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**Transcript Exhibit(s)**

**Docket #(s):** EW-01428A-08-0234

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**Exhibit #:** J1, C1

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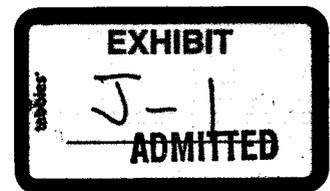
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**SETTLEMENT AGREEMENT**

This Settlement Agreement (the "Agreement") is dated September 12, 2008, and is by and between Westcor/Goodyear LLC ("Westcor"), Globe Land Investors, L.L.C. ("Globe"), and Litchfield Park Service Company ("Utility"). Westcor, Globe, and Utility may be referred to collectively as "the Parties" or individually as a "Party." Westcor and Globe may be referred to collectively as "Developers."

**RECITALS**

- A. Utility is a public service corporation within the meaning of Article 15, § 2 of the Arizona Constitution, and is authorized to provide water and wastewater utility service within portions of Maricopa County, Arizona, in accordance with a Certificate of Convenience and Necessity ("CC&N") granted by order of the Arizona Corporation Commission ("Commission").
- B. Developers have worked together in the development of Estrella Falls, a 330-acre master planned mixed-use land development located north of Interstate 10 between Pebble Creek Parkway and Bullard Avenue in the City of Goodyear. Three hundred of the 330 acres are located north of McDowell Road and within Utility's CC&N.
- C. Globe and Utility are, among other things, parties to the Commercial Wastewater Facilities Agreement between Utility and Globe, dated June 1, 2001 ("the 2001 Commercial Agreement"), together with a Commercial Water Facilities Agreement, Residential Wastewater Facilities Agreement, and a Residential Water Facilities Agreement, of the same date (together the four Agreements may be referred to as the "Development Agreements"). Westcor and Globe have agreed that each Party would be responsible for funding their respective portions of the facility advances and offsite infrastructure improvements necessary to provide water and wastewater utility service under the Development Agreements.
- D. The 2001 Commercial Agreement requires two phased payments for treatment capacity to serve the 300 commercial acres located within Utility's CC&N service territory. Phase I capacity payments were intended to secure wastewater service for Phase I of Estrella Falls, a portion of a 66-acre retail "power center" on the northeast corner of McDowell and Pebble Creek Parkway. This power center is anticipated to consist of 500,000 square feet of retail space, including tenants, shops, pad buildings, and hotels. The Phase I capacity payments provided Developers the right to receive, and Utility the obligation to provide, wastewater treatment service for up to 60,000 gallons of average daily flow.
- E. The 2001 Commercial Agreement also requires Developers to provide a payment to Utility for any and all necessary facilities to secure wastewater service for Phase II of Estrella Falls, which consists of the balance of the power center development and a regional mall known as the Estrella Falls regional shopping center (which Westcor intends to open in fall 2010), along with additional commercial mixed-use developments ("the Phase II Capacity Payment"). The Phase II Capacity Payment provides Developers

the right to receive, and Utility the obligation to provide, wastewater treatment service for Phase II of Estrella Falls.

- F. Developers and Utility have disputed the amount of the Phase II Capacity Payment required to be paid by Developers to Utility under the 2001 Commercial Agreement.
- G. On May 5, 2008, Developers filed a formal complaint against Utility at the Arizona Corporation Commission ("Commission") concerning, among other things, whether the Phase II Capacity Payment is set by the 2001 Commercial Agreement and, if so, the proper amount of the Phase II Capacity Payment due Utility under the 2001 Commercial Agreement. The Commission docketed the complaint as Docket No. SW-01428A-08-0234 (the "Commission Complaint"). Utility denied and continues to deny any and all claims, allegations and liabilities as alleged by Developers in the Commission Complaint.
- H. On May 5, 2008 Developers filed a formal complaint against Utility in the Superior Court for the County of Maricopa concerning, among other things, the proper amount of the Phase II Capacity Payment due Utility under the 2001 Commercial Agreement. The Court has docketed the complaint as Docket No. CV 2008-010349 (the "Court Complaint"). Utility denied and continues to deny any and all claims, allegations and liabilities as alleged by Developers in the Court Complaint.
- I. Following arms-length negotiations between the Parties, and following consultations with representatives of the Commission and the City of Goodyear, the Parties wish to resolve all issues in the Commission Complaint and the Court Complaint and wish to memorialize their understandings and agreements in this Settlement Agreement. In this Agreement, the Parties desire to settle all claims existing between the Developers and Utility relating to the 2001 Commercial Agreement, the Commission Complaint and the Court Complaint. The Parties have agreed to the following terms and conditions as a compromise of disputed issues and claims between the Parties, and without admitting any fault or liability.
- J. The City of Goodyear ("Goodyear") has agreed to enter into a Memorandum of Agreement ("MOA") with Utility pursuant to which Goodyear has agreed to provide Utility with backup bulk wastewater treatment capacity to serve Phase I and Phase II of the Estrella Falls project in the event Utility is delayed in the planned expansion of its Palm Valley Water Reclamation Facility. Upon execution, the MOA will be incorporated as Exhibit A to this Settlement Agreement.

NOW, THEREFORE, in exchange for and in consideration of the foregoing recitals and the mutual covenants, obligations contained herein, and for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereby agree as follows:

### **TERMS AND CONDITIONS**

#### **1. Wastewater Utility Service**

- 1.1. Utility shall provide wastewater utility service to Developers for Phase II of the Estrella Falls project in accordance with the terms, conditions and schedule set forth in the

August 13, 2008 Will-Serve Letter from Utility to Developers (“Will-Serve Letter”) and the August 21, 2008 letter from Utility to Developers. A copy of the Will-Serve Letter is attached to this Agreement as Exhibit B and incorporated herein by reference in its entirety. A copy of the August 21, 2008 letter is attached to this Agreement as Exhibit C and incorporated herein by reference.

1.2. Utility anticipates providing treatment capacity for Phase II of the Estrella Falls project through a planned expansion of its Palm Valley Water Reclamation Facility (“PVWRF”). To the extent that expansion of the PVWRF is not feasible or delayed, Utility will provide alternative treatment capacity to satisfy Developers’ Phase II Capacity requirements in accordance with the terms and conditions set forth in the Will-Serve Letter, including, without limitation, use of the bulk treatment capacity provided to Utility by Goodyear pursuant to the MOA.

2. **Permits.**

2.1. Based on Utility’s understanding of the permitting requirements for the estimated one-million gallon per day (mgd) expansion of the PVWRF, and discussions with Goodyear, Utility represents and warrants that it is not presently aware of (i) any information that would prevent completion of the expansion of the PVWRF, or (ii) any information that would prevent issuance of all necessary regulatory permits and approvals necessary for construction of wastewater facilities to serve Phase II of Estrella Falls.

2.2. Utility will be required to obtain any and all necessary regulatory permits required by Arizona Department of Environmental Quality (“ADEQ”), Maricopa County, Goodyear and/or any other governmental entity, as applicable, asserting jurisdiction over the operation of the Utility. Developers acknowledge and agree that the permit requirements and timelines and issuance of the permits are beyond Utility’s control and that Utility’s service obligations are contingent on issuance of all necessary governmental permits and approvals.

2.3. Utility has begun the preliminary permitting process and will immediately take actions to secure the necessary permits upon satisfaction of Developers’ payment obligations under this Agreement. Such actions will include, but not be limited to, preparing appropriate engineering drawings, and preparing necessary submittals to and responding to information requests from, Goodyear, ADEQ, and other regulatory agencies with jurisdiction.

3. **Amount of Capacity.**

3.1. Utility will provide treatment capacity for Phases I and II of the Estrella Falls project, described as Parcels 1 through 13 in Exhibit D to this Agreement, to the maximum treatment capacity amount for Phases I and II of the Estrella Falls project as requested by Developers pursuant to ¶ 3.2 below.

3.2. The Parties affirm their previous agreement that Utility will provide Phase I treatment capacity in the amount of 60,000 gallons per day (“gpd”) (“Phase I Capacity”). Based upon demand as calculated in accordance with A.A.C. Title 18, Chapter 9, Table 1 - Unit

Design Flows (2005), as amended, or such successor standards used by ADEQ to calculate unit design flows for permitting new utility sewage collection systems, Developers have requested that Utility provide Phase II wastewater treatment capacity in the amount of 558,780 gpd for Phase II of Estrella Falls ("Phase II Capacity"). Upon satisfaction of Developers' payment obligations under this Agreement, Utility shall provide Developers with 558,780 gallons of Phase II Capacity. Developers understand and agree that Utility is not making any representations regarding whether such treatment capacity will meet the demands of Phase II of Estrella Falls at full build-out.

- 3.3. Should Developers or any successor party request wastewater utility service from Utility for the Estrella Falls project or any other project such that the total cumulative demand, and usage of Phases I and II of the project, calculated using flow rates from A.A.C. Title 18, Chapter 9, Table 1 - Unit Design Flows (2005), as amended, or such successor standards used by ADEQ to calculate unit design flows for permitting new utility sewage collection systems, would exceed 618,780 gpd (Phase I Capacity of 60,000 gpd plus Phase II Capacity of 558,780 gpd), any such excess demand will be considered new capacity and not Phase II Capacity. Such capacity will not be subject to the 2001 Commercial Agreement, and will be subject to Utility's then applicable development and funding requirements, and Commission-approved tariffs.

#### 4. Capacity Payment.

- 4.1. Developers' payment for Phase II Capacity is calculated at the rate of \$8.67 per gallon. Based on Developer's requested Phase II Capacity of 558,780 gpd, Developers' total required Phase II Capacity Payment is \$4,844,623.
- 4.2. Developers' Phase II Capacity Payment will be treated by Utility as an advance in aid of construction, subject to refunding in accordance with the provisions of the 2001 Commercial Agreement.
- 4.3. Developers' Phase II Capacity Payment shall be tendered in the form of a check made payable to Utility within five (5) days of the effective date of this Agreement as set forth below. That Phase II Capacity Payment shall constitute the full amount that Developers are obligated to pay for 558,780 gallons per day of Phase II Capacity, except as noted in § 5 below. Further, this provision does not apply to Developers' payment obligations or other applicable fees under any and all line extension agreements executed between the parties for the Phase II project.
- 4.4. Developers' obligations under this Agreement are subject to approval of the MOA by the Goodyear City Council in a form acceptable to Developers no later than October 15, 2008 with such approval not to be unreasonably withheld by Developers, unless otherwise agreed by Developers. In the event that the City Council does not approve the MOA by October 15, 2008, Developers shall have the right to void this Agreement. Developers agree, represent and warrant that Utility does not have any control over the decision by the Goodyear City Council to approve the MOA, and that any failure of the City to approve or execute the MOA does not imply that Utility lacks the ability to or is unwilling to provide wastewater utility service to the Estrella Falls Project.

5. **Protection Against Stranded Investment.**

5.1. The treatment capacity, capacity price, payment and funding terms of this Agreement are based on Developers' representations that they intend to proceed with the full development of Phase II of Estrella Falls as intended to require 558,780 gallons of treatment capacity of Phase II in accordance with Developers' project schedule. In the events that Utility finances and constructs, partially or completely, the necessary expansion of PVWRF (or any other facility) to provide treatment capacity for Phase II of the Estrella Falls project, and Developers cancel Phase II or materially reduce the capacity needs of Phase II by 10% or more, then Developers shall reimburse Utility the full amount of Utility's stranded investment in the treatment capacity dedicated to serve Phase II of the Estrella Falls project. In that event, Developers shall pay to Utility the full amount of Utility's stranded investment in treatment capacity calculated as [(the actual per gallon cost incurred by Utility to finance and construct 558,780 gallons per day of treatment capacity - \$8.67 per gallon) x (the amount of Stranded Capacity, as defined in the next paragraph, exceeding 55,878 gallons)].

5.2. Developers' payment obligations shall accrue upon issuance of a final decision by the Commission disallowing all or a portion of such Phase II capacity and facilities from inclusion in Utility's rate base because such capacity exceeds the amount required to provide service to Utility's customers within its CC&N and/or for any other similar reason. The amount of such capacity disallowance is defined as the "Stranded Capacity." Upon issuance of such final decision and/or order by the Commission, Developer shall make payment for Stranded Capacity within 21 days of written demand by Utility. Developers shall be jointly and severally liable for the payment obligations under this paragraph.

5.3. Demands in this Section will be calculated in accordance with A.A.C. Title 18, Chapter 9, Table 1 - Unit Design Flows (2005), as amended, or such successor standards used by ADEQ to calculate unit design flows for permitting new utility sewage collection systems.

6. **Notice of Intent to Commence Construction.** After issuance of the Commission approval set forth in § 10 below and after issuance of the regulatory permits set forth in § 2 above, Utility shall notify Developers in writing that all permits have been issued and that Utility intends to proceed with construction, financing and contracting for the wastewater facilities to serve Phase II of the project. Upon receipt of such notice, Developers shall have five (5) business days to notify Utility to cease construction of the wastewater facilities. If Developers do not advise Utility in writing to cease construction within that five (5) day period, Utility shall be deemed authorized to commence construction of the facilities, Developers' Phase II Capacity Payment shall become non-refundable and Developers' remaining payment obligations under this Agreement shall be perfected and enforceable against Developers, jointly and severally. If Developers advise Utility in writing to cease construction within that five (5) day period, Utility shall refund the unused portion of the Phase II Capacity Payment to Developers, after accounting for any and all costs incurred by Utility.

7. **Dismissal of Pending Litigation and Release.** Within five (5) days of the effective date of this Agreement, Developers will dismiss the Court Complaint with prejudice, with each Party bearing its own costs and attorney's fees. Further, upon the effective date of this Agreement, Developers fully and forever release and discharge Utility from any and all claims, causes of actions, demands, or damages of any kind relating in any way to the issues that were raised or could have been raised in the Court Complaint, the Commission Complaint and any and all claims, causes of actions, demands, or damages of any kind relating to the 2001 Commercial Agreement.
8. **Existing Agreements.** Except as expressly set forth in this Agreement, all other terms and conditions of the Parties' Development Agreements, including the 2001 Commercial Agreement, remain in full force and effect.
9. **Line Extension Agreements.** For all future development up to the amount of the total Phase I and Phase II Capacity, the Parties will expeditiously execute necessary water and wastewater line-extension agreements in the forms attached as Exhibit E and Exhibit F.
10. **Commission Approval; Effectiveness of Agreement, Effective Date.** The Parties jointly require Commission approval of this Settlement Agreement, including the financing and funding provisions pertaining to Developers, and will jointly file for approval of this Agreement including the negotiated capacity price of \$8.67/gallon and the amount of Developer funding, advances and contributions.
  - 10.1. **Cooperation of the Parties.** The Parties agree to cooperate fully and in good-faith to take any and all steps necessary and reasonable to seek Commission approval of this Agreement without material change by October 22, 2008. If the Commission determines that it does not have authority to approve this Agreement, the Parties shall seek Commission approval of the financing and funding provisions set forth in § 4 of this Agreement without material change by October 22, 2008. Such approval shall be sought in the Commission Complaint proceeding under Docket No. SW-01428A-08-0234. For purposes of this Agreement, a "material change" shall be a modification, alteration or amendment to this Agreement and/or any of its individual terms and conditions, including its funding, payment and financing provisions, such that a reasonable person would view such modification, alteration or amendment as materially influencing the decision whether to enter this Agreement.
  - 10.2. **Commission Approval Without Material Change.** If the Commission approves this Agreement without material change, or alternatively, if the Commission determines that it does not have authority to approve this Agreement but approves the financing and funding provisions contained in § 4 of this Agreement without material change, then Utility shall submit a statement of acceptance in writing within five (5) days of such order being issued by the Commission.
  - 10.3. **Commission Approval With Material Change.** If the Commission issues an order approving this Agreement but with material changes, or alternatively, if the Commission determines that it does not have authority to approve this Agreement but approves the financing and funding provisions in § 4 of this Agreement with material

change, then each Party shall submit a statement of acceptance or non-acceptance within five (5) days of such order being issued by the Commission. If either Party fails to issue such statement within that five (5) day period, then the Commission order shall be deemed acceptable by that Party. If any Party refuses to accept the order, then the Parties shall meet within seven (7) days to discuss whether the reason for non-acceptance can be cured or resolved. If such statement of non-acceptance is not withdrawn and a statement of acceptance issued as a result of such meeting, the Parties hereby agree that this Agreement shall have no force and effect, shall become null and void, and that the Parties' existing Development Agreements shall remain in full force and effect, subject to the existing dispute between the Parties.

