

AMENDMENT NO. 2
to
LEASE OF RUBBER DAM BODIES FOR TEMPE TOWN LAKE

This Amendment No. 2 (the "Amendment") is entered into as of this ____ day of December, 2015, between **BRIDGESTONE INDUSTRIAL PRODUCTS AMERICA, INC.**, a Delaware corporation ("BIP"), with its principal place of business at 402 BNA Drive, Suite 212, Nashville, Tennessee 37217, and the **CITY OF TEMPE**, a political subdivision of the State of Arizona ("**City**"). BIP and the City are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties".

BACKGROUND:

A. On April 22, 2009, BIP and the City entered into the Lease of Rubber Dam Bodies for Tempe Town Lake, C2009-45, as amended by Amendment No. 1 dated February 24, 2011 ("Lease"), as evidenced by the Memorandum of Commencement Date dated November 4, 201, between BIP and City.

B. BIP subsequently acted to terminate the Lease. The City disagrees the Lease was terminated. The Parties desire to continue and reinstate the Lease in accordance with its original terms and provisions except as modified in this Amendment.

THEREFORE, BIP and the City agree as follows:

1. Definitions; Recitals. Except as otherwise defined herein, all capitalized terms used herein shall have the meanings ascribed thereto in the Lease. The Recitals above are true and correct and are incorporated into this Amendment as if stated herein.

2. Term. Section 5(a) of the Lease is hereby deleted in its entirety and the following inserted therefor:

(a) BIP hereby leases to the City, and the City hereby leases from BIP, the four (4) Replacement RDB's to be supplied pursuant to this Lease for a term (the "**Term**") commencing on the Effective Date and expiring on June 1, 2016 (the "**Expiration Date**"), subject to the provisions of Sections 10 and 11. City waives any and all rights to extend the Term of the Lease for any reason, including, without limitation, weather delays or other events of force majeure or unavoidable delay; prior delays in the research, design, permitting, bidding, or fabricating of the dam; or delays in completing the new dam.

3. Rent. Section 6(a) of the Lease is hereby deleted in its entirety and the following inserted therefor:

(a) City paid all monthly rent (and applicable taxes) for the Replacement RDB's (the "**Rent**") from December 26, 2010 (the "**Rent Commencement Date**") to December 26, 2015. Upon the execution and delivery of Amendment No. 2, City will pay to BIP Rent as set forth below. The Rent shall not abate under any circumstances.

<u>Dates</u>	<u>Rent *</u>
12/26/10 to 12/26/15	\$1.00
12/27/15 to 6/1/16	\$148,000 per month, for the five month period, as set forth below**

*All rental figures require additional payment of any applicable taxes by the City, in addition to the rent set forth.

** City agrees to pay BIP \$740,000 (plus any applicable taxes) as Rent for the five month period beginning December 27, 2015 and ending on June 1, 2016. Payment of \$240,000 to be made on or before July 2, 2016, regardless of the date the lease ends or the Replacement RDB's are decommissioned and removed. If all four (4) of the Replacement RDB's are decommissioned and removed by June 1, 2016, as evidenced by a certificate from BIP in the form attached hereto as **Exhibit A** (the "Completion Certificate"), no further Rent will accrue and the City may retain the remaining \$500,000 of the \$740,000, lowering the total payment to \$240,000 for the rental period from December 26, 2015 to June 1, 2016. If the Replacement RDB's are not decommissioned and removed by June 1, 2016, City will pay the outstanding sum of \$500,000 to BIP on June 2, 2016.

4. Decommission and Removal. For purposes of this Amendment and the underlying Lease, "decommissioned and removed" or similar phrases means that all portions of the four (4) Replacement RDB's/Leased RDBs (i) have been detached and removed from the concrete foundation in Tempe Town Lake riverbed, and (ii) have been removed from Tempe Town Lake and the Salt River riverbed in their entirety, and (iii) have been cut or otherwise rendered unable to hold air or function in any way as rubber dam bodies, as confirmed by an inspection and Completion Certificate from BIP in the form attached as **Exhibit A**. City will give at least 10 (ten) days notice of the anticipated date of removal and decommissioning and allow 24 hours for inspection. Any delay in inspection or completion and execution of Exhibit A shall not alter the date of actual removal and decommissioning.

