

# GROUNDWATER SAVINGS FACILITY AGREEMENT

## BETWEEN

### ROOSEVELT IRRIGATION DISTRICT

## AND

### THE CITY OF GOODYEAR

#### 1. PARTIES:

This Groundwater Savings Facility Agreement ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between ROOSEVELT IRRIGATION DISTRICT, an Arizona municipal corporation and political subdivision of the State of Arizona (hereinafter referred to as "RID") and the City of Goodyear, a municipal corporation and political subdivision of the State of Arizona, (hereinafter referred to as "Goodyear"). RID and Goodyear may hereinafter be referred to individually as "Party" and collectively as "Parties".

#### 2. RECITALS:

- 2.1. RID operates a groundwater savings facility ("RID GSF") under Permit No. 72-572386.0005 ("RID GSF Permit") issued by the Arizona Department of Water Resources ("ADWR"). The current term of the RID GSF Permit expires October 26, 2020. RID has submitted a renewal application to ADWR to extend the term of the RID GSF Permit beyond October 26, 2020.
- 2.2. Under the RID GSF Permit, RID is permitted to accept into the RID GSF Central Arizona Project ("CAP") water in lieu of pumping groundwater from wells it operates east of the Agua Fria River.
- 2.3. Goodyear holds (1) a CAP subcontract, Subcontract No. 07-XX-30-W0498 ("Goodyear CAP Contract"), for the use of 10,742 acre-feet of CAP water and (2) a Lease Agreement for CAP Water among the City of Goodyear, the Gila River Indian Community, and the United States dated May 15, 2006, for the use of 7,000 acre-feet of CAP Water (collectively "Goodyear CAP Water"), that it desires to store at the RID GSF in order to earn LTSCs under Arizona's Underground Water Storage, Savings, and Replenishment statutes, A.R.S. §§ 45-801.01 *et seq.*
- 2.4. Goodyear has applied or will apply to ADWR for a water storage permit authorizing the storage of Goodyear CAP Water at the RID GSF ("Goodyear Water Storage Permit").
- 2.5. The RID water delivery system is not directly connected to the CAP canal. RID can accept the delivery of CAP water that is wheeled through the Salt River Project ("SRP") water delivery system that is connected to the CAP canal. Goodyear has executed an agreement entitled "CAP/SRP Interconnection Facility Lease and Water Transportation Agreement" among City of Goodyear, Salt River Valley Water Users' Association, and Salt River Project Agricultural Improvement and Power District dated February 7, 2017, which allows SRP to wheel the Goodyear CAP Water through the SRP water delivery system for delivery to the RID GSF ("Goodyear-SRP CSIF Lease and Water Transportation Agreement").

- 2.6. RID and Goodyear desire to enter into this Agreement for delivery and use of Goodyear CAP Water within the RID GSF in-lieu of groundwater pumped from wells operated by RID east of the Agua Fria River.

**3. AGREEMENT:**

Now, therefore, for and in consideration of the mutual covenants and agreements set forth herein and other good and valuable consideration, RID and Goodyear agree to the following terms and conditions:

**4. AUTHORIZED REPRESENTATIVES:**

Within thirty (30) days after execution of this Agreement, each Party shall designate in writing to the other Party, an authorized representative ("Authorized Representative") and an alternate to administer on behalf of the designating Party, the provisions of this Agreement as specified herein. Written notice of a change of an Authorized Representative or alternate shall be provided within thirty (30) days of such change. The alternate shall act only in the absence of the Authorized Representative. Neither the Authorized Representatives nor the alternates shall have authority to amend this Agreement provided, however, the Authorized Representatives or, in the absence of the Authorized Representatives, the alternates may by mutual written agreement extend the time for a party to perform its obligations under this Agreement in a given calendar year. Agreements of the Authorized Representatives pursuant to this Agreement shall be in writing and signed by them.