- 10.4. **Commission Denial of Approval.** If the Commission issues an order denying approval of this Agreement, or alternatively, or if the Commission determines that it does not have authority to approve this Agreement but denies the financing and funding provisions contained in this Agreement, then the Parties hereby agree that this Agreement shall have no force and effect, shall become null and void, and that the Parties' existing Development Agreements shall remain in full force and effect, subject to the existing dispute between the Parties.
- 10.5. **Effective Date.** The Parties agree that the effective date of this Agreement shall be the date upon which either (i) Utility issues a statement of acceptance under ¶ 10.2 or (ii) both parties issue a statement of acceptance under ¶ 10.3 indicating that the Commission decision and order approving this Agreement is acceptable in accordance with the provisions set forth above. If the Commission does not issue a decision and order by October 22, 2008, then this Agreement shall be void and of no further effect, unless otherwise agreed by the Parties. Within five business days of the effective date of this Agreement, Developers shall dismiss the Court Complaint with prejudice in accordance with §7 above, and tender to Utility the Phase II Capacity Payment required in §4 of this Agreement.
11. **Limitations.** Unless expressly approved by the Commission, none of the positions taken in this Agreement by any of the Parties may be referred to, cited to, or relied upon by any other Party or person in any fashion as precedent or otherwise in any proceeding before the Commission or any other regulatory agency or before any court of law for any purpose except in furtherance of the purpose and results of this Agreement.
12. **Compromise and Settlement.** This Agreement is the compromise of disputed claims between the Parties, and is not to be construed as an admission of liability by any Party.
13. **Severability.** The terms of this Agreement are in consideration and support of all other terms. Accordingly, such terms are not severable.
14. **Support and Defend.** The Parties pledge to support and defend this Agreement before the Commission or Superior Court, including appearing at any Open Meeting of the Commission or Court hearing when such agreement is considered, and not to take any position, either before the Commission, Superior Court or elsewhere, that is inconsistent with the terms of this Agreement.

15. **Sole Agreement**. With respect to its subject matter, including without limitation all matters incorporated herein by reference, this Agreement is a complete integration and final expression of the Parties' rights and duties, and there are no other agreements or understandings between the Parties to the contrary, except as set forth in this Agreement.
16. **Modifications**. This Agreement shall not be altered, modified or amended except by written agreement signed by the Parties.
17. **Governing Law**. This Agreement shall be governed by and construed in accordance with Arizona law.
18. **Attorneys' Fees and Costs**. In the event an action is commenced to enforce or declare the rights of the parties under this Agreement, the prevailing party in such action shall collect its legal costs and reasonable attorneys' fees, in addition to all other available relief.
19. **Authorization to Execute**. Each Party executing this Agreement represents and warrants that he or she is fully authorized to do so. Each Party represents to the other parties hereto that it has authority to perform its respective obligations under this Agreement, and that it is not in violation of any other agreements or binding arrangements in so entering into or performing under this Agreement, and that there are no other parties to be bound by this Agreement in order to fully resolve the claims.
20. **Counterparts**. This Agreement may be executed in counterparts.

Executed by the Parties as of September 12<sup>th</sup>, 2008.

**Litchfield Park Service Company,**  
an Arizona corporation

By: Robert Dodds  
Robert Dodds  
Its President

**Westcor/Goodyear, L.L.C.,** an Arizona limited liability  
company

By: the Westcor Company II Limited Partnership, an  
Arizona limited partnership, its managing member

By: Macerich TWC II Corp., a Delaware  
corporation, its general partner

By: \_\_\_\_\_  
Charles McPhee, Sr  
Its Senior Vice President

**Globe Land Investors, L.L.C.,** a Delaware limited liability  
company

By: the Globe Corporation, a Delaware Corporation, its  
managing member

By: \_\_\_\_\_  
George Getz  
Its President

Executed by the Parties as of September 12, 2008.

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By: Macerich TWC II Corp., a Delaware  
corporation, its general partner

By: Charles McPhee  
Charles McPhee, Sr  
Its Senior Vice President

**Globe Land Investors, L.L.C.,** a Delaware limited liability  
company

By: the Globe Corporation, a Delaware Corporation, its  
managing member

By: \_\_\_\_\_  
George Getz  
Its President

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**Litchfield Park Service Company,**  
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Its President

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Arizona limited partnership, its managing member

By: Macerich TWC II Corp., a Delaware  
corporation, its general partner

By: \_\_\_\_\_  
Charles McPhee, Sr  
Its Senior Vice President

**Globe Land Investors, L.L.C.,** a Delaware limited liability  
company

By: the Globe Corporation, a <sup>Illinois</sup> ~~Delaware~~ Corporation, its  
managing member

By:  \_\_\_\_\_  
George Getz  
Its President

**MEMORANDUM OF AGREEMENT  
REGARDING BULK WASTEWATER TREATMENT SERVICE**

This Memorandum of Agreement Regarding Bulk Wastewater Treatment Service ("MOA") is made and entered into this 16 day of September, 2008 by and between the City of Goodyear, Arizona, an Arizona municipal corporation ("Goodyear") and Litchfield Park Service Company ("LPSCo"), an Arizona public service corporation.

WHEREAS, LPSCo is a public service corporation within the meaning of Article 15, § 2 of the Arizona Constitution, and is authorized to provide water and wastewater utility service within portions of Maricopa County, Arizona, in accordance with Certificates of Convenience and Necessity ("CC&N") granted by order of the Arizona Corporation Commission ("Commission").

WHEREAS, Developers Westcor/Goodyear LLC ("Westcor") and Globe Land Investors, LLC ("Globe") (collectively "Developers") have requested that LPSCo provide wastewater utility service to Phases I and II of the Estrella Falls project.

WHEREAS, Developers have requested that LPSCo provide wastewater treatment capacity for Phase I of their project in the amount of 60,000 gallons per day ("gpd") and Phase II of the project in the amount of 558,780 gpd. Phase II of the project which is intended to consist of a 66-acre retail "power center" on the northeast corner of McDowell Road and Pebble Creek Parkway and a regional shopping mall (to be known as the Estrella Falls regional shopping center which Westcor intends to open in the fall of 2010), along with other commercial mixed-used developments.

WHEREAS, Goodyear has represented to LPSCo and Developers that Goodyear is willing to enter into a memorandum of agreement under which Goodyear would provide LPSCo with temporary bulk wastewater treatment capacity at its 157<sup>th</sup> Street wastewater treatment plant in order accommodate wastewater flows from Phases I and II of Estrella Falls in the event such treatment capacity is needed by LPSCo to meet Developers' project schedule and might not otherwise be available at a LPSCo facility due to permitting or construction delays. Goodyear has agreed to offer such temporary capacity so as to allow the unimpeded development of the Estrella Falls project without further concern as to the availability of wastewater treatment capacity from LPSCo while LPSCo develops and constructs permanent treatment capacity as required for Phase II of the project.

WHEREAS, Goodyear and LPSCo agree that LPSCo shall have the right to direct up to 300,000 gpd of wastewater for treatment to Goodyear's 157<sup>th</sup> Avenue Water Reclamation Facility (or other City facility as mutually determined by Goodyear and LPSCo) for the Estrella Falls project during the term of this MOA.

WHEREAS, in the event LPSCo desires to use such treatment capacity, LPSCo has agreed to pay to Goodyear the current commercial sewer rates in effect at that time as approved by the Goodyear City Council;

NOW THEREFORE, Goodyear and LPSCo hereby agree as follows:

1. **LPSCO'S RIGHT TO USE TREATMENT CAPACITY.** During the term of this MOA, LPSCo shall have the right to direct up to 300,000 gpd of wastewater for treatment at Goodyear's 157<sup>th</sup> Avenue Water Reclamation Facility ("WRF") (or other City facility as determined by Goodyear) from the flows generated from Phases I and II of the Estrella Falls project to accommodate the projected wastewater treatment capacity needs for the Estrella Falls project. Goodyear represents and warrants that it has 300,000 gpd of available treatment capacity in the 157<sup>th</sup> Avenue WRF or other facility. The Parties expressly understand and agree that LPSCo shall not be obligated to use such treatment capacity, but that LPSCo will have the right to use as much of such capacity as LPSCo determines it needs in the event such treatment capacity is needed by LPSCo to accommodate the wastewater treatment capacity needs for the Estrella Falls project. .

a. It is anticipated that the wastewater flows shall be delivered through a new interconnection along McDowell Road. LPSCo and Goodyear shall mutually agree as to the final location and design of any interconnections when and if required to convey flows to Goodyear and LPSCo shall be responsible for constructing, at Developers cost, any interconnection or other facilities connecting to Goodyear's collection system or treatment facility.

b. Goodyear shall accept and treat any and all wastewater from LPSCo up to 300,000 gpd until such time as LPSCo has constructed its own treatment capacity to accommodate such flows, the term of this MOA expires or this MOA is terminated in accordance with ¶ 2 below.

c. Goodyear shall charge, and LPSCo shall pay, the City's then current commercial sewer rates in effect at that time for all wastewater flows. The Parties agree that treated wastewater volume will be determined by flow measurement as provided by LPSCo and subject to verification by Goodyear.

d. Goodyear shall retain full ownership, operational control and maintenance of the 157<sup>th</sup> Avenue WRF or any other treatment facility used to provide treatment capacity and service to LPSCo under this MOA.

e. Goodyear represents and warrants that LPSCo's use of Goodyear's treatment capacity under this MOA will not require any permit modification or other regulatory approvals. To the extent such permit modification or regulatory approval becomes necessary, Goodyear shall pursue such approvals and permits expeditiously and shall be responsible for any and all costs of such permit or approval process.

2. **GOODYEAR'S RIGHT TO TERMINATE TREATMENT CAPACITY/LPSCO'S OPTION FOR PERMANENT TREATMENT CAPACITY.** Goodyear reserves the right to allocate or transfer the 300,000 gpd in available capacity in the 157<sup>th</sup> Ave WRF (or other City treatment facility) to other projects or users within the City's service area upon expiration of this MOA. Goodyear shall do so only in the

event that Goodyear does not have other available treatment capacity to serve such user(s). In that event, Goodyear shall provide LPSCo with eighteen (18) months advance written notice before terminating the availability of treatment capacity under this MOA. Upon issuance of such notice from Goodyear, LPSCo shall have the right and option to enter an agreement with Goodyear for permanent treatment capacity. . . , LPSCo shall have 30 days from receipt thereof to notify Goodyear in writing of LPSCo's intent to exercise the option for permanent treatment. Within 30 days after the exercise of such option for permanent treatment capacity by LPSCo, Goodyear shall provide LPSCo with the estimated price for providing up to 2,000,000 gpd of treatment capacity. LPSCo then shall have 30 days to accept or reject such price. Upon acceptance by LPSCo, the Parties shall enter a permanent treatment capacity agreement obligating Goodyear to provide up to 2,000,000 gpd of treatment capacity to LPSCo, and obligating LPSCo to pay all of the capital, engineering and permitting costs for the capacity, plus pay the City's current commercial sewer rates in effect at that time as approved by the City Council, less the amount included in such rates for capital depreciation.

3. **TERM.** The Parties understand and agree that the capacity under this MOA shall be available for a period of 36 months from the date of Goodyear City Council approval, unless otherwise extended by mutual agreement of the Parties. Thereafter, the availability of such capacity may be reduced pursuant to notice of such reduction as set forth in ¶ 2 above, whereby Goodyear shall notify LPSCo of such proposed reduction in available capacity a minimum of 18 months prior to the withdrawal of available capacity. With 60 days of receipt of such notice, LPSCo shall notify Goodyear of further arrangements for capacity, or exercise LPSCo's rights for permanent capacity up to the agreed amount under ¶ 2 above.

Notwithstanding the above, the Parties agree that the terms and conditions of this MOA anticipate an opening date of the Estrella Falls project in late 2010. Any delay in opening of the Estrella Falls project beyond December 31, 2010, will result in a renegotiation of the terms and conditions of this MOA or any extension thereof.

4. **MISCELLANEOUS TERMS.** This MOA shall not be modified except by written instrument executed by both parties. Time is of the essence of this Memorandum. This MOA shall be governed by Arizona law.

5. **CITY COUNCIL APPROVAL.** LPSCo agrees that this MOA is subject to approval by the Goodyear City Council. LPSCo has executed this MOA in advance of City Council consideration.. Once approved by the City Council and executed by the authorized City representative, it shall be fully enforceable and binding on all Parties.

6. **ATTORNEY'S FEES.** In the event either Party bring a court action to enforce the terms or conditions of this MOA, the prevailing party shall be entitled to an award of attorney's fees and legal costs as determined by the court.

This MEMORANDUM OF AGREEMENT REGARDING BULK WASTEWATER TREATMENT SERVICE has been executed and ratified by the parties as provided below.

**City of Goodyear  
an Arizona municipal corporation**

**Litchfield Park Service Company**

By: *John F. Hochbach*  
City Manager

By: *Robert Douds*

Its: *President*

Date: *Sept. 24, 2008*

Date: *Sept. 17/08*

Attest:

By *Lynne Mulhall*  
City Clerk

Approved as to form:

By *[Signature]*  
City Attorney





**ALGONQUIN**  
WATER SERVICES, LLC.

Litchfield Park Service Company  
(An Algonquin Water Utility)

12725 West Indian School Road  
Suite D10  
Avondale, Arizona 85399  
Phone: 623.935.9367  
Fax: 623.935.1026  
Web: www.algonquinwater.com

August 13, 2008

Westcor/Goodyear LLC  
c/o Westcor  
11411 N. Tatum Boulevard  
Phoenix, AZ 85028

Attention: Mr. Rob Bassett, Assistant Vice President Development

Dear Sirs,

**RE: Will Serve Letter--Wastewater Utility Service for Phase II of the Market at Estrella Falls**

Westcor/Goodyear LLC and its development partner, Globe Land Investors, L.L.C. (together, "Developers") have requested that Litchfield Park Service Company ("LPSCo") provide a will-serve letter relating to the proposed commercial development in Goodyear, Arizona known as Estrella Falls, Phase II ("the Project"). The Project is located within LPSCo's Certificate of Convenience & Necessity as issued by the Arizona Corporation Commission ("Commission"), which certificate gives LPSCo the authority to provide wastewater service to the Project. LPSCo will provide wastewater service to the Project as set forth below.

