

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
THE CITY OF GOODYEAR**

THIS INTERGOVERNMENTAL AGREEMENT (this “Agreement”) is entered into as of August 6, 2018, by and between the City of Avondale, an Arizona municipal corporation (“Avondale”) and the City of Goodyear (“Goodyear”) an Arizona municipal corporation. Avondale and Goodyear are sometimes collectively referred to in this Agreement as the “Parties” and each individually as a “Party.”

RECITALS

A. Avondale and Goodyear desire to coordinate a Block Party (the “Event”) to jointly celebrate the Parties’ histories.

B. The Parties desire to hold the Event in an area located in Goodyear and Avondale along Thomas Road between North Litchfield Road and North Dysart Road.

C. Subject to the approval of the appropriate governing body, the Parties desire to hold portions of the Event on the grounds of the Estrella Mountain Community College (“EMCC”) located at 3000 North Dysart Road in Avondale (the “EMCC Property”).

D. The Parties desire to enter into this Agreement to set forth the terms by which the Parties will jointly coordinate the Event, including Event planning, Event development, and Event administration.

E. The Parties are authorized and empowered to enter into this Agreement pursuant to ARIZ. REV. STAT. §§ 11-951 and 11-952 and their respective City Charters or other governing authority.

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 is hereby acknowledged, the Parties agree as follows:

1. Term of Agreement. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until June 30, 2019 (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 four 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. Both Parties' 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.

2. Avondale's Obligations.

2.1 Event Location. The Parties intend for the Event to be located on Thomas Road and North Dysart Road near the EMCC Property and held each year during the Term of this Agreement on a date that is acceptable to each Party. Avondale shall coordinate the location for the Event with EMCC or its governing body, the Maricopa County Community College District of Maricopa County, Arizona (the "MCCCD") by way of separate written agreement. Goodyear acknowledges that use of the EMCC Property is subject to final approval of the MCCCD Governing Board. In the event such approval is not granted, Avondale and Goodyear shall reasonably cooperate to select an alternate location for the Event.

2.2 Event Coordinator. Avondale shall procure the services of a qualified individual or firm to act as the event coordinator (the "Coordinator Services").

2.3 Event Security. In coordination with the EMCC, Avondale shall provide appropriate public safety personnel to secure the EMCC Property to such extent and during such times as Avondale and the MCCCD shall mutually agree. Avondale will be responsible for providing and ensuring adequate police personnel for all areas related to the Event at their sole expense.

3. Joint Cost Obligations and Revenue Sharing.

3.1 Costs of Event. Goodyear and Avondale shall each bear 50% of the total costs of the Event, not to exceed a total combined cost of \$70,000 (including, without limitation, costs for event coordinator services, barricade services, and promotions paid to third parties, minus any revenue adjustments).

3.1.1 Each City shall pay for any overtime costs associated with its own police, fire, traffic management and sanitation services for the Event.

3.1.2 After the necessary revenue adjustments, it is the intent of the Parties that the combined total amount paid by the Parties for all costs associated for the Event shall not exceed \$70,000.

3.2 Revenue Sharing.

3.2.1 Goodyear and Avondale shall each receive 50% of the total revenue generated from the Event, which includes but is not limited to revenue resulting from vendor spaces, and net profits of sponsorships. Avondale shall be responsible for collecting, accounting for and distributing any Event revenues to Goodyear in accordance with this Section.

3.2.2 Budget Reconciliation. The Cities will agree on an event budget no later than 45 days prior to the Event. Avondale will reconcile the budget and provide a copy of the final reconciliation documents to Goodyear no later than 30 days after the Event.

4. Joint Obligations.

4.1 Event Access. Each Party shall provide access to its property as may be reasonably required for successful staging of the Event, which property shall include without limitation, access to each Party's streets, sidewalks and other related facilities.

4.2 Event Approval. The Event shall be approved by each Party's City Manager, or authorized designee, who shall act as the Event liaison and approval authority for the Event.

4.3 Event/Traffic Management. The police departments for Avondale and Goodyear will work cooperatively to create a traffic plan and street closures associated with the Event. Any overtime costs incurred by each City for its own police personnel will be paid by that City.

4.4 Fire/Paramedics. Fire and paramedic needs for the Event will be addressed pursuant to the terms of the Fire Mutual Aid Agreement.

4.5 Sanitation Services. Goodyear will be responsible for sweeping and cleaning up the street prior to the Event and Avondale will be responsible for sweeping and cleaning the street after the Event ends. Each City will pay the cost incurred for its own portion of the sweeping and cleaning services.

4.6 Promotion and Public Notification. Both Parties shall promote the Event on the Parties' web pages, Event guides, if any, and information releases, if any and as appropriate. Each Party hereby grants to the other Party a license to use the registered logos and copyright of such granting Party, for the purpose of promoting the Event. Each Party's use of any registered logos or copyright of the other Party is subject to review and approval of the other Party. Both Parties shall have the unlimited right to use the logo created specifically for promoting the Event. Each Party shall actively support and participate in public notification efforts to contact impacted residents of street closures, increased noise levels, and general disruptions resulting from the Event.

