

Scottsdale No. 2012-189-COS

**EXHIBIT "D"****PRELIMINARY BUDGET OF DUE DILIGENCE AND CLOSING COSTS**

1. Escrow closing costs	\$25,000
2. Phase 1 E/A	\$3,900
3. Evaluation of Mock hydrology by HydroSystems	\$5,000
4. Amendments to CAGRD Agreement	\$5,000
5. Miscellaneous (water quality testing; ADWR filing fees)	\$16,100
<b>Total Estimated Closing Costs</b>	<b>\$55,000</b>

**EXHIBIT "E"**

**FARM LEASE**

1. Agricultural Lease Agreement (MBT) dated January 1, 2000 by and between Southwestern Agricultural Services, Inc., as Landlord, and HCT Farms II, as Tenant;
2. Addendum to Agricultural Lease Agreement (MBT) Maintenance dated January 1, 2000 by and between Landlord and Tenant;
3. Addendum to Agricultural Lease Agreement (MBT) State Lease Lands dated January 1, 2000 by and between Landlord and Tenant;
4. Addendum to Agricultural Lease Agreement (MBT) dated January 1, 2000 by and between Landlord and Tenant;
5. Addendum to Agricultural Lease Agreement (MBT) dated January 1, 2001 by and between Landlord and Tenant;
6. Assignment and Assumption of Agricultural Lease Agreement dated August 1, 2001 by and between Tenant, as assignor, Rancho Escalante, as assignee, and Landlord, following which Rancho Escalante was the Tenant under the Agricultural Lease Agreement;
7. Assignment, Assumption and Extension of Agricultural Lease Agreement MBT Farm dated November 1, 2001 by and between Tenant, as assignor, Yellow Snail Farms, as assignee, and Landlord, following which Yellow Snails Farms was the Tenant under the Agricultural Lease Agreement;
8. Assignment and Assumption of Agricultural Lease Agreement MBT Farm dated January 1, 2002 by and between Tenant, as assignor, Rancho Escalante, as assignee, and Landlord, following which Rancho Escalante was the Tenant under the Agricultural Lease Agreement;
9. Agricultural Lease Amendment and Extension MBT Farm dated as of December 1, 2002, between Landlord and Tenant;
10. Agricultural Lease Extension MBT Farm dated as of October 1, 2003 between Landlord and Tenant;
11. Assignment and Assumption of Agricultural Lease Agreement MBT Farm dated January 1, 2004 by and between Tenant, as assignor, Broken Wing Farms, as assignee, and Landlord, following which Broken Wing Farms was the Tenant under the Agricultural Lease Agreement;
12. Agricultural Lease Extension MBT Farm dated as of November 1, 2004, between Landlord and Tenant;
13. Agricultural Lease Extension MBT Farm dated as of December 15, 2006 between Vidler Water Company, as Landlord, and Tenant;

14. Agricultural Lease Extension MBT Farm dated as of January 1, 2008, between Landlord and Tenant;
15. Agricultural Lease Extension MBT Farm dated as of January 1, 2009, between Landlord and Tenant;
16. Letter from Landlord to Tenant dated June 3, 2009, consenting to the sublease of Tenant's interest to Double Anchor Farms; Red Bullet Farms and Yellow Snail Farms;
17. Agricultural Lease Extension MBT Farm dated as of January 1, 2010, between Landlord and Hardy Darton Farms, as Tenant;
18. Agricultural Lease Extension MBT Farm dated as of May 1, 2011, between Landlord and Tenant; and
19. Agricultural Lease Extension MBT Farm dated as of January 2, 2012, between Landlord and Tenant (unsigned).

**EXHIBIT "F"**

**AFFIDAVIT OF PROPERTY VALUE**

The parties consent to the preparation of the Affidavit of Property Value by the Escrow Agent for approval by the parties prior to the Closing Date.

EXHIBIT "G"

PARTIAL ASSIGNMENT AND ASSUMPTION OF FARM LEASE

THIS PARTIAL ASSIGNMENT AND ASSUMPTION OF FARM LEASE (this "Assignment") is executed this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by Vidler Water Company, Inc., a Nevada corporation ("Assignor") and the City of Scottsdale, an Arizona municipal corporation (the "Assignee"). Assignor and Assignee are sometimes referred to, individually, as a "Party" and, together, as the "Parties".

RECITALS:

A. With regard to the real property described on Exhibit A attached hereto (the "Property") a map of which is depicted on Exhibit A1 attached hereto, Assignor and Assignee have entered into a Purchase Agreement and Escrow Instructions dated as of \_\_\_\_\_, 2012 (the "Agreement").

B. In connection with and at the same time as the conveyance of the Property to Assignee, the Agreement obligates the Assignor to assign to the Assignee, and Assignee to assume, all of the "landlord's" interest under the Farm Lease encumbering the Property, as identified in the Schedule of Farm Lease (the "Farm Lease") attached hereto as Exhibit B, subject to the terms and conditions set forth in this Assignment.

ASSIGNMENT AND ASSUMPTION:

NOW THEREFORE, in consideration of the terms and conditions hereof, the Assignor and the Assignee agree as follows:

1. Assignment by Assignor. The Assignee and Assignor acknowledge that the Farm Lease encumbers land owned by the Assignor in addition to the Property. Accordingly, Assignor hereby assigns, sets over and transfers to Assignee, and Assignee hereby takes and accepts from Assignor, all of Assignor's rights, title and interest as "landlord" in and under and to the Farm Lease and to all rents and other sums hereafter owing, and all other rights, benefits and privileges hereafter occurring to the landlord thereunder, which are applicable to the Property. The Parties acknowledge that the Assignor shall retain, and does not assign, its interest in the Farm Lease as applicable to land, other than the Property, owned by the Assignor. The Assignee and Assignor agree to cooperate, in good faith, to manage and enforce such partially assigned Farm Lease, and the dealings with each tenant, allocation of rent and fulfillment of the obligations of "landlord" thereunder in a reasonable manner.

2. Assumption by Assignee. Assignee assumes all liabilities and obligations of Assignor under the Farm Lease and agrees to perform and observe all the covenants and conditions of Assignor as "landlord" under the Farm Lease (with regard to the Property). Notwithstanding the foregoing, Assignee does not assume liability of Assignor for any obligation that is based on any omission or occurrence prior to date hereof.

3. Indemnifications by Assignor and Assignee. Assignor shall hold harmless, indemnify and defend Assignee, its successors and assigns, from and against any claim of

liability for breach or default on the part of Assignor as landlord under the Farm Lease (to the extent assigned hereby) based on an event occurring (or alleged to have occurred) or a condition arising (or alleged to have arisen) before the date hereof. Assignee shall hold harmless, indemnify and defend the Assignor, its successors and assigns, from and against any claim or liability for breach or default on the part of the Assignee as landlord under the Farm Lease (to the extent assigned hereby) based on an event occurring (or alleged to have occurred) or a condition arising, including the failure to discharge responsibilities (or allege to have arisen) on or after the date hereof.

4. Miscellaneous.

a. Assignor represents and warrants that: (i) the Farm Lease is in full force and effect and has not been modified or amended; (ii) the rents described in the Farm Lease has not been waived, discounted, compromised or setoff; (iii) there are no other assignments, transfers, pledges or encumbrances of the Farm Lease or of the rents described therein; and (iv) neither Assignor nor, to Assignor's knowledge, the lessee and tenant are in default under the Farm Lease.

b. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES STATED IN PARAGRAPH 4(a), ASSIGNEE ACKNOWLEDGES THAT IT IS ACQUIRING ITS INTEREST IN THE FARM LEASE DESCRIBED IN THIS ASSIGNMENT IN AN "AS-IS" CONDITION, WITHOUT REPRESENTATION OR WARRANTY OF ANY NATURE WHATSOEVER, EXPRESS OR IMPLIED.

c. Each Party agrees to perform, execute and deliver (or to cause to be performed, executed, and delivered) any additional documents, records and assurances as are consistent with the Agreement and as the other Party may reasonably request to fully carry out the intent of this Assignment.

d. Assignor and Assignee warrant and represent to each other that they have the requisite power and authority to enter this Assignment and have performed all acts and secured all approvals necessary to make this Assignment effective and legally binding on such Party in accordance with its terms. Each person executing this instrument on behalf of either Party personally warrants that he or she is duly authorized and empowered to do so and that all signatures and approvals of persons with an ownership interest in such Party have been obtained so as to make this Assignment legally enforceable and effective against such Party.

e. This Assignment is binding upon, and will inure to the benefit of, the Parties and their successors and assigns.

f. This Assignment shall be governed by and interpreted under the laws of the State of Arizona.

g. This Assignment may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Assignment and Assumption of Farm Lease to be effective as of the date hereof.

ASSIGNOR:

VIDLER WATER COMPANY, INC., a Nevada  
corporation

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

ASSIGNEE:

CITY OF SCOTTSDALE, an Arizona municipal  
corporation

By: \_\_\_\_\_  
Name: Brian Biesemeyer  
Its: Executive Director, Water Resources  
Division

APPROVED AS TO FORM:

\_\_\_\_\_  
Name: Bruce Washburn, City Attorney  
By: Clifford J. Frey  
Senior Assistant City Attorney

**EXHIBIT A**

**PARTIAL ASSIGNMENT AND ASSUMPTION OF FARM LEASE**

**LEGAL DESCRIPTION OF PROPERTY**

1. The East half (E ½) of the Southeast quarter (SE ¼) of Section 28, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona, as depicted in the Boundary Survey recorded October 10, 2012, Document #2012-05400, La Paz County Recorder.  
APN 303-81-003, 80.02 acres more or less
2. The West half (W ½) of the Southeast quarter (SE ¼) of Section 28, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona, as depicted in the Boundary Survey recorded October 10, 2012, Document #2012-05400, La Paz County Recorder.  
APN 303-81-004, 80.01 acres more or less
3. The North half (N ½) of Section 33, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona, as depicted in the Boundary Survey recorded October 10, 2012, Document #2012-05400, La Paz County Recorder.  
APN 303-14-069, 320.10 acres more or less
4. The North half (N ½) and the Southeast quarter (SE ¼) of Section 34, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona, as depicted in the Boundary Survey recorded October 10, 2012, Document #2012-05400, La Paz County Recorder.  
APN 303-14-071, 480.08 acres more or less
5. The West 2,015.56 feet of the South half (S ½) of the South half (S ½) of Section 35, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona, being described as the New Parcel #5 in the Lot Line Adjustment map recorded October 10, 2012, Document #2012-05399, La Paz County Recorder. Excepting therefrom one-third (1/3) of all oil gas, minerals and other hydrocarbon substances as reserved in an instrument Recorded April 24th, 1958 in Docket 222, page 514 Records of Yuma (now La Paz County), Arizona.  
APN 303-40-\_\_\_\_, 61.10 acres more or less

EXHIBIT 1A

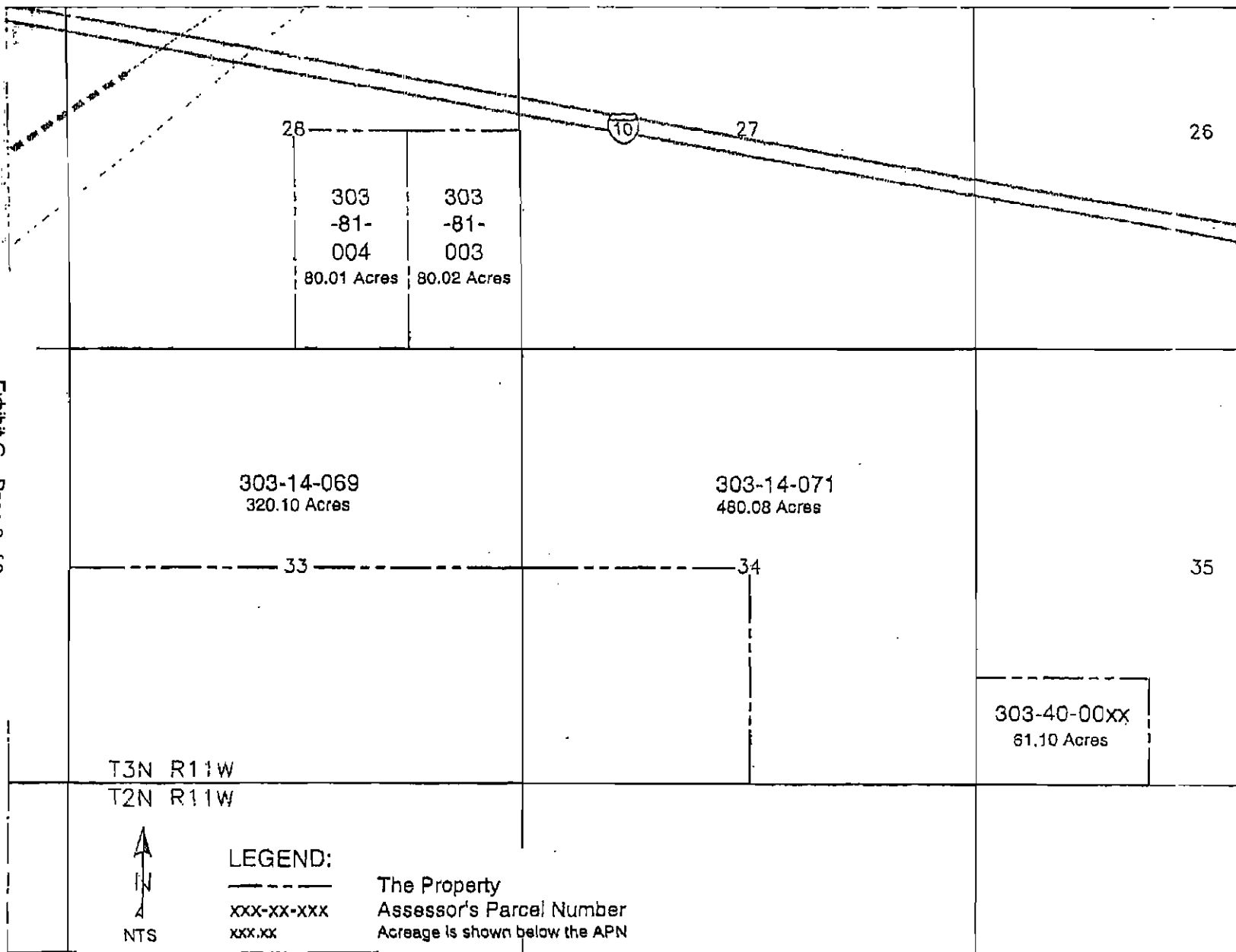
PARTIAL ASSIGNMENT AND ASSUMPTION OF FARM LEASE

MAP OF THE PROPERTY

(SEE ATTACHED)

Exhibit "A1"  
The Property

Scottsdale No. 2012-189-COS



**EXHIBIT B**

**PARTIAL ASSIGNMENT AND ASSUMPTION OF FARM LEASE**

**FARM LEASE SCHEDULE**

1. Agricultural Lease Agreement (MBT) dated January 1, 2000 by and between Southwestern Agricultural Services, Inc., as Landlord, and HCT Farms II, as Tenant;
2. Addendum to Agricultural Lease Agreement (MBT) Maintenance dated January 1, 2000 by and between Landlord and Tenant;
3. Addendum to Agricultural Lease Agreement (MBT) State Lease Lands dated January 1, 2000 by and between Landlord and Tenant;
4. Addendum to Agricultural Lease Agreement (MBT) dated January 1, 2000 by and between Landlord and Tenant;
5. Addendum to Agricultural Lease Agreement (MBT) dated January 1, 2001 by and between Landlord and Tenant;
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7. Assignment, Assumption and Extension of Agricultural Lease Agreement MBT Farm dated November 1, 2001 by and between Tenant, as assignor, Yellow Snail Farms, as assignee, and Landlord, following which Yellow Snails Farms was the Tenant under the Agricultural Lease Agreement;
8. Assignment and Assumption of Agricultural Lease Agreement MBT Farm dated January 1, 2002 by and between Tenant, as assignor, Rancho Escalante, as assignee, and Landlord, following which Rancho Escalante was the Tenant under the Agricultural Lease Agreement;
9. Agricultural Lease Amendment and Extension MBT Farm dated as of December 1, 2002, between Landlord and Tenant;
10. Agricultural Lease Extension MBT Farm dated as of October 1, 2003 between Landlord and Tenant;
11. Assignment and Assumption of Agricultural Lease Agreement MBT Farm dated January 1, 2004 by and between Tenant, as assignor, Broken Wing Farms, as assignee, and Landlord, following which Broken Wing Farms was the Tenant under the Agricultural Lease Agreement;
12. Agricultural Lease Extension MBT Farm dated as of November 1, 2004, between Landlord and Tenant;
13. Agricultural Lease Extension MBT Farm dated as of December 15, 2006 between Vidler Water Company, as Landlord, and Tenant;

14. Agricultural Lease Extension MBT Farm dated as of January 1, 2008, between Landlord and Tenant;
15. Agricultural Lease Extension MBT Farm dated as of January 1, 2009, between Landlord and Tenant;
16. Letter from Landlord to Tenant dated June 3, 2009, consenting to the sublease of Tenant's interest to Double Anchor Farms, Red Bullet Farms and Yellow Snail Farms;
17. Agricultural Lease Extension MBT Farm dated as of January 1, 2010, between Landlord and Hardy Darton Farms, as Tenant;
18. Agricultural Lease Extension MBT Farm dated as of May 1, 2011, between Landlord and Tenant; and
19. Agricultural Lease Extension MBT Farm dated as of January 2, 2012, between Landlord and Tenant (unsigned).

EXHIBIT "H"

RELEASE AND ESTOPPEL AGREEMENT

(DESERT MOUNTAIN)

THIS RELEASE AND ESTOPPEL AGREEMENT (this "Agreement") is executed as of the \_\_\_\_ day of \_\_\_\_\_, 2013 (the "Effective Date"), by the CITY OF SCOTTSDALE, ARIZONA, an Arizona municipal corporation ("City") and DESERT MOUNTAIN CLUB, INC., an Arizona nonprofit corporation ("Desert Mountain"). City and Desert Mountain are each a "Party" and shall collectively be referred to as the "Parties," and the Agreement is as follows:

A. City entered into that IWDS Pipeline Capacity Agreement for Desert Mountain Properties dated as of May 13, 2002 between City and DESERT MOUNTAIN PROPERTIES LIMITED PARTNERSHIP, a Delaware limited partnership ("DMP") (Agreement No. 2002-065-COS) (the "2002 IWDS Agreement").

B. DMP assigned the 2002 IWDS Agreement to DESERT MOUNTAIN CLUB, INC., an Arizona nonprofit corporation ("Desert Mountain") on December 31, 2010.

C. City and Desert Mountain entered into the First Amendment to IWDS Pipeline Capacity Agreement Desert Mountain Properties on December 31, 2010 (Agreement No. 2002-065-COS-A1) (the "First Amendment") (the "2002 IWDS Agreement" and the "First Amendment" shall collectively be referred to as the "Desert Mountain PCA").

D. City, Desert Mountain, VIDLER WATER COMPANY, INC., a Nevada corporation ("Seller"), and CGP-GRANITE GOLF, L.L.C., an Arizona limited liability company ("Granite Golf") have entered into that certain Purchase Agreement and Escrow Instructions dated \_\_\_\_\_, 2012 (the "Vidler Purchase Agreement").

E. City and Desert Mountain have entered into that certain Amended and Restated IWDS Pipeline Capacity Agreement for Desert Mountain dated \_\_\_\_\_, 2013 (the "Amended and Restated IWDS Pipeline Capacity Agreement"), which supersedes and replaces in its entirety the Desert Mountain PCA.

F. The Parties desire to confirm the rights and obligations of the Parties concerning the Desert Mountain PCA, the Amended and Restated IWDS Pipeline Capacity Agreement and the Vidler Purchase Agreement.

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged and confessed, the Parties hereby agree as follows:

1. Amended and Restated IWDS Agreement. The Parties acknowledge and agree that the Amended and Restated IWDS Pipeline Capacity Agreement supersedes and replaces in its entirety the Desert Mountain PCA and that all rights and obligations between the Parties previously set forth in the Desert Mountain PCA that arise after the Effective Date are set forth solely in the

(i) Amended and Restated IWDS Pipeline Capacity Agreement and the (ii) Vidler Purchase Agreement.

2. Acknowledgement/Ratification. The Parties acknowledge that all obligations of Desert Mountain and City under the Desert Mountain PCA have been satisfied through the Effective Date. City hereby acknowledges, ratifies, and confirms that the Amended and Restated IWDS Pipeline Capacity Agreement is in full force and effect as of the Effective Date.