LPSCo hereby confirms it is willing and able to provide wastewater utility service to the Project in accordance with the Commission's rules and regulations, and in accordance with the requirements of the Arizona Department of Environmental Quality, the Maricopa County Environmental Services Department, and any other regulatory agencies having jurisdiction over the facilities and/or LPSCo's provision of wastewater service. The provision of such service by LPSCo shall be subject to the Parties' existing agreements, including the terms and conditions set forth in the 2001 Commercial Wastewater Facilities Agreement, which contract calls for capacity funding by Developer and entering into appropriate line extension agreements governing the on-site and off site facilities to be constructed by Developers and conveyed to LPSCo. Construction, operation and maintenance of the wastewater utility system will also be in accordance with LPSCo's procedures and standard practices.

Subject to applicable regulatory approvals and permits, the agreements between the parties, and satisfaction of Developer's funding and other obligations under existing and/or future agreements, LPSCo will provide sufficient treatment capacity for the Project. The parties have agreed that the amount of capacity necessary for the Project will be calculated in accordance with ADEQ Engineering Bulletin 12, table 1 Average Daily Sewage Flow.

Subject to the obligations and liabilities of the parties set out in the existing and/or future agreements, and barring any unforeseen regulatory or other circumstances, LPSCo will provide wastewater utility service, including treatment, as required to meet the scheduled needs of each phase of the Project. Specifically LPSCo understands that the Project will proceed in three



**ALGONQUIN**  
WATER SERVICES, LLC.

Litchfield Park Service Company  
(An Algonquin Water Utility)

12725 West Indian School Road  
Suite D101  
Avondale, Arizona 85392  
Phone: 623.935.9367  
Fax: 623.935.1020  
Web: [www.algonquinwater.com](http://www.algonquinwater.com)

phases with the first, the Power Center, anticipated to be completed in approximately six months, requiring less than 100,000 gallons per day of treatment capacity. The second phase of the Project is the Mall, expected to be opened in the third or fourth quarter of 2010, and will require approximately 200,000 gallons per day of treatment capacity. Lastly, the final phase of the Project, which LPSCo understands involves several additional commercial developments anticipated to be added in and around the vicinity of the Mall over a roughly 10-year period after the Mall is completed, will require the balance of the agreed upon treatment capacity. At this time, LPSCo is not aware of any specific problems or circumstances that would prevent it from providing capacity in accordance with this understanding of Developers' Project schedule.

If there are any questions with respect to this letter, or LPSCo's provision of wastewater utility service to the Project, please contact the undersigned at your convenience.

Yours very truly,

Gregory S. Sorensen  
Manager,  
Litchfield Park Service Company

cc: Mayor James Cavanaugh, City of Goodyear  
Chairman Mike Gleason  
Commissioner William A. Mundell  
Commissioner Jeff Hatch-Miller  
Commissioner Kristin K. Mayes  
Commissioner Gary Pierce  
Judge Dwight D. Nodes  
Shawn Bradford, City of Goodyear  
ACC Docket Control (13 copies)



**ALGONQUIN**  
WATER SERVICES, LLC

Litchfield Park Service Company  
(An Algonquin Water Utility)

12725 West Indian School Road  
Suite D10  
Avondale, Arizona 8539  
Phone: 623.935.936  
Fax: 623.935.102  
Web: www.algonquinwater.com

August 21, 2008  
Westcor/Globe, LLC  
c/o Westcor  
11411 N. Tatum Blvd.  
Phoenix, AZ 85028

Attention Mr. Rob Bassett, Assistant Vice President, Development

Dear Sirs;

We are in receipt of the August 15, 2008 letter from Mr. Bassett responding to my letter of August 13, 2008. The following response is meant to address each of your seven corresponding points outlined in your letter.

1. **Capacity Price.** We are prepared to accept the proposed price, subject to the Arizona Corporation Commission confirming the acceptability of the proposed funding arrangement and the settlement agreement between the parties. To the extent the Arizona Corporation Commission directs LPSCo to require Developers fund a greater or lesser amount for the required capacity, the Developers shall be required to fund such greater amount.
2. **Capacity Requirement.** We are in agreement with the proposed capacity based on ADEQ Engineering Bulletin 12 and the study submitted by Jacobs Engineering. If Phase II requires more than 558,000 gallons in capacity, Developers shall pay the actual costs for any such additional capacity.
3. **Available Capacity.** Subject to the terms and conditions set out in the Will-Serve Letter, LPSCo believes that it has or will have sufficient capacity to serve the Power Center and Regional Mall.
4. **Future Capacity.** Subject to the terms and conditions set out in the Will Serve Letter, LPSCo has committed to serve the requirements of the Power Center and Regional Mall and fully anticipates providing treatment capacity through the expansion of the Palm Valley Water Reclamation Facility. To the extent that such expansion is not feasible, LPSCo shall be responsible for provision of alternative treatment capacity in accordance with the terms and conditions set forth in the Will Serve Letter.
5. **Capacity Payment.** We agree that the terms of the proposed settlement will involve payment in full for the capacity acquired to serve the Developer's projects.
6. **Permits.** Based on LPSCo's understanding of the permitting requirements for the 1 mgd expansion of the PVWRF, and discussions with City of Goodyear



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Fax: 623.935.1026  
Web: www.algonquinwater.com

representatives who pledged support for those permits, LPSCo does not anticipate any permitting issues which will not allow completion of the 1 mgd expansion of the PVWRF. LPSCo will be required to obtain any and all necessary regulatory permits required by ADEQ, Maricopa County or any other entity. LPSCo has begun the preliminary permitting process and will pursue the necessary permits as quickly as possible upon satisfaction of Developers' payment obligations. LPSCo anticipates entering into a short term capacity usage agreement with the City of Goodyear to address any unforeseen permitting and construction delays.

7. **Line Extension Agreements** Until the uncertainty introduced by the litigation currently being advanced by the Developers is resolved, LPSCo would not undertake a review of the draft LXAs prepared by the Developers. It is LPSCo's intent to utilize its current standard form of the Line Extension Agreements for the Developers projects and will undertake to provide such draft agreements forthwith following settlement of the outstanding litigation claims being advanced by the Developers.

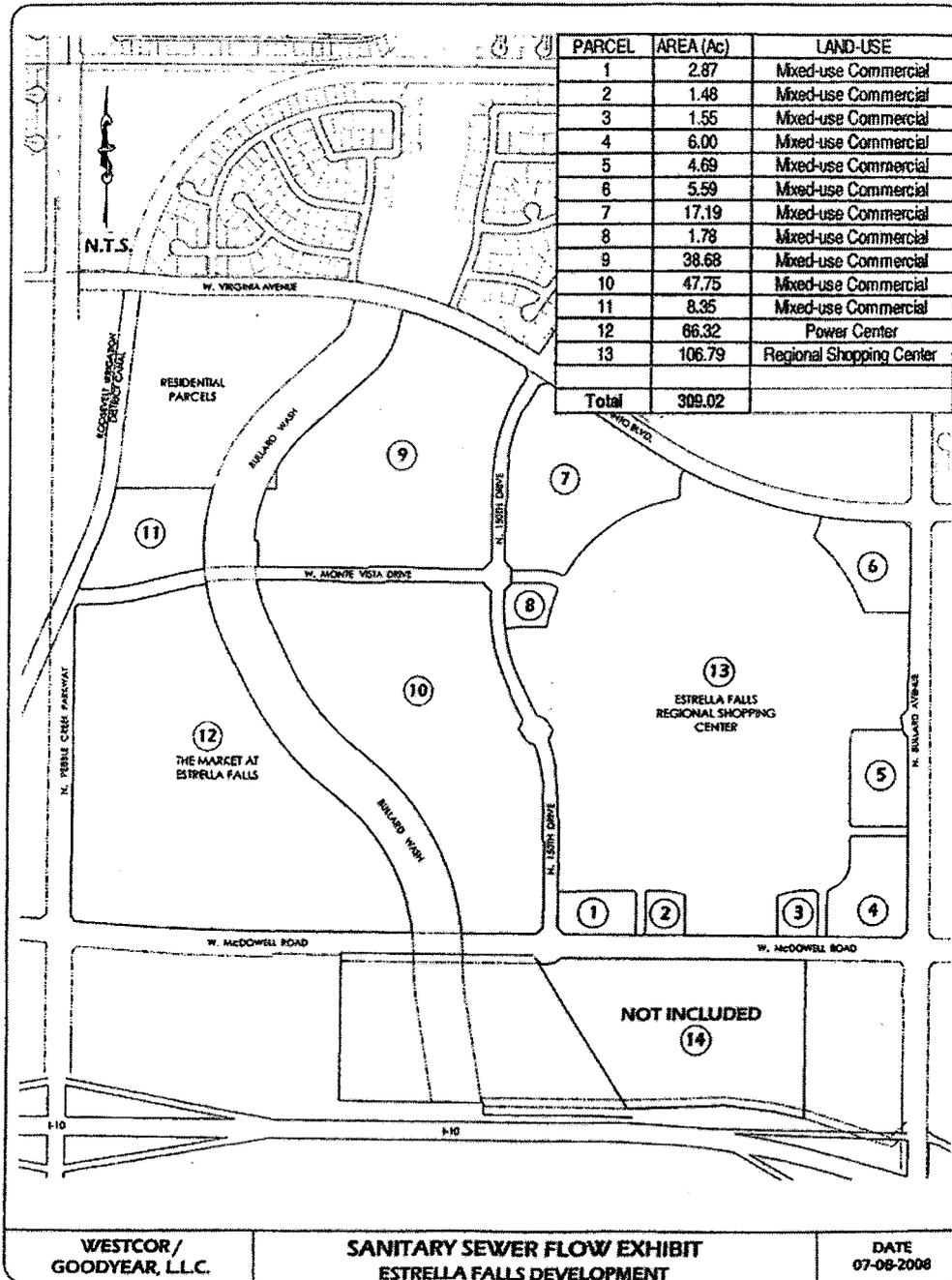
Assuming the above responses address your concerns as expressed in your August 15<sup>th</sup> letter, we look forward to quickly executing a settlement agreement that will allow all litigation to be dismissed.

Please contact me with any additional questions you may have.

Sincerely,

Gregory S. Sorensen  
Manager  
Litchfield Park Service Company

Cc: Mayor James Cavanaugh, City of Goodyear  
Chairman Mike Gleason  
Commissioner William A. Mundell  
Commissioner Jeff Hatch-Miller  
Commissioner Kristin K. Mayes  
Commissioner Gary Pierce  
Judge Dwight D. Nodes  
Shawn Bradford, City of Goodyear  
ACC Docket Control SW01428A-08-0234 (13 copies)



FORM WATER LINE EXTENSION AGREEMENT

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(THE MARKET AT ESTRELLA FALLS – PHASE II ONSITE)  
This WATER FACILITIES AGREEMENT ("Agreement"),  
is entered into this \_\_\_\_\_ of \_\_\_\_\_, 2008, by and between  
LITCHFIELD PARK SERVICE COMPANY,  
an Arizona corporation ("Utility") and  
WESTCOR/GOODYEAR L.L.C.,  
an Arizona limited liability company ("Developer")

RECITALS

WHEREAS, Developer proposes to construct water-distribution facilities within Phase II of the Market at Estrella Falls development ("Development") located on real property described on Exhibit "A" attached hereto that is within Utility's certificated area and desires Utility to provide certain utility services; and

WHEREAS, Utility owns and operates a water utility system that authorizes Utility to provide public utility water service to Development and desires to provide such services to Development; and

WHEREAS, Utility entered into that certain Commercial Water Facilities Agreement with Globe Land Investors, L.L.C. ("Owner") dated June 1, 2001 (the "Master Agreement"); and

WHEREAS, Developer is a "Designated Builder" of the Water Facilities contemplated by this Agreement, as provided in the Master Agreement; and

WHEREAS Developer is willing to assume the obligation of Owner to reimburse Utility for Overhead Costs as set forth in the Master Agreement.

NOW THEREFORE; in consideration of the mutual promises contained in this Agreement and other good and valuable consideration, the receipt of which the parties acknowledge, the parties agree as follows.

I. Water Facilities

A. Construction of On-Site Water Facilities by Developer.

1. Developer shall construct, or cause to be constructed, pursuant to this Agreement and Section I.A of the Master Agreement, certain on-site water distribution facilities ("Water Facilities") necessary for Utility to provide water utility service within Development, as more particularly described in Exhibit "B" attached hereto. Developer shall design and construct, or cause to be designed and constructed, all Water Facilities to serve Development in accordance with the plans and specifications prepared by Developer and approved by Utility.

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2. The construction of the Water Facilities shall be in accordance with plans and specifications (and any material changes thereto) which have been (i) prepared in accordance with good water utility practice as generally accepted in Maricopa County, and with all applicable rules, regulations and requirements of all regulatory agencies having jurisdiction over water service in the Development, (ii) approved, in writing, by the Utility, which approval shall not be unreasonably conditioned, delayed or denied, and (iii) approved, in writing, by any governmental entity having authority over water service in the Development ("Approved Plans"). The Utility shall provide to the Developer the Utility's written approval or disapproval with comments, of any plans and specifications for the Water Facilities within thirty (30) calendar days after submittal of such plans and specifications to the Utility. If such plans and specifications are disapproved by the Utility, the Utility's approval of such plans and specifications shall be provided within fourteen (14) calendar days after re-submittal of such plans and specifications incorporating the Utility's comments to the originally submitted plans and specifications. The Approved Plans shall be incorporated herein by reference and made part of this Agreement. Developer shall not commence construction of the Water Facilities prior to the issuance of any Approved Plans.

3. All materials used to construct the Water Facilities shall be new and both workmanship and materials shall be of good quality that meets the specifications and standards of the Utility's Development Guide, the Arizona Corporation Commission ("Commission"), the Arizona Department of Environmental Quality, the Arizona Department of Health Services and all other applicable regulatory agencies. Developer shall assign to the Utility the warranties of its contractor(s) for the Water Facilities. Developer agrees to remove or replace at its own cost, or reimburse the Utility for all reasonable costs incurred by the Utility for removing and replacing any defective part or parts of the Water Facilities, for two (2) years after Utility's acceptance pursuant to Section I.A.5 herein.

4. An itemized cost estimate of the Water Facilities (including soft costs) is attached hereto as Exhibit "C" and represents the estimated cost of the Water Facilities subject to amendment upon completion of construction and Utility receiving Developer's invoices for the Water Facilities. This initial cost estimate for the Water Facilities is \$\_\_\_\_\_. Upon final construction and inspection by Utility of the Water Facilities constructed and installed by Developer, in the manner described in Section I.B.8 and I.B.9 of the Master Agreement, Utility shall provide Developer with a written Operational Acceptance of the Water Facilities, pursuant to Section I.A.5. Developer shall provide Utility with accurate as-built maps (4-mil Mylar and AutoCAD format) showing the exact location of the Water Facilities and the configuration of such facilities in Development. Accurate as-built maps must be received by Utility prior to final inspection of the Water Facilities.