**5. TERM AND TERMINATION:**

- 5.1. This Agreement shall become effective upon execution by all of the Parties ("Execution Date") and the date ADWR issues Goodyear a permit to store Goodyear CAP Water under A.R.S. § 45-831.01 at the RID GSF ("Effective Date");
- 5.2. Once this Agreement is effective as provided in Subparagraph 5.1, it shall remain effective until December 31, 2020. Once effective, this Agreement shall remain in effect from year-to-year on a calendar year basis unless terminated as provided in Subparagraph 5.3 below.
- 5.3. Either Party may terminate this Agreement effective at the end of the then-current calendar year, upon written notice provided to the other Party at least thirty (30) days prior to the end of the then-current term of this Agreement. Termination of this Agreement shall not relieve either Party of its obligation to make payments due pursuant to this Agreement.

**6. PERMITS AND REPORTS:**

- 6.1. At its expense, RID shall maintain the RID GSF Permit in effect to operate the RID GSF as a GSF pursuant to and in accordance with the RID GSF Permit.
- 6.2. At its expense, Goodyear has applied or will apply for and will maintain in effect the Goodyear Water Storage Permit issued or to be issued by ADWR under A.R.S. § 45-831.01 for the RID GSF specified in Subparagraph 6.1.

- 6.3. The Party issued a permit by ADWR pursuant to this Paragraph 6 shall be responsible for the filing of reports required by the Party's permit.
- 6.4. Each Party shall cooperate with and provide nonproprietary information required by the other Party to obtain or conform to the requirements of the permits specified in Paragraph 6 hereof. RID and Goodyear agree to comply with the operating requirements of the GSF permit and the GSF plan of operation applicable to them. If RID becomes aware of a threatened or actual action of ADWR to terminate the RID GSF Permit, or to disallow credits for stored Goodyear CAP Water, RID will promptly notify Goodyear of such threatened or actual action.
- 6.5. Goodyear acknowledges that certain water losses incurred transporting Goodyear CAP Water as in-lieu water through the SRP water delivery system as set forth in the Goodyear-SRP CSIF Lease and Water Transportation Agreement, and through the RID water delivery system as determined by ADWR, for use in the RID GSF, which losses will reduce the amount of water credits accrued by Goodyear at the RID GSF.

**7. CAP WATER CONTRACT:**

- 7.1. Goodyear has entered into the Goodyear CAP Contract and lease agreement described in Exhibit A for the delivery of Goodyear CAP Water by the Central Arizona Water Conservation District ("CAWCD"). Goodyear CAP Water ordered by Goodyear from CAWCD for delivery to the RID GSF and intended to be used by RID in lieu of pumping from the wells RID operates east of the Agua Fria River ("RID Eastside Wells") shall be referred to in this Agreement as "In-Lieu Water."
- 7.2. Goodyear shall order In-Lieu Water in accordance with CAWCD water ordering procedures, and the following procedures to be followed by the Authorized Representatives.
  - 7.2.1. On or before the Effective Date, the Authorized Representatives shall agree upon an estimate of the amount of RID groundwater pumping that can be displaced from the RID Eastside Wells within the RID GSF in accordance with Paragraph 8 on gallon-for-gallon (or acre-foot-for-acre-foot) substitute basis in the manner provided for in RID's GSF Permit by the receipt of In-Lieu Water by RID for use in the RID GSF in 2020. In reaching this agreement, the Authorized Representatives and SRP shall take into account the anticipated quantity of effluent and CAP water offered by any other party seeking to store water in the RID GSF 2020. On or before October 1, 2020 and each October 1 thereafter, the same process will be followed for storage planned in the subsequent year.
  - 7.2.2. On a date specified by CAWCD in each year, the Goodyear Authorized Representative may order In-Lieu Water up to such estimated amount from CAWCD for delivery to the RID GSF, with a copy of such order to the RID Authorized Representative. The amount of In-Lieu Water ordered by Goodyear may be in any amount, so long as the order does not exceed the estimated amount of In-Lieu Water agreed upon by the Authorized Representatives under Subparagraph 7.2.1.