5. Operation and Control. Section 9 of the Lease is amended to add the following:

(c) City agrees not to use any of the Replacement RDBs in wet testing or to test in a way that will create back pressure on the Replacement RDBs. City further agrees to not close the new steel gate dam system so that water backs up or is trapped between the steel gates and the Replacement RDBs.

(d) City agrees and acknowledges that any wet testing using the Replacement RDBs, or any testing conducted in a manner that will create back

pressure on the Replacement RDBs is dangerous and improper. Should any wet testing using the Replacement RDBs occur, or should any testing conducted in a manner that will create back pressure on the Replacement RDBs occur, or should the City close the new steel gate dam system so that water backs up or is trapped between the steel gates and the Replacement RDBs, the City acknowledges and agrees that such breach constitutes a material default under the Lease, the Lease Term will automatically terminate, and the provisions in Section 10(d)(iii) below will apply.

6. Removal by End of Term. Section 10(b) and the preface to Section 10(c) of the Lease are hereby deleted in their entirety and the following inserted therefor:

(b) The project schedule for the decommissioning and removal of all four (4) Replacement RDB's is attached as **Supplemental Schedule C** (the "**Dam Replacement Schedule**"). City agrees that its Chief Operations Officer will provide a full written report to BIP on the first business day of every month regarding progress on the Dam Replacement Schedule and will schedule a monthly conference call at a mutually convenient time to provide all requested information regarding the status of the Dam Replacement Schedule and the new Steel Gate Dam project.

(c) If the Term is terminated early, then:

7. Additional Rent. Section 10(d)(iii) of the Lease is hereby deleted in its entirety and the following inserted therefor:

(iii) Until such time as either the City or BIP has completed decommissioning and removal of all four (4) Replacement RDB's, the City will pay per diem Rent in the amount of \$10,000.00 per day (plus any applicable taxes) for the first 30 days, and will thereafter pay a monthly rental of \$300,000.00 per month (plus any applicable taxes), and thereafter on the first day of every month thereafter (without proration for any partial months).

8. Unavoidable Delay. Section 24 of the Lease is hereby deleted in its entirety and the following inserted therefor:

24. Unavoidable Delay. The Term of the Lease will not be extended for any reason whatsoever, including but not limited to delays in the Dam Replacement Schedule. The provisions of the Lease regarding early termination of the Lease will not be extended for any reason, including, without limitation, weather delays or other events of force majeure or unavoidable delay; prior delays in the research, design, permitting, bidding, or fabricating of the dam; or delays in completing the new dam.

9. Dam Replacement Schedule. Schedule C to the Lease is hereby deleted in its entirety and **Supplemental Schedule C** attached to this Amendment is inserted therefor.

10. Stipulated Order. City irrevocably consents to BIP filing the Complaint attached hereto as Exhibit B (the "Complaint") and waives any objection to, and stipulates to the entry of, the Order of Injunctive Relief and Final Judgment requiring the City to pay all amounts as provided in this Amendment and to pay future Rent and holdover Rent as set forth above, in the form attached hereto as Exhibit C (the "Stipulated Order"). In addition, the Stipulated Order directs the City to drain the Lake and remove and decommission the four (4) Replacement RDB's immediately, without delay, should any of the Replacement RDB's not be removed and decommissioned by June 1, 2016 or earlier termination of the Lease Term. City hereby waives and relinquishes all rights to appeal or otherwise challenge the entry of the Stipulated Order and waives the notice of claims statute, A.R.S. § 12-821.01, for the Complaint in full. BIP agrees to not file the Stipulated Order if the City makes all Rent payments on time and in full and decommissions and removes the Replacement RDB's by June 1, 2016 or any earlier termination of the Lease Term.

11. Press Release; Non-Disparagement. BIP and the City agree to jointly issue the press release attached hereto as Exhibit D. The Parties mutually agree not to disparage the character or businesses of the other Party either by words or deeds, except with respect to any future litigation or arbitration between the Parties, including, without limitation, any negative or derogatory comments related to BIP, the original RDB's, the Replacement RDB's, the Lease or this Amendment, or any other reference to BIP or the Replacement RDB removal. Except as required by applicable law, the Parties agree not to discuss the facts and circumstances that form the basis of this Amendment and the settlement between the Parties. The Parties recognize that this provision is a material term of this Amendment and violations of this provision shall constitute a breach of the Lease.

12. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of Arizona.

13. Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original and all of which combined shall constitute one and the same instrument.