5. "Operational Acceptance" of the Water Facilities by the Utility shall occur at the time the Developer has provided all of the following items to the Utility as required by this Agreement: (i) all fees, costs, and funds required under this Agreement, other than the overhead fee required by Section II(B)(1), below; (ii) the Approval to Construct the Water Facilities; and (iii) recorded copies of all required Deeds and Easements. The Utility shall assume operational responsibilities for the Water Facilities only after receipt of the above. Final Acceptance of the Water Facilities by the Utility shall occur only after the Utility receives all of the following as

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otherwise required by this Agreement: (i) all items required for Operational Acceptance; (ii) approved Final Inspection by Utility, including all punch list items; (iii) all invoices; (iv) all lien waivers; (v) copies of all permits and licenses; (vi) all required evidences of title, including a Bill of Sale as more fully set forth in Section I.B; (vii) the as-built plans; and (viii) the overhead fee required by Section II(B)(1), below. Utility will then promptly provide Developer written final acceptance of the Water Facilities. If all documents for the Utility's Final Acceptance are not received within sixty (60) days of Utility's Final Inspection, Utility shall have no obligation to set additional meters within the Development until such time as Developer has complied with these requirements.

6. In connection with the construction of the Water Facilities, Developer shall be responsible for complying with A.R.S. 40-360.21, et seq., and related local regulations, and will assume all costs and liabilities associated with (1) coordination with the owners or agents of all underground facilities within and adjacent to the Development regarding the location of such facilities, and (2) construction near, or damage to, such underground facilities. Developer will conduct, or cause to be conducted, all excavation in a careful and prudent manner in its construction of the Water Facilities.

B. Transfer of Water Facilities to Utility; Bill of Sale.

1. Upon written Operational Acceptance of the Water Facilities by Utility and receipt by Utility of accurate as-builts in 4-mil Mylar and AutoCAD format for the Water Facilities, Developer shall provide Utility with a Bill of Sale, which shall be accompanied by a detailed itemization of all amounts paid in connection with the construction of the Water Facilities, together with satisfactory evidence of full and final payment of all amounts due and payable in connection with such construction.

2. In the Bill of Sale, Developer shall warrant and represent for the completed parcel that (1) the Water Facilities have been properly constructed and installed in accordance with the plans and specifications therefore; (2) the Water Facilities are free and clear of all liens and encumbrances of any nature; and (3) the Water Facilities have been inspected and approved by Utility and all governmental agencies having jurisdiction over the construction of the Water Facilities. In addition, Developer shall warrant that the completed Water Facilities for Development will be free from all defects and deficiencies in construction, materials and workmanship for a period of two years from the date of Utility's written acceptance. During the warranty period, Developer agrees to promptly undertake any actions required to repair or correct any defects or deficiencies in construction, materials or workmanship upon receipt of written notice thereof from Utility. Should Developer fail to promptly take such actions during the warranty period, Utility may repair or correct the defect or deficiency and Developer shall reimburse the Utility for all reasonable costs incurred by the Utility. The foregoing notwithstanding, upon the transfer of Water Facilities, Developer shall retain no right, title or interest in any Water Facilities.

C. Easements.

1. Developer shall provide to Utility satisfactory evidence of easements and right-of-way (public or private) over, under and across all portions of the main and pipeline routes of the

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Water Facilities as may be necessary in order to (1) serve each parcel or lot within Development and (2) operate, maintain and repair the Water Facilities. All easements and rights of way shall be free of obstacles, which may interfere with Utility's use, operation, and maintenance of the Water Facilities. In no event shall such easements be less than sixteen (16) feet in width.

D. Utility's Right to Inspect During Construction.

1. Utility shall have the right at all times during construction to inspect the progress of the work performed and to determine whether the work is being performed in accordance with the plans and Utility specifications and all agreements between the parties. Utility will use its best efforts to inspect the progress of the work performed and determine whether the work is being performed in accordance with the plans and Utility specifications and all agreements between the parties, within forty-eight (48) hours after Developer requests an inspection (excluding Saturdays, Sundays, and holidays). Failure to inspect within forty-eight (48) hours shall not constitute a waiver of Utility's right to inspect the work performed and determine whether the work is being performed in accordance with the plans and Utility Specifications and all agreements between the parties. If, in Utility's reasonable opinion, the work has not been, or is not being, performed in a good and workmanlike manner and in accordance with the plans and Utility specifications and applicable governmental requirements, Utility shall have the right to require Developer to correct any defects by providing written notice to Developer describing the defect to be remedied. Complete and satisfactory completion of the Water Facilities in accordance with the plan and Utility's specifications and applicable governmental requirements is a condition precedent to Utility's acceptance of the transfer of the Water Facilities and the furnishing of water utility service to Development, which acceptance shall not be unreasonably withheld or delayed.

E. Jurisdiction of the Arizona Corporation Commission.

1. All rights and obligations hereunder including those regarding water utility service to Development, shall be subject to the rules and regulations of the Commission and all applicable rates, fees, charges, and tariffs of Utility as approved by the Commission now or as they may be changed in the future. However, the provisions for refunds to Developer shall be as set forth herein and in the Master Agreement or any Amendment to the Master Agreement. Utility shall have the unilateral right to apply to the Commission for changes or modifications in any of its rates or charges and to alter or amend its terms and conditions of service and to otherwise charge for its services as may be permitted by the Commission.

F. Survey.

1. In the event of a dispute over the location of an easement, or a discrepancy from the recorded plat, Utility may require Developer to conduct a survey at Developer's cost, but only to the extent necessary to identify the legal description or to resolve the discrepancy.

G. Oversizing.

1. If requested by Utility before approval of the engineering plans, as provided in Section I.A. of this Agreement, Developer shall "oversize" the Water Facilities as specified by

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Utility. Utility shall reimburse Developer for the amount by which the material prices of the oversized Water Facilities exceed the actual material prices of these Water Facilities prior to "oversizing". Payment for oversizing will be made by Utility to Developer within thirty (30) days of written notice to Utility after Utility's Final Acceptance of said Water Facilities.

**II. Advances in Aid of Construction; Refunds; Overhead Costs; Taxes**

**A. Refund Provisions.**

I. The amounts set forth in Exhibit "C" hereto representing the cost of the Water Facilities constructed and installed under this Agreement shall be considered an advance in aid of construction ("Advance") and shall be subject to refund. The Advance shall be repaid to Developer through annual refund payments (made without interest to Developer) in the amount of ten percent (10%) of Utility's total gross annual revenue (exclusive of revenue taxes, connect and reconnect charges, bad check charges and other similar non-service charges) earned from water sales to each bona fide customer whose customer service line is connected to the Water Facilities constructed under this Agreement. Such annual payments shall be made by Utility on or before August 31<sup>st</sup> of each year covering refunds due from water revenues received during the preceding July 1 to June 30 period. Such annual payments shall continue to be made by Utility to Developer until such time as Developer receives the full amount of the Advance or for a period of fifteen (15) years from the date on which Utility has issued its written notice of operational acceptance, whichever occurs first. If the entire Advance has not been refunded to Developer at the end of such fifteen (15) year period, Utility's obligation to make such refund payments shall cease and the portion of the advance that was not so refunded shall become nonrefundable, in which case the balance not refunded shall be entered as a contribution in aid of construction in the accounts of Utility. Utility reserves the right to accelerate the repayment of refunds owed to Developer. Utility and Developer agree that throughout the term of this Agreement, Utility's refund obligation is executory in nature and Developer's right to receive refunds from Utility exists only in accordance with the terms of the Agreement and the Master Agreement, or any Amendment to the Master Agreement, not otherwise. The aggregate of refunds hereunder shall in no event exceed the total of the Advance. Utility shall have the right to set off refunds owing to Developer against any amount owing by Developer to Utility.

**B. Overhead Costs.**

I. Under Section I.B.14 of the Master Agreement, Utility is entitled to reimbursement from Developer for fees and expenses incurred by Utility in connection with overhead costs, which shall include inspection and testing of the Water Facilities ("Overhead Costs"). Utility's reimbursement entitlement for Overhead Costs is equal to 3% of the remaining Water Facilities costs. The Overhead Costs to be reimbursed by Developer will be based on invoices provided by Developer and approved by Utility under Section I.A.2 above. Utility will then obtain reimbursement for Overhead Costs by submitting an invoice to Developer. Developer's reimbursement payment will be due within 30 days of the receipt of the invoice for Overhead Costs. For purposes of this Agreement, the cost estimate for Overhead Costs is \$ \_\_\_\_\_ [3% of \$ \_\_\_\_\_].

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C. Changes to Construction Costs: Unforeseen Conditions.

1. The parties acknowledge that the costs set forth in Exhibit "C" hereto are based on specifications in the plans for the improvement for Development. If adjustments are made to, the Water Facilities cost due to changes in the final water plans, changes in the cost of the final installed facilities or actual invoices the final amount representing the installed and constructed Water Facilities contribution shall be adjusted accordingly. If during construction, difficult trenching or other unforeseen construction conditions are encountered or any increase in the cost of construction caused by circumstances that could not have been reasonably known or are beyond the control of the parties hereto, the amount set forth in Exhibit "C" shall be adjusted to reflect the actual total cost of construction together with any appropriate engineering fees, overheads, and attorneys' fees incurred as a result of the unforeseen construction conditions and such final amount shall be made as an adjustment to Exhibit "C".

D. New Water Meters.

1. Utility shall not be obligated to set any water meter within Development until Utility has issued Operational Acceptance of the associated Water Facilities.

E. Water Meter Deposit Refunds.

1. The amount representing Tariff Meter Charge at the time of payment, installed and activated under this Agreement shall be considered reimbursable deposits. Utility shall repay such water meter charge to Developer, through annual refund payments (made without interest) each in the amount of ten percent (10%) of such charge. Utility shall make such payments on or before November 30 of each year. The aggregate refunds hereunder shall in no event exceed the total of the water meter charge expended by Developer minus any refunds of meters already made.

III. General Provisions

A. Non-Liability Loss.

1. Utility's Water and Wastewater System Master Plan dated April 2006, attached hereto as Exhibit D, shows the water distribution system is designed to supply water at a minimum pressure of approximately 50 pounds per square inch (psi) during normal operating conditions. However, notwithstanding the foregoing, Utility makes no representation or warranty concerning the adequacy of Utility services it provides for the protection of Development. UTILITY EXPRESSLY DISCLAIMS ANY RESPONSIBILITY OR OBLIGATION TO PROVIDE WATER AT A SPECIFIC PRESSURE OR GALLONS PER MINUTE FLOW RATE AT ANY FIRE STANDPIPE, OR FIRE HYDRANT, OR FOR FIRE PROTECTION SERVICE. IN THE EVENT FIRE PROTECTION SERVICE IS INTERRUPTED, IRREGULAR, DEFECTIVE, OR FAILS FROM CAUSES BEYOND THE UTILITY'S CONTROL OR THROUGH ORDINARY NEGLIGENCE OF ITS EMPLOYEES, SERVANTS OR AGENTS, THE UTILITY WILL NOT BE LIABLE FOR ANY INJURIES OR DAMAGES ARISING THEREFROM. Utility's obligation is to supply water at such pressures as may be available as a result of the normal operation of its system, at an amount not less than

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20 psi pursuant to A.A.C. R14-2-407.E and Utility shall not be liable for injuries or damage resulting from causes beyond Utility's control. Pressures may drop to a minimum of 20 psi during fire flow events or other unusual demand conditions.

2. Developer will indemnify and hold Utility, its officers, directors, agents, and employees harmless from and against any and all claims, damages, costs and expenses, including penalties and assessments, attorneys' fees and court costs, to which they or any of them may be subjected by reason of injury, death, loss, claim, penalty, assessment or damage caused or contributed to by the active or passive negligence of Developer, its agents, servants, employees, contractors or subcontractors in the execution of the work or in connection therewith; and in case any suit or other proceeding shall be brought on account thereof, Developer will assume the defense at Developer's expense and will pay all judgments rendered therein. The foregoing indemnity does not cover any negligent or wrongful acts of Utility, its officers, directors, agents or employees.

B. Uncontrollable Forces.

1. Utility shall not be liable to Developer, nor to Developer's agents, nor to any other person, firm or corporation whatsoever, for or on account of any interruption or failure in the delivery of water in accordance with this Agreement, or for or on account of any loss, injury or damage occasioned hereby where such interruption of failure, either directly or indirectly, is caused by or results from any of the following: fire, lightning, flood, windstorm, Act of God, invasion or force majeure; compliance with any orders, rules, regulations or determination, whether valid or invalid, of any governmental authority or status or ownership of water and water curtailment plans adopted by the Commission; breakdown, repair or replacement of any well, machinery, equipment, transmission line, pipeline or other facility; shortage of any fuel, supplies, material or labor, or where such interruption or failure is directly or indirectly due to any cause not reasonably preventable by Utility or not reasonably within its control; any action or omission on the part of Utility which is not grossly negligent or is the result of willful misconduct.

C. Binding Effect; Assignments.

1. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective legal representatives, successors and assigns. Without Utility's written consent, which consent may not be unreasonably withheld, delayed or conditions, Developer may not assign its rights, obligations and interest in this Agreement. Notwithstanding the preceding sentence, Developer – upon prior written notice to Utility, but without consent of Utility, may assign its rights under this agreement to an entity that controls, is controlled by or is under common control with Westcor/Goodyear LLC or The Market at Estrella Falls, LLC. Upon any assignment by Developer in accordance with this Section C.1, Developer shall be released from any and all liabilities and obligations under this Agreement that first arise after the date of any such assignment.

2. Utility reserves the right to deem this Agreement null and void if Developer does not begin construction within one year from the date of this Agreement. If Developer has not started construction within one year from the date of this Agreement, Developer may issue a

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written request to Utility for an extension of this Agreement. Utility's response to said request for extension will not be unreasonably delayed. If Utility deems the Agreement null and void, Utility will send written notice of cancellation of Agreement to Developer via certified mail to the address provided below.

D. Notices.

1. Any notice required or permitted to be given under this Agreement shall be deemed delivered and be effective on the date physically delivered to the party of whom notice is being provided or two (2) calendar days following the date on which the notice is deposited in the United States Mail, postage prepaid, certified delivery, and address to the party to whom notice is being provided as follows:

Utility:  
Litchfield Park Service Company  
12725 W. Indian School Rd, Suite DI01  
Avondale, Arizona 85323  
Attn: James W. Humble; Development Services Manager

Developer:  
Westcor/Goodyear, L.L.C.  
11411 N. Tatum Blvd.  
Phoenix, Arizona 85028  
Attn: Garrett Newland; Vice President of Development

2. Each party shall promptly provide written notice to the other party, as provided herein, of any subsequent change of address, and the failure to do so shall preclude any subsequent claim that notice was improperly given hereunder.

E. Warranties. Utility warrants to Developer that:

1. All conditions set forth in the Master Agreement, including the requirement to provide Utility with sufficient water supply, to Utility's obligations to provide water service to Development have been satisfied by Developer.

2. Subject to construction of Water Facilities contemplated by this Agreement and the Water and Wastewater System Master Plan, attached hereto as Exhibit D, the water utility system owned and operated by Utility and referred to in this Agreement contains sufficient capacity to provide adequate water service to Development.

F. No Agency Relationship or Third Party Beneficiaries.

1. Nothing set forth herein shall imply any agency or partnership between Utility and Developer, nor shall third persons who are not parties to this Agreement, including but not limited to those who are, purchasers of real property from Developer, be entitled to claim that they are third party beneficiaries of the rights and obligations set forth hereunder.

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G. Risk Insurance.

1. Developer shall carry on all work required hereunder at its own risk until final transfer of ownership to Utility and will, in case of accident, destruction or injury to the work or material before such completion, replace or repair forthwith the work or materials so injured, damaged or destroyed, in accordance with the Approved Plans, to the reasonable satisfaction of the Utility, and at Developer's own expense.

