

**CITY OF GOODYEAR,  
ADAMAN MUTUAL WATER COMPANY, AND  
ADAMAN IRRIGATION WATER DELIVERY DISTRICT NO. 36  
NEW WELL FACILITIES  
OPERATION AND MAINTENANCE AGREEMENT**

This City of Goodyear, Adaman Mutual Water Company, and Adaman Irrigation Water Delivery District No. 36 New Well Facilities Operation and Maintenance Agreement (“O&M Agreement”) is entered into this \_\_\_\_day of February, 2018, by and between the City of Goodyear, an Arizona municipal corporation (“City”), Adaman Mutual Water Company, an Arizona corporation (“Adaman”), and Adaman Irrigation Water Delivery District No. 36, a political subdivision of the State of Arizona (“AIWDD”). The City, Adaman, and AIWDD shall hereafter be referred to individually as a “Party” and collectively as the “Parties.”

**ARTICLE I - RECITALS**

WHEREAS, the City and Adaman entered into a Bulk Water Sales and Treatment Agreement on August 27, 2007, and amended and restated it as the Amended and Restated Bulk Water Delivery Agreement on February \_\_\_\_\_, 2018, adding AIWDD as a party (“Bulk Water Agreement”), for the development of additional water supplies from New Wells for the benefit of the City;

WHEREAS, the City agreed to develop, and has partially developed, additional new well capacity for Adaman within Adaman’s Certificate of Convenience and Necessity (“CC&N”) in order for Adaman to have sufficient capacity to make bulk water sales to the City on a longer-term basis;

WHEREAS, pursuant to the terms of the Bulk Water Agreement, the City will construct, operate and maintain the New Wells, and the New Well well sites will be owned by AIWDD;

WHEREAS, pursuant to the terms of the Bulk Water Agreement, the City will construct, operate, maintain and own any treatment facilities used to treat the water generated from the New Wells;

WHEREAS, it is the intent of the Parties that the City have unlimited access to the New Wells and any property, equipment, information, structure, and any other access in any manner related to the New Wells which may be necessary, related or relevant for the City to carry out the intent, purpose and provisions of this O&M Agreement and the Bulk Water Agreement for the duration of the Bulk Water Agreement;

WHEREAS, pursuant to the terms of the Bulk Water Agreement, Adaman and/or AIWDD are responsible for the operation and maintenance of the Existing Wells and the Initial Treatment Plant; and

WHEREAS, the provisions of this O&M Agreement are intended to supplement the Bulk Water Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants of the Parties contained in this O&M Agreement and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties do hereby agree as follows:

## **ARTICLE II - GENERAL**

2.1 Incorporation of Recitals. The Recitals, set forth in Article I above, are incorporated herein by reference as if fully set forth herein and are acknowledged and agreed to by the Parties.

2.2 Purpose. The purpose of this O&M Agreement is to supplement and further define the terms and conditions by which the Parties will work cooperatively to manage, operate and maintain the New Wells in compliance with the terms of the Bulk Water Agreement and any Applicable Laws.

2.3 Cooperation. The Parties shall cooperate and exercise all reasonable efforts in the performance of their obligations and the exercise of their rights under the Agreements, to facilitate timely and effective implementation and carry out the Parties' intent. The Parties further agree to negotiate in good faith to address and endeavor to resolve disputes, if any, in an equitable and timely manner so as to avoid, where feasible, the need for more formal dispute resolution procedures.