4.7 Permitting. To the extent applicable, each Party shall provide to the other Party at no cost any required approvals or permits for the Event. Event vendors, participants or other persons participating in the Event shall be subject to the Parties' event permitting rules and procedures.

4.8 Manner of Financing. Subject to Section 8.3, below, each Party shall provide for its financial obligations under this Agreement through its annual budget process or by separate resolution as allowed by law and as deemed appropriate by its city council.

5. Indemnification. To the fullest extent permitted by law, 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. 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. This Section shall survive the termination or expiration of this Agreement for one year from the date of such termination or expiration.

6. Insurance. Each Party agrees 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.

7. Applicable Law. This Agreement shall be governed by the laws of the State of Arizona.

8. Termination; Cancellation.

8.1 For Convenience. This Agreement may be terminated by either Party with or without cause upon 30 days' written notice to the other Party.

8.2 Conflict of Interest. This Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511.

8.3 Agreement Subject to Appropriation. 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 for its obligations 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 then-current fiscal year and each Party shall be relieved of any subsequent obligation under this Agreement.

9. Miscellaneous.

9.1 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 remains in compliance with all rules, regulations, ordinances, statutes or laws affecting the services, including 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 (“OSHA”) standards.

9.2 Amendments. This Agreement may be modified only by a written amendment signed by each Party’s City Manager, or authorized designee.

9.3 Provisions Required by Law. Each and every provision of law and any clause required by law to be in the 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, the Agreement will promptly be physically amended to make such insertion or correction.

9.4 Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid 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.

9.5 Relationship of the Parties. It is clearly understood that each Party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one Party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever.

9.6 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.

9.7 Assignment. 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.

9.8 Subcontracts. No subcontract shall be entered into with any other party to furnish any of the material or services specified herein without the prior written approval of the either Party to this Agreement.

9.9 Rights and Remedies. No provision in this Agreement shall be construed, expressly or by implication, as waiver by either Party of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of either Party to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or a Party's acceptance of services, shall not release the other Party from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of a Party to insist upon the strict performance of this Agreement.

9.10 Attorneys' Fees. In the event either Party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing Party shall be entitled to receive from the other Party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.

9.11 Disposition of Property Upon Termination. The Parties do not anticipate having to dispose of any property upon partial or complete termination of this Agreement. However, to the extent that such disposition is necessary, property shall be returned to its original owner.

9.12 Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (a) delivered to the party at the address set forth below, (b) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, (c) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to Avondale: City of Avondale
 11465 West Civic Center Drive
 Avondale, Arizona 85323
 Attn: Charles Montoya, City Manager

With copy to: GUST ROSENFELD, P.L.C.
 One East Washington Street, Suite 1600
 Phoenix, Arizona 85004-2553
 Attn: Andrew J. McGuire, Esq.

If to Goodyear: City of Goodyear
190 North Litchfield Road
Goodyear, Arizona 85338
Attn: Julie Arendall, City Manager

With copy to: Roric Massey
City Attorney
190 North Litchfield Road
Goodyear, Arizona 85338

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (a) when delivered to the party, (b) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage, (c) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

9.13 E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Parties warrant compliance, on behalf of themselves and any and all subcontractors, with all federal immigration laws and regulation that relate to their employees and compliance with the E-Verify requirements under ARIZ. REV. STAT. § 23-214(A). A Party's breach of the above-mentioned warranty shall be deemed a material breach of this Agreement and the non-breaching Party may terminate this Agreement. The Parties retain the legal right to inspect the papers of the other Party to ensure that the party is complying with the above-mentioned warranty under this Agreement.

9.14 Israel. Each Party certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in a "boycott," as that term is defined in ARIZ. REV. STAT. § 35-393, of Israel.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first set forth above.

“Avondale”

CITY OF AVONDALE, an Arizona
municipal corporation

Charles Montoya, City Manager

ATTEST:

Carmen Martinez, City Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on _____, 2018,
by Charles Montoya, the City Manager of the CITY OF AVONDALE, an Arizona municipal
corporation, on behalf of the City of Avondale.

(affix notary seal here)

Notary Public in and for the State of Arizona

“Goodyear”

CITY OF GOODYEAR, an Arizona
municipal corporation

Julie Arendall, City Manager

ATTEST:

Darcie McCracken, City Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on _____, 2018,
by Julie Arendall, City Manager of the CITY OF GOODYEAR, an Arizona municipal
corporation, on behalf of the City of Goodyear.

(affix notary seal here)

Notary Public in and for the State of Arizona

INTERGOVERNMENTAL AGREEMENT DETERMINATION

In accordance with the requirements of A.R.S. § 11-952(D), each of the undersigned City Attorneys acknowledge that: 1) they have reviewed the above Agreement on behalf of their respective client; and, 2) 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 to each Party.

Andrew J. McGuire
Avondale City Attorney

Roric Massey
Goodyear City Attorney