2. Until Utility has issued its written notice of Final Acceptance of the Water Facilities constructed by Developer hereunder, all risk of loss with respect to the Water Facilities shall remain with Developer. Developer shall indemnify and hold Utility and its officers, directors, employees and agents harmless for, from and against all claims or other liability, whether actually asserted or threatened, arising out of or related to Developer's construction of the Water Facilities hereunder. To the fullest extent permitted by law, Developer, and its successors, assigns and guarantors, shall defend, indemnify and hold harmless Utility and its partners, members, directors, principals, officers, agents, employees, representatives, parents, subsidiaries, affiliates, consultants, insurers and/or sureties, from and against any and all liabilities, claims, damages, losses, costs, expenses (including but not limited to, attorney's fees), injuries, causes of action, or judgments occasioned by, contributed to and/or in any way caused, in whole or in part, by Developer and/or Developer's contractors, agents or employees, or any subcontractor, consultant or sub-subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, relating to construction, design and/or installation of the Water Facilities, including but not limited to any active or passive negligence of Utility, and/or any act or omission of Utility, unless such negligence, act and/or omission of Utility was the sole cause of such liability and/or claim. This Indemnity Clause shall apply to any claim arising out of or related to construction of the Water Facilities that is sustained or asserted before or after completion of the work or termination of this Agreement. This Indemnity Clause extends to and includes all claims, just or unjust, based on a tort, strict liability, contract, lien, statute, stop notice, rule, safety regulation, ordinance or other affiliated relief or liability, and whether the injury complained of arises from any death, personal injury, sickness, disease, property damage (including loss of use), economic loss, patent infringement, copyright infringement, or otherwise, even if such claim may have been caused in part by Utility as set forth above. Developer's obligations under this paragraph shall not apply to any claims or liability arising out of or are caused by Utility's ownership and operation of the Water Facilities following their acceptance.

3. Developer agrees to obtain and maintain all insurance described below, and shall provide to the Utility certificates evidencing the same, prior to commencement of construction of the Water Facilities:

- A. Workmen's compensation in the benefit amounts, and occupational disease disability insurance, as required by the laws and regulations of the state.
- B. Commercial general liability insurance, with minimum combined single limits of \$2,000,000.00, including operations and protective

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liability coverage. When the work to be performed requires blasting, Developer's insurance shall specifically cover that risk.

- C. Comprehensive automobile liability insurance with minimum combined single limits of \$1,000,000.00, and covering all owned and non-owned automobiles or trucks used by or on behalf of Developer, in connection with the construction of the Facilities.

H. Dispute Resolution

The Parties hereto agree that each will use good faith efforts to resolve, through negotiation, disputes arising hereunder without resorting to mediation, arbitration or litigation. However, to the extent that a dispute arises which cannot be resolved through negotiation, the Parties agree to the following dispute resolution mechanisms:

(i) Mediation. The Parties shall first attempt, in good faith, to resolve the dispute through mediation administered by the American Arbitration Association under its Commercial Mediation Rules.

(ii) Arbitration. If a dispute cannot be resolved as set forth above, the matter shall be submitted to binding arbitration in accordance with the rules of commercial arbitration ("Rules") then followed by the American Arbitration Association ("AAA"), Phoenix, Arizona. If the claim in dispute does not exceed \$20,000, then there shall be a single arbitrator selected by mutual agreement of the parties, and in the absence of agreement, appointed according to the Rules. If the claim in dispute exceeds \$20,000, the arbitration panel shall consist of three (3) members, one of who shall be selected by Developer, one of who shall be selected by Utility, and the third, who shall serve as chairman, whom shall be selected by the AAA. The arbitrator or arbitrators must be knowledgeable in the subject matter of the dispute. The costs and fees of the arbitrator(s) shall be divided equally between the parties. Any decision of the arbitrator(s) shall be supported by written findings of fact and conclusions of law, and shall be based upon sound engineering practice. The decision of the arbitrator(s) shall be final, subject to the exceptions outlined in the Arizona Uniform Arbitration Act, A.R.S. Section 12-1502, et seq., and judgment may be entered upon the same; provided, however, that any decision of the arbitrator(s) may be appealed to the Superior Court of Maricopa County if it is based on an erroneous interpretation, application or disregard of the law applicable to the dispute. The arbitrator(s) shall control discovery in the proceedings and shall award the prevailing party its reasonable attorneys' fees and costs.

I. Miscellaneous

1. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. This Agreement, together with the attachments hereto, sets forth the

LXA # \_\_\_\_\_

entire agreement between the parties and supersedes all prior negotiations, understandings and agreements between them. No change in, addition to, or waiver of any of the provisions of this Agreement shall be binding upon any party unless in writing and signed by the parties. Time is of the essence of this Agreement and each and every term contained herein. Each party irrevocably warrants to the other that it has all applicable power and authority, actual representative or otherwise, to enter into this Agreement and bind each party's performance hereunder.

J. Authority to Execute and Perform

1. Each party represents and warrants to the other party that it has been duly authorized to execute and perform this Agreement and all of its duties and obligations hereunder.

K. Approval of Agreement.

1. This Agreement shall be governed by the laws of the State of Arizona and shall be subject to such approvals of regulatory agencies as may be required under the said state. Without limiting the foregoing, this Agreement shall be submitted to the Utilities Division of the Arizona Corporation Commission for review, and shall be subject to that agency issuing its approval of the Agreement.

END OF AGREEMENT

LXA # \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their authorized individuals in the day, month, and year first above written.

LITCHFIELD PARK SERVICE COMPANY,  
an Arizona corporation

WESTCOR/GOODYEAR, L.L.C., an  
Arizona limited liability company

By: The Westcor Company II Limited  
Partnership, an Arizona limited  
partnership, its managing member

By: Macerich TWC II Corp.,  
a Delaware corporation,  
its general partner

By: \_\_\_\_\_  
Robert Dodds  
President

By: \_\_\_\_\_  
Garrett Newland  
Vice President



LXA # \_\_\_\_\_

STATE OF ARIZONA     )  
                                  ) ss.  
County of Maricopa     )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2008 by Robert Dodds, President of Litchfield Park Service Company, an Arizona corporation, on behalf of the corporation.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

My Commission expires:

\_\_\_\_\_

---

LXA # \_\_\_\_\_

STATE OF ARIZONA        )  
                                  ) ss.  
County of Maricopa        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2008  
by Garrett Newland, Vice President, Macerich TWC II Corp., a Delaware corporation, on behalf  
of the corporation.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

My Commission expires:

\_\_\_\_\_  
2105766.160199.010



FORM WASTEWATER LINE EXTENSION AGREEMENT

LXA # \_\_\_\_\_

(THE MARKET AT ESTRELLA FALLS- PHASE II ONSITE)  
This WASTEWATER FACILITIES AGREEMENT ("Agreement"),  
is entered into this \_\_\_\_\_ of \_\_\_\_\_, 2008, by and between  
LITCHFIELD PARK SERVICE COMPANY,  
an Arizona corporation ("Utility") and  
WESTCOR/GOODYEAR, L.L.C.,  
an Arizona limited liability company ("Developer")

RECITALS

WHEREAS, Developer proposes to construct wastewater collection mains within Phase II of the Market at Estrella Falls commercial development ("Development") located on real property described on Exhibit "A" attached hereto that is within Utility's certificated area and desires Utility to provide certain utility services; and

WHEREAS, Utility owns and operates a wastewater utility system that authorizes Utility to provide public utility wastewater service to Development and desires to provide such services to Development; and

WHEREAS, Utility entered into that certain Commercial Wastewater Facilities Agreement with Globe Land Investors, L.L.C. ("Owner") dated June 1, 2001 (the "Master Agreement"); and

WHEREAS, Developer is a "Designated Builder" of the Wastewater Facilities contemplated by this Agreement, as provided in the Master Agreement, and

WHEREAS, Developer is willing to assume the obligation of Owner to reimburse Utility for certain Costs as set forth in the Master Agreement.

NOW THEREFORE, in consideration of the mutual promises contained in this Agreement and other good and valuable consideration, the receipt of which the parties acknowledge, the parties agree as follows.

**I. Wastewater Facilities**

**A. Construction of On-Site Wastewater Facilities by Developer.**

1. Developer shall construct, or cause to be constructed, pursuant to this Agreement and the Master Agreement, certain on-site Wastewater Facilities ("Wastewater Facilities") necessary for Utility to provide wastewater utility service within Development, as more particularly described in Exhibit "B" attached hereto. Developer shall design and construct, or cause to be designed and constructed, all Wastewater Facilities to serve Development in accordance with the plans and specifications prepared by Developer and approved by Utility.

2. The construction of the Wastewater Facilities shall be in accordance with plans and specifications (and any material changes thereto) which have been (i) prepared in accordance with good wastewater utility practice as generally accepted in Maricopa County, and with all applicable rules, regulations and requirements of all regulatory agencies having jurisdiction over water service in the Development, (ii) approved, in writing, by the Utility, which approval shall not be unreasonably conditioned, delayed or denied, and (iii) approved, in writing, by any governmental entity having authority over wastewater service in the Development ("Approved Plans"). The Utility shall provide to the Developer the Utility's written approval or disapproval with comments, of any plans and specifications for the Wastewater Facilities within thirty (30) calendar days after submittal of such plans and specifications to the Utility. If such plans and specifications are disapproved by the Utility, the Utility's approval of such plans and specifications shall be provided within fourteen (14) calendar days after re-submittal of such plans and specifications incorporating the Utility's comments to the originally submitted plans and specifications. The Approved Plans shall be incorporated herein by reference and made part of this Agreement. Developer shall not commence construction of the Wastewater Facilities prior to the issuance of any Approved Plans.

3. All materials used to construct the Wastewater Facilities shall be new and both workmanship and materials shall be of good quality that meets the specifications and standards of the Utility's Development Guide, the Arizona Corporation Commission ("Commission"), the Arizona Department of Environmental Quality, the Arizona Department of Health Services and all other applicable regulatory agencies. Developer shall assign to the Utility the warranties of its contractor(s) for the Wastewater Facilities. Developer agrees to remove or replace at its own cost, or reimburse the Utility for all reasonable costs incurred by the Utility for removing and replacing any defective part or parts of the Wastewater Facilities, for two (2) years after Utility's acceptance pursuant to Section I.A.5 herein.

4. An itemized cost estimate of the Wastewater Facilities (including soft costs) is attached hereto as Exhibit "C" and represents the estimated cost of the Wastewater Facilities subject to amendment upon completion of construction and Utility receiving Developer's invoices for the Wastewater Facilities. This initial cost estimate for the Wastewater Facilities is \$ \_\_\_\_\_. Upon final construction and inspection by Utility of the Wastewater Facilities constructed and installed by Developer, in the manner described in Section I.B.6 and I.B.7 of the Master Agreement, Utility shall provide Developer with a written operational acceptance of the Wastewater Facilities, not to be unreasonably withheld or delayed. Developer shall provide Utility with accurate as-built maps (4-mil Mylar and AutoCAD format) showing the exact location of the Wastewater Facilities and the configuration of such facilities in Development. Accurate as-built maps must be received by Utility prior to final inspection of the Wastewater Facilities.

5. "Operational Acceptance" of the Wastewater Facilities by the Utility shall occur at the time the Developer has provided all of the following items to the Utility as required by this Agreement: (i) all fees, costs, and funds required under this Agreement, other than the overhead fee required by Section II(B)(1), below; (ii) the Approval to Construct the Wastewater Facilities; and (iii) recorded copies of all required Deeds and Easements. The Utility shall assume operational responsibilities for the Wastewater Facilities only after receipt of the above. Final

LXA # \_\_\_\_\_

Acceptance of the Wastewater Facilities by the Utility shall occur only after the Utility receives all of the following as otherwise required by this Agreement: (i) all items required for Operational Acceptance; (ii) approved Final Inspection by Utility, including all punch list items; (iii) all invoices; (iv) all lien waivers; (v) copies of all permits and licenses; (vi) all required evidences of title, including a Bill of Sale as more fully set forth in Section I.B; (vii) the as-built plans; and (viii) the overhead fee required by Section II(B)1), below. Utility will then promptly provide Developer written final acceptance of the Water Facilities. If all documents for the Utility's Final Acceptance are not received within sixty (60) days of the Utility's Final Inspection, Utility shall have no obligation to set additional meters within the Development until such time as Developer has complied with these requirements.

6. In connection with the construction of the Wastewater Facilities, Developer shall be responsible for complying with A.R.S. 40-360.21, et seq., and related local regulations, and will assume all costs and liabilities associated with (1) coordination with the owners or agents of all underground facilities within and adjacent to the Development regarding the location of such facilities, and (2) construction near, or damage to, such underground facilities. Developer will conduct, or cause to be conducted, all excavation in a careful and prudent manner in its construction of the Wastewater Facilities.

**B. Transfer of Wastewater Facilities to Utility: Bill of Sale.**

1. Upon written operational acceptance of the Wastewater Facilities by Utility and receipt by Utility of accurate as-builts in 4-mil Mylar and AutoCAD format for the Wastewater Facilities, Developer shall provide Utility with a Bill of Sale, which shall be accompanied by a detailed itemization of all amounts paid in connection with the construction of the Wastewater Facilities, together with satisfactory evidence of full and final payment of all amounts due and payable in connection with such construction.

2. In the Bill of Sale, Developer shall warrant and represent for the completed parcel that (1) the Wastewater Facilities have been properly constructed and installed in accordance with the plans and specifications therefore; (2) the Wastewater Facilities are free and clear of all liens and encumbrances of any nature; and (3) the Wastewater Facilities have been inspected and approved by Utility and all governmental agencies having jurisdiction over the construction of the Wastewater Facilities. In addition, Developer shall warrant that the completed Wastewater Facilities for Development will be free from all defects and deficiencies in construction, materials and workmanship for a period of two years from the date of Utility's written acceptance. During the warranty period, Developer agrees to promptly undertake any actions required to repair or correct any defects or deficiencies in construction, materials or workmanship upon receipt of written notice thereof from Utility. Should Developer fail to promptly take such actions during the warranty period, Utility may repair or correct the defect or deficiency and Developer shall reimburse the Utility for all reasonable costs incurred by the Utility. The foregoing notwithstanding, upon the transfer of Wastewater Facilities, Developer shall retain no right, title or interest in any Wastewater Facilities.

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C. Easements.

1. Developer shall provide to Utility satisfactory evidence of easements and right-of-way (public or private) over, under and across all portions of the main and pipeline routes of the Wastewater Facilities as may be necessary in order to (1) serve each parcel or lot within Development and (2) operate, maintain and repair the Wastewater Facilities. All easements and rights of way shall be free of obstacles, which may interfere with Utility's use, operation, and maintenance of the Wastewater Facilities. In no event shall such easements be less than sixteen (16) feet in width.

D. Utility's Right to Inspect During Construction.

1. Utility shall have the right at all times during construction to inspect the progress of the work performed and to determine whether the work is being performed in accordance with the plans and Utility specifications and all agreements between the parties. Utility will use its best efforts to inspect the progress of the work performed and determine whether the work is being performed in accordance with the plans and Utility specifications and all agreements between the parties, within forty-eight (48) hours after Developer requests an inspection (excluding Saturdays, Sundays, and holidays). Failure to inspect within forty-eight (48) hours shall not constitute a waiver of Utility's right to inspect the work performed and determine whether the work is being performed in accordance with the plans and Utility Specifications and all agreements between the parties. If, in Utility's reasonable opinion, the work has not been, or is not being, performed in a good and workmanlike manner and in accordance with the plans and Utility specifications and applicable governmental requirements, Utility shall have the right to require Developer to correct any defects by providing written notice to Developer describing the defect to be remedied. Complete and satisfactory completion of the Wastewater Facilities in accordance with the plan and Utility's specifications and applicable governmental requirements is a condition precedent to Utility's acceptance of the transfer of the Wastewater Facilities and the furnishing of wastewater utility service to Development, which acceptance shall not be unreasonably withheld or delayed.