14. Successors and Assigns. This Amendment shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

15. Amendment. Except as otherwise amended hereby, all of the terms and provisions of the Lease shall remain in full force and effect. In the event of a conflict between the terms and provisions of this Amendment and the terms and provisions of the Lease, the terms and provisions of this Amendment will govern and prevail.

The Parties have caused this Amendment to be executed as of the date set forth above.

CITY:

CITY OF TEMPE, a municipal corporation and political subdivision of the State of Arizona

By: _____
Name: Mark Mitchell
Title: Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

STATE OF ARIZONA)
)
County of Maricopa) ss:

On this, the ____ day of _____, 2015, before me, the undersigned Notary Public, personally appeared Mark Mitchell, who acknowledged himself to be the Mayor of the City of Tempe, a municipal corporation of the State of Arizona, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand official seal.

(Seal)

Notary Public

The Parties have caused this Amendment to be executed as of the date set forth above.

BIP:

**BRIDGESTONE INDUSTRIAL PRODUCTS
AMERICA, INC., a Delaware corporation**

By: _____

Name: _____

Title: _____

STATE OF _____)

County of _____)

ss:

On this, the ____ day of _____, 2015, before me, the undersigned Notary Public, personally appeared _____, who acknowledged himself/herself to be the _____ of Bridgestone Industrial Products America, Inc., a Delaware corporation, and that he/she as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand official seal.

Notary Public

(Seal)

Schedules and Exhibits

- Supplemental Schedule C Dam Replacement Schedule
- Exhibit A Completion Certificate
- Exhibit B Complaint
- Exhibit C Stipulated Order
- Exhibit D Press Release

Schedule C
Dam Replacement Schedule

[See Attached]

Supplemental SCHEDULE C

- Negotiate Engineering Contract** **Aug. – Sept. 7, 2015**
Select engineering firm and negotiate contract to prepare design documents for the Leased RDBs decommissioning and removal and construction administration for same, completed by September 7, 2015
- Executive Engineering Contract**..... **Oct. 15, 2015**
City Council approves the Design contract for decommissioning and removal of all Leased RDBs, completed by October 15, 2015
- Prepare Construction Document**..... **Oct. 20 – Dec 21, 2015**
Evaluate Decommissioning Requirements against ADWR Dam Safety Permit requirements. Prepare Design drawings, required specifications and Work Plan for Leased RDB decommissioning and removal, completed by December 21, 2015
- Submit Dam Safety Permit Application to ADWR** **December 21, 2015**
Prepare and submit a complete Dam Safety Permit application with Work Plan to decommission and remove the Leased RDBs for ADWR review, Completed by December 21, 2015.
- Acquire all Permits from Permitting Agencies** **January 31, 2016**
Obtain all required ADWR permits to decommission and remove the Leased RDBs as well as all other permits from any other permitting agencies needed to decommission and remove the Leased RDBs. All necessary permit approvals from all agencies in hand by January 31, 2016.
- Procure Construction Contract**..... **Dec. 2015 – Jan. 31, 2016**
Select contractor and develop cost model for Leased RDB decommissioning and removal, obtain bids. All complete by January 31, 2016.
- Award and Execute Construction Contract**..... **February 11, 2016**
City Council approves the construction contract for the dam decommissioning and removal, all complete by February 11, 2016.
- Prepare Lake for Draining** **February 16, 2016**
Remove boat dock and remove boats from the Lake, all complete by February 16, 2016.
- Setup Pumps and Divert Lake Water to SRP Canal**..... **Feb. 16 - March 15, 2016**
Prepare canal to handle diverted water from the lake. Build pad for Pump and install 500 feet of piping for water diversion, all complete by March 15, 2016.. Begin draining Tempe Town lake no later than March 15, 2016 and be complete in draining and full dry out of Lakebed by March 28, 2016, regardless of availability of SRP canal or status of progress in any water diversion program.

Decommission and Remove all Leased RDBsMarch 28 – April 12, 2016

Contractor begins on site work to decommission and remove all 4 Leased RDBs by no later than March 28, 2016. All four leased RDBs are removed and decommissioned in time to have inspection and certification occur at 9 a.m. on April 12, 2016.

