

ORIGINAL

October 13, 2008

Honorable Mike Gleason, Chairman
Honorable Jeff Hatch-Miller, Commissioner
Honorable Kristin Mayes, Commissioner
Honorable William Mundell, Commissioner
Honorable Gary Pierce, Commissioner
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ. 85007

Arizona Corporation Commission
DOCKETED
OCT 13 2008



RE: DOCKET NO. SW-01428A-08-0234
SETTLEMENT AGREEMENT BETWEEN WESTCOR AND LPSCO

Dear Mr. Chairman and ACC Commissioners:

The City of Goodyear continues to actively support the Settlement Agreement between WESTCOR and LPSCO as relates to the need for construction of increased sewer capacity in order to service the Estrella Falls Regional Mall and adjacent development. Our previously submitted letter dated September 29, 2008, to the ACC speaks for itself.

Our latest concern now focuses on the "Staff's Clarification of Position Regarding Request for Approval" filing that was submitted to Docket Control on October 9, 2008. After close review of the transcript from the October 1, 2008, Evidentiary Hearing, it should be clear that Staff's reluctance to formally approve this Agreement has been articulately addressed in Judge Nodes' Order. I would further urge the Commission members to carefully examine and pay particular attention to the following hearing language which underscores the extent to which all of the parties tried to alleviate the notion that this is a "rate case pre-approval" or that the Commission and its staff are somehow precluded from conducting a thorough financial evaluation of this Agreement in the context of future deliberations:

- 1. Mr. Marks on behalf of WESTCOR
a. Page 13, lines 20 thru 25;
b. Page 14, lines 1 thru 6 and lines 14 thru 18;
2. Mr. Shapiro on behalf of LPSCO
a. Page 19, lines 10 thru 14;
b. Page 22, lines 5 thru 8 and lines 16 thru 23
3. Judge Nodes in his effort to craft language to address Staff concerns
a. Page 23, lines 1 thru 8;
4. Mr. Shapiro on behalf of LPSCO
a. Page 24, lines 10 thru 16;

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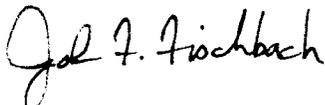
City Manager's Office
190 North Litchfield Road P.O. Box 5100 Goodyear, Arizona 85338
623-932-3910 Fax 623-932-1177 1-800-872-1749 TDD 623-932-6500
www.ci.goodyear.az.us

Letter to Chairman Gleason and the ACC Commissioners

5. Judge Nodes in his effort to craft language to address Staff concerns
 - a. Page 29, lines 9 thru 21;
6. Mr. Torrey in response to Judge Nodes
 - a. Page 29, lines 22 thru 25;
 - b. Page 30, lines 1 thru 14;
7. Judge Nodes in his effort to craft language to address Staff concerns
 - a. Page 31, lines 1 thru 5;
8. Mr. Torrey in response to Judge Nodes
 - a. Page 31, lines 6 thru 11;
9. Judge Nodes in his effort to craft language to address Staff concerns
 - a. Page 31, lines 12 thru 20; and,
10. Mr. Torrey in which he expressly agrees that language can be drafted
 - a. Page 31, line 21

I am also submitting for the record a copy of our Council Action which approves a Memorandum of Agreement (MOA) between the City of Goodyear and the LPSCO for temporary wastewater capacity. Mr. Bradford, our Water Resources Director, referenced this MOA in both his testimony and his responses to questions from Judge Nodes at the Evidential Hearing. The City's willingness to backstop both WESTCOR and LPSCO to ensure that adequate capacity is provided reflects the importance that this issue has to our elected officials. Any delay in Mall construction will have the direct impact of costing the City and the State of Arizona millions of dollars in sales tax revenue and other economic derivatives. I greatly appreciate your attention to this matter and this opportunity to be heard.

Sincerely,



John F. Fischbach
City Manager

Attachment – 1 (the City Council Action document)

CC: Mayor and Council
Jim Nichols, Deputy City Manager
Shawn Bradford, Water Resources Director
David Iwanski, Water Resources Manager
Docket Clerk – requisite copies for Docket Control submitted

AGENDA ITEM # 8.A.
DATE: September, 22, 2008
COAC NUMBER: 08-3951

**CITY OF GOODYEAR
CITY COUNCIL ACTION FORM**

SUBJECT: Council approve a Memorandum of Agreement between the City of Goodyear and the Litchfield Park Service Company for temporary wastewater capacity

STAFF PRESENTER: Shawn Bradford
COMPANY: Litchfield Park Service Company
CONTACT: Greg Sorenson

Conc 4-1191-08

RECOMMENDATION:

Council approve a Memorandum of Agreement (MOA) between the City of Goodyear and the Litchfield Park Service Company (LPSCO) for temporary wastewater capacity and authorize the City Manager to execute all necessary documentation.

EXECUTIVE SUMMARY:

The Estrella Falls Regional Mall will solidify the City's strategy in becoming the premier regional destination for retail and commercial activity in the southwest valley. The MOA between the City of Goodyear and LPSCO for temporary wastewater capacity will ensure that the development has wastewater utility service for the planned opening in the fall of 2010.

COMMUNITY BENEFIT:

Westcor/Goodyear, L.L.C. (Westcor) plans to construct a major retail and commercial project of more than two million square feet. The proposed project will include a regional center (mall), a power center, certain mixed-use commercial developments, restaurants, hotels and motels, automobile sales facilities, amusement areas and theatres.

The community benefits resulting from this Development Agreement (DA) include:

- Goodyear will secure a regional mall, which has been a goal of the community for several years;
- It helps solidify Goodyear's strategy to become the premier regional destination for retail and commercial activity in the southwest valley;
- The construction of a fully-improved Bullard Wash public park between Virginia Avenue and McDowell Road, with planned improvements to include lakes, ramadas, shade structures, grass, equestrian trails and boardwalk;
- The mall will include a community room for use by the public;
- Westcor will advance the construction of public infrastructure that will benefit other properties in the vicinity. They will also design, construct, and install needed traffic signalization and other road improvements which will facilitate additional commercial development in the general area;

- Sales tax revenues generated from the project will provide significant revenues to the City that can be used for providing additional municipal services, projects and programs for the entire community.

DISCUSSION:

The City recently entered into discussions with LPSCO and Westcor on a temporary wastewater capacity agreement to service the Estrella Falls Regional Mall. LPSCO is in the process of developing additional wastewater treatment capacity to service the mall but given the time line to complete regulatory oversight and permit requirements both parties seek a temporary agreement with the City to ensure the planned fall 2010 opening.

The temporary wastewater agreement will be capped at 200,000 gallons per day and only be utilized in the event LPSCO has not received final permitting on the facility expansion. The term of the MOA will be for 36 months. In the event that the mall is delayed and does not open by December 31, 2010 the City reserves the right to renegotiate the MOA.

If wastewater capacity is used, LPSCO will pay the City's current commercial sewer rates in effect at that time for all wastewater flows delivered to the City.

FISCAL IMPACT:

There are no additional costs associated with this action.

**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 157th 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 157th 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 157th 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 157th 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 157th 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 157th 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. Fischbach
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