3. Defaults. City and Desert Mountain agree that, as of the Effective Date hereof, neither Party is in default, nor does there exist any condition or event which with notice, the passage of time, or both would constitute a default under the Amended and Restated IWDS Pipeline Capacity Agreement by either Party thereunder.

4. Release. City and Desert Mountain hereby irrevocably release and forever discharge each other and their individual directors, officers, agents, employees, representatives, predecessors, successors, assigns, affiliated entities and all Parties claiming by or through them, from any and all claims, actions, causes of action, demands, judgments, damages, liability or obligations of any nature or kind, whether presently known or unknown, which City or Desert Mountain may now have or which hereafter accrue on account of, or in any way arising out of or in connection with the Desert Mountain PCA.

5. Authority. Each of the Parties warrants that it has the full authority and capacity to enter into, execute, deliver and perform this Agreement and that such execution, delivery, or performance does not violate any contractual or other obligation by which such Party is bound. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, successors, and assigns.

6. Entire Agreement. City acknowledges that all obligations of Desert Mountain to City are set forth in the Amended and Restated IWDS Pipeline Capacity Agreement and the Vidler Purchase Agreement with respect to the subject matter thereof and there are no other written or oral agreements, understandings or representations among the Parties with respect to the subject matter thereof.

7. Severability. Except as expressly provided to the contrary herein, each section, part, term, or provision of this Agreement shall be considered severable, and if for any reason any section, part, term, or provision herein is determined to be invalid and contrary to or in conflict with any existing or future law or regulation by a court or agency having valid jurisdiction, such determination shall not impair the operation of or have any other effect on other sections, parts, terms, or provisions of this Agreement as may remain otherwise intelligible, and the latter shall continue to be given full force and effect and bind the Parties hereto, and said invalid sections, parts, terms, or provisions shall not be deemed to be a part of this Agreement.

8. Enforcement. In the event legal proceedings are commenced for the construction or enforcement of this Agreement, the Party prevailing in any such

action shall recover its reasonable attorneys' fees and costs from the adverse Party (or Parties) whether or not formal suit is actually filed.

9. **Governing Law and Venue.** This Agreement shall be construed in accordance with and governed by the internal laws of the State of Arizona. The parties agree to submit to the process, jurisdiction and venue of the state and federal courts located in Maricopa County, State of Arizona.

This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors and assigns.

EXECUTED as of the date first set forth above.

**CITY:**

APPROVED AS TO FORM:

**CITY OF SCOTTSDALE, ARIZONA,**  
an Arizona municipal corporation

\_\_\_\_\_  
Bruce Washburn, City Attorney  
By Clifford J. Frey  
Senior Assistant City Attorney

By: \_\_\_\_\_  
Name: Brian Biesemeyer  
Title: Executive Director, Water Resources  
Division

**DESERT MOUNTAIN:**

**DESERT MOUNTAIN CLUB, INC.,**  
an Arizona nonprofit corporation

\_\_\_\_\_  
By: Robert E. Jones, II  
Its: Chief Operating Officer/General Manager

RELEASE AND ESTOPPEL AGREEMENT

(GRANITE GOLF)

THIS RELEASE AND ESTOPPEL AGREEMENT (this "Agreement") is executed as of the \_\_\_\_ day of \_\_\_\_\_, 201\_\_ (the "Effective Date"), by the CITY OF SCOTTSDALE, ARIZONA, an Arizona municipal corporation ("City") and CGP-GRANITE GOLF, L.L.C., an Arizona limited liability company ("Granite Golf"). City and Granite Golf are each a "Party" and shall collectively be referred to as the "Parties," and the Agreement is as follows:

A. City and Granite Golf entered into that certain IWDS Pipeline Capacity Agreement dated May 13, 2002 (Agreement No. 2002-066-COS) (the "Granite Golf PCA").

B. City, Granite Golf, VIDLER WATER COMPANY, INC., a Nevada corporation, and DESERT MOUNTAIN CLUB, INC., an Arizona non-profit corporation, have entered into that certain Purchase Agreement and Escrow Instructions dated \_\_\_\_\_, 2012 (the "Vidler Purchase Agreement").

C. City and Granite Golf have entered into that certain Amended and Restated IWDS Pipeline Capacity Agreement for Granite Golf dated \_\_\_\_\_, 201\_\_ (the "Amended and Restated IWDS Pipeline Capacity Agreement"), which supersedes and replaces in its entirety the Granite Golf PCA.

E. The Parties desire to confirm the rights and obligations of the Parties concerning the Granite Golf PCA, the Amended and Restated IWDS Pipeline Capacity Agreement, and the Vidler Purchase Agreement.

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged and confessed, the Parties hereby agree as follows:

10. Amended and Restated IWDS Agreement. The Parties acknowledge and agree that the Amended and Restated IWDS Pipeline Capacity Agreement supersedes and replaces in its entirety the Granite Golf PCA and that all rights and obligations between the Parties previously set forth in the Granite Golf PCA that arise after the Effective Date are set forth solely in the (i) Amended and Restated IWDS Pipeline Capacity Agreement and the (ii) Vidler Purchase Agreement.

11. Acknowledgement/Ratification. The Parties acknowledge that all obligations of Granite Golf and City under the Granite Golf PCA have been satisfied through the Effective Date. City hereby acknowledges, ratifies, and confirms that the Amended and Restated IWDS Pipeline Capacity Agreement is in full force and effect as of the Effective Date.

12. Defaults. City and Granite Golf agree that, as of the Effective Date hereof, neither Party is in default, nor does there exist any condition or event which with notice, the passage of time, or both would constitute a default under the Amended and Restated IWDS Pipeline Capacity Agreement by either Party thereunder.

13. Release. City and Granite Golf hereby irrevocably release and forever discharge each other and their individual directors, officers, agents, employees, representatives, predecessors, successors, assigns, affiliated entities and all Parties claiming by or through them, from any and all claims, actions, causes of action, demands, judgments, damages, liability or obligations of any nature or kind, whether presently known or unknown, which City or Granite Golf may now have or which hereafter accrue on account of, or in any way arising out of or in connection with the Granite Golf PCA.

14. Authority. Each of the Parties warrants that it has the full authority and capacity to enter into, execute, deliver and perform this Agreement and that such execution, delivery, or performance does not violate any contractual or other obligation by which such Party is bound. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, successors, and assigns.

15. Entire Agreement. City acknowledges that all obligations of Granite Golf to City are set forth in the Amended and Restated IWDS Pipeline Capacity Agreement and the Vidler Purchase Agreement with respect to the subject matter thereof and there are no other written or oral agreements, understandings or representations among the Parties with respect to the subject matter thereof.

16. Severability. Except as expressly provided to the contrary herein, each section, part, term, or provision of this Agreement shall be considered severable, and if for any reason any section, part, term, or provision herein is determined to be invalid and contrary to or in conflict with any existing or future law or regulation by a court or agency having valid jurisdiction, such determination shall not impair the operation of or have any other effect on other sections, parts, terms, or provisions of this Agreement as may remain otherwise intelligible, and the latter shall continue to be given full force and effect and bind the Parties hereto, and said invalid sections, parts, terms, or provisions shall not be deemed to be a part of this Agreement.

17. Enforcement. In the event legal proceedings are commenced for the construction or enforcement of this Agreement, the Party prevailing in any such action shall recover its reasonable attorneys' fees and costs from the adverse Party (or Parties) whether or not formal suit is actually filed.

18. Governing Law and Venue. This Agreement shall be construed in accordance with and governed by the internal laws of the State of Arizona. The

parties agree to submit to the process, jurisdiction and venue of the state and federal courts located in Maricopa County, State of Arizona.

This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors and assigns.

EXECUTED as of the date first set forth above.

ATTEST:

CITY:

\_\_\_\_\_  
Carolyn Jagger  
City Clerk

**CITY OF SCOTTSDALE, ARIZONA,**  
an Arizona municipal corporation

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Bruce Washburn, City Attorney  
By Clifford J. Frey  
Senior Assistant City Attorney

**GRANITE GOLF:**

**CPG-GRANITE GOLF, L.L.C.,**  
an Arizona limited liability company

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

EXHIBIT "I"

SPECIAL WARRANTY DEED

When Recorded, Return to:

City of Scottsdale  
9379 E. San Salvador  
Scottsdale, Arizona 85258  
Attn: Executive Director, Water Resources Division

SPECIAL WARRANTY DEED, COVENANTS  
AND RESERVATION OF EASEMENTS

For the consideration of the sum of Ten and No/100 Dollars (\$10.00) and other valuable consideration received, VIDLER WATER COMPANY, INC., a Nevada corporation ("GRANTOR") does hereby convey to the CITY OF SCOTTSDALE, an Arizona municipal corporation ("GRANTEE"), the following described real property together with any and all improvements, if any, rights and privileges appurtenant thereto (the "Property") situated in La Paz County, Arizona:

SEE LEGAL DESCRIPTION ATTACHED AS EXHIBIT "1" HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

A map of the Property is attached as Exhibit "1A" hereto and by this reference made a part hereof.

SUBJECT TO: current taxes; patent reservations; all covenants, conditions, restrictions, reservations, easements and declarations or other matters of record described on EXHIBIT "2" attached hereto and by this reference made a part hereof and subject to the easements reserved herein.

GRANTOR hereby binds itself and its successors to warrant and defend the title against the acts of GRANTOR and no other, subject to the matters set forth on EXHIBIT "2".

GRANTOR hereby reserves to itself and its successors and assigns the following easements:

1. Subsurface Easement.

A perpetual, nonexclusive easement (the "Subsurface Easement") on, over, within, and upon the entire subsurface of the Property from 50 feet below the land surface to a depth of 2000 feet below the land surface (the "Subsurface Easement Area"), including the entire unsaturated zone and all aquifers that underlay the Property within these limits, for the purposes of the recharge, storage and recovery of water, and the migration of the recharged, stored and recovery water to, within, through, and from the Subsurface Easement Area. Recharge and storage of water may occur through the use of the surface of a portion of the Property described in EXHIBIT "3" hereto. Recharge, storage and recovery activities may also occur off of the

Property, and recharged water may migrate to or from the unsaturated zone and/or the aquifers underlying the Property in whole or in part.

2. Water Storage and Recovery Facilities Easement.

A perpetual, nonexclusive easement on, over, under, through and across that portion of the Property described in EXHIBIT "3" hereto (the "Water Storage and Recovery Facilities Area") for the purposes of utilizing, operating, maintaining, repairing and replacing the Water Storage and Recovery Facilities (defined below), together with the right of ingress and egress over, under and across the Water Storage and Recovery Area for the purposes of servicing, maintaining, repairing and replacing the Water Storage and Recovery Facilities (the "Water Storage and Recovery Facilities Easement"). The Water Storage and Recovery Facilities Area is graphically depicted on EXHIBIT "3A" attached hereto and incorporated herein by this reference. For purposes of this Water Storage and Recovery Facilities Easement, the term "Water Storage and Recovery Facilities" shall mean those existing and future uncovered water retention basin, ponds and associated recovery wells situated on the Water Storage and Recovery Area and on other land adjacent to the Property and specifically designed for the underground storage of water into or the recovery of water from the aquifer beneath said water retention basins, ponds and associated recovery wells, along with all related monitor wells, turnout structures, intake facilities, piping, pumps and existing equipment, infrastructure and improvements or personal property of any nature situated on the Water Storage and Recovery Facilities Area for use in connection with delivery of water to the water retention basins and ponds and from any recovery wells located on or to be located on and in the Water Storage and Recovery Facilities Area. All recovery wells located within the Water Storage and Recovery Facilities Area shall be either Grantor Wells or Existing Wells (herein defined) and shall be located within Wellsite Easement Areas (defined below).

3. Pipeline and Well Easement.

Grantor is the owner of certain real property legally described on EXHIBIT "4" attached hereto and incorporated herein by this reference (the "Additional Property"). The Additional Property is graphically depicted on EXHIBIT "4A" attached hereto and incorporated herein by this reference.

Under certain circumstances, ownership of the Additional Property and the Property entitles the owner(s) thereof to withdraw groundwater for transportation into an initial active management area ("Water for Transport").

In addition, Grantor and others have stored, and may continue to store, Central Arizona Project ("CAP") water underground at the Water Storage and Recovery Facilities. Such storage has created, and may continue to create, long-term storage credits ("LTSCs") issued by Arizona Department of Water Resources ("ADWR").

Grantor additionally reserves the following easements on, over, under, across and through the Property (i) a nonexclusive easement for the construction, operation, maintenance and replacement of a recovery well or wells, including the casing, pump, motor, piping, meter and other well equipment, appurtenances and improvements or personal property of any nature (collectively, the "Grantor Wells") for the withdrawal of LTSCs and Water for Transport; (ii) a nonexclusive easement for the construction, operation, maintenance and replacement of a pipeline or pipelines, including valves, connections and other pipeline equipment, appurtenances and improvements or personal property of any nature, for the conveyance of

recovered LTSCs and/or Water for Transport (collectively, the "Pipelines") from the Grantor Wells to the CAP canal or to locations off the Property; (iii) a nonexclusive easement for the construction, operation, maintenance and replacement of utility facilities necessary to support the construction, operation, maintenance and replacement of the Grantor Wells and Pipelines; (iv) a nonexclusive easement for ingress and egress to and from the Pipelines and the Grantor Wells; and (v) a nonexclusive easement for the construction, operation, maintenance and replacement of the Existing Wells (defined below), which Existing Wells are included in the definition of Grantor Wells (together, the "Pipeline and Well Easement"). The easement area for the Grantor Wells, utilities servicing the Grantor Wells and ingress and egress to and from the Grantor Wells shall consist of those 100 foot by 100 foot square locations depicted on attached EXHIBIT "5" (each, a "Wellsite Easement Area"), together with those existing wells registered with ADWR as Well No. 55-579336, Well No. 55-603423, and Well No. 55-596680 including any pumps, motors, valves, piping, casing, storage tanks and any other well equipment and appurtenances (the "Existing Wells"). Each Existing Well shall also have a Wellsite Easement Area that is a 100 foot by 100 foot square surrounding the Existing Well. The easement area for Pipelines, utilities servicing the Pipelines and ingress and egress to and from the Pipelines shall consist of (i) an area 100 feet wide on or parallel to the entire perimeter of the Property; (ii) an area 100 feet wide, within the quarter sections of the Property; (iii) an area 100 feet wide extending out from each Wellsite Easement Area; (iv) that 200 feet by 180 feet drainage crossing area located at the southeast corner of Section 34; (v) that 230 feet by 180 feet drainage crossing area located at the southwest corner of Section 35; (vi) that 150 feet by 150 feet drainage crossing area located in the southeast corner of Section 28; (vii) that 150 feet by 200 feet drainage crossing area located in the northeast corner of Section 33; (viii) that 200 feet by 200 feet drainage crossing area located at the east quarter corner of Section 33, (ix) that 200 feet by 200 feet concrete lined ditch crossing area located approximately 1120 feet east of the northwest corner of Section 33; and (x) that 100 feet by 75 feet drainage crossing located approximately 300 feet west of the center of Section 33, excluding therefrom any easements along the North or East boundary lines or within the interior of that portion of the Property located in the south half of the southwest quarter of Section 35, T3N, R11W (the "Pipeline Easement Area"). The Pipeline Easement Area is depicted on attached EXHIBIT "6" hereto. The parties agree to cooperate with regard to pipeline alignments that deviate from those depicted on Exhibit "6" which may create construction benefits, economic benefits or other savings or benefits to one or both of the parties and which create little or no impact to land surface rights, wells or planned well locations and do not impact the covenants regarding water right quantities or quality as set forth in this Special Warranty Deed, the Purchase and Sale Agreement dated \_\_\_\_\_, 2012 pursuant to which this Special Warranty Deed has been executed and recorded, and the CC&Rs (defined below) affecting the Property and the Additional Property. Grantor shall use the Grantor Wells, Existing Wells and Replacement Wells (defined below) solely for (a) the withdrawal of LTSCs including any storage of water that may occur at the Storage Facility after the date hereof, and (b) the withdrawal of Water for Transport based on ownership of the Additional Property. The use of the Grantor Wells, Existing Wells and Replacement Wells shall be consistent with and subject to the terms and conditions of that Declaration of Covenants, Conditions and Restrictions dated as of the date hereof and recorded by Grantor against the Property and the Additional Property contemporaneously with the recordation of this instrument (the "CC&Rs").

#### 4. Conveyance of Wells.

Grantor does hereby convey to Grantee all its right, title and interest in Well No. 55-603424 and Well No. 55-603425, including the casing, pump, motor, piping, meter and other

well equipment, appurtenances and improvements or personal property of any nature associated with such wells, located on the Property in the east half of Section 34, T3N, R11W. These wells and their casing, pump, motor, piping, meter and other well equipment, appurtenances and improvements or personal property of any nature are conveyed and transferred to Grantee AS IS, WITH ALL FAULTS, WITHOUT REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THEIR CONDITION, THEIR FITNESS FOR ANY INTENDED PURPOSE, OR THEIR MERCHANTABILITY.

5. Replacement Wells.

Grantor additionally reserves the right to construct, operate, maintain and repair a replacement well (each, a "Replacement Well") within 200 feet of the center of each Grantor Well and Existing Well (the "Replacement Well Right"). Following construction, each Replacement Well shall have a 100 foot by 100 foot square Wellsite Easement Area centered on such Replacement Well, shall be considered a Grantor Well hereunder and the Pipeline and Well Easement shall automatically extend and apply to each Replacement Well. Grantor may exercise its Replacement Well Right one time for each Grantor Well and Existing Well, but Grantor's Replacement Well Right shall not apply to Replacement Wells.

All of the above-described reservations of easements and rights in favor of Grantor shall run with the land, shall be a burden upon the Property, shall be binding upon and enforceable against Grantee, and its successors and assigns, including any person or entity having or acquiring any title to or interest in the Property or any part thereof, and shall inure to the benefit of Grantor, its successors and assigns, and to any person or entity having or acquiring any title to or interest in the Additional Property, the Water Storage and Recovery Facilities, the Grantor Wells or the Pipelines. Grantor may assign, transfer, or convey all or a portion of its rights or interests under these easements to any purchaser of LTSCs, provided, however, that the entity to which the Grantor assigns, transfers, or conveys its rights or interest under these easements must expressly agree to be bound by all of the terms and conditions of this instrument and the CC&Rs recorded by Grantor, and, provided further, that only an entity that has the right to use a Grantor Well, Existing Well or Replacement Well for the withdrawal of LTSCs may exercise such rights related to the withdrawal of LTSCs reserved herein by Grantor.

GRANTEE acknowledges that GRANTOR, as of the date hereof, has made no warranties regarding the existence of any improvements on the Property.

IN WITNESS WHEREOF, the GRANTOR and GRANTEE have caused this Special Warranty Deed, Covenants and Reservation of Easements to be executed this \_\_ day of \_\_\_\_\_, 2012.