E. Jurisdiction of the Arizona Corporation Commission.

1. All rights and obligations hereunder including those regarding wastewater utility service to Development, shall be subject to the rules and regulations of the Arizona Corporation Commission ("Commission") and all applicable rates, fees, charges, and tariffs of Utility as approved by the Commission now or as they may be changed in the future.

F. Survey.

1. In the event of a dispute over the location of an easement, or a discrepancy from the recorded plat, Utility may require Developer to conduct a survey at Developer's cost, but only to the extent necessary to identify the legal description or to resolve the discrepancy.

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G. Oversizing.

1. If requested by Utility before approval of the engineering plans, as provided in Section I.A of this Agreement, Developer shall "oversize" the Wastewater Facilities as specified by Utility. Utility shall reimburse Developer for the amount by which the material prices of the oversized Wastewater Facilities exceed the actual material prices of these Wastewater Facilities prior to "oversizing". Payment for oversizing will be made by Utility to Developer within thirty (30) days of written notice to Utility after Utility's Final Acceptance of said Wastewater Facilities.

II. Non-Refundable Contribution in Aid of Construction for Wastewater Facilities; Overhead Costs; Cost Changes.

A. Refund Provisions.

1. The amounts set forth in Exhibit "C" hereto representing the cost of the Wastewater Facilities constructed and installed under this Agreement are a contribution in aid of construction and are non-refundable to Developer.

B. Overhead Costs.

1. Under Section I.B.13 of the Master Agreement, Utility is entitled to reimbursement from Developer for fees and expenses incurred by Utility in connection with overhead costs, which shall include inspection and testing of the Wastewater Facilities ("Overhead Costs"). Utility's reimbursement entitlement for Overhead Costs is equal to 3% of the Wastewater Facilities costs. The Overhead Costs to be reimbursed by Developer will be based on invoices provided by Developer and approved by Utility under Section I.A.2, above. Utility will then obtain reimbursement for Overhead Costs by submitting an invoice to Developer. Developer's reimbursement payment will be due within 30 days of the receipt of the invoice for Overhead Costs. For purposes of this Agreement, the cost estimate for Overhead Costs is \$ \_\_\_\_\_ [3% of \$ \_\_\_\_\_].

C. Changes to Construction Costs; Unforeseen Conditions.

1. The parties acknowledge that the costs set forth in Exhibit "C" hereto are based on specifications in the plans for the improvement for Development. If adjustments are made to, the Wastewater Facilities cost due to changes in the final wastewater plans, changes in the cost of the final installed facilities or actual invoices the final amount representing the installed and constructed Wastewater Facilities contribution shall be adjusted accordingly. If during construction, difficult trenching or other unforeseen construction conditions are encountered or any increase in the cost of construction caused by circumstances that could not have been reasonably known or are beyond the control of the parties hereto, the amount set forth in Exhibit "C" shall be adjusted to reflect the actual total cost of construction together with any appropriate engineering fees, overheads, and attorneys' fees incurred as a result of the unforeseen construction conditions and such final amount shall be made as an adjustment to Exhibit "C".

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**III. General Provisions****A. Non-Liability Loss.**

1. Developer will indemnify and hold Utility, its officers, directors, agents, and employees harmless from and against any and all claims, damages, costs and expenses, including penalties and assessments, attorneys' fees and court costs, to which they or any of them may be subjected by reason of injury, death, loss, claim, penalty, assessment or damage caused or contributed to by the active or passive negligence of Developer, its agents, servants, employees, contractors or subcontractors in the execution of the work or in connection therewith; and in case any suit or other proceeding shall be brought on account thereof, Developer will assume the defense at Developer's expense and will pay all judgments rendered therein. The foregoing indemnity does not cover any negligent or wrongful acts of Utility, its officers, directors, agents or employees.

**B. Uncontrollable Forces.**

1. Utility shall not be liable to Developer, nor to Developer's agents, nor to any other person, firm or corporation whatsoever, for or on account of any interruption or failure in the collection of wastewater in accordance with this Agreement, or for or on account of any loss, injury or damage occasioned hereby where such interruption or failure, either directly or indirectly, is caused by or results from any of the following: fire, lightning, flood, windstorm, Act of God, invasion or force majeure; compliance with any orders, rules, regulations or determination, whether valid or invalid, of any governmental authority or status or ownership of wastewater and wastewater regulations adopted by the Commission; breakdown, repair or replacement of any well, machinery, equipment, transmission line, pipeline or other facility; shortage of any fuel, supplies, material or labor, or where such interruption or failure is directly or indirectly due to any cause not reasonably preventable by Utility or not reasonably within its control; any action or omission on the part of Utility which is not grossly negligent or is the result of willful misconduct.

**C. Binding Effect: Assignments.**

1. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective legal representatives, successors and assigns. Without Utility's written consent, which consent may not be unreasonably withheld, delayed or conditioned, Developer may not assign its rights, obligations and interest in this Agreement. Notwithstanding the preceding sentence, Developer, upon prior written notice to Utility, but without the consent of Utility, may assign its rights under this agreement to an entity that controls, is controlled by or is under common control with Westcor/Goodyear LLC or The Market at Estrella Falls, LLC. Upon any assignment by Developer in accordance with this Section D.1., Developer shall be released from any and all liabilities and obligations under this Agreement that first arise after the date of any such assignment.

2. Utility reserves the right to deem this Agreement null and void if Developer does not begin construction within one year from the date of this Agreement. If Developer has not started construction within one year from the date of this Agreement, Developer may issue a

LXA # \_\_\_\_\_

written request to Utility for an extension of this Agreement. Utility's response to said request for extension will not be unreasonably delayed. If Utility deems the Agreement null and void, Utility will send written notice of cancellation of Agreement to Developer via certified mail to the address provided below.

D. Notices.

1. Any notice required or permitted to be given under this Agreement shall be deemed delivered and be effective on the date physically delivered to the party of whom notice is being provided or two (2) calendar days following the date on which the notice is deposited in the United States Mail, postage prepaid, certified delivery, and address to the party to whom notice is being provided as follows:

Utility:  
Litchfield Park Service Company  
12725 W. Indian School Rd, Suite D101  
Avondale, Arizona 85323  
Attn: James W. Humble; Development Services Manager

Developer:  
Westcor/Goodyear, L.L.C.  
11411 N. Tatum Blvd.  
Phoenix, Arizona 85028  
Attn: Garrett Newland; Vice President of Development

2. Each party shall promptly provide written notice to the other party, as provided herein, of any subsequent change of address, and the failure to do so shall preclude any subsequent claim that notice was improperly given hereunder.

E. Warranties. Utility warrants to Developer that:

1. All of Developer's conditions set forth in the Master Agreement have been satisfied and Utility is obligated to provide wastewater collection and treatment service to Development.

2. Subject to construction of the Wastewater Facilities contemplated by this Agreement and the Water and Wastewater System Master Plan dated April 2006 (attached hereto as Exhibit "D"), the wastewater utility system owned and operated by Utility and referred to in this Agreement contains or will contain sufficient collection and treatment capacity to provide adequate wastewater service to Development.

F. No Agency Relationship or Third Party Beneficiaries.

1. Nothing set forth herein shall imply any agency or partnership between Utility and Developer, nor shall third persons who are not parties to this Agreement, including but not limited to those who are purchasers of real property from Developer, be entitled to claim that they are third party beneficiaries of the rights and obligations set forth hereunder.

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G. Risk Insurance.

1. Developer shall carry on all work required hereunder at its own risk until final transfer of ownership to Utility and will, in case of accident, destruction or injury to the work or material before such completion, replace or repair forthwith the work or materials so injured, damaged or destroyed, in accordance with the approved Plans, to the reasonable satisfaction of the Utility, and at Developer's own expense.

2. Until Utility has issued its written notice of Final Acceptance of the Wastewater Facilities constructed by Developer hereunder, all risk of loss with respect to the Wastewater Facilities shall remain with Developer. Developer shall indemnify and hold Utility and its officers, directors, employees and agents harmless for, from and against all claims or other liability, whether actually asserted or threatened, arising out of or related to Developer's construction of the Wastewater Facilities hereunder. To the fullest extent permitted by law, Developer, and its successors, assigns and guarantors, shall defend, indemnify and hold harmless Utility and its partners, members, directors, principals, officers, agents, employees, representatives, parents, subsidiaries, affiliates, consultants, insurers and/or sureties, from and against any and all liabilities, claims, damages, losses, costs, expenses (including but not limited to, attorney's fees), injuries, causes of action, or judgments occasioned by, contributed to and/or in any way caused, in whole or in part, by Developer and/or Developer's contractors, agents or employees, or any subcontractor, consultant or sub-subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, relating to construction, design and/or installation of the Wastewater Facilities, including but not limited to any active or passive negligence of Utility, and/or any act or omission of Utility, unless such negligence, act and/or omission of Utility was the sole cause of such liability and/or claim. This Indemnity Clause shall apply to any claim arising out of or related to construction of the Wastewater Facilities that is sustained or asserted before or after completion of the work or termination of this Agreement. This Indemnity Clause extends to and includes all claims, just or unjust, based on a tort, strict liability, contract, lien, statute, stop notice, rule, safety regulation, ordinance or other affiliated relief or liability, and whether the injury complained of arises from any death, personal injury, sickness, disease, property damage (including loss of use), economic loss, patent infringement, copyright infringement, or otherwise, even if such claim may have been caused in part by Utility as set forth above. Developer's obligations under this paragraph shall not apply to any claims or liability arising out of or are caused by Utility's ownership and operation of the Wastewater Facilities following their acceptance.

3. Developer agrees to obtain and maintain all insurance described below, and shall provide to the Utility certificates evidencing the same, prior to commencement of construction of the Wastewater Facilities:

- A. Workmen's compensation in the benefit amounts, and occupational disease disability insurance, as required by the laws and regulations of the state.

LXA # \_\_\_\_\_

- B. Commercial general liability insurance, with minimum combined single limits of \$2,000,000.00, including operations and protective liability coverage. When the work to be performed requires blasting, Developer's insurance shall specifically cover that risk.
- C. Comprehensive automobile liability insurance with minimum combined single limits of \$1,000,000.00, and covering all owned and non-owned automobiles or trucks used by or on behalf of Developer, in connection with the construction of the Facilities.

#### H. Dispute Resolution

The Parties hereto agree that each will use good faith efforts to resolve, through negotiation, disputes arising hereunder without resorting to mediation, arbitration or litigation. However, to the extent that a dispute arises which cannot be resolved through negotiation, the Parties agree to the following dispute resolution mechanisms:

(i) Mediation. The Parties shall first attempt, in good faith, to resolve the dispute through mediation administered by the American Arbitration Association under its Commercial Mediation Rules.

(ii) Arbitration. If a dispute cannot be resolved as set forth above, the matter shall be submitted to binding arbitration in accordance with the rules of commercial arbitration ("Rules") then followed by the American Arbitration Association ("AAA"), Phoenix, Arizona. If the claim in dispute does not exceed \$20,000, then there shall be a single arbitrator selected by mutual agreement of the parties, and in the absence of agreement, appointed according to the Rules. If the claim in dispute exceeds \$20,000, the arbitration panel shall consist of three (3) members, one of who shall be selected by Developer, one of who shall be selected by Utility, and the third, who shall serve as chairman, whom shall be selected by the AAA. The arbitrator or arbitrators must be knowledgeable in the subject matter of the dispute. The costs and fees of the arbitrator(s) shall be divided equally between the parties. Any decision of the arbitrator(s) shall be supported by written findings of fact and conclusions of law, and shall be based upon sound engineering practice. The decision of the arbitrator(s) shall be final, subject to the exceptions outlined in the Arizona Uniform Arbitration Act, A.R.S. Section 12-1502, et seq., and judgment may be entered upon the same; provided, however, that any decision of the arbitrator(s) may be appealed to the Superior Court of Maricopa County if it is based on an erroneous interpretation, application or disregard of the law applicable to the dispute. The arbitrator(s) shall control discovery in the proceedings and shall award the prevailing party its reasonable attorneys' fees and costs.

LXA # \_\_\_\_\_

I. Miscellaneous.

1. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. This Agreement, together with the attachments hereto, sets forth the entire agreement between the parties and supersedes all prior negotiations, understandings and agreements between them. No change in, addition to, or waiver of any of the provisions of this Agreement shall be binding upon any party unless in writing and signed by the parties. Time is of the essence of this Agreement and each and every term contained herein. Each party irrevocably warrants to the other that it has all applicable power and authority, actual representative or otherwise, to enter into this Agreement and bind each party's performance hereunder.

J. Authority to Execute and Perform

1. Each party represents and warrants to the other party that it has been duly authorized to execute and perform this Agreement and all of its duties and obligations hereunder.

END OF AGREEMENT

LXA # \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their authorized individuals in the day, month, and year first above written.

LITCHFIELD PARK SERVICE COMPANY,  
an Arizona corporation

WESTCOR/GOODYEAR, L.L.C., an  
Arizona limited liability company

By: The Westcor Company II Limited  
Partnership, an Arizona limited  
partnership, its managing member

By: Macerich TWC II Corp.,  
a Delaware corporation,  
its general partner

By: \_\_\_\_\_  
Robert Dodds  
President

By: \_\_\_\_\_  
Garrett Newland  
Vice President

LXA # \_\_\_\_\_

STATE OF ARIZONA     )  
                                  ) ss.  
County of Maricopa     )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by Robert Dodds, President of Litchfield Park Service Company, an Arizona corporation, on behalf of the corporation.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

My Commission expires:

\_\_\_\_\_

LXA # \_\_\_\_\_

STATE OF ARIZONA     )  
                                  ) ss.  
County of Maricopa    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2008 by Garrett Newland, Vice President, Macerich TWC II Corp., a Delaware corporation, on behalf of the corporation.

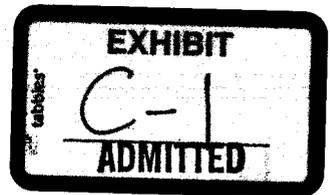
\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

My Commission expires:

\_\_\_\_\_

21063361/60199.010



BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MIKE GLEASON, Chairman  
JEFF HATCH-MILLER  
WILLIAM A. MUNDELL  
KRISTIN K. MAYES  
GARY PIERCE

IN THE MATTER OF THE FORMAL  
COMPLAINT OF WESTCOR/ GOODYEAR,  
L.L.C. and GLOBE LAND INVESTORS, L.L.C.  
AGAINST LITCHFIELD PARK SERVICE  
COMPANY

DOCKET NO. SW-01428A-08-0234

**DIRECT TESTIMONY  
OF  
GARRETT NEWLAND  
IN SUPPORT OF REQUEST FOR  
APPROVAL OF SETTLEMENT AGREEMENT  
ON BEHALF OF  
WESTCOR/ GOODYEAR, L.L.C.  
SEPTEMBER 22, 2008**

**DIRECT TESTIMONY  
OF  
GARRETT NEWLAND  
IN SUPPORT OF REQUEST FOR  
APPROVAL OF SETTLEMENT AGREEMENT  
ON BEHALF OF  
WESTCOR/ GOODYEAR, L.L.C.  
SEPTEMBER 22, 2008**

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<b>VIII</b>	<b>REQUESTED RELIEF .....</b>	<b>9</b>

1 **I INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND TELEPHONE**  
3 **NUMBER.**

4 A. My name is Garrett Newland. My business address is 11411 N Tatum Blvd., Phoenix,  
5 AZ 85028, and my business phone is (602) 953-6200.