- 7.2.3. Goodyear authorizes RID to receive the In-Lieu Water ordered by Goodyear directly from CAWCD as wheeled through the SRP water delivery system under the Goodyear-SRP CSIF Lease and Water Transportation Agreement. The amounts, times and rates of delivery of the In-Lieu Water to the RID GSF during any month shall be determined by the order submitted by RID to SRP prior to the beginning of each month.
- 7.3. In-Lieu Water shall be delivered by SRP through the SRP Water Delivery System under the Goodyear-SRP CSIF Lease and Water Transportation Agreement. Goodyear shall promptly request that SRP amend the Goodyear-SRP CSIF Lease and Water Transportation Agreement to include a provision requiring SRP to: (A) measure the total amount of In-Lieu Water received by RID under this Agreement each month; and (B) within forty-five (45) days after the end of the month in which RID receives In-Lieu Water under this Agreement ("Reporting Month"), provide a monthly report to Goodyear and RID that specifies the total quantity of In-Lieu Water received by RID under this Agreement, as verified by the CAWCD delivery schedule, for (i) the Reporting Month and (ii) the calendar year to date through the end of the Reporting Month (the "SRP Report").
- 7.4. Except as otherwise provided in this Agreement, RID shall have no obligation to conform to the requirements of the Goodyear CAP Contract, except RID shall pay to Goodyear twenty-five dollars (\$25.00) for each acre foot of In-Lieu Water received by RID under this Agreement, unless otherwise agreed by the Authorized Representatives. RID's payments shall be remitted to Goodyear as provided in Subparagraph 7.6.
- 7.5. RID shall be responsible for the In-Lieu Water and its delivery for use on RID land in the RID GSF once the water has been introduced to the RID canal system. Except as provided in the Goodyear-SRP CSIF Lease and Water Transportation Agreement, Goodyear shall not be charged a transportation fee for In-Lieu Water delivered to RID pursuant to this Agreement.
- 7.6. Within thirty (30) days after RID receives the SRP Report as described in Subparagraph 7.3, RID shall pay Goodyear for any In-Lieu Water received by RID under this Agreement during the Reporting Month in accordance with Subparagraph 7.4.
- 7.7. RID shall reduce its groundwater pumping from the RID Eastside Wells in accordance with Paragraph 8 hereof within the RID GSF on a gallon-for-gallon (or acre-foot-for-acre-foot) substitute basis in comparison to the amount of groundwater RID would have otherwise pumped from the RID Eastside Wells within the RID GSF had it not received the In-Lieu Water.

## **8. RID IN-LIEU WITHDRAWALS:**

The Parties acknowledge that RID's GSF Permit provides that RID shall use in lieu water that is delivered to the RID GSF in lieu of groundwater on a gallon-for-gallon substitute basis. For purposes of this Agreement, so long as RID complies with the requirements of the RID GSF Permit, the Parties shall presume that the In-Lieu Water RID receives under this Agreement was used by RID in-lieu of withdrawals from the RID Eastside Wells on a gallon-for-gallon substitute basis.