## **ARTICLE III - DEFINITIONS**

3.1 Definitions. Unless otherwise provided herein, the capitalized terms used herein shall have the same meaning as such terms have in the Bulk Water Agreement. As used in this O&M Agreement, the following terms shall have the following respective meanings:

a. "Adaman Representative(s)" shall mean the person(s) identified by Adaman with the authority to act on behalf of Adaman for purposes of this O&M Agreement. All Adaman Representatives must meet the definition of Approved Adaman Staff.

b. "Agreements" shall mean both the Bulk Water Agreement and this O&M Agreement.

c. "AIWDD Representative(s)" shall mean the person(s) identified by AIWDD with the authority to act on behalf of AIWDD for purposes of this O&M Agreement. All AIWDD Representatives must meet the definition of Approved AIWDD Staff.

d. "Applicable Law(s)" shall mean any federal, State, district or local statute, law, municipal charter provision, regulation, ordinance, rule, mandate, judgment, order, decree, permit, code or license or other governmental requirement or resolution, whether now or hereafter in effect.

e. "Approved Adaman Staff" shall mean those persons the Adaman Representatives have identified and verified to the City Representative as having appropriate Security Clearance as defined herein.

f. “Approved AIWDD Staff” shall mean those persons the AIWDD Representatives have identified and verified to the City Representative as having appropriate Security Clearance as defined herein.

g. “Bulk Water Agreement” shall mean the Amended and Restated Bulk Water Delivery Agreement among the Parties dated February \_\_\_\_\_, 20118.

h. “City” shall mean City of Goodyear.

i. “City Representative” shall mean the Public Works Director or designee. Inquiries, concerns and issues should be directed to the City Representative.

j. “Confidential Information” shall mean (a) trade secrets as such term is defined and interpreted by Applicable Law; or (b) records deemed confidential under Applicable Law.

k. “Emergency” shall mean any occurrence, in the reasonable judgment of the Representatives, as the case may be, which may arise that requires immediate action and which constitutes a serious hazard to the safety of persons or property, or which may materially interfere with the safe, economical or environmentally-sound operation of the New Wells.

l. “New Well” shall have the meaning set forth in the Bulk Water Agreement.

m. “New Well Site” or “New Well Sites” shall mean the well sites conveyed to AIWDD for Well AP1 and Well AP2 per section 4.5 of the Bulk Water Agreement, and for other New Wells shall mean the real property reasonably necessary to own, operate and maintain the New Well(s).

n. “Representative(s)” shall mean the City’s Representative, Adaman’s Representative, and AIWDD’s Representative.

o. “Security Clearance” shall mean any and all background and security investigation required and recommended by federal, state or city statute, ordinance, rule, regulation or requirement for those persons with access to the New Wells or any water treatment facility operated or maintained by the City.

#### **ARTICLE IV - TERM; REPRESENTATIVES**

4.1 Term. This O&M Agreement shall be for the same term, and term extensions, provided in the Bulk Water Agreement.

4.2 Adaman Representative(s). Adaman shall provide the City Representative the name(s) and emergency contact information for all Adaman staff with the authority to act on behalf of Adaman for purposes of this O&M Agreement and that are responsible for receiving all City notifications. Adaman shall be responsible for informing the City Representative as soon as practicable of any changes in the name(s) and contact information for its chosen representative(s). All Adaman Representatives must meet the definition of Approved Adaman Staff.

4.3 AIWDD Representative(s). AIWDD shall provide the City Representative the name(s) and emergency contact information for all AIWDD staff with the authority to act on behalf of AIWDD for purposes of this O&M Agreement and that are responsible for receiving all City notifications. AIWDD shall be responsible for informing the City Representative as soon as practicable of any changes in the name(s) and contact information for its chosen representative(s). All AIWDD Representatives must meet the definition of Approved AIWDD Staff.

4.4 City Representative(s). The City Representative shall be the Public Works Director or designee. The Public Works Director shall provide the name and emergency contact information for all approved designees with the authority to act on behalf of the Public Works Director for purposes of this O&M Agreement. The City shall be responsible for informing the Adaman Representative as soon as practical of any changes in the name(s) and contact information for the City's designated representative(s). All notices, reports and inquiries from Adaman or AIWDD shall be submitted to the Public Works Director.

4.5 Ownership. AIWDD is the owner of the New Wells and related infrastructure, and the City is the owner of all physical structures above the ground, as well as the pumps and motors associated with the New Wells. AIWDD shall own the well casings and the New Well Sites where the New Wells are located, unless otherwise agreed by the Parties in writing.