GRANTOR:

VIDLER WATER COMPANY, INC., a  
Nevada corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**GRANTEE:**

CITY OF SCOTTSDALE, an Arizona  
municipal corporation

By: \_\_\_\_\_  
Name: Brian Biesemeyer\_\_\_\_\_  
Its: Executive Director, Water  
Resources Division

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Name: Bruce Washburn, City Attorney  
By: Clifford J. Frey  
Senior Assistant City Attorney

STATE OF NEVADA                     )  
  ) ss.  
County of Carson City                )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by \_\_\_\_\_, the \_\_\_\_\_ of VIDLER WATER COMPANY, INC., a Nevada corporation, who executed the foregoing on behalf of the corporation, being authorized to do so for the purposes therein contained.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

STATE OF ARIZONA                     )  
  ) ss.  
County of Maricopa                    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by Brian Biesemeyer, the Executive Director of the Water Resources Division of the CITY OF SCOTTSDALE, an Arizona municipal corporation, who executed the foregoing on behalf of such city, being authorized to do so for the purposes therein contained.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

Document: Special Warranty Deed  
Date: \_\_\_\_\_, 2013  
Page Numbers: 22  
Other Signers other than as listed on this page: None

EXHIBIT "1"

SPECIAL WARRANTY DEED

LEGAL DESCRIPTION OF PROPERTY

1. The East half (E ½) of the Southeast quarter (SE ¼) of Section 28, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona, as depicted in the Boundary Survey recorded October 10, 2012, Document #2012-05400, La Paz County Recorder.  
APN 303-81-003, 80.02 acres more or less
2. The West half (W ½) of the Southeast quarter (SE ¼) of Section 28, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona, as depicted in the Boundary Survey recorded October 10, 2012, Document #2012-05400, La Paz County Recorder.  
APN 303-81-004, 80.01 acres more or less
3. The North half (N ½) of Section 33, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona, as depicted in the Boundary Survey recorded October 10, 2012, Document #2012-05400, La Paz County Recorder.  
APN 303-14-069, 320.10 acres more or less
4. The North half (N ½) and the Southeast quarter (SE ¼) of Section 34, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona, as depicted in the Boundary Survey recorded October 10, 2012, Document #2012-05400, La Paz County Recorder.  
APN 303-14-071, 480.08 acres more or less
5. The West 2,015.56 feet of the South half (S ½) of the South half (S ½) of Section 35, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona, being described as the New Parcel #5 in the Lot Line Adjustment map recorded October 10, 2012, Document #2012-05399, La Paz County Recorder. Excepting therefrom one-third (1/3) of all oil gas, minerals and other hydrocarbon substances as reserved in an instrument Recorded April 24th, 1958 in Docket 222, page 514 Records of Yuma (now La Paz County), Arizona.  
APN 303-40-\_\_\_\_, 61.10 acres more or less

EXHIBIT "1A"  
SPECIAL WARRANTY DEED  
MAP OF THE PROPERTY  
(SEE ATTACHED)

Exhibit "1A"  
The Property

Scottsdale No. 2012-189-COS

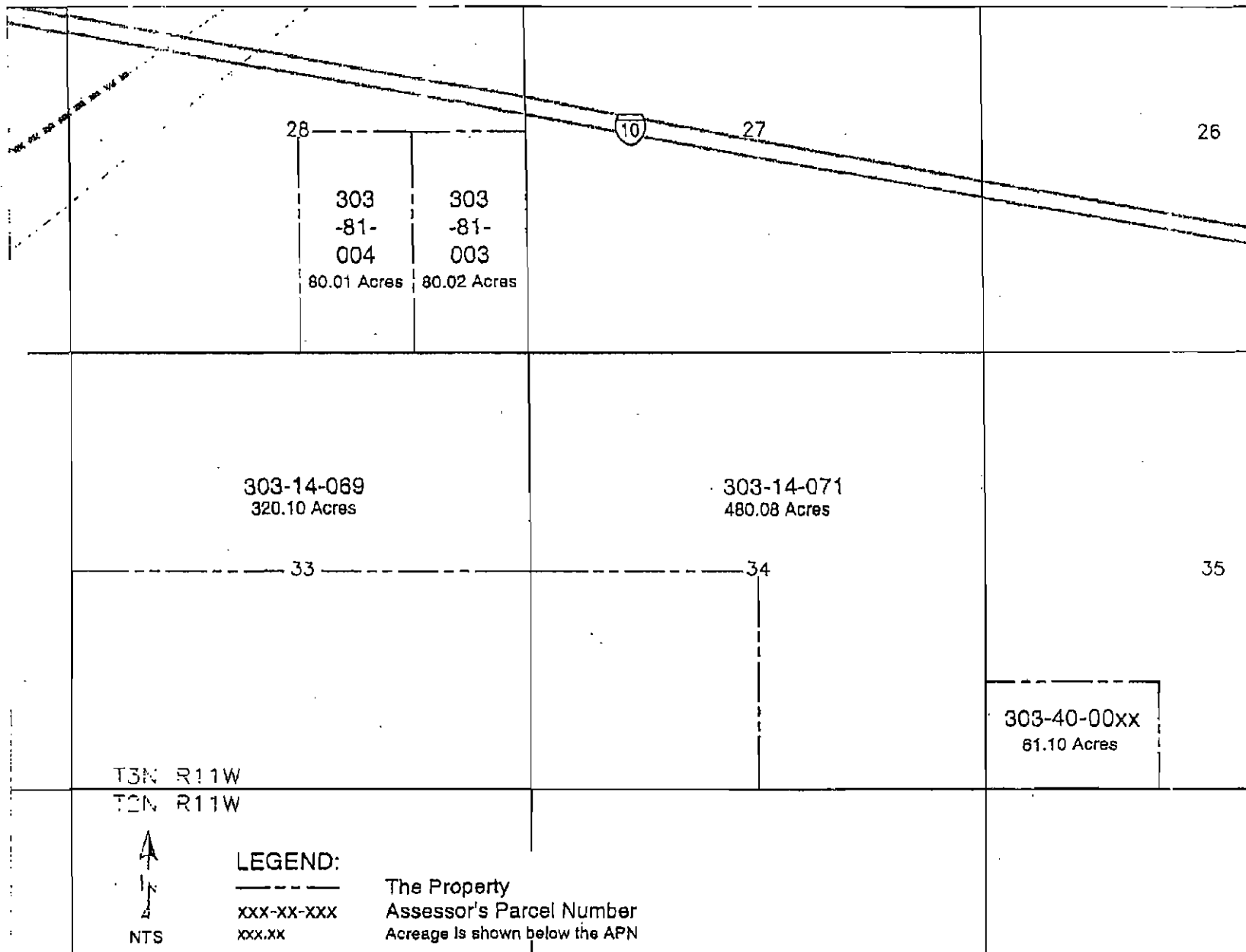


EXHIBIT "2"  
SPECIAL WARRANTY DEED  
PERMITTED EXCEPTIONS TO TITLE

EXHIBIT "3"

SPECIAL WARRANTY DEED

LEGAL DESCRIPTION OF THE SURFACE OF A PORTION OF THE PROPERTY USED  
FOR RECHARGE AND STORAGE OF WATER

1. The North half (N ½) of Section 33, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona, as depicted in the Boundary Survey recorded October 10, 2012, Document #2012-05400, La Paz County Recorder.

APN 303-14-069, 320.10 acres more or less

EXHIBIT "3A"

SPECIAL WARRANTY DEED

MAP OF THE WATER STORAGE AND RECOVERY FACILITIES AREA

(SEE ATTACHED)

Exhibit "3A"  
Water Storage and Recovery Facilities Area

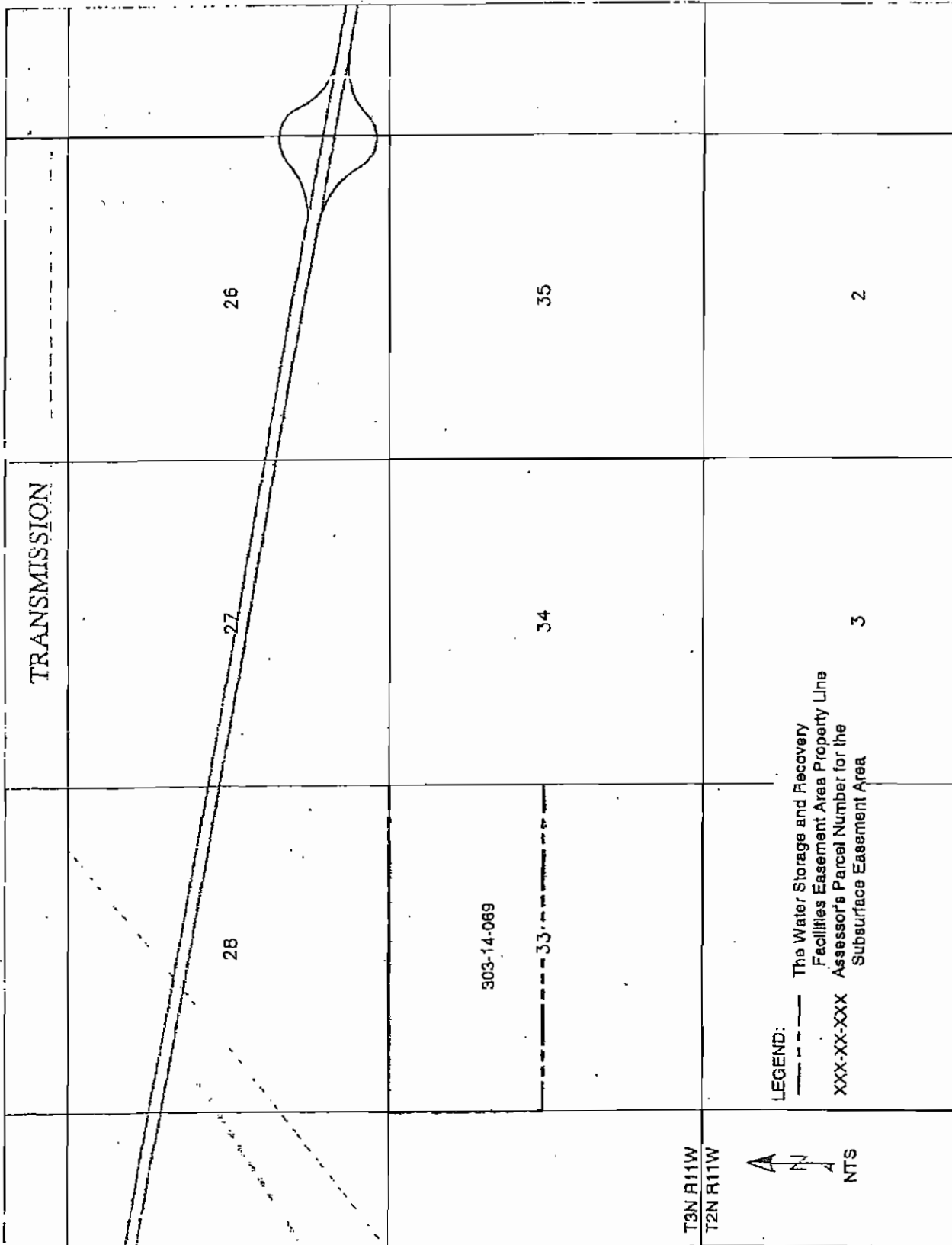


EXHIBIT "4"

SPECIAL WARRANTY DEED

ADDITIONAL PROPERTY

1. The West 390 feet of Lots 4 and 5 of Section 6, Township 2 North, Range 10 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona.  
APN 303-02-001, 23.64 acres more or less
2. The West 390 feet of Lots 6 and 7 of Section 6, Township 2 North, Range 10 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona.  
APN 303-02-002, 23.63 acres more or less
3. The West 390 feet of Lots 1 and 2 of Section 7, Township 2 North, Range 10 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona.  
APN 303-03-001, 23.64 acres more or less
4. The Northeast quarter (NE  $\frac{1}{4}$ ) of the Southwest quarter (SW  $\frac{1}{4}$ ) of Section 1, Township 2 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona.  
APN 303-04-001-B, 40.00 acres more or less
5. The Northwest quarter (NW  $\frac{1}{4}$ ) of the Southwest quarter (SW  $\frac{1}{4}$ ) of Section 1, Township 2 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona.  
APN 303-04-001-C, 40.00 acres more or less
6. The South half (S  $\frac{1}{2}$ ) of the Southwest quarter (SW  $\frac{1}{4}$ ) of Section 1, Township 2 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona.  
APN 303-04-002-A, 80.00 acres more or less
7. The South half (S  $\frac{1}{2}$ ) of Section 33, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona.  
APN 303-14-070, 320.00 acres more or less
8. The North half (N  $\frac{1}{2}$ ) of the Southwest quarter (SW  $\frac{1}{4}$ ) of Section 35, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona. Excepting therefrom one-third (1/3) of all oil gas, minerals and other hydrocarbon substances as reserved in an instrument Recorded April 24th, 1958 in Docket 222, page 514 Records of Yuma (now La Paz County), Arizona.  
APN 303-40-003, 80.00 acres more or less
9. A portion of the South half (S  $\frac{1}{2}$ ) of the South half (S  $\frac{1}{2}$ ) of Section 35, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona, being described as the New Parcel #6 in the Lot Line Adjustment map recorded October 10, 2012, Document #2012-05399, La Paz County Recorder. Excepting therefrom one-third (1/3) of all oil gas, minerals and other hydrocarbon substances as reserved in an instrument

Recorded April 24th, 1958 in Docket 222, page 514 Records of Yuma (now La Paz County), Arizona.

APN 303-40-\_\_\_\_, 28.94 acres more or less

10. The East 2,310 feet of the South half (S ½) of the South half (S ½) of Section 35, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona. Excepting therefrom the East 60 feet of the Southeast quarter (SE ¼) of the Southeast quarter (SE ¼) of the Southeast quarter (SE ¼) per Document No. 2001-01236, La Paz County Recorder. Further excepting one-third (1/3) of all oil gas, minerals and other hydrocarbon substances as reserved in an instrument Recorded April 24th 1958 in Docket 222, page 514 Records of Yuma (now La Paz County), Arizona.  
APN 303-40-010, 69.09 acres more or less
11. The Northwest quarter (NW ¼) of the Northwest quarter (NW ¼) of Section 26, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona.  
APN 303-72-009, 40.00 acres more or less
12. The Southwest quarter (SW ¼) of the Northwest quarter (NW ¼) of Section 26, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona.  
APN 303-72-010, 40.00 acres more or less
13. The Northeast quarter (NE ¼) of the Southwest quarter (SW ¼) of Section 28, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona.  
APN 303-81-005, 40.00 acres more or less
14. The West half (W ½) of the Southwest quarter (SW ¼) of Section 28, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona.  
APN 303-81-007, 80.00 acres more or less
15. The North half (N ½) of Section 29, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona, lying South and adjacent to Interstate Highway 10 Right-of-way. Excepting therefrom that portion of said land lying East of a line which runs parallel to and is 67.3 feet West of the West section line of the Northeast quarter (NE ¼) of said Section 29.  
APN 303-82-001, 104.10 acres more or less
16. Lots 1 and 2, the Northeast quarter (NE ¼) and the East Half (E ½) of the Northwest quarter (NW ¼) of Section 30, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona, lying South and adjacent to the Southerly boundary line of Interstate Highway 10 Right-of-way.  
APN 303-83-001, 289.27 acres more or less
17. A portion of the South half (S ½) of Section 30, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona, described as follows: That portion of the South half (S ½) of said Section 30, lying North of the following described line: COMMENCING at the Southwest corner of said Section 30; Thence North along the West

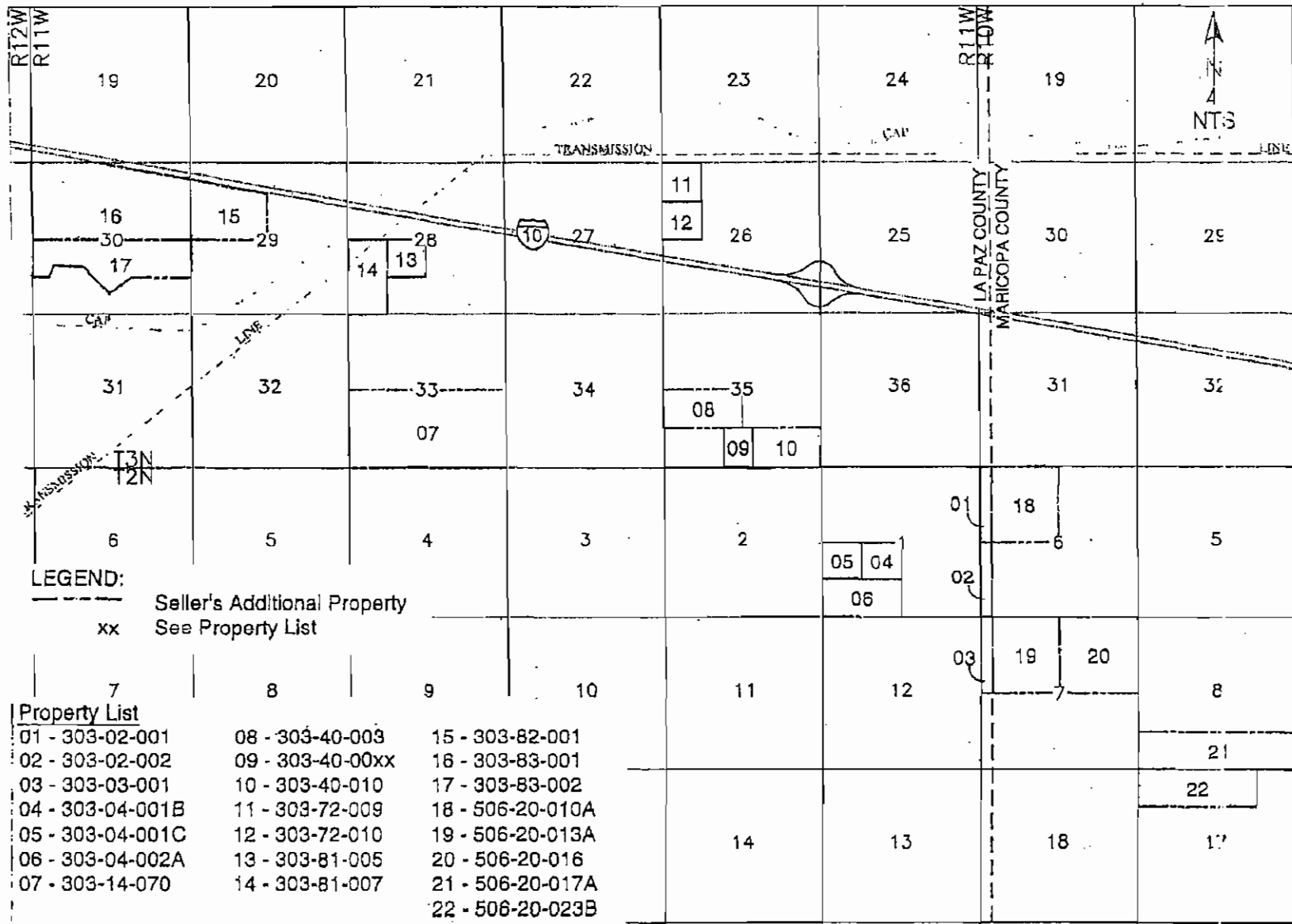
line of said Section 30, 1,320.93 feet to the POINT OF BEGINNING of the herein described line; Thence North 88 degrees 06 minutes 56 seconds East, 579.82 feet; Thence North 16 degrees 33 minutes 05 seconds East, 412.25 feet; Thence South 87 degrees 29 minutes 07 seconds East, 999.87 feet; Thence South 42 degrees 29 minutes 10 seconds East, 1,272.62 feet; Thence North 51 degrees 54 minutes 49 seconds East, 921.83 feet; Thence South 89 degrees 38 minutes 14 seconds East, 1,927.80 feet; to a point on the East line of said Section 30, said point being the end of said line.

APN 303-83-002, 155.96 acres more or less

18. Lot 3, portions of lots 4 and 5 and the Southeast quarter (SE  $\frac{1}{4}$ ) of the Northwest quarter (NW  $\frac{1}{4}$ ) of Section 6, Township 2 North, Range 10 West, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona. Except therefrom the west 390 feet lying within La Paz County, Arizona.  
APN 506-20-010-A, 132.54 acres more or less
19. Portions of Lots 1 and 2 and the East half (E  $\frac{1}{2}$ ) of the Northwest quarter (NW  $\frac{1}{4}$ ) of Section 7, Township 2 North, Range 10 West, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona. Excepting therefrom the west 390 feet lying within La Paz County, Arizona.  
APN 506-20-013-A, 134.44 acres more or less
20. The Northeast quarter (NE  $\frac{1}{4}$ ) of Section 7, Township 2 North, Range 10 West, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.  
APN 506-20-016, 160.00 acres more or less
21. The South half (S  $\frac{1}{2}$ ) of the South half (S  $\frac{1}{2}$ ) of Section 8, Township 2 North, Range 10 West, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona. Excepting therefrom a 40-foot wide road right-of-way on the east boundary.  
APN 506-20-017-A, 158.79 acres more or less
22. The Northwest quarter (NW  $\frac{1}{4}$ ) of the Northeast quarter (NE  $\frac{1}{4}$ ) and the North half (N  $\frac{1}{2}$ ) of the Northwest quarter (NW  $\frac{1}{4}$ ) of Section 17, Township 2 North, Range 10 West, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.  
APN 506-20-023-B, 120.00 acres more or less

Scottsdale No. 2012-189-COS

EXHIBIT "4A"  
SPECIAL WARRANTY DEED  
MAP OF ADDITIONAL PROPERTY  
(SEE ATTACHED)



Seller's Additional Property

Exhibit "4A"

Scottsdale No. 2012-189-COS

EXHIBIT "5"  
SPECIAL WARRANTY DEED  
WELLSITE EASEMENT AREAS  
(SEE ATTACHED)

**NOTES:**

- All Pipeline Easement Areas are 100' wide unless otherwise noted (See Exhibit "6").
- All Pipeline Easement Area Boundaries run along Property/Section Line unless otherwise noted (See Exhibit "6").