**9. PRIORITY OF WATER STORAGE; RID DUTY TO NOTIFY AND REIMBURSE:**

- 9.1. Each Party acknowledges that RID has a pre-existing relationship with the City of Phoenix ("Phoenix"), Litchfield Park Service Company, now Liberty Utilities ("LPSCO"), the City of Buckeye ("Buckeye") and ASARCO, LLC ("ASARCO") regarding water storage at the RID GSF. The Parties agree that, subject to RID obligations under Subparagraphs 9.2 and 9.3, storage of Goodyear CAP Water will be managed in such a manner as to assure that Phoenix's, LPSCO's, Buckeye's and ASARCO's ability to store effluent at the RID GSF is not negatively impacted. Goodyear acknowledges, understands, and agrees that, subject to RID's obligations to Goodyear under Subparagraphs 9.2 and 9.3, Phoenix, LPSCO, Buckeye and ASARCO have a superior right to store effluent in the RID GSF. RID acknowledges, understands, and agrees that Goodyear and the Gila River Indian Community ("GRIC"), on a pro-rata basis, shall have priority to store CAP water at the RID GSF once RID's obligations to store effluent for Phoenix, LPSCO, Buckeye and ASARCO are satisfied.
- 9.2. With respect to the accounting of any Goodyear CAP Water stored by Goodyear at the RID GSF, the Parties agree that RID shall annually report to ADWR total Goodyear CAP Water stored by Goodyear as follows: (1) RID shall give first priority to effluent storage by Phoenix and shall report all deliveries of effluent by Phoenix to ADWR in accordance with the requirements of ADWR and RID's agreements with Phoenix; (2) if LPSCO delivers reclaimed wastewater to the RID GSF, RID shall give second priority to the storage of LPSCO's reclaimed wastewater; (3) if Buckeye delivers Excess Reclaimed Water to the RID GSF, RID shall give third priority to the storage of Buckeye's Excess Reclaimed Water; (4) RID shall give fourth priority to the storage of ASARCO's CAP water; and (5) for the term of this Agreement, RID shall give fifth priority to Goodyear and GRIC, on a pro-rata basis. Goodyear acknowledges, understands, and agrees that decisions respecting the issuance of LTSCs are in ADWR's sole discretion, and RID makes no guarantees with respect thereto.
- 9.3. Within twenty (20) days after the end of each month, RID agrees to report to Goodyear (1) RID's total water use for the calendar year to date through the end of each month; (2) the amount of In-Lieu Water received for storage at the RID GSF from Phoenix, LPSCO, Buckeye, ASARCO, Goodyear and GRIC under arrangements described in Subparagraph 9.1 during the calendar year for (A) each month; and (B) the calendar year to date through the end of each month; and (3) the amount of capacity remaining in the RID GSF for the calendar year. RID shall notify Goodyear promptly during the calendar year if RID will be unable to store all of Goodyear's CAP Water as planned so that Goodyear has the opportunity to redirect the ordered Goodyear CAP Water to another storage facility before the end of such calendar year.

**10. RECOVERY, SALE, TRANSFER, OR EXCHANGE OF STORED WATER AND CREDITS:**

- 10.1. Goodyear shall have the right to recover, sell, or transfer any credits earned from the Goodyear CAP Water that Goodyear stores at the RID GSF under this Agreement.
- 10.2. RID and Goodyear acknowledge and agree that recovery of water stored underground in the RID GSF under this Agreement and applicable permits is beyond the scope of this

Agreement, and recovery of such water shall be the sole responsibility of the Party desiring to recover such water.

**11. WATER QUALITY:**

Neither Party guarantees the quality of In-Lieu Water delivered, received or used pursuant to this Agreement. Each Party waives its right to make a claim against the other Party for the effect on the quality of surface or underground water as a result of this Agreement, unless such effect on water quality is the result of such other Party's negligent or wrongful action or inaction.

**12. INDEMNIFICATION:**

Each Party (Indemnitor) to this Agreement shall indemnify and hold harmless the other Party (Indemnitee) and its governing bodies, agents, directors, officers, and employees from any loss, damage, or liability, including reasonable attorney's fees, caused by a negligent or wrongful action or inaction on the part of the indemnitor and its governing bodies, agents, directors, officers, and employees, including without limitation, claims for bodily injury, illness, death, or damage to property. Each Party shall assume liability for its own negligent or wrongful action or inaction.