6 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

7 A. I am employed by Westcor as Vice President, Development.

8 **Q. WHAT ARE YOUR RESPONSIBILITIES AS WESTCOR'S VICE PRESIDENT,**  
9 **DEVELOPMENT?**

10 A. I manage regional retail development and redevelopment projects for Westcor in the  
11 Phoenix Metropolitan area. My current projects include development of San Tan Village,  
12 a ground up, more than 2-million-square-foot, super-regional retail destination in Gilbert,  
13 Arizona, and Estrella Falls, a new super-regional retail center in Goodyear, Arizona.

14 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL EXPERIENCE.**

15 A. I received Master of Business Administration and Bachelor of Arts in Government  
16 degrees from New Mexico State University in Las Cruces, New Mexico.

17 **Q. PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE.**

18 A. Before joining Westcor, I served as Economic Development Director for the City of  
19 Chandler, Arizona and as Vice President of Business Development for the Greater  
20 Phoenix Economic Council. Overall, I have more than 17 years experience in real estate,  
21 economic development and project management in Arizona and New Mexico.

22 **Q. DO YOU HAVE ANY PROFESSIONAL AFFILIATIONS?**

1 A. Yes. I am an active member of the International Council of Shopping Centers and the  
2 Valley Partnership, and serve on the Board of Director's for the East Valley Partnership.  
3 I am also the Immediate-Past President of the Board of the Arizona Association for  
4 Economic Development.

5 **II PURPOSE OF TESTIMONY**

6 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS CASE?**

7 A. I am supporting the September 12, 2008, Settlement Agreement by and between  
8 Westcor/Goodyear, L.L.C. and Globe Land Investors, L.L.C. ("collectively  
9 "Developers") and Respondent Litchfield Park Service Company ("Utility").

10 **III THE ESTRELLA FALLS DEVELOPMENT**

11 **Q. WHAT IS WESTCOR/GOODYEAR, L.L.C.?**

12 A. Westcor/Goodyear, L.L.C. ("Westcor") is a subsidiary of the Macerich Company, which  
13 is traded on the New York Stock Exchange. Westcor is the master developer of public  
14 and private infrastructure for Estrella Falls. Among other things, Westcor and Globe  
15 Land Investors, L.L.C. ("Globe") share the cost of planning and constructing  
16 improvements necessary for the provision of water and wastewater service to the project.

17 **Q. WHAT IS THE ESTRELLA FALLS DEVELOPMENT?**

18 A. Developers are working together to develop a project known as "Estrella Falls." Estrella  
19 Falls is a 330-acre master-planned, mixed-use, land development north of Interstate 10  
20 between Pebble Creek Parkway and Bullard Avenue in the City of Goodyear. I have  
21 attached a copy of the Conceptual Master Plan for Estrella Falls to my testimony as  
22 Exhibit GN-1.

23 **Q. HOW WILL ESTRELLA FALLS BE DEVELOPED?**

1 A. Estrella Falls is being developed in phases. Phase I of Estrella Falls is a portion of a 66-  
2 acre retail "power center" on the northeast corner of McDowell Road and Pebble Creek  
3 Parkway (the "Power Center"). The Power Center will include major tenants, shops and  
4 pad buildings, plus hotels. Phase II of the Estrella Falls project involves the remainder of  
5 the Power Center, development of a regional center known as the Estrella Falls Mall on  
6 the northwest corner of McDowell Road and Bullard Avenue, and additional commercial  
7 development. I have attached a copy of the Site Plan for the Estrella Falls Mall as  
8 Exhibit GN-2.

9 **Q. WHAT IS THE STATUS OF ESTRELLA FALLS?**

10 A. The Power Center has opened and tenants are entering leases. Additional tenants are  
11 being added. Westcor is now ready to begin construction of the Estrella Falls Mall.

12 **IV WATER AND WASTEWATER SERVICE**

13 **Q. WHAT ENTITY IS CERTIFICATED TO SUPPLY WATER AND**  
14 **WASTEWATER SERVICE FOR ESTRELLA FALLS?**

15 A. All but 30 acres of Estrella Falls is located within Utility's water and wastewater  
16 treatment Certificate of Convenience and Necessity ("CC&N"). The remainder is within  
17 the City of Goodyear's service territory.

18 **Q. DID DEVELOPERS ENTER INTO ANY AGREEMENTS WITH UTILITY**  
19 **CONCERNING WATER AND WASTEWATER SERVICE?**

20 A. Yes. In 2001, Globe and Utility entered into four agreements concerning how Utility  
21 would provide, and Developers would fund, water and wastewater service for Estrella  
22 Falls:

- 23 1. The Commercial Wastewater Facilities Agreement, dated June 1, 2001 ("the  
24 Commercial Wastewater Agreement");

- 1           2. The Commercial Water Facilities Agreement, dated June 1, 2001;  
2           3. The Residential Wastewater Facilities Agreement, dated June 1, 2001; and  
3           4. The Residential Water Facilities Agreement, dated June 1, 2001.

4           The Commercial Wastewater Agreement is the one at issue in this case.

5   **Q.   HOW MUCH WASTEWATER SERVICE WILL ESTRELLA FALLS REQUIRE?**

6   A.   Phase I, which is underway, will require 60,000 gallons per day (gpd) of wastewater  
7       collection and treatment service. Developers have made all payments required for this  
8       capacity and Utility has agreed to provide service for Phase I of Estrella Falls.  
9       Developers estimate that Phase II— the Estrella Falls Mall, the remainder of the Power  
10      Center, and additional commercial development—will require an additional 558,780 gpd  
11      of wastewater service at buildout.

12 **Q.   CAN DEVELOPERS BEGIN PHASE II OF ESTRELLA FALLS WITHOUT**  
13 **WASTEWATER SERVICE?**

14 A.   No. Lenders will not fund construction and tenants will not enter into leases without  
15      committed wastewater service. Once approved by the Commission, the Settlement  
16      Agreement provides that commitment.

17 **V    NATURE OF DISPUTE**

18 **Q.   WHAT IS THE DISPUTE BETWEEN DEVELOPERS AND UTILITY?**

19 A.   The dispute is more fully set forth in Developers' Complaint in this docket. In summary,  
20      the Commercial Wastewater Agreement requires Developers to make phased payments to  
21      secure wastewater collection and treatment service for Estrella Falls. The purpose of the  
22      payments was to fund, as an advance, Developers' share of the treatment capacity that  
23      Utility would build to serve Estrella Falls. The Phase I capacity payment, which secured  
24      treatment capacity for Phase I of Estrella Falls, has been made and is not at issue. The

1 major issue in this case is the amount of the payment that the Commercial Wastewater  
2 Agreement requires Developers to pay for treatment capacity to serve Phase II of Estrella  
3 Falls.

4 **Q. WHAT DO DEVELOPERS BELIEVE IS THE REQUIRED PAYMENT FOR**  
5 **TREATMENT CAPACITY FOR PHASE II OF ESTRELLA FALLS?**

6 A. In 2001, when the Commercial Wastewater Agreement was executed, Utility did not have  
7 any treatment facilities to serve Estrella Falls. Section I(B)(1) of the Commercial  
8 Wastewater Agreement provided that Utility would build a new treatment plant to serve  
9 Estrella Falls..

10 Wastewater service will be provided by Company by building a new water  
11 reclamation facility. Owner agrees to advance funds for the additional wastewater  
12 treatment capacity necessary to treat the computed wastewater flows from all  
13 phases of the Development ("Wastewater Treatment Capacity").

14 Exhibit D provided that Developers' advance for Phase II would be "\$2,538,000 or  
15 additional capacity cost, whichever is higher." To this would be added a 2%  
16 administrative fee, which brought the total Phase II payment to \$2,588,760.

17 Utility then constructed the 4.1 mgd Palm Valley Treatment Facility. After construction  
18 was completed, Utility and Developers continued to agree that Developers would owe  
19 \$2,588,760 for Phase II capacity when they were ready to proceed with Phase II.

20 **Q. DID UTILITY CHANGE ITS POSITION CONCERNING WHAT PAYMENT IT**  
21 **WOULD REQUIRE FROM DEVELOPERS FOR PHASE II CAPACITY?**

22 A. Yes. In the fall of 2007, Utility for the first time maintained that the Phase II Capacity  
23 Payment would be based on Utility's cost to construct a new treatment plant on Sarival  
24 Road, along with a new force main. Developers estimated that associated Phase II

1 Capacity Payment would be approximately \$14.5 million. Developers were unable to  
2 resolve this issue with Utility. Developers then filed their Complaint with the  
3 Commission in this docket to allow resolution of this issue, along with several ancillary  
4 issues. Simultaneously, Developers also filed a complaint in Superior Court concerning  
5 some of the same issues.

6 **VI SETTLEMENT AGREEMENT**

7 **Q. PLEASE DESCRIBE THE SETTLEMENT NEGOTIATIONS BETWEEN**  
8 **DEVELOPERS AND UTILITY.**

9 A. The content of the discussions is privileged, but I can characterize the discussions as  
10 spirited and difficult. We met numerous times, either directly or through our attorneys,  
11 and exchanged many draft proposals. I can confidently say that each side expended  
12 hundreds of person-hours before we were able to reach agreement. I would especially  
13 like to thank Judge Nodes and Commissioner Mayes for helping us to narrow the issues  
14 and for encouraging us to continue negotiations.

15 **Q. PLEASE SUMMARIZE THE SETTLEMENT AGREEMENT.**

16 A. The Settlement Agreement is short and speaks for itself. Briefly, the Settlement  
17 Agreement fixes Developers' cost for Phase II capacity at \$8.67/gallon and stipulates that  
18 Phase II capacity is 558,780 gpd. Therefore, provided that the Commission approves the  
19 Settlement Agreement's payment provisions no later than October 22, 2008, Developers  
20 will tender a check to Utility for \$4,844,623 (\$8.67/gallon x 558,780 gallons).

21 Another key provision is the requirement that Utility will execute a Memorandum of  
22 Agreement with the City of Goodyear, whereby the City will provide back-up treatment  
23 capacity to Utility. This will allow Estrella Falls to receive treatment service for the mall  
24 and other planned tenants, even if Utility's planned treatment expansion were delayed.

1 The Settlement Agreement also includes form water and wastewater line-extension  
2 agreements for future on-site facilities at Estrella Falls. This will reduce the time needed  
3 to complete future construction, because the parties will not have to negotiate line-  
4 extension agreements from scratch.

5 Finally, assuming that the Commission timely provides approval, the Settlement  
6 Agreement resolves all issues in this docket (the Commission Complaint Case) and the  
7 Superior Court Complaint Case.

8 **VII SETTLEMENT AGREEMENT BENEFITS**

9 **Q. HOW DOES THE SETTLEMENT AGREEMENT BENEFIT DEVELOPERS?**

10 A. The Settlement Agreement benefits Developers in numerous ways. First, by successfully  
11 resolving the Commission and Superior Court complaint cases, the Parties will avoid  
12 protracted litigation that would likely have consumed hundreds of thousands of dollars  
13 and thousands of person-hours for each party. The Settlement Agreement provides a  
14 certain, timely, outcome, without the expense, uncertainty, and time commitment  
15 associated with protracted commercial litigation. It also conserves the resources of the  
16 Commission, its Utilities Division Staff, the Court, and the parties by ending all  
17 litigation.

18 **Q. YOU MENTIONED A TIMELY OUTCOME: WHY IS A TIMELY OUTCOME**  
19 **IMPORTANT TO DEVELOPERS?**

20 A. As I previously testified, without assured wastewater service, Lenders will not fund  
21 construction and tenants will not enter into leases. This means, among other things that  
22 Developers could not proceed with financing, engineering, and construction of the  
23 Estrella Falls Regional Mall. This mall has already been delayed once for a year.  
24 Westcor currently plans to open the mall in the third quarter of 2010, in time for the fall

1 and holiday buying season. If Developers could not obtain Utility's commitment to  
2 provide wastewater service for the mall and other projects, Westcor would have no  
3 choice but to again delay the mall's opening.

4 **Q. WOULD DELAYING THE MALL HARM DEVELOPERS?**

5 A. Definitely. Developers would incur significant, continuing, consequential damages. If  
6 construction does not begin this fall, Westcor could lose key tenants, thereby causing  
7 enormous monetary losses for Developers. In addition, Developers must begin making  
8 Improvement District Assessment payments in January 2010. Developers expected that  
9 there would be sales tax receipts from mall and other tenants by that date to offset these  
10 payments. Because of the initial mall delay, there will now not be any sales-tax revenue  
11 from mall tenants until at least the third quarter of 2010. Developers must make up any  
12 shortfalls. Additional delays for the mall would correspondingly delay sales-tax revenue,  
13 thereby causing even more serious, irreparable, financial harm to Developers.

14 **Q. WOULD THERE BE ANY OTHER CONSEQUENCES FOR DEVELOPERS IF**  
15 **WASTEWATER SERVICE WERE DELAYED?**

16 A. Yes. Without wastewater service, additional development at Estrella Falls would be  
17 impossible. Without wastewater service, no tenant would sign a lease and no lender  
18 would finance construction. There would be no additional tenants for the Power Center  
19 and no other commercial development within Estrella Falls. The financial impact for  
20 Developers would be enormous.

21 **Q. IF WASTEWATER SERVICE WERE DELAYED, WOULD THERE BE ANY**  
22 **OTHER HARM?**

23 A. Certainly. Based on Westcor's experience with similar projects like the Chandler  
24 Regional Mall, we estimate that the Estrella Falls Regional Mall will provide

1 approximately two thousand jobs for residents of the City of Goodyear and neighboring  
2 communities. Further, we estimate that the mall and other development will generate  
3 millions of dollars in annual sales and property-tax revenues for the City. Consequently,  
4 delaying the mall and other development would delay the associated jobs and directly  
5 cost the City millions of dollars annually.

6 **Q. WHY DOES THE SETTLEMENT AGREEMENT REQUIRE A FINAL ORDER**  
7 **FROM THE COMMISSION APPROVING THE SETTLEMENT AGREEMENT**  
8 **BY OCTOBER 22, 2008?**

9 A. As I just discussed, further delay of the mall and other development would seriously  
10 damage Developers, postpone thousands of new jobs, and cost the City of Goodyear  
11 millions in sales and property tax revenues. If the Settlement Agreement is approved by  
12 October 22, 2008, Developers will still be able to proceed with mall construction and  
13 leasing Phase II of the Power Center. If the Commission cannot act by that date,  
14 Developers will have no choice but to delay the mall and will be unable to lease to any  
15 tenants for Phase II of the Power Center.

16 **VIII REQUESTED RELIEF**

17 **Q. WHAT ARE DEVELOPERS ASKING THE COMMISSION TO DO?**

18 A. We respectfully request that the Commission issue a Decision and Order no later than  
19 October 22, 2008, which unconditionally approves the Settlement Agreement, or  
20 alternatively, approves the financing and funding provisions contained in Section 4.