**ABBREVIATIONS:**

PVW - Potential Vidler Wellsite

**LEGEND:**

- Pipeline Easement Areas (See Exhibit "6")
- Wellsite Easement Areas (100' x 100')
- Property Line
- Section Line

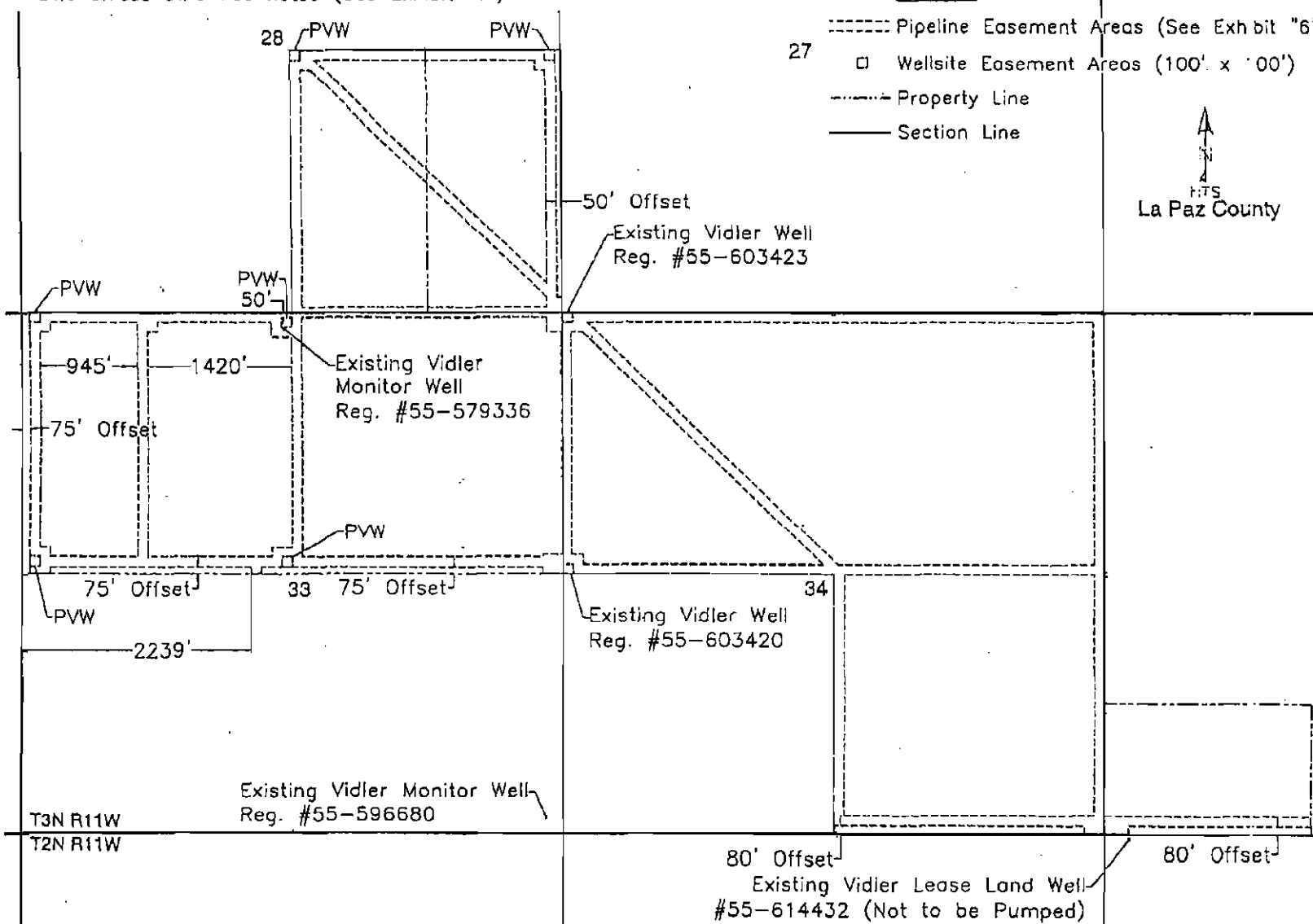


Wellsite Easement Areas

Exhibit "5"

Scottsdale No. 2012-189-COS

Exhibit I - Page 20 of 22



Scottsdale No. 2012-189-COS

EXHIBIT "6"

SPECIAL WARRANTY DEED

PIPELINE EASEMENT AREA

(SEE ATTACHED)

# NOTES:

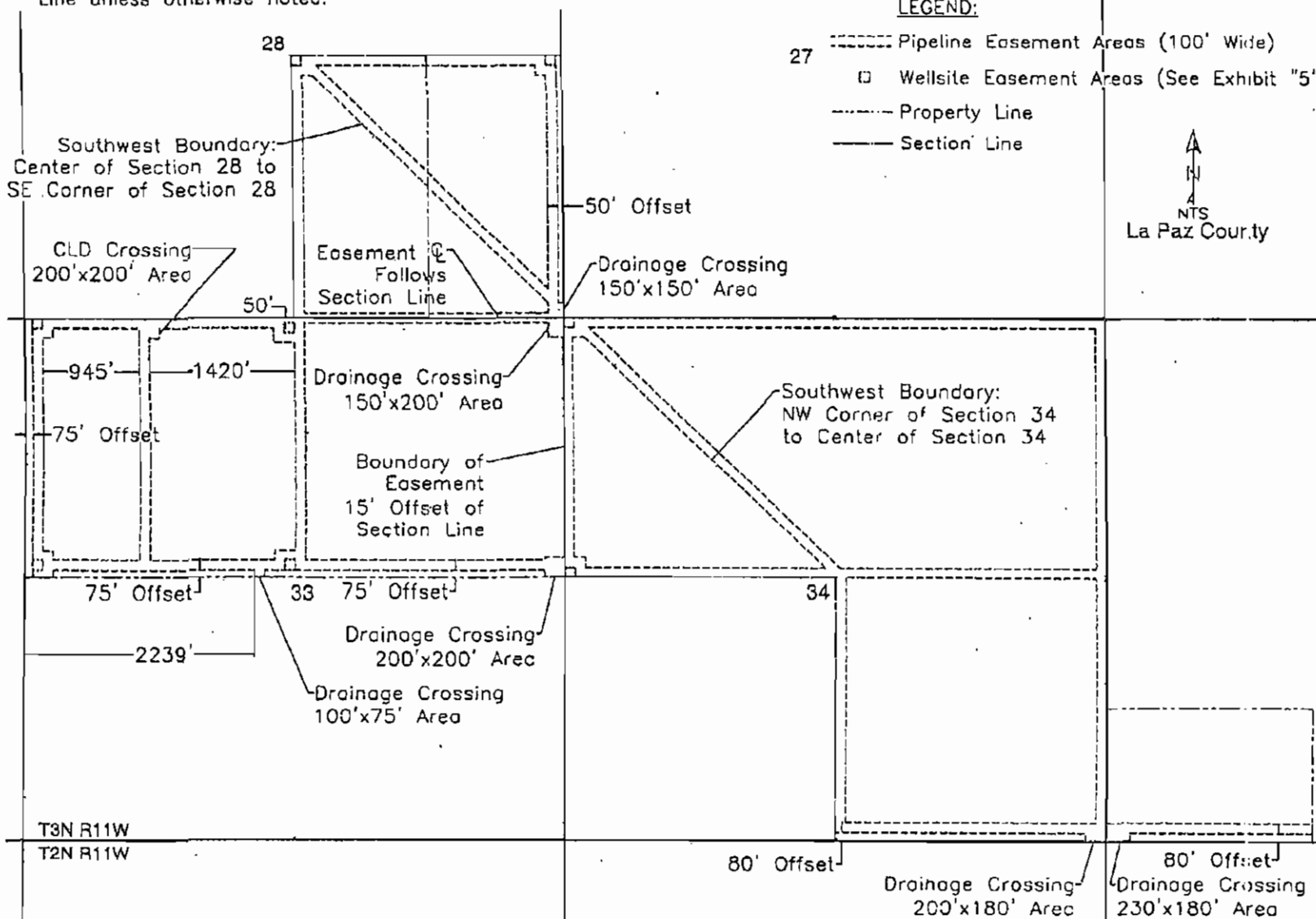
- All Pipeline Easement Areas are 100' wide unless otherwise noted.
- All Pipeline Easement Area Boundaries run along Property/Section Line unless otherwise noted.

# ABBREVIATIONS:

- CL - Center Line
- CLD - Concrete Liner Ditch

# LEGEND:

- 27 Pipeline Easement Areas (100' Wide)
- Wellsite Easement Areas (See Exhibit "5")
- Property Line
- Section Line



Pipeline Easement Areas

Exhibit "6"

Scottsdale No. 2012-189-COS

EXHIBIT "J"

NONFOREIGN AFFIDAVIT

Section 1445 of the United States Internal Revenue Code provides that a transferee (Buyer) of a U. S. Real property interest must withhold tax if the transferor (Seller) is a foreign person. To inform the City of Scottsdale, an Arizona municipal corporation (the "Transferee") that withholding of tax is not required upon the disposition of a U. S. Property interest by Vidler Water Company, Inc. a Nevada corporation, (the "Transferor"), in the United States real property described on Exhibit A attached hereto and incorporated herein by this reference, the undersigned hereby certifies the following on behalf of the Transferor:

1. Transferor is not a foreign person, foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. Transferor's employer identification number is \_\_\_\_\_; and
3. Transferor's office address is:

3480 GS Richards Boulevard  
Suite 101  
Carson City, Nevada 89703

If any of these statements contained herein are not true and, as a result, Transferee is subject to United States federal income tax withholding liability, Transferor agrees to indemnify Transferee for, from and against such liability and to pay its reasonable attorneys' fees and other costs incurred in enforcing its rights of indemnity.

Transferor understands that this certification may be disclosed to the Internal Revenue Service by Transferee and that any false statement contained herein could be punished by fine, imprisonment or both.

Under penalties of perjury, I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete and I further declare that I have the authority to sign this document on behalf of Transferor.

Dated \_\_\_\_\_, 2012

VIDLER WATER COMPANY, INC., a  
Nevada corporation

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

EXHIBIT A

NONFOREIGN AFFIDAVIT

LEGAL DESCRIPTION OF PROPERTY

1. The East half (E ½) of the Southeast quarter (SE ¼) of Section 28, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona, as depicted in the Boundary Survey recorded October 10, 2012, Document #2012-05400, La Paz County Recorder.  
APN 303-81-003, 80.02 acres more or less
2. The West half (W ½) of the Southeast quarter (SE ¼) of Section 28, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona, as depicted in the Boundary Survey recorded October 10, 2012, Document #2012-05400, La Paz County Recorder.  
APN 303-81-004, 80.01 acres more or less
3. The North half (N ½) of Section 33, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona, as depicted in the Boundary Survey recorded October 10, 2012, Document #2012-05400, La Paz County Recorder.  
APN 303-14-069, 320.10 acres more or less
4. The North half (N ½) and the Southeast quarter (SE ¼) of Section 34, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona, as depicted in the Boundary Survey recorded October 10, 2012, Document #2012-05400, La Paz County Recorder.  
APN 303-14-071, 480.08 acres more or less
5. The West 2,015.56 feet of the South half (S ½) of the South half (S ½) of Section 35, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona, being described as the New Parcel #5 in the Lot Line Adjustment map recorded October 10, 2012, Document #2012-05399, La Paz County Recorder. Excepting therefrom one-third (1/3) of all oil gas, minerals and other hydrocarbon substances as reserved in an instrument Recorded April 24th, 1958 in Docket 222, page 514 Records of Yuma (now La Paz County), Arizona.  
APN 303-40-\_\_\_\_, 61.10 acres more or less

**EXHIBIT "K"**

**PIPELINE EASEMENT**

When recorded, return to:

City of Scottsdale  
9379 E. San Salvador  
Scottsdale, Arizona 85258  
Attn: Executive Director, Water Resources Division

**PIPELINE EASEMENT AGREEMENT**

This Pipeline Easement Agreement ("Easement Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2012, by and between VIDLER WATER COMPANY, INC., a Nevada corporation ("Grantor"), and the CITY OF SCOTTSDALE, an Arizona municipal corporation ("Grantee").

**RECITALS**

A. Grantor has sold to Grantee and Grantee has purchased from Grantor the real property located in La Paz County, Arizona, as specifically described in Exhibit "1" attached hereto and a map of which is depicted on Exhibit "1A" attached hereto (the "Property"), the Property having been conveyed by Grantee to Grantor by a Special Warranty Deed, Covenants and Reservation of Easements of even date herewith; and

B. As part of the consideration for the sale by Grantor and the purchase by Grantee of the Property, Grantor agreed to grant to Grantee a nonexclusive easement as described herein, on, over, under, through and across that real property owned by the Grantor and located in La Paz County, Arizona, as specifically described and depicted in Exhibit "2" attached hereto (the "Easement Property").

**AGREEMENTS**

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and Grantee agree as follows:

1. Easement. Grantor hereby grants to Grantee, its employees, contractors, agents, designees and invitees, a nonexclusive easement on, over, under, through and across the Easement Property for the sole purposes of constructing, installing, utilizing, operating, maintaining, repairing and replacing the Pipeline (defined below) on the Easement Property, together with the right of ingress and egress on, over, under and across the Easement Property for vehicular and non-vehicular ingress and ingress to and from and access to the Easement Property for the purposes of servicing, maintaining, repairing and replacing the Pipeline (the "Easement").

2. Pipeline. For purposes of this Easement Agreement, the term "Pipeline" shall mean an underground water transmission pipeline, connection valves, pumps and other related

aboveground and underground equipment, facilities and appurtenances as necessary for the transmission of water pumped from wells now or hereinafter located at the Property into the Central Arizona Project Canal.

3. Temporary Construction Easement. Grantor hereby grants to Grantee, its employees, contractors, agents, designees and invitees, a temporary construction easement on, over, under, through and across that real property owned by the Grantor and located in La Paz County, Arizona, as specifically described and depicted in Exhibit "3" attached hereto (the "Temporary Construction Easement Property") for the purposes of: (i) performing the initial construction of Pipeline; and (ii) maintaining on the Temporary Construction Easement Property such materials and equipment as shall be necessary or desirable for the prompt and expeditious performance of such construction. During all such construction periods, customary insurance shall be maintained protecting Grantor from the risks involved with such construction activities on the Temporary Construction Easement Property. Grantee shall protect and keep the title of the Temporary Construction Easement Property free and clear of and from any and all mechanics', laborers', materialmen's or other liens, claims, clouds and encumbrances in any manner arising from or caused by the installation or construction of the Pipeline. Following its completion of installation and construction of the Pipeline, Grantee shall, in a prompt and workman like manner, repair and restore the surface of the Temporary Construction Easement Property as nearly as practicable to the condition that existed prior to the installation and construction of the Pipeline. Any grading which materially alters the flow of surface water to, or materially alters the drainage of, the Temporary Construction Easement Property shall likewise be repaired and restored as nearly as practicable to the condition that existed prior to such grading. The temporary construction easement granted pursuant to this Section 3 shall terminate upon the completion of the initial construction of the Pipeline without the requirement of any further act or agreement by any of the parties; provided, however, that at any time after the completion of such construction, Grantee shall, at the written request of Grantor, execute an instrument in recordable form and otherwise in form reasonably satisfactory to Grantor, evidencing the termination of the temporary construction easement.

4. Term. The Easement is intended to be perpetual.

5. Operation; Maintenance. Grantee shall install, construct, use, operate, maintain, repair and replace the Pipeline in accordance with all applicable laws, rules and regulations of any governmental entity having jurisdiction ("Laws"), including without limitation Laws pertaining to weed and dust control; in a good and workmanlike manner; and in a manner that does not unreasonably interfere with the use of the Easement Property by the Grantor, its successors and assigns. Grantee shall keep and maintain the Pipeline in a good, clean and safe condition and repair at all times. Grantor shall have no obligation to maintain or repair the Pipeline or to take action to bring the Pipeline into compliance with, or maintain its compliance with, any Laws pertaining to the condition of the Pipeline. Following completion of installation and construction of the Pipeline, if Grantee disturbs or damages the Easement Property, or any portion thereof, in the exercise of any rights or obligations hereunder, Grantee shall, in a prompt and workman like manner, repair and restore such damage or disturbance as nearly as practicable to the condition that existed prior to such damage or disturbance. Any grading which materially alters the flow of surface water to, or materially alters the drainage of, the Easement Parcel shall likewise be repaired and restored as nearly as practicable to the condition that existed prior to such grading.

6. Indemnity. Grantee shall defend, indemnify and hold the Grantor, its shareholders, officers, directors, beneficiaries, members, managers, partners, employees, agents, affiliates, and representatives, harmless for, from and against all loss, cost, expense, damage, injury, obligation, liability, penalty, fine, suit and settlement, including, without limitation, attorneys' and consultants' fees and expenses, court costs or other litigation expenses, of whatever kind and nature, known or unknown, contingent or otherwise, arising out of or in any way related to the installation, construction, use, operation, maintenance, repair or replacement of the Pipeline, or the use of the Easement Property or the Temporary Construction Easement Property for such purposes. The indemnity stated herein shall survive any mutual termination of the Easement for a period of three (3) years.

7. Representation and Warranties of Grantor. Grantor represents and warrants that:

(a) Organization. Grantor is a duly organized and validly existing corporation in good standing under the laws of the state of Nevada, and has full power and authority to enter into this Easement Agreement and perform its obligations hereunder and all corporate action necessary to authorize Grantor to enter into and perform this Easement Agreement has been taken, and is in full force and effect, and has not been revoked, modified or amended.

(b) Authorization. The individuals executing this Easement Agreement on behalf of Grantor are authorized to do so and, upon their execution hereof, this Easement Agreement shall be binding and enforceable upon Grantor in accordance with its terms.

(c) No Violation by Execution. The execution, delivery and performance of this Agreement by Grantor has been duly authorized by Grantor and does not conflict with or result in any material breach, default, violation of any applicable law, rule, regulation or decree of any court or any governmental department, commission, board, bureau, agency or instrumentality, or of the Articles of Incorporation or Bylaws of Grantor, or of any indenture, contract, agreement, lease or other instrument to which Grantor is a party or is subject.

(d) Survival. The foregoing representation and warranties of Grantor shall survive for a period of three years following the execution of this Easement Agreement.

8. Representations and Warranties of Grantee. Grantee represents and warrants that:

(a) Organization. Grantee has full power and authority to enter into this Agreement and perform its obligations hereunder and all action necessary to authorize Grantee to enter into and perform this Easement Agreement has been taken, is in full force and effect, and has not been revoked, modified or amended.

(b) Authorization. The individual(s) executing this Easement Agreement on behalf of Grantee is authorized to do so and, upon such individual's execution hereof, this Easement Agreement shall be binding upon Grantee and enforceable in accordance with its terms.

(c) No Violations by Execution. The execution, delivery and performance of this Easement Agreement by Grantee has been duly authorized by Grantee and does not conflict with or result in any material breach, default, or violation of any applicable law, rule,

regulation or decree of any court or any governmental department, commission, board, bureau, agency or instrumentality, or of any indenture, contract, agreement, lease or other instrument to which Grantee is a party or is subject.

(d) Survival. The foregoing representation and warranties of Grantee shall survive for a period of three years following the execution of this Easement Agreement.

9. Default. If any party shall fail to perform when due any act required by this Easement Agreement or in any other way defaults under this Easement Agreement, and the default is not cured within 20 days after the defaulting party's receipt of written notice of default from a non-defaulting party, then the non-defaulting party may pursue any rights or remedies that are available for such default, including actions for specific performance, injunctive relief and damages.

10. Notices. All notices and other communications required or permitted hereunder shall be in writing and shall be given by personal delivery, facsimile or e-mail transmission, overnight courier providing for written receipt of delivery, or by deposit in the United States mail, first class, registered or certified, return receipt requested, postage prepaid, correctly addressed to the intended recipient as follows:

To Grantor:	VIDLER WATER COMPANY, INC. 3480 GS Richards Boulevard, Suite 101 Carson City, Nevada 89703 FAX: (775) 885-5008 EMAIL: shartman@vidlerwater.com
with copy to:	Sheryl A. Sweeney Ryley Carlock & Applewhite One North Central Ave., Suite 1200 Phoenix, AZ 85004 FAX: (602) 257-6924 EMAIL: ssweeney@rcalaw.com
To Grantee:	City of Scottsdale 9379 E. San Salvador Scottsdale, Arizona 85258 Attn: Executive Director, Water Resources Division FAX: (480) 312-5615
With copy to:	City Attorney's Office 3939 E. Drinkwater Blvd Scottsdale, Arizona 85251 FAX: (480) 312-2548

Such notices and other communications shall be deemed to be effective upon actual receipt, if delivered personally; or one business day after deposit with an overnight delivery service, or if sent by fax, e-mail or overnight express delivery; or three business days following deposit in the mail, if delivered by certified mail, return receipt requested. The parties may, from time to time, designate a different address by written notice given in the manner provided for above, not less than two days prior to the effective date of the change.