**13. UNCONTROLLABLE FORCES:**

Neither Party shall be considered to be in default in the performance of any of its obligations hereunder (other than obligations of the Parties to make payments due hereunder) when a failure of performance shall be due to uncontrollable forces. The term "uncontrollable forces" shall mean any cause beyond the control of the Party unable to perform such obligation, including, but not limited to, failure of or threat of failure of facilities, flood, earthquake, storm, fire, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, strike, labor dispute, labor or material shortage, sabotage, and restraint by court order or public authority, and action or nonaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority, which by exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Nothing contained herein shall be construed to require either Party to settle any strike or labor dispute in which it is involved.

**14. NOTICES:**

Any notice, demand or request provided for in this Agreement shall be in writing and delivered in person, or sent by registered or certified mail, postage prepaid, to:

**ROOSEVELT IRRIGATION DISTRICT**

Roosevelt Irrigation District  
Attention: Superintendent  
103 West Baseline  
Buckeye, AZ 85326

Reference: Goodyear/Roosevelt Irrigation District Groundwater Savings Facility Agreement  
(With a copy to the RID Authorized Representative)

## **GOODYEAR**

City of Goodyear

Attention: City Manager and Water Resources

190 North Litchfield Rd.

Goodyear, AZ 85338

Reference: Goodyear/Roosevelt Irrigation District Groundwater Savings Facility Agreement  
(With a copy to the Goodyear Authorized Representative)

### **15. WAIVER:**

The waiver by either Party of any breach of any term, covenant or condition herein shall not be deemed a waiver of any other term, covenant or condition, or any subsequent breach of the same or any other term, covenant or condition herein.

### **16. TRANSFER OF INTEREST:**

No voluntary transfer of this Agreement or the rights or obligations of Goodyear under this Agreement shall be made without the written consent and approval of RID, except (a) to a successor in operation of the properties of Goodyear, or (b) to an Affiliate of Goodyear; however, water credits accrued by Goodyear from operation of the RID GSF may be assigned at the sole discretion of Goodyear. For purposes of the foregoing, an "Affiliate" is any legal entity directly or indirectly, controlling, controlled by or under common control with Goodyear.

### **17. GOVERNING LAW:**

This Agreement is made under, and shall be construed in accordance with and governed by, the laws of the State of Arizona without regard to the conflicts or choice of law provisions thereof. Any action to enforce any provision of this Agreement or to obtain any remedy with respect hereto shall be brought in the Superior Court, Maricopa County, Arizona, and for this purpose, each Party and SRP (in consideration of accepting its third-party beneficiary status) hereby expressly and irrevocably consents to the jurisdiction and venue of such Court.

### **18. HEADINGS:**

Title and paragraph headings herein are for reference only and are not part of this Agreement.


### **19. ENTIRE AGREEMENT:**

The terms, covenants and conditions of this Agreement constitute the entire Agreement between the Parties, and no understandings or obligations not herein expressly set forth shall be binding upon them. This Agreement may not be modified or amended in any manner unless in writing and signed by the Parties.

[signatures on the following pages]

IN WITNESS WHEREOF, this Agreement was executed by the Parties on the date first hereinabove written.

**ROOSEVELT IRRIGATION DISTRICT**

By:   
Name: DONOVAN L. NEESE  
Title: SUPERINTENDENT

**CITY OF GOODYEAR**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**EXHIBIT A**  
to  
GROUNDWATER SAVINGS FACILITY AGREEMENT  
BETWEEN  
ROOSEVELT IRRIGATION DISTRICT  
AND  
THE CITY OF GOODYEAR  
  
Goodyear CAP Contracts

1. Subcontract No. 07-XX-30-W0498, among the United States, the Central Arizona Water Conservation District, and Goodyear entitled "Subcontract Among the United States, the Central Arizona Water Conservation District, and Goodyear Providing for Water Service dated May 25, 2007
2. Lease Agreement for Central Arizona Project Water among City of Goodyear, the Gila River Indian Community, and the United States dated May 15, 2006