Exhibit A
Completion Certificate

[See Attached]

Completion Certificate—Exhibit A

In accord with paragraph four (4) of Amendment No. 2 to Lease of Rubber Dam Bodies for Tempe Town Lake, dated December ____, 2015, the undersigned certify that all four (4) of the Replacement RDB's have been decommissioned and removed from the existing dam and that this occurred on or before June 1, 2016. "Decommissioned and removed" requires that all portions of the four (4) Leased RDBs, sometimes referenced as Replacement RDBs, have (1) been removed from the concrete foundation in the Tempe Town Lake riverbed, and (ii) have been removed from Tempe Town Lake and the riverbed of the Salt River in their entirety, and (iii) have been cut or otherwise rendered unable to hold air and function in any way as rubber dam bodies, and that all this has been confirmed by inspection and certification by Bridgestone Industrial Products America, Inc, using this form.

With the signatures of both undersigned parties the City of Tempe is deemed to have decommissioned and removed the four Leased RDBs, sometimes referenced as Replacement RDBs as of the date set forth here as _____.

Dated: _____

Thomas Truempy
Bridgestone Industrial Products, America, Inc.

James Wheeler
Bridgestone Industrial Products, America, Inc.

Exhibit B
Complaint

[See Attached]

1 FENNEMORE CRAIG, P.C.
2 Graeme Hancock (No. 007190)
3 Emily Ward (No. 029963)
4 2394 East Camelback Road, Suite 600
5 Phoenix, AZ 85016-3429
6 Telephone: (602) 916-5000
7 Email: ghancock@fclaw.com
8 Email: eward@fclaw.com

9 Attorney for Plaintiff
10 Bridgestone Industrial Products America, Inc.

11 SUPERIOR COURT OF ARIZONA

12 MARICOPA COUNTY

13 BRIDGESTONE INDUSTRIAL
14 PRODUCTS AMERICA, INC.,

No.

15 Plaintiff,

COMPLAINT

16 v.

17 CITY OF TEMPE, an Arizona municipal
18 corporation,

19 Defendant.

20 For its Complaint, Bridgestone Industrial Products America, Inc. ("BIP") alleges as
21 follows:

22 **JURISDICTION, PARTIES, AND VENUE**

23 1. Bridgestone Industrial Products America, Inc. ("BIP") is a Delaware
24 corporation, doing business in Maricopa County, Arizona.

25 2. The City of Tempe (the "City") is a municipal corporation in Maricopa
26 County, Arizona, and has caused events and transactions to occur in Maricopa County,
Arizona, out of which this action arises.

3. This Court has jurisdiction over this matter and venue is proper in this Court
as the City, its agents and employees, have caused acts and events to occur in Maricopa

1 County, Arizona, out of which the claims set forth herein arise.

2 4. The amount in controversy exceeds the jurisdictional minimum for this
3 Court.

4 5. The City has previously waived all requirements in A.R.S. § 12-821.01 by
5 stipulation and by substantially participating in pre-litigation conduct, including but not
6 limited to repeated responses, orally and through correspondence, regarding BIP's claims,
7 and participation in a mediation and settlement conferences to resolve the parties' disputes
8 and the receipt and response to draft claim letters.

9 **FACTUAL ALLEGATIONS**

10 6. The City and BIP executed the certain Lease Agreement and supplemental
11 amendments collectively attached here as **Exhibit A** ("**Lease Agreement**"). The Lease
12 Agreement required the City decommission and remove the four Leased RDBs,
13 sometimes referred to as Replacement RDB's, on or before December 26, 2015.

14 7. The parties subsequently entered into an "Amendment No. 2 to the Lease of
15 Rubber Dam Bodies for Tempe Town Lake" ("**Amendment No. 2**"), confirming the City
16 owes and must pay additional rent for the Leased RDBs for the period beginning
17 December 27, 2015 and continuing until June 1, 2016, and for any subsequent time period
18 following June 1, 2016 until the City decommissions and removes the four Leased RDBs.

19 8. Under the terms of the parties' agreements, decommissioning and removal
20 requires all portions of the four (4) Leased RDBs have been detached and removed from
21 the concrete foundation in Tempe Town Lake's riverbed and have been removed from
22 Tempe Town Lake and the riverbed for the Salt River in their entirety and have been cut
23 or otherwise rendered unable to hold air or function in any way as rubber dam bodies and
24 this has been confirmed by inspection and certification from BIP.

25 9. The parties agreed to extend the time for the City to decommission and
26 remove the Leased RDBs until June 1, 2016, contingent on the City agreeing to pay

1 \$740,000 in rent, as more fully set forth in Amendment No. 2, agreeing that if the City
2 decommissioned and removed the Leased RDBs as required, the City would be entitled to
3 a return of certain portions of this rent prior to the decommissioning and removal of the
4 Leased RDBs.