11. Miscellaneous.

(e) Section Headings. The section headings of this Easement Agreement are inserted only for convenient reference and do not define, limit, or prescribe the scope of this Agreement.

(f) Governing Law. This Easement Agreement shall be construed under and governed by the laws of the state of Arizona.

(g) Severability. In case any one or more of the provisions contained in this Easement Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, and this Easement Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had never been contained herein.

(h) Execution in Counterparts. This Easement Agreement may be executed in counterparts, each of which, when so executed and delivered, shall constitute an original; but all such counterparts shall together constitute but one and the same Easement Agreement.

(i) Attorneys' Fees. If either party commences litigation or other legal proceedings against the other party for a default hereunder or to enforce the provisions hereof, the prevailing party in any such proceeding shall be entitled to recover its costs and expenses, including reasonable attorneys' fees and expert witness fees, with attorneys' fees to be determined by the court and not a jury in any such litigation.

(j) Modification of Agreement. No modification of this Easement Agreement shall be effective unless it is in writing and is signed by all parties.

(k) Waivers. No waiver of any of the provisions of this Easement Agreement shall constitute a waiver of any other provisions, whether or not similar, nor shall any waiver be a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver. Either party may waive any provisions of this Easement Agreement intended for its benefit; provided, however, such waiver shall in no way excuse the other party from the performance of any of its other obligations under this Easement Agreement.

(l) No Dedication to Public. Nothing contained in this Easement Agreement shall be deemed to be a gift or dedication of any portion of the Easement Property to the general public or any public use or purpose whatsoever, it being the intention of the parties hereto that this Easement Agreement is for the exclusive benefit of the Parties hereto and that nothing in this Easement Agreement, express or implied, shall confer upon anyone, other than as specified herein, any rights or remedies under or by reason of this Easement Agreement.

12. Binding Effect; Runs with the Land. The Easement and the covenants and agreements of Grantor contained in this Easement Agreement shall run with the land, shall be a burden upon the Easement Property and every part thereof and a benefit to the Property and every part thereof, shall be binding upon and enforceable against Grantor, and its successors and assigns, including any person or entity having or acquiring any title to or interest in the Easement Property or any part thereof, and shall inure to the benefit of and be enforceable by Grantee, its successors and assigns, and any person or entity having or acquiring any title to or

interest in the Property. The covenants and agreements of Grantee contained in this Easement Agreement shall be binding upon and enforceable against Grantee, and its successors and assigns, including any person or entity having or acquiring any title to or interest in the Property or any part thereof, and shall inure to the benefit of Grantor, its successors and assigns, and to any person or entity having or acquiring any title to or interest in the Easement Property.

In witness whereof, this Easement Agreement is executed by the parties effective the date first shown above.

GRANTOR:

VIDLER WATER COMPANY, INC., a Nevada corporation

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

STATE OF NEVADA                    )  
  ) ss.  
County of Carson City            )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by \_\_\_\_\_, the \_\_\_\_\_ of VIDLER WATER COMPANY, INC., a Nevada corporation, who executed the foregoing on behalf of the corporation, being authorized to do so for the purposes therein contained.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

GRANTEE:

CITY OF SCOTTSDALE, an Arizona municipal  
corporation

By: \_\_\_\_\_  
Name: Brian Biesemeyer  
Its: Executive Director, Water Resources  
Division

APPROVED AS TO FORM:

\_\_\_\_\_  
Name: Bruce Washburn, City Attorney  
By: Clifford J. Frey  
Senior Assistant City Attorney

STATE OF ARIZONA            )  
  ) ss.  
County of Maricopa         )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_  
2012, by Brian Biesemeyer, the Executive Director of the Water Resources Division of the City  
of Scottsdale, an Arizona municipal corporation, who executed the foregoing on behalf of such  
City, being authorized to do so for the purposes therein contained.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

EXHIBIT "1"

PIPELINE EASEMENT AGREEMENT

LEGAL DESCRIPTION OF PROPERTY

1. The East half (E ½) of the Southeast quarter (SE ¼) of Section 28, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona, as depicted in the Boundary Survey recorded October 10, 2012, Document #2012-05400, La Paz County Recorder.  
APN 303-81-003, 80.02 acres more or less
2. The West half (W ½) of the Southeast quarter (SE ¼) of Section 28, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona, as depicted in the Boundary Survey recorded October 10, 2012, Document #2012-05400, La Paz County Recorder.  
APN 303-81-004, 80.01 acres more or less
3. The North half (N ½) of Section 33, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona, as depicted in the Boundary Survey recorded October 10, 2012, Document #2012-05400, La Paz County Recorder.  
APN 303-14-069, 320.10 acres more or less
4. The North half (N ½) and the Southeast quarter (SE ¼) of Section 34, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona, as depicted in the Boundary Survey recorded October 10, 2012, Document #2012-05400, La Paz County Recorder.  
APN 303-14-071, 480.08 acres more or less
5. The West 2,015.56 feet of the South half (S ½) of the South half (S ½) of Section 35, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona, being described as the New Parcel #5 in the Lot Line Adjustment map recorded October 10, 2012, Document #2012-05399, La Paz County Recorder. Excepting therefrom one-third (1/3) of all oil gas, minerals and other hydrocarbon substances as reserved in an instrument Recorded April 24th, 1958 in Docket 222, page 514 Records of Yuma (now La Paz County), Arizona.  
APN 303-40-\_\_\_\_, 61.10 acres more or less

EXHIBIT "1A"

PIPELINE EASEMENT AGREEMENT

MAP OF PROPERTY (SEE ATTACHED)

Exhibit "1A"  
The Property

Scottsdale No. 2012-189-COS

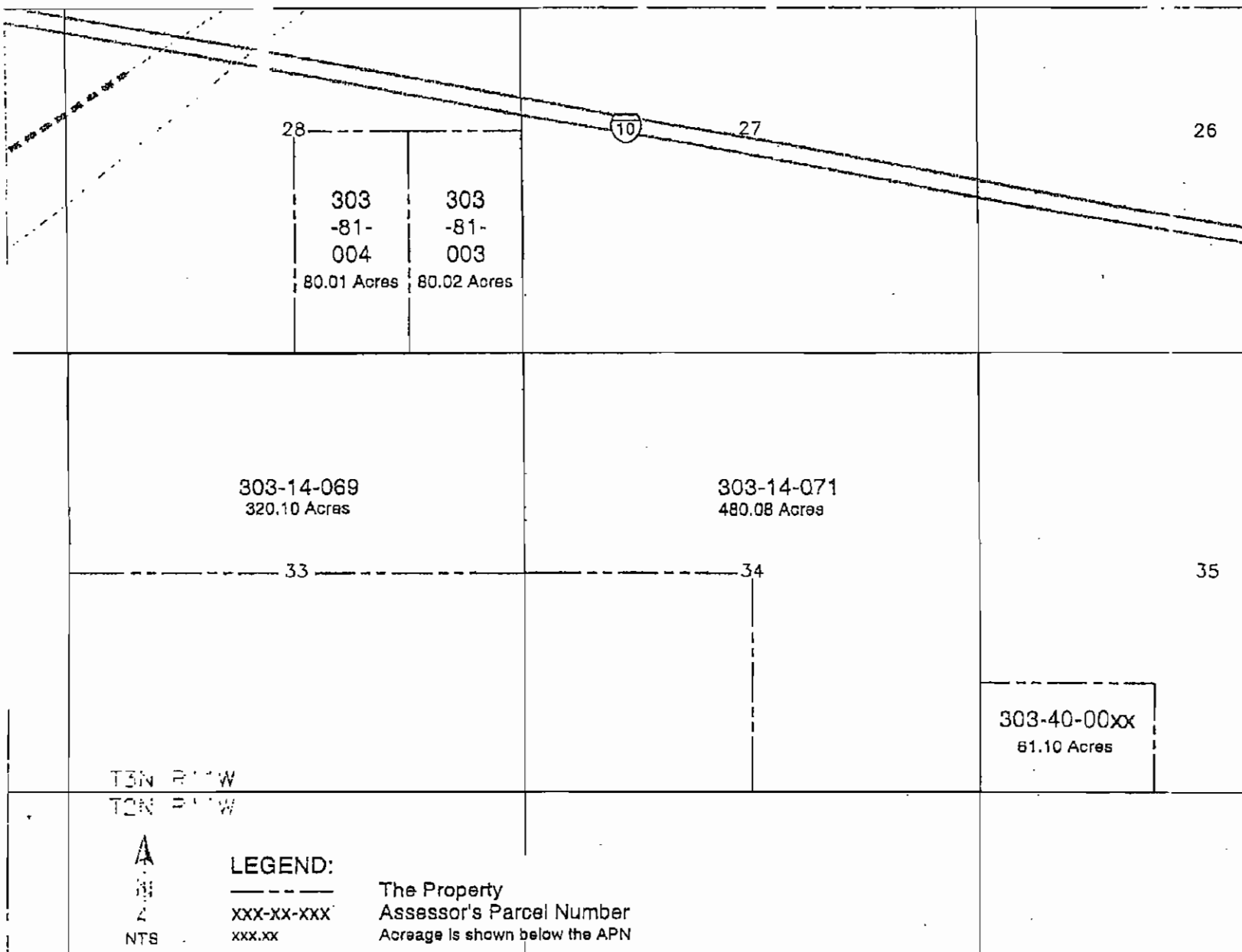


EXHIBIT "2"

PIPELINE EASEMENT AGREEMENT

EASEMENT PROPERTY (SEE ATTACHED)

Exhibit "2"  
Easement Property

Scottsdale No. 2012-189-COS

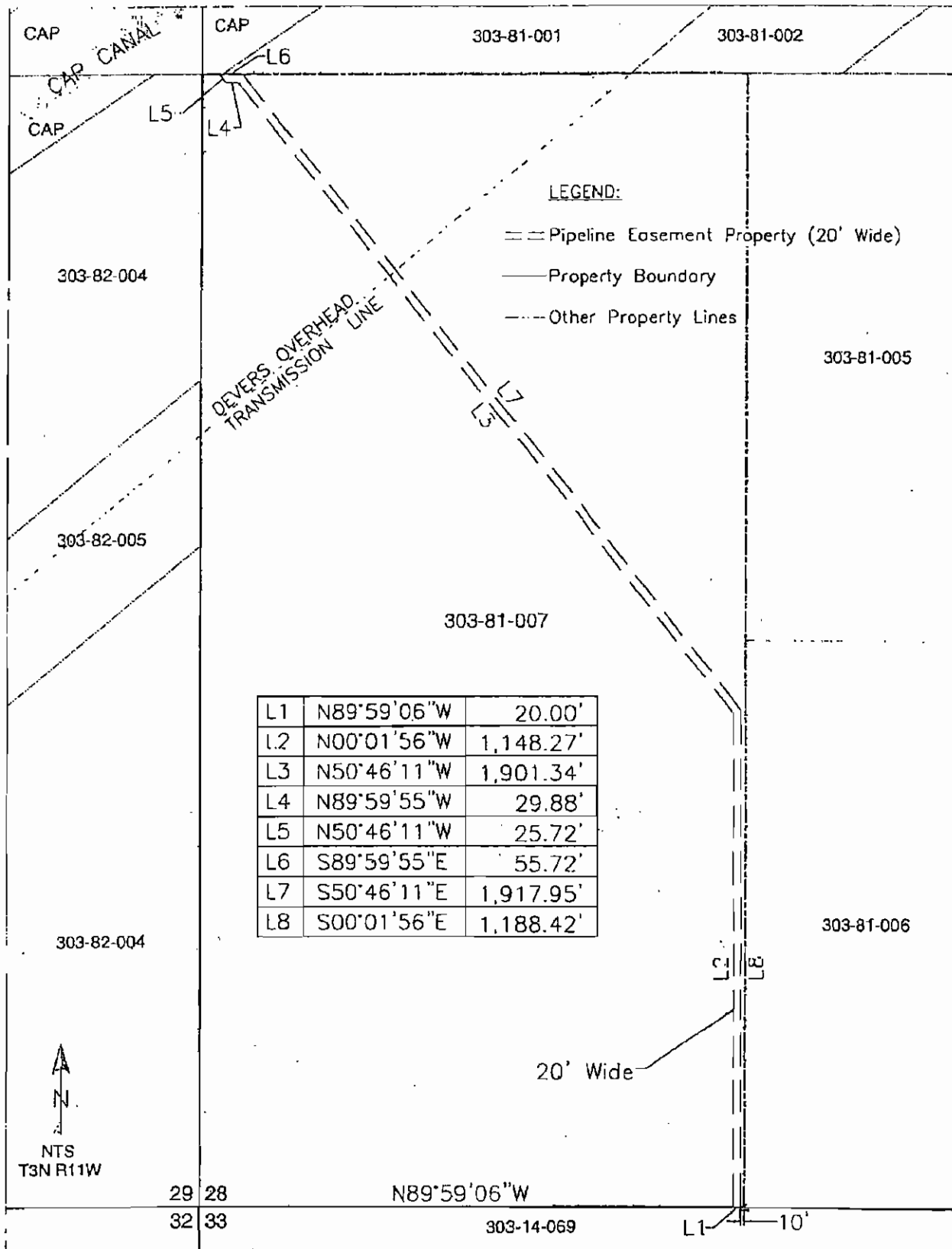


EXHIBIT "3"

PIPELINE EASEMENT AGREEMENT

TEMPORARY CONSTRUCTION EASEMENT PROPERTY (SEE ATTACHED)

Exhibit "3"  
Temporary Construction Easement Property

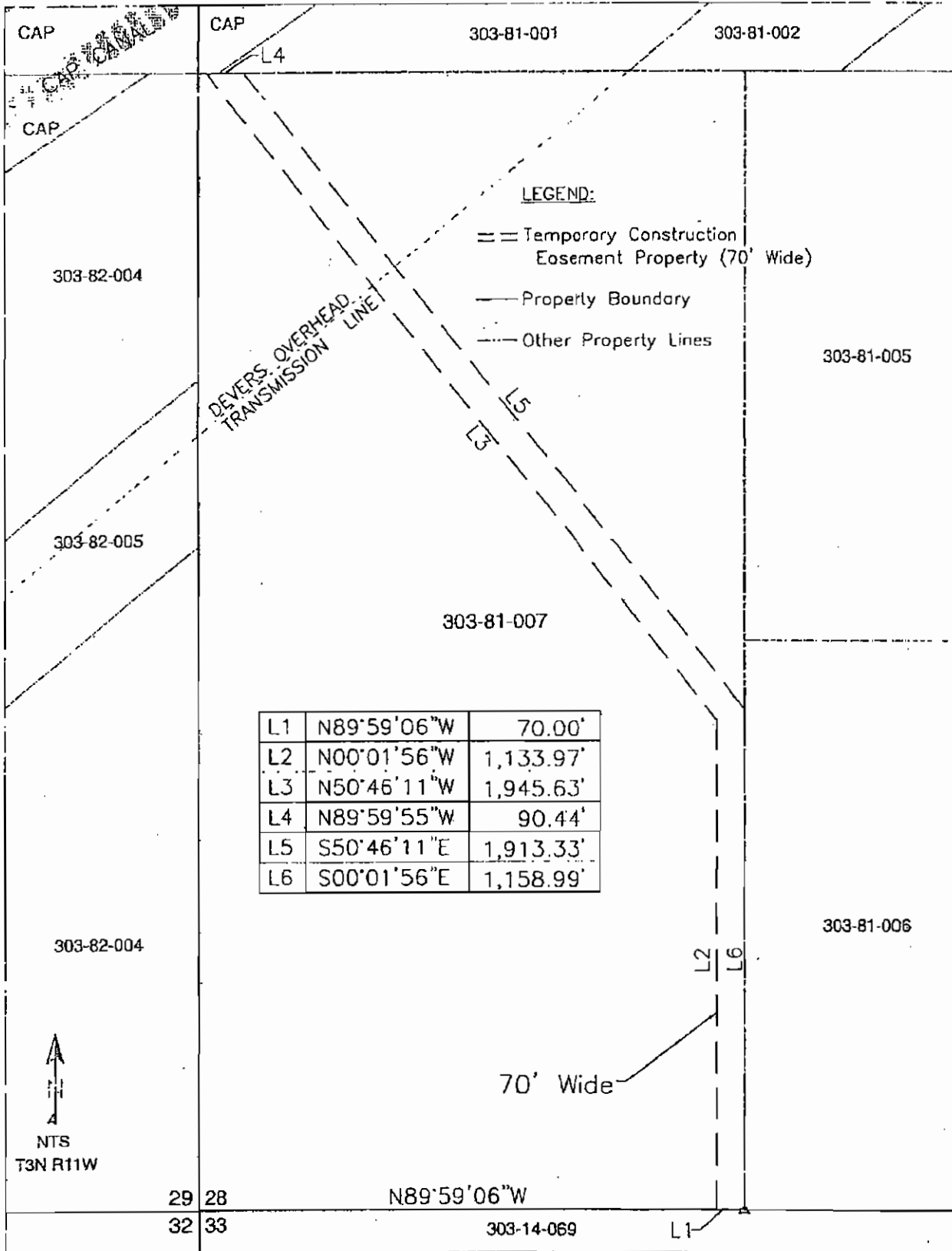


EXHIBIT "L"

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

When Recorded, Return to:

Dorothy Timian-Palmer  
Vidler Water Company, Inc.  
3480 GS Richards Boulevard, Suite 101  
Carson City, Nevada 89703

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (these "CC&Rs") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2012 ("Effective Date") by VIDLER WATER COMPANY, INC., a Nevada Corporation, hereinafter "Declarant" or "Vidler".

RECITALS

A. Vidler has permitted, constructed and operated the Storage and Recovery Facilities (herein defined) on a portion of its property in La Paz County, Arizona. Vidler, and/or Vidler's affiliates, has stored Central Arizona Project ("CAP") water at the Storage and Recovery Facilities, and the Arizona Department of Water Resources ("ADWR") has issued long-term storage credits to Vidler, and/or Vidler's affiliates, reflecting said storage of CAP water (the "Long-Term Storage Credits" or "LTSCs") in the approximate amount of 250,683 acre feet of LTSCs;

B. Pursuant to that Purchase Agreement and Escrow Instructions dated \_\_\_\_\_, 2012, by and between Vidler, the City of Scottsdale, Arizona, an Arizona municipal corporation (the "City"), Desert Mountain Club, Inc., an Arizona nonprofit corporation and CGP-Granite Golf, L.L.C., an Arizona limited liability company (the "Purchase Agreement"), Vidler will sell to the City real property located in La Paz County, Arizona, the legal description of which is attached as Exhibit "A" hereto and a map depicting the same is attached as Exhibit "A1" hereto (the "Property");

C. Vidler will reserve the right to continue to store water at its Storage and Recovery Facilities and may construct, install, equip and/or operate up to 8 wells (the "Vidler Wells") at the Property, at the locations shown on Exhibit "C", for the purpose of recovery and withdrawal of all or a portion of the LTSCs which are stored or which may be stored in the Storage and Recovery Facilities;

D. Vidler, or Vidler's affiliates, own additional real property located in La Paz County, Arizona, and/or Maricopa County, Arizona, the legal description of which is attached as Exhibit "B" hereto and a map depicting the same is attached as Exhibit "B1" hereto (the "Additional Property"), and Vidler, and/or Vidler's affiliates, and/or future owners of the Additional Property intend to also withdraw water based on the Long-Term Storage Credits from the Additional Property. Vidler also may withdraw water based on the Long-Term Storage Credits from other lands Vidler acquires or in which it has an interest;

E. Under certain circumstances an owner of all or part of the Property or the Additional Property may be eligible to withdraw groundwater from the Property or the Additional Property for transportation into an initial Active Management Area, as provided in A.R.S. § 45-554.B.2 or any successor statute ("Water for Transport"); and

F. Because of the potential for multiple users on the Property and the Additional Property, and the need for certain common requirements and conditions, Vidler does hereby impose upon the Property and the Additional Property more particularly described in Exhibits "A" and "B" incorporated herein by this reference as if fully set forth, and does hereby create the following mutually beneficial covenants, conditions and restrictions upon the Property and the Additional Property, which shall run with the land and be binding upon all parties having any right, title or interest in the Property or the Additional Property and their heirs, successors and assigns, and shall be deemed to be and will be construed as equitable servitudes enforceable against the Property and the Additional Property on the terms and conditions provided herein.