## **ARTICLE V - OPERATIONS; MAINTENANCE; COSTS AND FEES**

5.1 Water Cost. For purposes of calculating the monthly water costs to be billed by Adaman to the City per Section 11.1 of the Bulk Water Agreement, the following shall apply:

5.1.1 The Initial Treatment Plant, referenced in the Bulk Agreement section 5.1, was accepted by Adaman and the Parties agree that the City paid \$888,978 for this capital investment. This amount shall be reflected as a capital investment amortized as an offset to the BCF for each year in an amount equal to three percent of the BCF as adjusted each year, until such capital investment is fully amortized.

5.1.2 Adaman will include copies of the electric bills for the New Wells with each invoice sent to the City per Section 11.1 of the Bulk Water Agreement. Upon request, Adaman will provide documentation confirming Adaman's payment of such electric bills.

5.1.3 By January 20 of each year, Adaman shall advise the City of the proposed BCF adjusted figures. The City and Adaman will work together if there is any disagreement regarding the calculation of the new rate and adjust billings accordingly.

5.1.4 Any groundwater withdrawal fees, water quality assurance fees, taxes, license fees, and other governmental charges associated with operation, reporting, and/or licensing for the pumping of and/or delivery of water (collectively, the "Fees") will be timely paid by Adaman regardless of the time of enactment, with the City to reimburse Adaman as provided in Section 20.3 of the Bulk Water Agreement. Adaman may include a charge for such Fees on a separate invoice to the City, or on monthly bulk water bills, but shall not bill the City for such Fees more than 45 days in advance of the due date for

Adaman's payment of such Fees. Upon the City's request, Adaman will provide copies of documentation confirming Adaman's payment of the Fees.

## **ARTICLE VI - PERMITTING, REPORTING, INSPECTIONS AND DATA SHARING**

6.1 Permits, Licenses. The Parties will work cooperatively, with the City primarily responsible, to procure and maintain any and all permits, licenses and other regulatory requirements necessary for the construction and operation of the New Wells, New Well-related treatment facilities and New Well-related infrastructure. The Parties will use reasonable efforts and work cooperatively to obtain and maintain all applicable federal, state, and local permits and licenses necessary for construction and operation of the New Wells.

6.2 Reporting. The Parties will use reasonable efforts, work cooperatively and in good faith on all regulatory and reporting requirements that each may have individually or collectively and as a direct result of the water production and transmission related activities with reference to the New Wells.

6.3 Inspections. The Parties will use reasonable efforts, work cooperatively and in good faith to facilitate any and all federal, state and local inspections and comply with any and all reporting requirements.

6.4 Data Sharing. To the extent the City develops or obtains information regarding water quality in the New Wells, the City will promptly provide Adaman with copies of such information. The City also will provide Adaman copies of the quarterly summaries of the monitoring review required by Arizona Department of Water Resources ("ADWR") Decision and Order No. 86-002019.0002, dated May 31, 2016 (*see* Conclusion of Law No. 5), regarding the City's designation of assured water supply, together with any notification of the occurrence of a "trigger event" reported to ADWR. Such reports shall be provided to Adaman at the same time they are submitted to ADWR.

## **ARTICLE VII - SITE**

7.1 Goodyear Access. AIWDD, as the owner of the New Wells, and Adaman, as a permitted user of the New Wells, shall both allow the City, its staff, agents, subcontractors, and employees to have full use of and access to the New Well Site(s) and the associated easement areas for water production and transmission, as determined necessary, relevant or reasonable by the City to carry out the terms of the Agreements.

## **ARTICLE VIII - SITE ACCESS; SECURITY REQUIREMENTS**

8.1 Security Clearance. Both Parties will ensure that all staff with access to any New Wells shall meet all requisite security requirements. Only Approved Adaman Staff and Approved AIWDD Staff shall be allowed access to the New Wells. In order to be an approved staff member, the individual shall be required to successfully obtain the appropriate security clearance as set forth by City policy and procedures.

