding relating to this AGREEMENT and agrees that the venue of any action or proceeding relating to this AGREEMENT shall lie exclusively in the Superior Court of Maricopa County, Arizona.
18. If any provision of this AGREEMENT is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this AGREEMENT shall continue in full force and effect and shall in no way be impaired or invalidated, and the Parties agree to substitute for the invalid or unenforceable provision a valid and enforceable provision that most closely approximates the intent and economic effect of the invalid or unenforceable provision.
19. This AGREEMENT may be executed in one or more counterparts, all of which, taken together, shall constitute one and the same instrument. The parties authorize each other

to attach all such signature pages to a single document so that the signatures of all parties will be physically attached to the same document for recording.

20. The acceptance date of this AGREEMENT shall be the day which the last party executes the AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT.

Counsel Accepted:

ROOSEVELT IRRIGATION DISTRICT,  
an Arizona municipal corporation

CITY OF GOODYEAR,  
an Arizona municipal corporation

Title: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**ACKNOWLEDGMENT BY DISTRICT**

STATE OF ARIZONA       )  
                                      ) ss.  
County of Maricopa        )

The foregoing instrument (PERPETUAL AGREEMENT FOR ACCESS) was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017, by \_\_\_\_\_, the \_\_\_\_\_ of the Roosevelt Irrigation DISTRICT on behalf of said corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_



**ACKNOWLEDGMENT BY GRANTOR**

STATE OF ARIZONA       )  
  ) ss.  
County of Maricopa )

The foregoing instrument (PERPETUAL AGREEMENT FOR ACCESS) was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017, by \_\_\_\_\_, the \_\_\_\_\_ of the GRANTOR, City of Goodyear on behalf of said corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

ATTEST:

\_\_\_\_\_

CITY CLERK

APPROVED AS TO FORM

\_\_\_\_\_

CITY ATTORNEY

**EXHIBIT "A"**  
**Perpetual Agreement Area for Access on City of Goodyear Land**