#### COVENANTS, CONDITIONS AND RESTRICTIONS

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Vidler agrees as follows:

1. Recitals Incorporated. The Recitals set forth above are hereby incorporated into these CC&Rs.

2. Definitions. In addition to the defined terms described in the other Sections of these CC&Rs, the following terms are defined as follows:

(a) "Additional Property Wells" means any well constructed, installed, equipped and/or operated on the Additional Property by any Owner or Occupant for the purposes of withdrawal or recovery of all or any portion of the LTSCs or the withdrawal of Water for Transport based on ownership of the Additional Property.

(b) "City Wells" means any well constructed, installed, equipped and/or operated on the Property by the City for the purposes of withdrawal of Water for Transport based on ownership of the Property.

(c) "Occupant" shall mean the employees, tenants, contractors, assigns, licensees, invitees, permittees or others who enter upon, occupy or utilize the Property, the Additional Property or any portion thereof under a contract, lease, easement or otherwise with the Owner's consent.

(d) "Owner" shall mean one or more persons or entities who are, alone or collectively, the record owner of fee title to the Property, the Additional Property or any portion thereof.

(e) "Storage and Recovery Facilities" shall mean those existing and future uncovered water retention basin, ponds and associated recovery wells situated on a portion of the Property and on other land adjacent to the Property and specifically designed for the underground storage of water into or the recovery of water from the aquifer beneath said water retention basins, ponds and associated recovery wells, along with all related monitor wells, turnout structures, intake facilities, piping, pumps and existing and future equipment,

infrastructure and improvements or personal property of any nature used in connection therewith. The Vidler Wells are considered part of the Storage and Recovery Facilities.

3. Vidler Withdrawal Limitation. Vidler, on behalf of itself, its subsidiaries and affiliates, successors and assigns, agrees that (a) the maximum amount of water withdrawn by Vidler each calendar year from the Property and the Additional Property (taking into account both (i) water that is reported on an annual report to ADWR for that calendar year as groundwater or as recovered LTSCs, and (ii) water that is not reported on an annual report to ADWR for that calendar year) shall not exceed an annual cumulative total of 31,813.95 acre feet, and (b) the maximum amount of water withdrawn by Vidler each calendar year from the Property and the Additional Property, that is not reported on an annual report to ADWR for that calendar year as recovered LTSCs, shall not exceed an annual cumulative total of 6,813.95 acre feet (together, the "Vidler Withdrawal Limitation"). The Vidler Withdrawal Limitation is binding upon all Owners or Occupants who operate or utilize any of the Vidler Wells or the Additional Property Wells for the withdrawal of any water, whether characterized as groundwater or stored CAP water.

4. Property Withdrawal Limitation. All subsequent Owners and Occupants of the Property and their successors and assigns, agree that they will not withdraw or allow to be withdrawn for transportation into an initial Active Management Area an amount of groundwater per acre of the Property in excess of six acre feet per acre per year or in excess of thirty acre feet per acre for any period of ten consecutive years (computing in continuing progressive series beginning the year transportation from the Property begins) (the "Property Withdrawal Limitation"). Nothing herein shall prohibit or limit the withdrawal of Water for Transport from the Property, based upon ownership of the Additional Property, in amounts that are consistent with the Vidler Withdrawal Limitation.

5. Water Quality. From and after the date hereof, no Owner or Occupant will perform any water management, recharge, or other activity that will adversely affect the water quality of groundwater that can be withdrawn from the Property or the Additional Property. The quality of water shall be deemed adversely affected within the meaning of this paragraph only if, because of such activities, the quality of water falls below minimum water quality standards established for water transported through the CAP Canal, as such standards may exist from time to time as established by the Central Arizona Water Conservation District or the United States Bureau of Reclamation. Prior to testing the water quality of any water from the Property or the Additional Property, the production/recovery well must be pumped for a minimum of four hours before obtaining a water sampling for testing.

6. Characterization of Water – Property Withdrawal Limitation. Vidler, on its behalf and on behalf of its subsidiaries and affiliates, successors and assigns, and all subsequent Owners and Occupants, acknowledge that subsequent Owners and Occupants of the Property intend to withdraw Water for Transport consistent with the Property Withdrawal Limitation. All subsequent Owners and Occupants, on its behalf and on behalf of its successors and assigns, hereby absolutely and unconditionally waive any objection to or position or argument against the withdrawal of Water for Transport from the Property in amounts consistent with the Property Withdrawal Limitation, including any objection, position or argument based on the characterization of the withdrawn water as groundwater or stored CAP water. Notwithstanding that a portion of the Property contains a portion of Storage and Recovery Facilities and that the remainder of the Storage and Recovery Facilities is immediately south of the Property, all future Owners and Occupants of the Property shall have absolutely no responsibility, liability or obligation to Vidler, its subsidiaries, affiliates, successors or assigns, or any future owners of the

LTSCs or of the Additional Property for any claims, demands, obligations, actions, causes of action, damages, costs, losses or expenses of any nature whatsoever, that may arise from or be caused by or be incurred due to the withdrawal of Water for Transport from the Property by any subsequent Owner or Occupant of the Property in amounts that are consistent with the Property Withdrawal Limitation. Vidler, on its behalf, on behalf of its subsidiaries and affiliates, successors and assigns, and all future owners of the LTSCs, absolutely and irrevocably releases and forever discharges all future Owners and Occupants of the Property from any and all present or future claims, demands, obligations, actions, causes of action, damages, costs, losses and expenses of any nature whatsoever, alleged to arise from, be caused by or be incurred due to the withdrawal of Water for Transport from the Property by any future Owner or Occupant of the Property in amounts that are consistent with the Property Withdrawal Limitation. In this paragraph, all references to Water for Transport shall mean Water for Transport based on ownership of the Property.

7. Characterization of Water – Vidler Withdrawal Limitation. All future Owners and Occupants and their successors and assigns, acknowledge that Vidler and/or its successors and assigns intends to withdraw water based on the Long-Term Storage Credits and Water for Transport from the Property and the Additional Property, consistent with the Vidler Withdrawal Limitation. All future Owners and Occupants, and their successors and assigns, understand, agree and with full knowledge, take subject to the restrictions set forth herein and hereby absolutely and unconditionally waive any objection to or position or argument against the withdrawal of water based on the Long-Term Storage Credits or Water for Transport from the Property or the Additional Property by Vidler and/or its successors and assigns or any future owner of Long-Term Credits or future Owners and Occupants of the Additional Property in amounts that are consistent with the Vidler Withdrawal Limitation, including any objection, position or argument based on the characterization of the withdrawn water as groundwater or stored CAP water except as necessary to enforce the Vidler Withdrawal Limitations. Vidler, its subsidiaries, affiliates, successors or assigns, shall have absolutely no responsibility, liability or obligation to any future Owner or Occupant, and/or its successors and assigns, for any claims, demands, obligations, actions, causes of action, damages, costs, losses or expenses of any nature whatsoever, that may arise from or be caused by or be incurred due to the withdrawal of water based on the Long-Term Storage Credits or Water for Transport from the Property or the Additional Property by Vidler, its subsidiaries, affiliates, successors or assigns, or any future owner of the Long-Term Storage Credits, or any future Owner or Occupant, in amounts that are consistent with the Vidler Withdrawal Limitation. All future Owners and Occupants, on their behalf, and on behalf of their successors and assigns, absolutely and irrevocably release and forever discharge Vidler, its subsidiaries, affiliates, successors or assigns, and all future owners of the Long-Term Storage Credits and all future Owners and Occupants from any and all present or future claims, demands, obligations, actions, causes of action, damages, costs, losses and expenses of any nature whatsoever, alleged to arise from, be caused by or be incurred due to the withdrawal water based on the Long-Term Storage Credits or Water for Transport from the Property or the Additional Property by Vidler, its subsidiaries, affiliates, successors or assigns, or any future owner of the Long-Term Storage Credits, or any future Owner or Occupant, in amounts that are consistent with the Vidler Withdrawal Limitation. In this paragraph, all references to Water for Transport shall mean Water for Transport based on ownership of the Additional Property.

8. Wells. Vidler, its subsidiaries and affiliates, successors and assigns, shall not construct, install or operate any well on the Property that is located in areas other than as set forth in Exhibit "C" attached hereto and incorporated herein by this reference, except for any

monitoring wells that may be required by ADWR in connection with the Storage and Recovery Facilities, and except that Vidler, its subsidiaries and affiliates, successors and assigns, may construct, operate, maintain and repair a replacement well (each, a "Replacement Well") within 200 feet of the center of each Vidler Well (the "Replacement Well Right"). Vidler, its subsidiaries and affiliates, successors and assigns, may exercise its Replacement Well Right one time for each Grantor Well and Existing Well, but the Replacement Well Right shall not apply to Replacement Wells. Following construction, each Replacement Well shall be considered a Vidler Well hereunder. In no event shall Vidler, its subsidiaries and affiliates, successors and assigns, construct, install or operate any well on that portion of the Property described as the east half of Section 34, T3N, R11W or in that portion of the Property located in the south half of the southwest quarter of Section 35, T3N, R11W. All Owners and Occupants shall construct and install wells on the Property and the Additional Property such that the entire well casing is as perpendicular to the land surface as practicable. Each Owner and Occupant shall meter its production/recovery wells located on the Property and/or the Additional Property and, upon request by another Owner or Occupant, shall provide the requesting Owner or Occupant with a copy of the annual report to ADWR stating the amount of water withdrawn from the Property or the Additional Property from the reporting party's production/recovery wells based on Long-Term Storage Credits or Water For Transport during the preceding calendar year and with a statement of the amount of water, if any, withdrawn from the reporting party's production/recovery wells during the immediately preceding calendar year that was not included on the annual report to ADWR.

9. Well Information. All Owners and Occupants who own or operate the wells for Water for Transport or as LTSC recovery wells on the Property and/or the Additional Property shall, upon request by another Owner or Occupant, provide the requesting Owner or Occupant with available depth-to-water and available water quality information from such wells on the Property or the Additional Property or used to monitor the Storage and Recovery Facilities, but in any event no more frequently than once annually.

10. Authorization. All future Owners and Occupants hereby authorize Vidler to apply for, obtain and utilize such permits, registrations and authorizations as are necessary in accordance with applicable law and the rules and regulations of the ADWR and in amounts that are consistent with the Vidler Withdrawal Limitation to enable Vidler to construct and use the Vidler Wells to withdraw Long-Term Storage Credits and Water for Transport from the Property based on ownership of the Additional Property.

11. Cooperation. Vidler will cooperate with and join the City in obtaining all necessary or desired governmental approvals pertaining to the transfer of the Property to the City, including that approval described in Section 13.1(e) of the Purchase Agreement. Except as provided in such Section 13.1(e), any such government approvals shall be the sole cost and expense of the City. Further, Vidler shall cooperate with and join the City in its efforts to obtain any other variances, permits, third-party or nongovernmental approvals, or other matters required by the City pertaining to the transfer of the Property to the City and the withdrawal by the City of Water for Transport in amounts that are consistent with the Property Withdrawal Limitation. The City will cooperate with and join Vidler in obtaining all necessary or desired governmental approvals pertaining to the recovery LTSCs and the withdrawal of Water for Transport from the Vidler Wells and the Additional Property Wells, in amounts that are consistent with the Vidler Withdrawal Limitation. Any such government approvals shall be the sole cost and expense of Vidler. Further, City shall cooperate with and join Vidler in its efforts to obtain any other variances, permits, third-party or nongovernmental approvals, or other matters required by Vidler for the recovery of LTSCs and the withdrawal of Water for Transport from the

Vidler Wells and the Additional Property Wells, in amounts that are consistent with the Vidler Withdrawal Limitation.

12. No Reliance on Analysis. Following the transfer of the Property to the City, Owners and Occupants of the Property shall not rely upon or utilize, for the benefit of the Property, the balance of the analysis volume (which is anticipated to be 6,813.95 AF) remaining under that Analysis of Adequate Water Supply (#43-700689.0001) dated December 21, 2011 (the "Analysis"), following the approval by ADWR of Vidler's request for a reduction in the volume of the Analysis pursuant to Section 13.1(e) of the Purchase Agreement.

13. Development of Additional Property. All future Owners and Occupants acknowledge and agree that the Additional Property may be utilized for any lawful purpose(s), subject to any applicable permitting or licensing requirements, and provided that such utilization will not adversely affect the water quality of groundwater that can be withdrawn from the Property or the Additional Property. The quality of water shall be deemed adversely affected only as provided in Section 5 hereof.

14. Access Road. Vidler has an easement for the access road that serves the Property and the Additional Property. Following the conveyance of the Property to the City and for so long as Vidler, its subsidiaries and affiliates, is an Owner or an Occupant and operates or utilizes any of the Vidler Wells or the Additional Property Wells, Vidler and the City (a) shall each pay one-half of the road maintenance costs for the access road, and (b) shall reasonably cooperate in the maintenance and repair of the access road. Upon Vidler, and its subsidiaries and affiliates, no longer being an Owner or Occupant, the City shall maintain and repair the road and the Owners of the Property and the Additional Property shall pay to the City a share of road maintenance costs for the access road, in proportion to the number of acres owned by the City and the other Owners.

15. City Wells. The City may elect to construct and install the City Wells at locations on those portions of the Property described as the east half of Section 34, T3N, R11W and as the west 300 feet of the south half of the southwest quarter of Section 35, T3N, R11W. At present, the City intends to construct and install the City Wells on the Property approximately as located on Exhibit "D" attached hereto and incorporated herein by this reference (the "Approximate City Well Locations"). Any and all wells constructed and installed by Owners and Occupants of the Additional Property shall be drilled not less than one-half mile from the center of a completed City Well or, if the City has not yet constructed and installed at least two City Wells at the Property, not less than one-half mile from the center of the Approximate City Well Locations. In addition, Vidler shall not operate any well constructed, owned or leased by Vidler and located less than one-half mile from the center of a completed City Well or, if the City has not yet constructed and installed at least two City Wells at the Property, less than one-half mile from the center of the Approximate City Well Locations, provided, however, that that foregoing limitation shall not apply to the Vidler Wells or to any Replacement Wells. Notwithstanding anything to the contrary stated herein, if an Owner or Occupant drills a well on the Additional Property after the Effective Date and that well is drilled in accordance with the requirements of this Section, the Owner or Occupant may continue to operate said well and any associated replacement well within 200 feet of said well, regardless of the location of the any subsequently-completed City Well.

16. Abandonment of Facilities. If Vidler, its successors or assigns, elects to cease the storage of water at the Storage and Recovery Facilities, Vidler shall abandon all recharge wells that are part of the Storage and Recovery Facilities in compliance with all laws, rules and

regulations of any governmental entity having jurisdiction (collectively, "Laws") relating to such abandonment. If any party abandons a production or recovery well on the Property, that party shall comply with all Laws relating to such abandonment.

17. Construction; Operation; Maintenance; etc. of Infrastructure on the Property. Vidler shall install, construct, use, operate, maintain, repair and abandon the Storage and Recovery Facilities and all related pipelines, including valves, connections and other pipelines, equipment, appurtenances and improvements or personal property of any nature for the conveyance of recovered LTSCs and/or Water for Transport (based on ownership of the Additional Property) from the Vidler Wells and the Additional Property Wells to the Central Arizona Project canal or to locations off the Property (collectively, the "Vidler Infrastructure") at its sole cost and expense; in accordance with all applicable Laws; in a good and workmanlike manner; and in a manner that does not unreasonably interfere with the use of the Property by the Owner of the Property. The foregoing obligation shall be binding upon Vidler and all Occupants of the Property with a right to construct, operate or utilize the Vidler Infrastructure or any portion thereof. The City shall have no obligation to maintain or repair the Vidler Infrastructure, or to take action to bring the Vidler Infrastructure into compliance with, or maintain its compliance with, any Laws pertaining to the condition of the Vidler Infrastructure. The Vidler Infrastructure shall be deemed to be personally owned by Vidler, its successors and assigns. The City shall install, construct, use, operate, maintain, repair and abandon the City Wells and all related pipelines, including valves, connections and other pipeline equipment and appurtenances, for the conveyance of Water for Transport (based on ownership of the Property) from the City Wells to the Central Arizona Project canal or to locations off the Property (collectively, the "City Infrastructure") at its sole cost and expense; in accordance with all applicable Laws; in a good and workmanlike manner; and in a manner that does not unreasonably interfere with the use of the Vidler Infrastructure by Vidler and all Occupants of the Property with the right to operate or utilize the Vidler Infrastructure or any portion thereof. The foregoing obligation shall be binding upon City and all Occupants of the Property with a right to construct, operate or utilize the City Infrastructure or any portion thereof. Vidler shall have no obligation to maintain or repair the City Infrastructure, or to take action to bring the City Infrastructure into compliance with, or maintain its compliance with, any Laws pertaining to the condition of the City Infrastructure. Before beginning actual design and construction of the Vidler Infrastructure or the City Infrastructure, as applicable, Vidler and City agree to consult with each other on issues related to their respective pipeline infrastructure to be located at the Property, including but not limited to, the proposed locations of their respective pipeline infrastructure, the type of pipeline infrastructure to be installed, the depth at which it will be placed and any other related issues about which early consultation and cooperation could benefit both parties in terms of cost savings and ease of construction and maintenance. The foregoing obligation shall be binding upon Vidler and the City and all Occupants of the Property with a right to construct the Vidler Infrastructure or the City Infrastructure or any portion thereof.

18. Taxes. If the Vidler Infrastructure or any part thereof is considered to be a taxable improvement on the Property, Vidler, its successors and assigns, shall be solely responsible for paying any and all taxes levied against the Vidler Infrastructure, including any taxes levied against recovery wells, monitor wells and other portions of the Vidler Infrastructure.

19. Indemnity. Vidler and all Occupants of the Property with the right to construct, operate or utilize the Vidler Infrastructure or any part thereof shall defend, indemnify and hold the City, its Council members, managers, employees, agents, contractors, and representatives, harmless for, from and against all loss, cost, expense, damage, injury, obligation, liability, penalty, fine, suit and settlement, including, without limitation, attorneys' and consultants' fees

and expenses, court costs or other litigation expenses, and including any obligation to pay taxes levied against the Vidler Infrastructure under Paragraph 18, of whatever kind and nature, known or unknown, contingent or otherwise, arising from, out of or in any way related to or resulting from any negligent or willful actions, acts, errors, mistakes or omissions to the extent caused by Vidler or its employees, contractors, subcontractors, agents or invitees performing work or services in connection with the Vidler Infrastructure, including but not limited to, anyone directly or indirectly employed by Vidler or its employees, contractors, subcontractors, agents or invitees or anyone for whose acts any of them may be liable. The City and all occupants of the Property with the right to construct, operate or utilize the City Infrastructure or any part thereof shall defend, indemnify and hold Vidler, its shareholders, officers, directors, beneficiaries, members, managers, partners, employees, agents, affiliates, and representatives, harmless for, from and against all loss, cost, expense, damage, injury, obligation, liability, penalty, fine, suit and settlement, including, without limitation, attorneys' and consultants' fees and expenses, court costs or other litigation expenses, of whatever kind and nature, known or unknown, contingent or otherwise, arising from, out of or in any way related to or resulting from any negligent or willful actions, acts, errors, mistakes or omissions to the extent caused by City or its employees, contractors, subcontractors, agents or invitees performing work or services in connection with the City Infrastructure, including but not limited to, anyone directly or indirectly employed by City or its employees, contractors, subcontractors, agents or invitees or anyone for whose acts any of them may be liable.

20. Insurance. Vidler and any Occupant of the Property with the right to construct, operate or utilize the Vidler Infrastructure or any part thereof that is located on the Property, shall, prior to initiating construction or well drilling activities on the Property (individually and collectively, "Construction Activities"), but not before that time, purchase and maintain, at its own expense, the minimum insurance coverages specified below (the "Required Coverages") with insurance companies duly licensed or approved to conduct business in the State of Arizona and with an A.M. Best's rating of B++6 or better with policies and forms satisfactory to the City. For purposes of clarity, Construction Activities shall not include routine maintenance, operations, or minor repair activities conducted on the Property in the ordinary course. Neither Vidler nor any Occupant shall initiate Construction Activities on the Property unless the City has been given not less than seven (7) days prior written notice of the commencement of such Construction Activities (the Commencement Notice") and, with the Commencement Notice, Vidler and/or the Occupant shall have provided the City the Certificate of Insurance required by this Section establishing the Required Coverages. All policies shall be written on an "occurrence" basis. If any excess insurance is utilized to fulfill the requirements of this Section (including, without limitation, the Required Coverages described below), the excess insurance, for each of the coverages specified below, must be "follow form" and provide coverage equal or broader in scope than the coverage provided by underlying insurance. Vidler and such Occupant(s) must annually submit Certificates of Insurance to the City's Water Resources Department citing the applicable coverage in force. Each Certificate must specifically reflect that Vidler or such Occupant has obtained an endorsement to each such insurance policy naming the City, its agents representatives, officers, directors, officials and employees as additional insureds on the Commercial General Liability and Excess Liability insurance at Vidler's and/or Occupant's sole cost and expense. Insurance shall be primary insurance as to the base policy only (but not as to any excess or umbrella policy), and all policies must waive rights of recovery (subrogation) against the City, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by or on behalf of Vidler or such Occupant under the CC&R's. The required policies may provide coverage which contain deductibles or

self-insured retention amounts. Vidler and such Occupant(s) are solely responsible for any deductible or self-insured retention amount.