8.2 Emergency Response. Either Party may take all necessary measures to respond in the event of an Emergency involving the New Wells or connected infrastructure. The first Party

responding to an Emergency will take sufficient steps to mitigate the Emergency situation and notify the other Party as soon as practicable.

## **ARTICLE IX - UTILITIES**

9.1 Establishment and Payment. Adaman shall be initially responsible to pay for all electric service for the New Well Sites, subject to reimbursement by the City. Adaman and the City shall work cooperatively to ensure that all electric service bills are paid in such a manner that there is no disruption of service due to missed or late utility payments by Adaman for wells producing and delivering water to the City.

9.2 Meter Reading. Approved Adaman Staff and Approved AIWDD Staff may access the water and electric meters on the New Well Sites to read the meters between the hours of 6:00 a.m. and 3:00 p.m. (noon) Monday through Sunday. Access shall be pursuant to conditions and restrictions contained herein, specifically Article VIII. Adaman will be responsible for complying with appropriate industry standards when conducting electric meter readings.

## **ARTICLE X - MEDIA RELATIONS, RECORDS REQUEST, LOGO**

10.1 Adaman and AIWDD Responsibilities. Adaman and AIWDD will use good faith efforts to advise the City's Representative of any media requests prior to responding to any inquiry from, or initiating any contact with, the press or other media regarding any event, circumstance or condition with respect to the management, operation or maintenance of the New Well(s) and related infrastructure. This section shall not be construed to limit Adaman's and AIWDD's rights or responsibilities to make any and all required filings or disclosures to governmental authorities.

10.2 City Responsibilities. The City will use good faith efforts to advise Adaman of any media requests prior to responding to any inquiry from, or initiating any contact with, the press or other media regarding any event, circumstance or condition with respect to the management, operation or maintenance of the New Well(s) and related infrastructure; subject to the City's legal obligation to comply with public records requests pursuant to Arizona law. This section shall not be construed to limit the City's right or responsibility to make any and all required filings and/or disclosures to governmental authorities.

10.3 Logo. No Party shall use the name or logo of another Party in any advertising, brochures, public relations documents or news releases without the prior written consent of the other Party.

## **ARTICLE XI - COMPLIANCE WITH LAWS**

11.1 E-Verify. A.R.S. § 41-4401 prohibits government entities from entering into an agreement with any other party who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A). Therefore, each Party agrees that:

11.1.1 Each Party, and on behalf of each contractor or subcontractor it uses, warrants compliance with all federal immigration laws and regulations that relate to its employees and its compliance with A.R.S. § 23-214 (A).

11.1.2 A breach of this warranty shall be deemed a material breach of the Agreements and subjects the breaching Party to penalties up to and including termination of the Agreements.

11.1.3 Each Party retains the legal right to inspect the papers of any other Party, its contractor or subcontractor to ensure compliance with this warranty.

## **ARTICLE XII - MISCELLANEOUS PROVISIONS**

12.1 Indemnification and Insurance Provisions. The Parties hereby incorporate by reference as if the restated fully herein the insurance and indemnification provisions in Sections 23 and 24 of the Bulk Water Agreement.

12.2 Cancellation. Notice is hereby given of the provisions of A.R.S. § 38-511, as amended. By this reference, the provisions of that statute are incorporated in this O&M Agreement to the extent of their applicability to contracts of the nature of this Agreement under the laws of the State of Arizona.

12.3 Entire Agreement: This O&M Agreement and the Bulk Water Agreement constitute the entire agreement between the Parties and no understandings or obligations not expressly set forth in these documents are binding upon the Parties.

12.4 Further Assurances. If a Party determines in its reasonable discretion that any further instruments, assurances or other things are necessary or desirable to carry out the terms of this Agreement, the other Parties shall execute and deliver all instruments and assurances and do all things reasonably necessary or desirable to carry out the terms of this Agreement, including using its best efforts to negotiate and enter into any agreements that may become necessary and appropriate.

