

RESOLUTION NO. 2020-2074

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, ADOPTING THE WASTEWATER MASTER PLAN FOR SECTION 23 IMPROVEMENTS PREPARED BY HILGART WILSON; AMENDING THE 2016 CITY OF GOODYEAR INTEGRATED WATER MASTER PLAN, TERMINATING COST RECOVERY RESOLUTION OF INTENTION NO. 2008-1279; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the area in the city known as "Section 23" is the square mile within the city that is bounded by Camelback Road on the north, Indian School Road on the south, Citrus Road on the west and Cotton Lane pm the east; and

WHEREAS, in 2008, Liberty Property Limited Partnership ("Liberty"), which owned property within Section 23, anticipated developing its property, which required the extension of public wastewater system improvements into Section 23; and

WHEREAS, Liberty submitted a wastewater infrastructure plan to provide wastewater service to Section 23, including its property (the 2008 Section 23 Wastewater Plan"); and

WHEREAS, Liberty's wastewater infrastructure plan required Liberty to construct wastewater infrastructure improvements that would benefit other property owners within the Section 23; and

WHEREAS, on December 8, 2008, at Liberty's request, the mayor and council of the city of Goodyear adopted cost recovery Resolution of Intention No. 2008-1279 to provide for the collection of the proportionate share of the costs of the infrastructure improvements from the various benefitted properties (the "Cost Recovery Resolution"); and

WHEREAS, on that same day, December 8, 2008, the mayor and council of the city of Goodyear adopted Resolution 2008-1280 authorizing the execution of a reimbursement development agreement with Liberty that provided for the reimbursement of the costs of the infrastructure improvements Liberty had to construct to receive wastewater service to its property ("2008 Liberty Reimbursement Agreement") and approving a form of reimbursement agreement that would be used for any entity that constructed any of the infrastructure improvements included in Cost Recovery Resolution; and

WHEREAS, under the terms of the 2008 Liberty Reimbursement Agreement, if construction of the infrastructure improvements identified in the agreement was not commenced within forty-eight (48) months of the date the 2008 Liberty Reimbursement Agreement was recorded, either party could terminate the agreement; and

WHEREAS, because of the downturn in the economy, Liberty had not commenced the construction of the infrastructure improvements identified in the 2008 Liberty Reimbursement Agreement and did not anticipate that Liberty would commence construction within forty-eight (48) months of the date the 2008 Liberty Reimbursement Agreement was recorded and Liberty sought to terminate the 2008 Liberty Reimbursement Agreement and enter a new reimbursement

agreement that provided more time within which to commence the construction of the required infrastructure improvements; and

WHEREAS, on April 27, 2012, the mayor and council of the City of Goodyear adopted Resolution 2012-1497 terminating the 2008 Liberty Reimbursement Agreement and authorizing the execution of another reimbursement development agreement with Liberty that provided for the reimbursement of the costs of the infrastructure improvements Liberty had to construct to receive wastewater service to its property (the "2012 Liberty Reimbursement Agreement"); and

WHEREAS, The infrastructure improvements in the 2008 Section 23 Wastewater Plan were incorporated into the City of Goodyear's integrated master utility studies, including the most recent integrated water master plan, the 2016 Integrated Water Master Plan (the "IWMP"); and

WHEREAS, under the terms of the 2012 Liberty Reimbursement Agreement, either party to the agreement is entitled to request that the agreement be terminated if construction of the infrastructure improvements identified in the agreement had not been commenced within forty-eight (48) months of the date the agreement was recorded with the Maricopa County Recorder (the "Commencement Deadline"); and

WHEREAS, because construction of the infrastructure improvements identified in the 2012 Liberty Reimbursement Agreement had not commenced by the Commencement Deadline, the city executed its right to terminate the agreement; and

WHEREAS, on March 23, 2020, a Termination or Reimbursement Development Agreement for Public Improvement Cost Recovery-Section 23 Sewer System was executed by Liberty Property Trust on behalf of Liberty; and

WHEREAS, none of the infrastructure improvements have been constructed or installed since the 2008 Section 23 Wastewater Plan was approved and the Cost Recovery Resolution was adopted; and

WHEREAS, since the Cost Recovery Resolution was adopted, there has been a change in ownership of various properties within Section 23 and changes in development plans; and

WHEREAS, various owners of properties within Section 23 have approached the city proposing alternative wastewater solutions; and

WHEREAS, the alternative wastewater solutions are based on more detailed engineering analysis and provide a more efficient and effective wastewater solution consistent with applicable regulatory requirements; and

WHEREAS, the Wastewater Master Plan for Section 23 Improvements prepared by Hilgart Wilson, a copy of which is attached hereto as Exhibit "A" (the "2019 Section 23 Wastewater Master Plan") provides an alternative wastewater solution that is consistent with what other property owners in Section 23 have requested; and

WHEREAS, engineering staff supports the 2019 Section 23 Wastewater Master Plan; however before it can be implemented, the IWMP, which incorporated the 2008 Section 23 Wastewater Plan, has to be amended to adopt the 2019 Section 23 Wastewater Master Plan and the Cost Recovery Resolution terminated; and

WHEREAS, there have been on-going communications between various owners of property within Section 23 and/or their representatives about the proposed changes to the wastewater solution for Section 23 and the termination of the Cost Recovery Resolution, and on or about May 19, 2020, Ed Bull Burch & Cracchiolo, on behalf of its client, sent notices to the owners of the properties within Section 23 and/or their representatives, advising that the city council will consider adopting the 2019 Section 23 Wastewater Master Plan and terminating the Cost Recovery Resolution during the meeting on June 22, 2020; and

WHEREAS, an Affidavit of Mailing with a copy of the form of the notice that was sent, along with a list of the persons and/or entities that were sent the notice are attached hereto as Exhibit "B"; and

WHEREAS, on June 9, 2020 at 11:00 a.m., a virtual meeting over Zoom was held so that the interested parties could discuss the pending actions; and

WHEREAS, staff has not received any objections to the proposed actions; and

WHEREAS, the amendment of the IWMP to incorporate the 2019 Section 23 Wastewater Master Plan and the termination of the Cost Recovery Resolution will allow for a more efficient and effective, alternative solution that complies with the city's requirement and will facilitate the development of a pending economic development project; and

WHEREAS, the mayor and council find that the amendment of the IWMP to incorporate the 2019 Section 23 Wastewater Master Plan and the termination of the Cost Recovery Resolution is in the best interests of the city of Goodyear and its residents.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:

SECTION 1. The Wastewater Master Plan for Section 23 Improvements prepared by Hilgart Wilson, a copy of which is attached as Exhibit hereto as Exhibit "A" (the "2019 Section 23 Wastewater Master Plan") is hereby adopted and the 2016 City of Goodyear Integrated Water Master Plan is hereby amended to incorporate the infrastructure improvements 2019 Section 23 Wastewater Master Plan.

SECTION 2. The cost recovery Resolution of Intention No. 2008-1279 adopted by the mayor and council of the city of Goodyear on December 8, 2008 is hereby terminated and shall have no further force or effect.

SECTION 3. This resolution shall be effective upon the date it is passed and adopted by the mayor and council of the city of Goodyear.

Exhibit “A”

Wastewater Master Plan for Section 23 Improvements
Prepared by Hilgart Wilson

Exhibit “B”

Affidavit of Mailing with
copy of form of notice and list of recipients