The Required Construction Coverages are as follows:

Commercial General Liability: An "Occurrence" form policy of Commercial General Liability insurance, with a limit of not less than \$5,000,000 for each occurrence, \$5,000,000 Products and Completed Operations Annual Aggregate, and a \$5,000,000 General Aggregate Limit. The policy must cover bodily injury and property damage liability arising from premises, operations, independent contractors, products-completed operations, and personal injury.

Workers Compensation Insurance: Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Vidler's or Occupant's employees engaged in the performance of work or services at the Property and must also maintain Employers' Liability Insurance of not less than the amounts required by applicable law, but in any event not less than \$100,000 for each accident, \$100,000 occupational disease for each employee, and a \$500,000 occupational disease policy limit.

Vehicle Liability: Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Vidler's or Occupant's owned, hired, and non-owned vehicles assigned to or used in the performance of Vidler's or Occupant's work or services at the Property.

During any period in which neither Vidler nor the Occupant is conducting Construction Activities on the Property, the Required Coverages shall be as specified above, but the maximum Commercial General Liability insurance limit shall be reduced to \$1,000,000 per occurrence, with a general aggregate limit of \$2,000,000. Vidler and any Occupant shall require that any contractor entering upon the Property to perform services for Vidler or the Occupant shall maintain the identical insurance coverages that Vidler is required to maintain hereunder.

If any Occupant of the Property has the right to construct, operate or utilize the City Infrastructure, or any part thereof, and obtains liability insurance or casualty insurance pertaining to the City Infrastructure or any part thereof, such Occupant shall, at the Occupant's sole cost and expense, obtain an endorsement to each such insurance policy naming Vidler as an additional insured. The requirements of this section shall become effective upon the conveyance of the Property to the City. As used in this subsection, the term "Vidler" shall include Vidler's subsidiaries and affiliates, successors and assigns, to the extent the same construct, operate or utilize the Vidler Infrastructure, or any part thereof, located on the Property.

21. Default. If any Owner or Occupant shall fail to perform when due any act required by these CC&Rs or in any other way defaults under these CC&Rs, and the default is not cured within 20 days after the defaulting party's receipt of written notice of default from a non-defaulting Owner or Occupant, then the non-defaulting Owner or Occupant may pursue any rights or remedies that are available for such default, including actions for specific performance and injunctive relief.

22. Notices. All notices and other communications required or permitted hereunder shall be in writing and shall be given by personal delivery, facsimile or e-mail transmission, overnight courier providing for written receipt of delivery, or by deposit in the United States mail, first class, registered or certified, return receipt requested, postage prepaid, correctly addressed to the intended recipient as follows:

To Vidler: VIDLER WATER COMPANY, INC.  
3480 GS Richards Boulevard, Suite 101  
Carson City, Nevada 89703  
FAX: (755) 885-5008  
EMAIL: shartman@vidlerwater.com

with copy to: Sheryl A. Sweeney  
Ryley Carlock & Applewhite  
One North Central Ave., Suite 1200  
Phoenix, Arizona 85004  
FAX: (602) 257-6924  
EMAIL: ssweeney@rcalaw.com

To the City: City of Scottsdale  
9379 E. San Salvador  
Scottsdale, Arizona 85258  
Attn: Executive Director, Water Resources Department  
FAX: (480) 312-5615

With copy to: City Attorney's Office  
3939 E. Drinkwater Blvd  
Scottsdale, Arizona 85251  
FAX: (480) 312-2548

Such notices and other communications shall be deemed to be effective upon actual receipt, if delivered personally; or one business day after deposit with an overnight delivery service, or if sent by fax, e-mail or overnight express delivery; or three business days following deposit in the mail, if delivered by certified mail, return receipt requested. Owners and Occupants may, from time to time, designate a different address by written notice given in the manner provided for above, not less than two days prior to the effective date of the change.

23. Miscellaneous.

(a) Section Headings. The section headings of these CC&Rs are inserted only for convenient reference and do not define, limit, or prescribe the scope of this Agreement.

(b) Governing Law. These CC&Rs shall be construed under and governed by the laws of the state of Arizona.

(c) Severability. In case any one or more of the provisions contained in these CC&Rs shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, and these CC&Rs shall be construed as if such invalid, illegal, or unenforceable provisions had never been contained herein.

(d) **Attorneys' Fees.** If either party commences litigation or other legal proceedings against the other party for a default hereunder or to enforce the provisions hereof, the prevailing party in any such proceeding shall be entitled to recover its costs and expenses, including reasonable attorneys' fees and expert witness fees and court costs, with attorneys' fees to be determined by the court and not a jury in any such litigation.

(e) Modification of CC&Rs. Following the conveyance of the Property to the City, Vidler and the City may modify these CC&Rs by recording such modification, executed by both Vidler and the City, in the records of La Paz County, Arizona and each such modification shall be effective without the consent or approval of any other Owner or Occupant. If Vidler, its subsidiaries or affiliates, are no longer an Owner or an Occupant under these CC&Rs, the City may modify these CC&Rs by recording such modification in the records of La Paz County, Arizona; provided, however, that no such modification shall materially and adversely modify the rights or obligations of other Owners and Occupants under these CC&Rs.

(f) Waivers. No waiver of any of the provisions of these CC&Rs shall constitute a waiver of any other provisions, whether or not similar, nor shall any waiver be a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver. Either party may waive any provisions of these CC&Rs intended for its benefit; provided, however, such waiver shall in no way excuse the other party from the performance of any of its other obligations under these CC&Rs.

24. Binding Effect; Runs with the Land. These CC&Rs and the covenants, conditions and restrictions contained in these CC&Rs shall run with the land, shall be a burden upon the Property and the Additional Property and every part thereof, shall be binding upon and enforceable against the Owners and Occupants, and shall inure to the benefit of the Owners and Occupants. These CC&Rs and the covenants, conditions and restrictions contained in these CC&Rs shall be enforceable by the Owners and Occupants.

25. Further Acts. Vidler and each Owner and Occupant shall execute such documents and take such actions, if any, as are reasonably necessary and appropriate to effectuate the terms and conditions of these CC&Rs.

In Witness Whereof, these CC&Rs are executed Vidler effective the date first shown above.

VIDLER:

VIDLER WATER COMPANY, INC., a Nevada corporation

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

STATE OF NEVADA )  
County of Carson City) ss.

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by \_\_\_\_\_, the \_\_\_\_\_ of VIDLER WATER COMPANY, INC., a Nevada corporation, who executed the foregoing on behalf of the corporation, being authorized to do so for the purposes therein contained.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

EXHIBIT "A"

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

LEGAL DESCRIPTION OF PROPERTY

1. The East half (E ½) of the Southeast quarter (SE ¼) of Section 28, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona, as depicted in the Boundary Survey recorded October 10, 2012, Document #2012-05400, La Paz County Recorder.  
APN 303-81-003, 80.02 acres more or less
2. The West half (W ½) of the Southeast quarter (SE ¼) of Section 28, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona, as depicted in the Boundary Survey recorded October 10, 2012, Document #2012-05400, La Paz County Recorder.  
APN 303-81-004, 80.01 acres more or less
3. The North half (N ½) of Section 33, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona, as depicted in the Boundary Survey recorded October 10, 2012, Document #2012-05400, La Paz County Recorder.  
APN 303-14-069, 320.10 acres more or less
4. The North half (N ½) and the Southeast quarter (SE ¼) of Section 34, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona, as depicted in the Boundary Survey recorded October 10, 2012, Document #2012-05400, La Paz County Recorder.  
APN 303-14-071, 480.08 acres more or less
5. The West 2,015.56 feet of the South half (S ½) of the South half (S ½) of Section 35, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona, being described as the New Parcel #5 in the Lot Line Adjustment map recorded October 10, 2012, Document #2012-05399, La Paz County Recorder. Excepting therefrom one-third (1/3) of all oil gas, minerals and other hydrocarbon substances as reserved in an instrument Recorded April 24th, 1958 in Docket 222, page 514 Records of Yuma (now La Paz County), Arizona.  
APN 303-40-\_\_\_\_, 61.10 acres more or less

**EXHIBIT "A1"**

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**MAP OF THE PROPERTY**

**(SEE ATTACHED)**

Exhibit "A1"  
The Property

Scottsdale No. 2012-189-COS

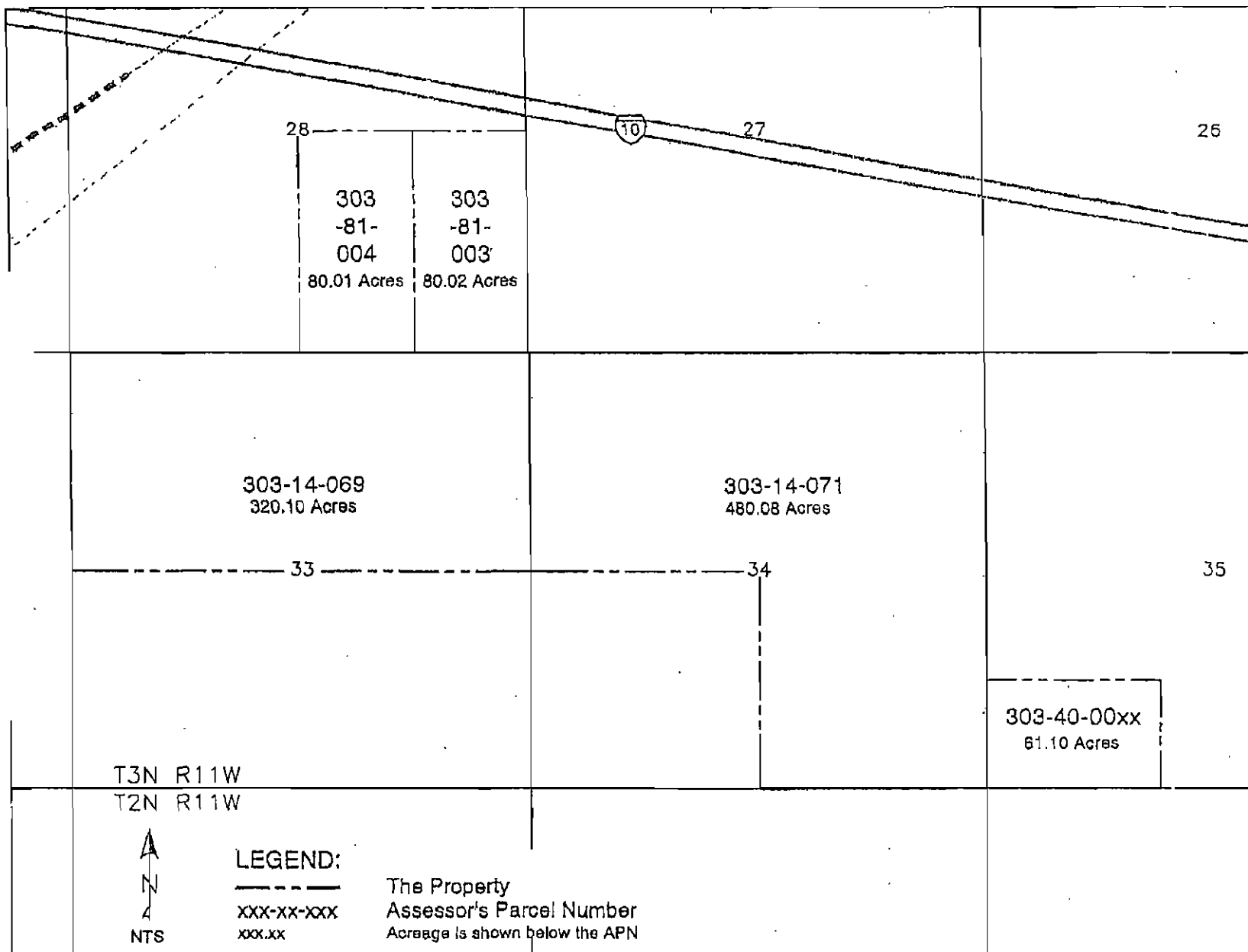


EXHIBIT "B"

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

ADDITIONAL PROPERTY

1. The West 390 feet of Lots 4 and 5 of Section 6, Township 2 North, Range 10 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona.  
APN 303-02-001, 23.64 acres more or less
2. The West 390 feet of Lots 6 and 7 of Section 6, Township 2 North, Range 10 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona.  
APN 303-02-002, 23.63 acres more or less
3. The West 390 feet of Lots 1 and 2 of Section 7, Township 2 North, Range 10 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona.  
APN 303-03-001, 23.64 acres more or less
4. The Northeast quarter (NE ¼) of the Southwest quarter (SW ¼) of Section 1, Township 2 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona.  
APN 303-04-001-B, 40.00 acres more or less
5. The Northwest quarter (NW ¼) of the Southwest quarter (SW ¼) of Section 1, Township 2 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona.  
APN 303-04-001-C, 40.00 acres more or less
6. The South half (S ½) of the Southwest quarter (SW ¼) of Section 1, Township 2 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona.  
APN 303-04-002-A, 80.00 acres more or less
7. The South half (S ½) of Section 33, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona.  
APN 303-14-070, 320.00 acres more or less
8. The North half (N ½) of the Southwest quarter (SW ¼) of Section 35, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona.  
Excepting therefrom one-third (1/3) of all oil gas, minerals and other hydrocarbon substances as reserved in an instrument Recorded April 24th, 1958 in Docket 222, page 514 Records of Yuma (now La Paz County), Arizona.  
APN 303-40-003, 80.00 acres more or less
9. A portion of the South half (S ½) of the South half (S ½) of Section 35, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona, being described as the New Parcel #6 in the Lot Line Adjustment map recorded October 10, 2012, Document #2012-05399, La Paz County Recorder. Excepting therefrom one-third (1/3) of all oil gas, minerals and other hydrocarbon substances as reserved in an instrument

Recorded April 24th, 1958 in Docket 222, page 514 Records of Yuma (now La Paz County), Arizona.

APN 303-40-\_\_\_\_, 28.94 acres more or less

10. The East 2,310 feet of the South half (S  $\frac{1}{2}$ ) of the South half (S  $\frac{1}{2}$ ) of Section 35, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona. Excepting therefrom the East 60 feet of the Southeast quarter (SE  $\frac{1}{4}$ ) of the Southeast quarter (SE  $\frac{1}{4}$ ) of the Southeast quarter (SE  $\frac{1}{4}$ ) per Document No. 2001-01236, La Paz County Recorder. Further excepting one-third (1/3) of all oil gas, minerals and other hydrocarbon substances as reserved in an instrument Recorded April 24th 1958 in Docket 222, page 514 Records of Yuma (now La Paz County), Arizona.  
APN 303-40-010, 69.09 acres more or less
11. The Northwest quarter (NW  $\frac{1}{4}$ ) of the Northwest quarter (NW  $\frac{1}{4}$ ) of Section 26, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona.  
APN 303-72-009, 40.00 acres more or less
12. The Southwest quarter (SW  $\frac{1}{4}$ ) of the Northwest quarter (NW  $\frac{1}{4}$ ) of Section 26, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona.  
APN 303-72-010, 40.00 acres more or less
13. The Northeast quarter (NE  $\frac{1}{4}$ ) of the Southwest quarter (SW  $\frac{1}{4}$ ) of Section 28, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona.  
APN 303-81-005, 40.00 acres more or less
14. The West half (W  $\frac{1}{2}$ ) of the Southwest quarter (SW  $\frac{1}{4}$ ) of Section 28, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona.  
APN 303-81-007, 80.00 acres more or less
15. The North half (N  $\frac{1}{2}$ ) of Section 29, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona, lying South and adjacent to Interstate Highway 10 Right-of-way. Excepting therefrom that portion of said land lying East of a line which runs parallel to and is 67.3 feet West of the West section line of the Northeast quarter (NE  $\frac{1}{4}$ ) of said Section 29.  
APN 303-82-001, 104.10 acres more or less
16. Lots 1 and 2, the Northeast quarter (NE  $\frac{1}{4}$ ) and the East Half (E  $\frac{1}{2}$ ) of the Northwest quarter (NW  $\frac{1}{4}$ ) of Section 30, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona, lying South and adjacent to the Southerly boundary line of Interstate Highway 10 Right-of-way.  
APN 303-83-001, 289.27 acres more or less
17. A portion of the South half (S  $\frac{1}{2}$ ) of Section 30, Township 3 North, Range 11 West, of the Gila and Salt River Base and Meridian, La Paz County, Arizona, described as follows: That portion of the South half (S  $\frac{1}{2}$ ) of said Section 30, lying North of the following described line: COMMENCING at the Southwest corner of said Section 30; Thence North along the West

line of said Section 30, 1,320.93 feet to the POINT OF BEGINNING of the herein described line; Thence North 88 degrees 06 minutes 56 seconds East, 579.82 feet; Thence North 16 degrees 33 minutes 05 seconds East, 412.25 feet; Thence South 87 degrees 29 minutes 07 seconds East, 999.87 feet; Thence South 42 degrees 29 minutes 10 seconds East, 1,272.62 feet; Thence North 51 degrees 54 minutes 49 seconds East, 921.83 feet; Thence South 89 degrees 38 minutes 14 seconds East, 1,927.80 feet; to a point on the East line of said Section 30, said point being the end of said line.

APN 303-83-002, 155.96 acres more or less

18. Lot 3, portions of lots 4 and 5 and the Southeast quarter (SE  $\frac{1}{4}$ ) of the Northwest quarter (NW  $\frac{1}{4}$ ) of Section 6, Township 2 North, Range 10 West, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona. Except therefrom the west 390 feet lying within La Paz County, Arizona.

APN 506-20-010-A, 132.54 acres more or less

19. Portions of Lots 1 and 2 and the East half (E  $\frac{1}{2}$ ) of the Northwest quarter (NW  $\frac{1}{4}$ ) of Section 7, Township 2 North, Range 10 West, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona. Excepting therefrom the west 390 feet lying within La Paz County, Arizona.

APN 506-20-013-A, 134.44 acres more or less

20. The Northeast quarter (NE  $\frac{1}{4}$ ) of Section 7, Township 2 North, Range 10 West, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

APN 506-20-016, 160.00 acres more or less

21. The South half (S  $\frac{1}{2}$ ) of the South half (S  $\frac{1}{2}$ ) of Section 8, Township 2 North, Range 10 West, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona. Excepting therefrom a 40-foot wide road right-of-way on the east boundary.