5 10. The City has failed to its deadlines and decommission and remove the
6 Leased RDBs by June 1, 2016. Accordingly all possible reductions or rebates in rent set
7 forth in Amendment No. 2, including the reduction or rebate of \$500,000 in monthly rent
8 have failed and payment of the \$740,000 is now immediately due. BIP is also entitled to
9 rent in the amount of \$300,000 per month, beginning June 2, 2016 or any earlier end of
10 Term and continuing in full each month until such time as the four Leased RDBs have
11 been decommissioned and removed.

12 11. BIP is also entitled to an order of injunctive relief directing the City to
13 complete the decommissioning and removal of the Leased RDBs forthwith and without
14 delay and confirming that no action will be taken to back pressure the Leased RDBs as
15 more fully set forth in Amendment No. 2

16 **COUNT ONE**

17 **(Breach of Contract)**

18 12. All allegations contained in paragraphs 1 through 12 are incorporated
19 herein.

20 13. The Lease Agreement represents a binding contract between BIP and the
21 City.

22 14. Pursuant to the Lease Agreement, the City breached the deadlines set forth
23 in Amendment No. 2. Accordingly all agreements regarding later payment or forgiveness
24 of any prior rent are null and void and the City is immediately liable for past due rent for
25 rental in the amount of \$740,000. The City is also liable for additional monthly rent
26 totaling \$300,000 per month, beginning June 2, 2016 and continuing until such time as all

1 four Leased RDBs have all been decommissioned and removed.

2 15. Pursuant to the Lease Agreement, the City is required to decommission and
3 remove the Leased RDBs immediately and without delay.

4 **PRAYER FOR RELIEF**

5 Wherefore, BIP hereby respectfully request that this Court enter Judgment as
6 follows:

7 A. For declaratory judgment construing the parties' rights and obligations
8 under the Lease Agreement, confirming that BIP is entitled to receive the sum of
9 \$740,000 per month in past due rent, and \$300,000 per month in rent. beginning June 2
10 2016, and continuing until such time as all four Leased RDBs have been decommissioned
11 and removed, bearing prejudgment liquidated interest at 10% and post judgment statutory
12 interest until paid.

13 B. An award of attorneys' fees and litigation costs and expenses pursuant to the
14 Lease Agreement, paragraph 33, and A.R.S. § 12-341.01.

15 C. For such other relief as the Court deems just.

16 DATED this _____ day of _____ 201__.

17 FENNEMORE CRAIG, P.C.

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By _____
Graeme Hancock
Emily Ward
Attorney for Plaintiff
Bridgestone Industrial Products, Inc.

1 ORIGINAL filed this
2 _____ day of December, 2015.

3 COPIES of the foregoing mailed
4 this _____ day of December, 2015 to:

5 Charles L. Cahoy
6 Tempe City Attorney's Office
7 21 E. 6th Street, Suite 201
8 Tempe, AZ 85280
9 Chuck Cahoy@tempe.gov
10 Counsel for Defendant

11 /s/ _____
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**Exhibit C
Stipulated Order**

[See Attached]

1 FENNEMORE CRAIG, P.C.
Graeme Hancock (No. 007190)
2 Emily Ward (No. 029963)
2394 East Camelback Road, Suite 600
3 Phoenix, AZ 85016-3429
Telephone: (602) 916-5000
4 Email: ghancock@fclaw.com
Email: eward@fclaw.com

5 Attorney for Plaintiff
6 Bridgestone Industrial Products America, Inc.

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SUPERIOR COURT OF ARIZONA

9

MARICOPA COUNTY

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BRIDGESTONE INDUSTRIAL
PRODUCTS AMERICA, INC.,

No.

11

Plaintiff,

**STIPULATION AND MOTION FOR
ENTRY OF FINAL JUDGMENT**

12

v.

13

CITY OF TEMPE, an Arizona municipal
corporation,

14

15

Defendant.

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COME NOW, Plaintiff Bridgestone Industrial Products America, Inc. (“BIP”) and
18 Defendant City of Tempe (the “City”) and request the Proposed Form of Judgment
19 attached and submitted as Exhibit A be entered by the Court. By the undersigned
20 signature, the City irrevocably waives the requirements of A.R.S. § 12-821.01 with
21 respect to all claims, causes of action and matters set forth in the Complaint and to all
22 matters set forth in the the Proposed Form of Judgment, Exhibit A. The City further
23 irrevocably consents to the jurisdiction and venue of this Court and waives any and all
24 affirmative defenses to the matters alleged in the Complaint.