12.5 No Waiver: The failure of a Party to enforce at any time any of the provisions of this Agreement (or to require at any time performance by the other Parties of any of its provisions) is not to be construed as a waiver of such provisions and does not in any way affect the validity of this Agreement or the right of such Party to enforce any provision.

12.6 Modification and Waiver. A modification or waiver of all or any part of this O&M Agreement is not valid unless it is reduced to a written agreement executed by the Parties..

12.7 Assignment. No Party shall assign this O&M Agreement or the rights and privileges herein, in whole or in part, without the prior written consent of the other Parties. Absent such consent, any attempted assignment shall be void. Notwithstanding any assignment, each Party shall remain primarily liable and responsible for fulfilling the terms and conditions of this O&M Agreement.

12.8 Sale of Adaman. In the event that Adaman is sold to a third party, or ownership changes as a result of the successful condemnation thereof or other action, the subsequent bona fide purchaser for value or owner is bound by the terms and conditions of this O&M Agreement and the Bulk Water Agreement.

12.9 Governing Law, Jurisdiction: The laws of the State of Arizona govern the interpretation and performance of this O&M Agreement. Any action to resolve any dispute regarding this O&M Agreement shall be taken in a state court of competent jurisdiction located in Maricopa County, Arizona.

12.10 Severability: If any provision of this O&M Agreement or the application thereof to any person or circumstance is held to be invalid, illegal, or unenforceable to any extent in an arbitration or court proceeding and such holding has become final and non-appealable, the remainder of this O&M Agreement and the application thereof will not be affected and will be enforceable to the fullest extent permitted by law.

12.11 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third person to any Party. This Agreement does not create any duty, liability or standard of care to any person not a Party.

12.12 No Party the Drafter. This O&M Agreement is the product of negotiation between the Parties. No Party is deemed the drafter of this O&M Agreement.

12.13 Headings. Section headings used in this O&M Agreement are for convenience and reference only and do not define, limit, or describe the scope or intent of any provision of this O&M Agreement.

12.14 Survival. The Parties agree that each Party shall remain obligated to the other Parties under all provisions of the Agreements that expressly or by their nature extend beyond and survive the expiration or termination of the Agreements. This includes by way of example, but not limitation, the provisions of this O&M Agreement authorizing the City's access to the New Well Sites to remove equipment after termination of the Agreements.

12.15 Rules, Regulations and Amendment or Successor Statutes. All references in this O&M Agreement to state law include all rules and regulations promulgated by ADWR under such statutes and all amendment statutes and successor statutes, rules, and regulations to such statutes, rules, and regulations.

12.16 Pledge of Credit, Encumbrances. Adaman shall not pledge the City's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness. Adaman further warrants and represents that it has no obligation or indebtedness that would materially impair its ability to fulfill the terms of this Agreement.

12.17 Counterparts. This O&M Agreement may be executed in more than one counterpart, each of which is an original, and all of which taken together constitute one single document.



12.18 Obligation to Continue to Perform. The Parties shall continue to perform under this O&M Agreement pending resolution of any dispute(s) unless the matter at issue precludes such continued activity until resolved, provided that each Party shall nevertheless have its rights that are provided under this O&M Agreement.

12.19 Authorizations. The signatories to this O&M Agreement represent that they have been appropriately authorized to enter into this O&M Agreement on behalf of the Party for which they sign, and that no further action or approvals are necessary before execution of this O&M Agreement.

CITY OF GOODYEAR, ARIZONA,  
an Arizona municipal corporation

ADAMAN MUTUAL WATER COMPANY,  
an Arizona corporation

\_\_\_\_\_  
NAME

\_\_\_\_\_  
NAME

ATTEST:

\_\_\_\_\_  
Darcie McCracken, City Clerk

ADAMAN IRRIGATION WATER  
DELIVERY DISTRICT NO. 36,  
a political subdivision of the State of Arizona

APPROVED AS TO FORM:

\_\_\_\_\_  
Roric Massey, City Attorney

\_\_\_\_\_  
NAME