21 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

22 A. Yes.

# ESTRELLA FALLS

Estrella Falls Site Data	63 acres
The Market at Estrella Falls 500,000 sq. ft. Opening Fall 2008	105 acres
Estrella Falls Regional Center 1,200,000 sq. ft. Opening Fall 2010	162 acres
Peripheral Retail/Mixed Use	330 acres
<b>TOTAL</b>	<b>330 acres</b>

**Key Legend**

-  Retail
-  Estrella Falls Regional Center
-  Office/ Commercial
-  Multifamily/Condominium Residential
-  Hotel



I-10

# ESTRELLA FALLS



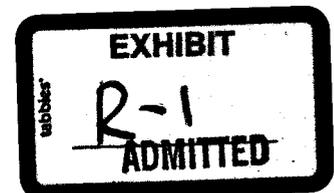
1 FENNEMORE CRAIG, P.C.  
Jay L. Shapiro (No. 014650)  
2 Todd C. Wiley (No. 015358)  
3003 North Central Avenue, Suite 2600  
3 Phoenix, Arizona 85012  
Telephone (602)916-5000  
4 Attorneys for Litchfield Park Service Company

5 **BEFORE THE ARIZONA CORPORATION COMMISSION**

6  
7 IN THE MATTER OF THE FORMAL  
COMPLAINT OF WESTCOR/  
8 GOODYEAR, L.L.C. and GLOBE LAND  
INVESTORS, L.L.C. AGAINST  
9 LITCHFIELD PARK SERVICE COMPANY

DOCKET NO. SW-01428A-08-0234

10  
11 **TESTIMONY**  
12 **OF**  
13 **GREG SORENSEN**  
14 **IN SUPPORT OF REQUEST FOR APPROVAL OF**  
15 **SETTLEMENT AGREEMENT**  
16  
17  
18  
19  
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26



1 **I. INTRODUCTION AND PURPOSE OF TESTIMONY.**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is Greg Sorensen. My business address is 12725 W. Indian School Road,  
4 Suite D-101, Avondale, AZ 85392.

5 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?**

6 A. On behalf of the Respondent, Litchfield Park Service Company ("LPSCo").

7 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

8 A. I am employed by Algonquin Water Services ("AWS") as Director of Operations  
9 for the Western Group. AWS is an affiliate through common ownership of LPSCo  
10 and LPSCo's parent, Algonquin Water Resources of America, which is eventually  
11 owned by Algonquin Power Income Fund ("APIF").

12 **Q. PLEASE SUMMARIZE YOUR RESPONSIBILITIES IN THESE**  
13 **POSITIONS?**

14 A. I oversee the operations and business management functions for AWRA's utility  
15 holdings in Arizona. AWS manages and operates 18 utilities in Arizona, Texas,  
16 Missouri, and Illinois. I have the responsibility for the daily operation of our  
17 Arizona utilities, financial operating results for each utility, capital and operating  
18 cost budgeting, rate case planning and oversight and rate setting policies and  
19 procedures as relating to the departments under my responsibility.

20 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE COMMISSION?**

21 A. Yes, I have testified in Commission proceedings involving LPSCo, Gold Canyon  
22 Sewer Company, and Northern Sunrise and Southern Sunrise water companies.

23 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**  
24 **PROCEEDING?**

25 A. On September 12, 2008, LPSCo and the complainants in this docket,  
26 Westcor/Goodyear, L.L.C. and Globe Land Investors, L.L.C. ("collectively

1 “Developers”) entered into a Settlement Agreement (the “Settlement”). The parties  
2 jointly filed the Settlement Agreement with the Commission on September 16,  
3 2008 and, at that time, requested that the Commission approve the agreement as a  
4 fair and final resolution of all claims made in this docket. Such approval would  
5 also resolve the companion complaint filed by the Developers against LPSCo in the  
6 Superior Court. The purpose of my testimony is to explain and support the request  
7 for approval on behalf of LPSCo.

8 **II. REQUEST FOR COMMISSION APPROVAL OF THE SETTLEMENT.**

9 **A. Background.**

10 **Q. WOULD YOU PLEASE DESCRIBE THE DISPUTE BETWEEN LPSCO**  
11 **AND THE DEVELOPERS THAT GAVE RISE TO THE LITIGATION?**

12 **A.** Yes, it is actually pretty straightforward. In 2001, before LPSCo was acquired by  
13 AWRA, Globe Land Investors LLC and LPSCo entered into a number of  
14 agreements concerning the provision of water and wastewater utility services by  
15 LPSCo to a 300-acre parcel of land located in Goodyear, AZ. One of the  
16 agreements was a Commercial Wastewater Facilities Agreement (“2001  
17 Agreement”). The 2001 Agreement established a funding obligation on the part of  
18 the Developers to pay for wastewater treatment facilities that would, among other  
19 things, provide capacity to be used to serve the Estrella Falls development in  
20 Goodyear, Arizona. Developers’ funding obligation was a condition of utility  
21 service being provided to Estrella Falls by LPSCo.

22 Under the 2001 Agreement, the availability of wastewater services would  
23 come in two increments. The first and smaller Phase 1 increment called for  
24 Developers to fund and LPSCo to make available approximately 60,000 gpd of  
25 wastewater treatment capacity almost immediately and concurrent with the  
26 construction of LPSCo’s Palm Valley Water Reclamation Facility (“PVWRF”).

1 Funding and utility services related to Phase I of the Estrella Falls project are not in  
2 dispute between the parties. Instead, the current dispute between the parties and  
3 this docket revolve around Developers' funding for treatment capacity needed to  
4 serve Phase II of Estrella Falls.

5 It is LPSCo's position that under the 2001 Agreement, Developers are  
6 required to fund the actual cost of capacity at the time we need to build that  
7 capacity, not in 2000 dollars, which are the source of the \$2,538,000 estimated  
8 capacity cost. Specifically, the 2001 Agreement provided that Developers'  
9 advance for treatment capacity for Phase II of their project would be "\$2,538,000  
10 or additional capacity cost, whichever is higher". Developers disagreed and argued  
11 that their funding requirement is either \$2,538,000, based on the estimated capacity  
12 cost set forth in the 2001 Agreement, or, alternatively, \$4,134,375, which is the  
13 amount Developers claim they would be required to pay for Phase II if LPSCo's  
14 hook-up fee tariff were applicable. So, in summary, the amount of Developers'  
15 funding obligation for wastewater treatment capacity for Phase II of the Estrella  
16 Falls Project is the fundamental issue in dispute between the parties.

17 **Q. WHAT DO YOU MEAN "IF" THE HOOK-UP FEE TARIFF APPLIES?**

18 A. LPSCo's hook-up fee tariff only went into effect on April 1, 2008. The tariff  
19 applies to new service laterals "established" after the effective date of the tariff.  
20 "Established" could be interpreted to mean physically installed into the ground, or  
21 simply mean that a line extension agreement was entered into between two parties.  
22 Therefore, we faced a situation where the 2001 Agreement predated the tariff,  
23 where we were uncertain as to how the language of the hook-up fee tariff should be  
24 interpreted, and where we interpreted the 2001 Agreement to require a greater level  
25 of funding by the Developers. We also do not know whether, if our hook-up fee  
26 tariff applies in these circumstances, we can still require the Developers to fund the

1 actual cost of the necessary capacity in excess of the amount of the hook-up fee. It  
2 is this uncertainty that, in part, kept us from simply applying the hook-up fee tariff  
3 to resolve this dispute.

4 **Q. BUT MR. SORENSEN, WHY DIDN'T LPSCO SIMPLY ACCEPT THE**  
5 **DEVELOPERS' OFFER TO FUND EITHER THE \$2.5 MILLION OR THE**  
6 **\$4.1 MILLION AND LPSCO FUND THE REST OF THE ACTUAL COST**  
7 **OF THE NECESSARY CAPACITY?**

8 A. From the ratepayers' perspective, if Developers paid an amount less than the actual  
9 cost of the capacity, it is LPSCo that will fund the difference and LPSCo's  
10 ratepayers that will pay the return on and of LPSCo's investment through higher  
11 rates. From the LPSCo perspective, we are concerned that, in the context of a  
12 future rate case, the Commission could interpret the 2001 Agreement to have  
13 required the utility to require Developers to have funded the total, actual cost of the  
14 treatment capacity. This means that, if the actual cost of the capacity needed to  
15 serve Phase II turns out to be in excess of the \$2.5 million or \$4.1 million funded  
16 by Developers, the Commission could deny rate base treatment for the portion of  
17 the actual cost of capacity paid for by LPSCo. This is a concern, even though  
18 under current Commission rules and utility practices, we are not aware of any  
19 affirmative obligation for any utility to collect the full cost of treatment capacity.  
20 In this light, LPSCo simply was not willing to accept the risks associated with a  
21 project of this size. However, as I explain below, if the Settlement is approved, we  
22 will know that if we make a prudent investment it should be accorded rate base  
23 treatment in a future rate case.

24 **B. The Settlement and LPSCO's Request for Approval.**

25 **Q. ALTHOUGH THE SETTLEMENT WAS ALREADY JOINTLY FILED**  
26 **WITH THE COMMISSION BY THE PARTIES, COULD YOU BRIEFLY**

1           **DESCRIBE THE CRITICAL TERMS AND CONDITIONS OF**  
2           **SETTLEMENT?**

3           A.    Yes. For purposes of this proceeding, and the parties' joint request for approval,  
4           there are essentially two critical components of the Settlement Agreement:  
5           (1) LPSCo's agreement to provide up to 558,780 gpd of wastewater treatment  
6           capacity for Phase II of Estrella Falls (Settlement Agreement, § 3.3); and  
7           (2) Developers' agreement to fund \$8.67 per gallon, or \$4,844,623, towards the  
8           cost of the additional capacity needed to serve Phase II of Estrella Falls (Settlement  
9           Agreement, § 4).

10          **Q.    WHAT IF THE COST OF THE ADDITIONAL CAPACITY IS MORE**  
11          **THAN \$8.67 PER GALLON?**

12          A.    Under the Settlement Agreement, LPSCo has agreed to fund any additional cost for  
13          the capacity above the \$8.67 per gallon to be funded by Developers. LPSCo then  
14          will seek and expects to include that additional investment amount in its rate base  
15          in a future ratemaking proceeding.

16          **Q.    IS LPSCO SEEKING APPROVAL TO INCLUDE THE PORTION OF THIS**  
17          **CAPACITY THAT IT PAYS FOR IN RATE BASE IN THIS**  
18          **PROCEEDING?**

19          A.    No, that wouldn't be appropriate given that the plant has not been built and we  
20          don't know how much of the actual cost of this capacity LPSCo will be required to  
21          fund. LPSCo, however, seeks confirmation that its course of action, the funding to  
22          be provided by Developers, is prudent.

23          **Q.    WHAT APPROVAL DOES LPSCO NEED FROM THE COMMISSION IN**  
24          **THIS PROCEEDING WITH RESPECT TO THE SETTLEMENT**  
25          **AGREEMENT?**

26          A.    LPSCo needs the Commission to approve the Settlement Agreement as a full and

1 final resolution of the Commission complaint filed by Developers. In doing so,  
2 LPSCo asks that the Commission conclude that the amount to be funded by  
3 Developers, \$8.67 per gallon for up to 558,780 gpd of treatment capacity, and  
4 LPSCo's funding of the balance of those capacity costs, is a reasonable and prudent  
5 means of financing the cost of additional wastewater treatment capacity necessary  
6 for LPSCo to serve Estrella Falls Phase II, even if the actual cost is greater than  
7 that level of Developer funding.

8 **Q. ARE YOU ASKING THAT THE COMMISSION GIVE APPROVAL NOW**  
9 **FOR THE PLANT FUNDED BY LPSCO TO BE INCLUDED IN RATE**  
10 **BASE IN A FUTURE RATE CASE?**

11 A. No, we are asking that the Commission provide what is essentially a type of  
12 financing approval. As a condition of the Settlement Agreement, we need the  
13 Commission to approve the Developer funding mechanism included in § 4 of the  
14 Settlement Agreement. In other words, by approving the Settlement Agreement,  
15 the Commission would be finding that the allocation of the funding responsibility  
16 for this additional treatment capacity between LPSCo and the Developers is fair,  
17 prudent and reasonable. In a future rate case, LPSCo still would have to  
18 demonstrate that the actual cost of capacity LPSCo funded was a reasonable and  
19 prudent investment given the facts and circumstances known at that time, meaning  
20 it is used and useful to serve customers over a reasonable planning horizon of at  
21 least five years.

22 **Q. DOES THAT MEAN THAT THE COMMISSION WOULD NOT BE ABLE**  
23 **TO CONCLUDE IN A FUTURE RATE CASE THAT LPSCO SHOULD**  
24 **HAVE REQUIRED A LARGER ADVANCE OR CONTRIBUTION IN AID**  
25 **OF CONSTRUCTION FROM THE DEVELOPERS, WHATEVER THE**  
26 **FINAL, ACTUAL COST?**

1 A. Yes, that is exactly what it means. Absent such approval by the Commission,  
2 LPSCo simply cannot take such investment risk and would, unfortunately, be better  
3 off litigating the dispute until one or both tribunals issued some sort of binding  
4 decision(s) on the parties. Such result would not benefit LPSCo and its customers,  
5 or the Developers and public interests in the City of Goodyear, where the Estrella  
6 Falls project is located.

7 **Q. WHY DOES LPSCO BELIEVE THIS APPROVAL IS IN THE PUBLIC**  
8 **INTEREST AND SHOULD BE GRANTED?**

9 A. First, the level of funding by Developers is greater than the amount Developers  
10 claimed they were obligated to pay under the 2001 Agreement, and greater than the  
11 amount that Developers would be required to pay if LPSCo's hook-up fee applies.  
12 Additionally, as I testified above, under the Commission's main extension rules,  
13 LPSCo could have elected to fund the entire amount of capacity on its own,  
14 without any funding from the Developers and then would be entitled to rate base  
15 treatment if the plant was used and useful. LPSCo asserts that the funding  
16 mechanism in the Settlement Agreement serves the best interests of the Utility and  
17 its customers simultaneously with the interests of the development. The Settlement  
18 Agreement is a good faith and reasonable settlement of the funding disputes  
19 between the parties and the Commission and Superior Court complaints filed by  
20 Developers.

21 Second, as the Commission has heard throughout this case, the Estrella Falls  
22 Phase II project is very important to the City of Goodyear and the surrounding  
23 community and the individual residents who live in the vicinity. We provide water  
24 and sewer service within the City and would like very much to cooperate with the  
25 City in matters that they feel are important to the community and its residents who  
26 are our customers. This is especially true because the project will expand our

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customer base over which to spread the ever-increasing costs of providing on-going utility service, as will be the case here when the Developers' project comes on-line.

Third, this has already been and, if the Settlement is not approved, will continue to be a costly dispute in terms of resources on the part of the parties and the Commission. Approval of the Settlement will allow the Developers to develop, LPSCo to provide utility service, and the Commission to focus on the many other matters before the agency.

**Q. THANK YOU MR. SORENSEN. DO YOU HAVE ANYTHING ELSE TO ADD IN SUPPORT OF LPSCO'S REQUEST FOR APPROVAL OF THE SETTLEMENT?**

A. Just to repeat that we believe this Settlement is a fair resolution to a hotly-contested dispute pending in two different tribunals, and we join the Developers in asking the Commission to approve the Settlement as requested before the October 22, 2008 deadline we have agreed to in order to accommodate the Developers' timetable.

**Q. DOES THAT CONCLUDE YOUR TESTIMONY IN SUPPORT OF THE SETTLEMENT AND REQUEST COMMISSION APPROVAL?**

A. Yes.

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