25

Defendant City also by the signature of its counsel below irrevocably consents to
26 the immediate entry of the Proposed Form of Judgment attached as Exhibit A and to each
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of its terms, and to any and all claims for post judgment relief by this Court other than presentation of satisfaction or partial satisfaction of judgment. Defendant City waives all rights to otherwise challenge or contest the entry of said Judgment, including any and all rights of appeal.

Should any party remove this case to Federal Court, the City, by and through the undersigned, irrevocably consents to all matters set forth herein and in the attached form of Judgment for any proceedings in the United States District Court and the City irrevocably consents to the entry of Judgment by said Court on identical terms in a final Judgment similar to Exhibit A. The undersigned City irrevocably waives consideration of any other matter pending before said Court prior to the entry of this Judgment and irrevocably waives any and all claims for post judgment relief by said Court. Defendant City waives all rights to otherwise challenge or contest the entry of said Judgment, including any and all rights of appeal.

Plaintiff accordingly requests that the Court enter the proposed form of Judgment attached as Exhibit A.

DATED this ____ day of _____, 201__.

FENNEMORE CRAIG, P.C.

By _____
Graeme Hancock
Emily Ward
Attorneys for Plaintiff
Bridgestone Industrial Products
America, Inc.

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CITY OF TEMPE

By _____
Charles Cahoy
Assistant City Attorney, City of Tempe

ORIGINAL filed this
_____ day of December, 2015.

COPIES of the foregoing emailed/mailed
this _____ day of December, 2015 to:

Graeme Hancock
Emily Ward
Fennemore Craig, P.C.
2394 E. Camelback Road, Suite 600
Phoenix, AZ 85016
ghancock@fclaw.com
eward@fclaw.com
Counsel for Plaintiff

Charles L. Cahoy
Tempe City Attorney's Office
21 E. 6th Street, Suite 201
Tempe, AZ 85280
Chuck_Cahoy@tempe.gov
Counsel for Defendant

/s/ _____

1 FENNEMORE CRAIG, P.C.
2 Graeme Hancock (No. 007190)
3 Emily Ward (No. 029963)
4 2394 East Camelback Road, Suite 600
5 Phoenix, AZ 85016-3429
6 Telephone: (602) 916-5000
7 Email: ghancock@fclaw.com
8 Email: eward@fclaw.com

9 Attorney for Plaintiff
10 Bridgestone Industrial Products America, Inc.

11 SUPERIOR COURT OF ARIZONA

12 MARICOPA COUNTY

13 BRIDGESTONE INDUSTRIAL
14 PRODUCTS AMERICA, INC.

No.

15 v.

FINAL JUDGMENT

16 CITY OF TEMPE, an Arizona municipal
17 corporation,

18 Defendant.

19 The Court having considered the “Stipulation and Motion for Entry of Final
20 Judgment” submitted by the Plaintiff herein and irrevocably stipulated to by the
21 Defendant and good cause appearing therefore;

22 IT IS HEREBY ORDERED, ADJUDGED AND DECREED granting judgment in
23 favor of Bridgestone Industrial Products America, Inc. (“BIP”) and against the City of
24 Tempe (the “City”) with respect to all claims asserted by Bridgestone in its Complaint.

25 IT IS FURTHER ORDERED that the Court finds no just reason for delay in
26 entering final judgment against Defendant City of Tempe pursuant to the parties’
stipulation.

IT IS FURTHER ORDERED that no further matters remain pending and this
Judgment is entered pursuant to Rule 54(c), Arizona Rules of Civil Procedure.

1 IT IS FURTHER ORDERED that Plaintiff shall have judgment in the amount of
2 \$740,000, and judgment in the additional amount of \$300,000 per month, in the amount
3 of \$10,000 per day from June 2 until June 30, 2016 and thereafter, beginning on July 1,
4 2016, \$300,000 per month payable in full, in advance and without apportionment on the
5 first of every calendar month thereafter. The City is also responsible for payment of all
6 taxes owing on rental payments for the Leased RDBs, together with both prejudgment
7 interest at the rate of 10% per annum from June 1, 2016 or any earlier termination of the
8 Lease, and post Judgment interest at the statutory rate, currently 4.25%.

9 IT IS FURTHER ORDERED that BIP shall have Declaratory Judgment that it is
10 entitled in the future to the monthly payment \$300,000 as set forth above, continuing on
11 the first of every month thereafter, unless and until the City has fully and entirely
12 decommissioned and removed all four (4) of the Leased RDBs. For purposes of this
13 Order and Judgment “decommissioned and removed” requires that each of the four (4)
14 Leased RDBs referenced in the Complaint be detached and removed from the concrete
15 foundation in the Tempe Town Lake riverbed and have been removed from Tempe Town
16 Lake and the riverbed in the Salt River in their entirety and have been cut or otherwise
17 rendered unable to hold air or function in any way as a rubber dam body, as attested in
18 the Completion Certificate used by the parties.

19 IT IS FURTHER ORDERED that the City and any of its employees, contractors,
20 affiliates, or agents, are hereby enjoined from any action that may result in back pressure
21 on the Leased RDBs including without limitation, using the Leased RDBs for “wet
22 testing” any new dam. Back pressure means a circumstance in which water backs up or
23 is trapped between the new dam system and the Leased RDBs, including any situation in
24 which the steel gates in the new dam system are in the closed position or in which the
25 new dam system permits the back up of water on the downstream side of the Leased
26 RDBs.

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IT IS FURTHER ORDERED that Defendant City is hereby directed to remove and decommission any of the four (4) Leased RDBs that have not yet been removed and decommissioned immediately and without any delay,

IT IS FURTHER ORDERED that Plaintiff shall have Judgment against Defendant City in the amount of \$10,000 in costs and attorney fees, pursuant to the agreement of the parties in the Lease Agreement identified in the Complaint and pursuant to A.R.S. § 12-341.01(A), together with statutory interest thereon from the date of this Judgment.

DATED this ____ day of _____, 20__.

Superior Court Judge

Exhibit D
Press Release

[See Attached]

For Immediate Release

City of Tempe and Bridgestone Agree to Lease
Extension on Tempe Town Lake Rubber Dams

(TEMPE, Ariz.)- DATE- The City of Tempe and Bridgestone Industrial Products America, Inc., today announced an agreement to extend and amend the city's existing lease on the rubber dams supplied by Bridgestone Industrial Products America, Inc. at Tempe Town Lake.

The rubber dam bodies have enabled the City of Tempe to dam the Salt River and create Tempe Town Lake. When the warranty on the original rubber dam bodies expired six years ago, Bridgestone Industrial Products agreed to rent replacements to the city for an additional five years, allowing the city time to evaluate and select the steel gate technology that is currently being installed as the replacement dam system for Tempe Town Lake.

The original termination date for the lease was Dec. 26, 2015. Today's amendment extends the lease until June 1, 2016.

"We are glad to support the City of Tempe and its citizens with the project at the lake that has become a hub of commerce for the city," said James Wheeler, Bridgestone Industrial Products, Director of Operations and Finance & Secretary.

Under the original lease, the rent for the additional five-month rental period would have been \$1.5 million. Under the amendment agreed to by Bridgestone and Tempe, that rent is reduced to \$740,000, and if the bladders are removed by June 1, 2016, the rent is further reduced by an additional \$500,000, to \$240,000.

This lease extension allows the city to temporarily move most of the water in Tempe Town Lake to the Salt River Project's canals while the city removes the leased rubber dam bodies, and performs additional maintenance at the lake. Moving the water to the SRP canals is a conservation effort that also saves the city the cost of replacing most of the water.

"Tempe Town Lake is a treasured and valuable economic engine, tourist attraction and recreation destination," said Tempe Public Works Director Don Bessler. "This is an important agreement with Bridgestone that enables the city to complete the installation of the new western dam at Town Lake and ensure that this incredible asset is preserved and able to

continue thriving for the benefit of our community. The city appreciates Bridgestone's ongoing partnership in extending the lease and agreeing to reduced rent."

About Bridgestone Industrial Products America, Inc.:

Bridgestone Industrial Products America, Inc. is a wholly owned sales division of Bridgestone Corporation, the world's largest tire and rubber company. Bridgestone Industrial Products America sells industrial rubber and other non-tire products throughout North, Central and South America. The company is headquartered in Nashville, Tenn.

Media Contacts:

Bridgestone Industrial Products America Communications Department -877-201-2373

Nikki Ripley, Tempe Communication and Media Relations Manager