APN 506-20-017-A, 158.79 acres more or less

22. The Northwest quarter (NW  $\frac{1}{4}$ ) of the Northeast quarter (NE  $\frac{1}{4}$ ) and the North half (N  $\frac{1}{2}$ ) of the Northwest quarter (NW  $\frac{1}{4}$ ) of Section 17, Township 2 North, Range 10 West, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

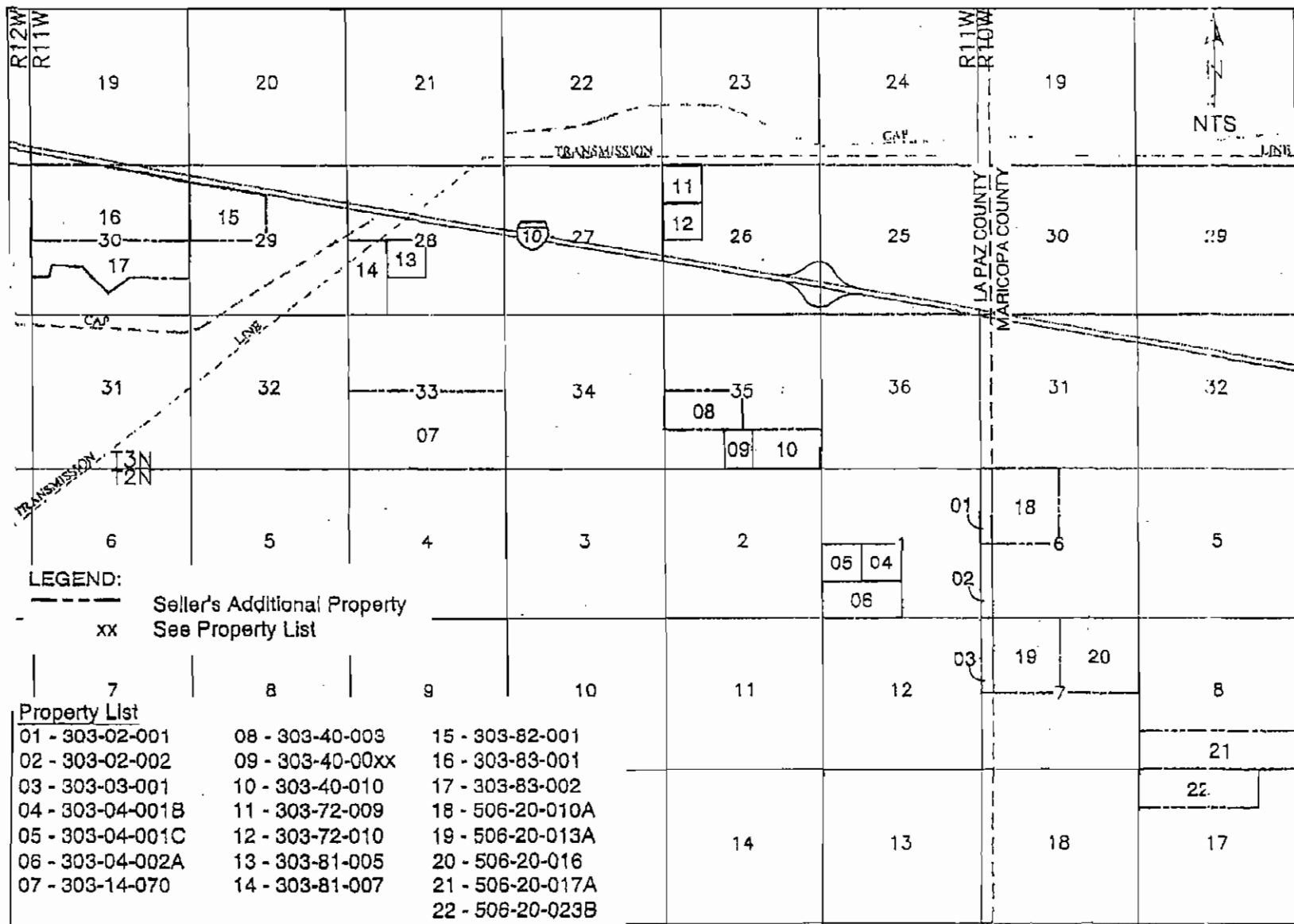
APN 506-20-023-B, 120.00 acres more or less

EXHIBIT "B1"

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

MAP OF ADDITIONAL PROPERTY

(SEE ATTACHED)



Seller's Additional Property

Exhibit "B1"

Scottsdale No. 2012-189-COS

EXHIBIT "C"

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
WELLSITE EASEMENT AREAS AND PIPELINE EASEMENT AREAS  
(SEE ATTACHED)

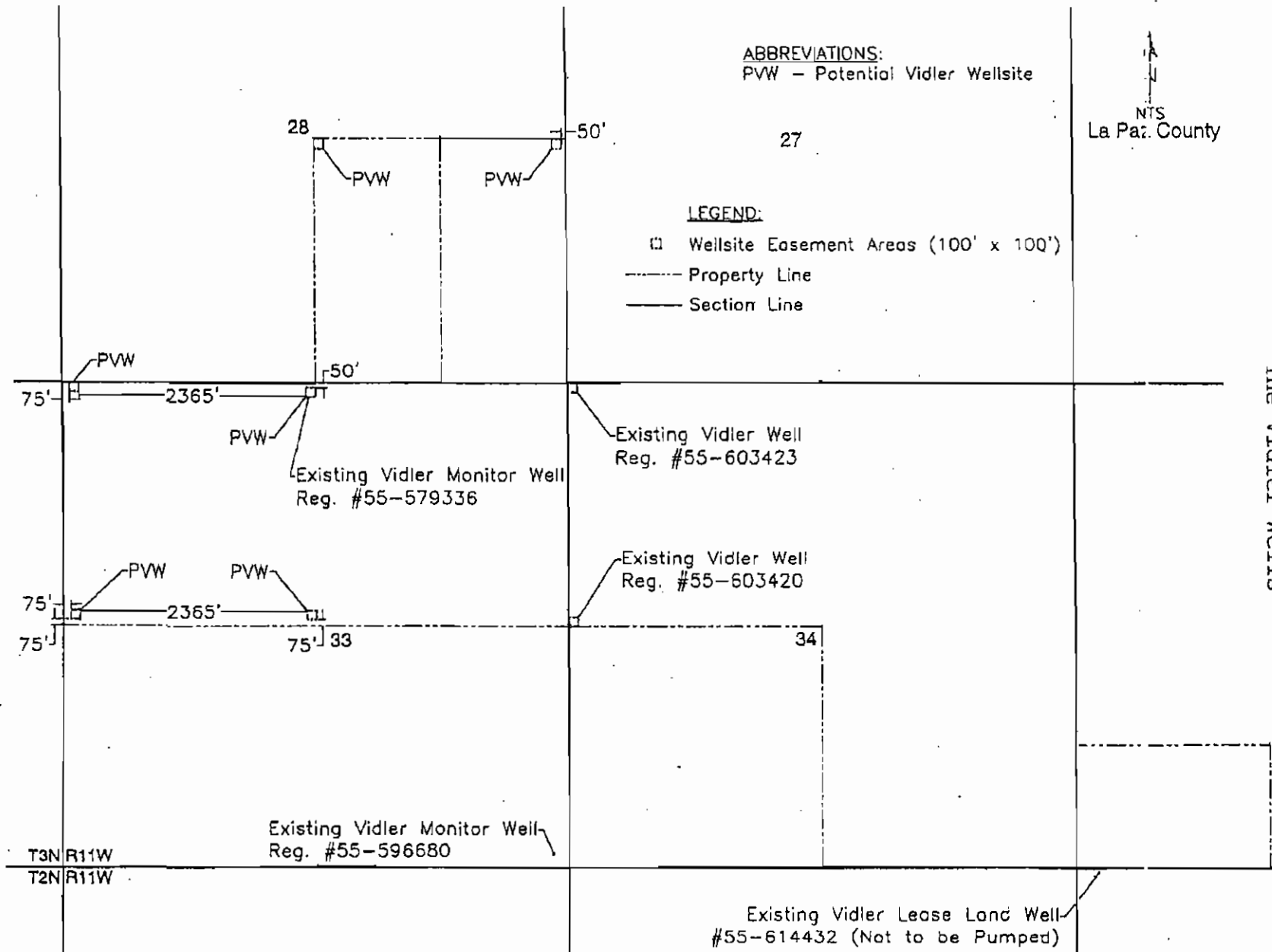


Exhibit "C"  
The Vidler Wells

Scottsdale No. 2012-189-COS

EXHIBIT "D"

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

APPROXIMATE CITY WELL LOCATIONS

(SEE ATTACHED)

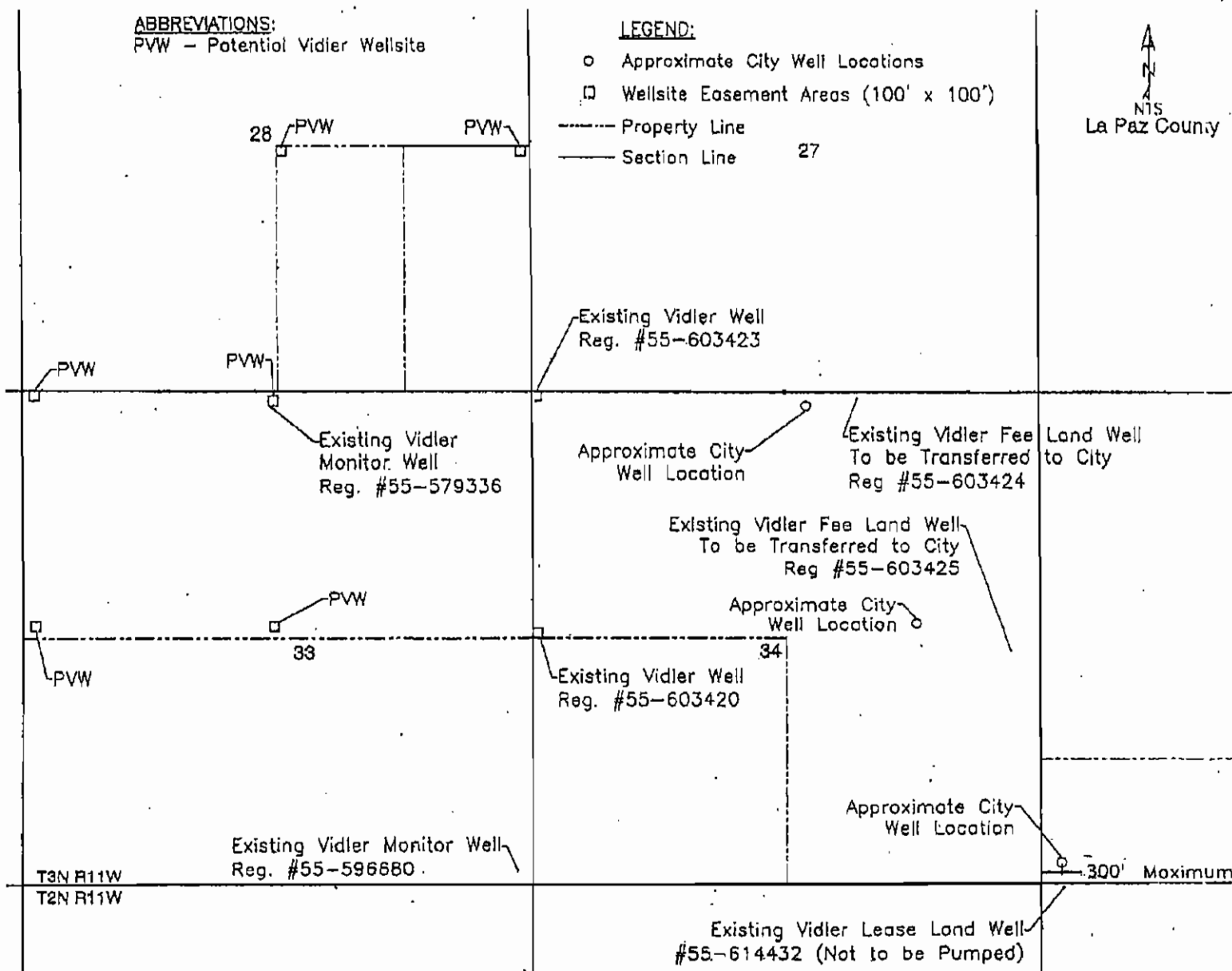


Exhibit "D"  
The Approximate City Well Locations

ATTACHMENT F

NOTICES OF IRRIGATION AUTHORITY

# Arizona Department of Water Resources

## Groundwater Right/Facility Report

RIGHT #: 60-201123.0004

STATUS DATE: 4/23/2004

AMA: HARQUAHALA VALLEY INA

RIGHT/PERMIT/FACILITY TYPE: IRRIGATION USE

LAND OWNERSHIP : CORPORATION

FILE STATUS: ACTIVE - FULL CONVEYANCE

2012 ALLOTMENT: 0.00

BMP Enrollee: N

RETIRED ACRES: 0.00

WATER DUTY ACRES: 0.00

IRRIGATION ACRES 320.00

WATER DUTY 0

IRRIGATION DISTRICT NAME:

MAWA: 0

---

### NAME & ADDRESS

---

VIDLER WATER CO INC

TYPE: OWNER

ATTN: DAVE MERRILL

3480 GS RICHARDS BLVD STE 101

CARSON CITY NV 89703 8442

---

VIDLER WATER COMPANY, INC

TYPE: REPORTING PARTY

ATTN: ANDREW AILES

3480 GS RICHARDS BLVD STE 101

CARSON CITY NV 89703 8442

---

### PLACE OF USE

N1/2 33 T3.0N R11.0W

---

### BOOK/MAP/PARCEL

---

Book: 303 Map: 14 Parcel: 69 Part:

---

### WELL SERVING

\*\*\* NO DATA FOUND \*\*\*

---

### RIGHT TO FACILITY RELATIONSHIPS

\*\*\* NO DATA FOUND \*\*\*

# Arizona Department of Water Resources

## Groundwater Right/Facility Report

RIGHT #: 60-201335.0002

STATUS DATE: 7/7/1997

AMA: HAROUAHALA VALLEY INA

RIGHT/PERMIT/FACILITY TYPE: IRRIGATION USE

LAND OWNERSHIP : WATER DISTRICT

FILE STATUS: ACTIVE - FULL CONVEYANCE

2012 ALLOTMENT: 0.00

BMP Enrollee: N

RETIRED ACRES: 0.00

WATER DUTY ACRES: 0.00

IRRIGATION ACRES 480.00

WATER DUTY 0

IRRIGATION DISTRICT NAME:

MAWA: 0

---

### NAME & ADDRESS

VIDLER WATER COMPANY, INC

TYPE: OWNER

ATTN: DAVE MERRILL

3480 GS RICHARDS BLVD STE 101

CARSON CITY NV 89703 8442

---

### PLACE OF USE

34 T3.0N R11.0W

---

### BOOK/MAP/PARCEL

Book: 303 Map: 14 Parcel: 71 Part:

---

### WELL SERVING

Well# 55 - 603420 Location SW SW NW 34 T3.0N R11.0W Year 2012

---

### RIGHT TO FACILITY RELATIONSHIPS

\*\*\* NO DATA FOUND \*\*\*

# Arizona Department of Water Resources

## Groundwater Right/Facility Report

RIGHT #: 60-201357.0005

STATUS DATE: 3/20/2003

AMA: HARQUAHALA VALLEY INA

RIGHT/PERMIT/FACILITY TYPE: IRRIGATION USE

LAND OWNERSHIP : CORPORATION

FILE STATUS: ACTIVE - PARTIAL CONVEYANCE

2012 ALLOTMENT: 0.00

BMP Enrollee: N

RETIRED ACRES: 0.00

WATER DUTY ACRES: 0.00

IRRIGATION ACRES 160.00

WATER DUTY 0

IRRIGATION DISTRICT NAME:

MAWA: 0

---

### NAME & ADDRESS

VIDLER WATER CO INC

TYPE: OWNER

ATTN: DAVE MERRILL

3480 GS RICHARDS BLVD STE 101

CARSON CITY NV 89703 8442

---

### PLACE OF USE

SE 28 T3.0N R11.0W

---

### BOOK/MAP/PARCEL

Book: 303 Map: 81 Parcel: 3 Part:

---

### WELL SERVING

\*\*\* NO DATA FOUND \*\*\*

---

### RIGHT TO FACILITY RELATIONSHIPS

\*\*\* NO DATA FOUND \*\*\*

# Arizona Department of Water Resources

## Groundwater Right/Facility Report

RIGHT #: 60-201357.0008

STATUS DATE: 6/13/2008

AMA: HARQUAHALA VALLEY INA

RIGHT/PERMIT/FACILITY TYPE: IRRIGATION USE

LAND OWNERSHIP : CORPORATION

FILE STATUS: ACTIVE - FULL CONVEYANCE

2012 ALLOTMENT: 0.00

BMP Enrollee: N

RETIRED ACRES: 0.00

WATER DUTY ACRES: 0.00

IRRIGATION ACRES 159.09

WATER DUTY 0

IRRIGATION DISTRICT NAME:

MAWA: 0

---

### NAME & ADDRESS

VIDLER WATER CO INC

TYPE: OWNER

ATTN: DAVE MERRILL

3480 GS RICHARDS BLVD STE 101

CARSON CITY NV 89703 8442

---

### PLACE OF USE

S1/2 S1/2 35 T3.0N R11.0W

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### BOOK/MAP/PARCEL

Book: 303 Map: 40 Parcel: 8 Part:

---

### WELL SERVING

\*\*\* NO DATA FOUND \*\*\*

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### RIGHT TO FACILITY RELATIONSHIPS

\*\*\* NO DATA FOUND \*\*\*

**ATTACHMENT G**

**MEMBER SERVICE AREA AGREEMENT  
BETWEEN  
CENTRAL ARIZONA WATER CONSERVATION DISTRICT  
AND  
THE CITY OF SCOTTSDALE, AMENDMENT NO. 1**

**MEMBER SERVICE AREA AGREEMENT  
BETWEEN  
CENTRAL ARIZONA WATER CONSERVATION DISTRICT  
AND  
THE CITY OF SCOTTSDALE  
AMENDMENT NO. 1**

This Amended Member Service Area Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 2013, between the Central Arizona Water Conservation District, a political subdivision of the State of Arizona, and the City of Scottsdale, a municipality.

**RECITALS**

A. The Municipal Provider is engaged in the business of providing water utility service within the Service Area.

B. By Resolution dated October 4, 2001, CAWCD adopted the Original Water Availability Status Resolution, which granted water availability status to the Municipal Provider and approved the Original Member Service Area Agreement and the Original Water Availability Status Contract.

C. On November 21, 2001, the Municipal Provider qualified the Service Area as a Member Service Area of the Central Arizona Groundwater Replenishment District and executed the Original Member Service Area Agreement. Concurrent with the execution of the Original Member Service Area Agreement, the Municipal Provider executed the Original Water Availability Status Contract.

D. Pursuant to the Original Water Availability Status Contract, CAWCD committed to deliver up to 3,460 acre-feet of Replenishment Water per year to the Municipal Provider's Turnout.

E. Based on the Original Water Availability Status Resolution, the Original Member Service Area Agreement and the Original Water Availability Status Contract, the Arizona Department of Water Resources modified the Municipal Provider's designation of assured water supply for the Service Area on April 25, 2002, AWS No. 2002-03. The modification increased the Municipal Provider's designation by 3,460 acre-feet.

F. Pursuant to the Original Water Availability Status Contract, and as required by A.R.S. 48-3772.B.10.d and the Municipal Provider's designation of assured water supply, the Municipal Provider acquired certain lands (the "Original Lands") and an associated water supply in the Harquahala Valley to serve as the Long-Term Water Supply.

G. The Municipal Provider will, at some time, sell the Original Land and the associated water supply it owns in the Harquahala Valley, which currently serves as the Long-Term Water Supply. The Municipal Provider intends to acquire other lands and an associated water supply in the Harquahala Valley to serve as the Long-Term Water Supply.

H. The Municipal Provider desires to amend the Original Water Availability Status Contract to reduce CAWCD's obligation to deliver Replenishment Water to the Municipal Provider's Turnout from 3,460 acre-feet per year to 2,910 acre-feet per year.

I. The Municipal Provider has applied to the Arizona Department of Water Resources for a modification of its designation of an assured water supply for the Service Area pursuant to Arizona Revised Statutes Title 45, Chapter 2, Article 9.

J. Amending the Original Water Availability Status Contract and modifying the Municipal Provider's designation of assured water supply requires conforming amendments to the Member Service Area Agreement. Accordingly, the parties desire to amend the Original Member Service Area Agreement. This Amended Agreement will be effective immediately and automatically upon the satisfaction of the conditions stated in Articles 2(i) and 2(ii) of the Amended Water Availability Status Contract.

K. As permitted by Arizona Revised Statutes § 45-576.07(A), the Municipal Provider desires to satisfy the water sufficiency and availability requirement set forth in Arizona Revised Statutes Section 45-576(J)(1), to enable it to modify its designation of assured water supply through a Water Availability Status Resolution of CAWCD. In order for CAWCD to adopt a resolution granting Water Availability Status to the Municipal Provider, Arizona Revised Statutes Section 48-3772.B.10 requires that the Municipal Provider qualify the Service Area as a Member Service Area pursuant to the Groundwater Replenishment Statute. As a Member Service Area, the Municipal Provider will be a member of the Central Arizona Groundwater Replenishment District, an operating subdivision of CAWCD.

L. To qualify the Service Area as a Member Service Area, the Groundwater Replenishment Statute requires the Municipal Provider to execute and deliver this Amended Agreement in accordance with Arizona Revised Statutes § 48-3780.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, and intending to be legally bound, the parties hereby agree as follows:

## **ARTICLE 1 DEFINITIONS**

As used in this Amended Agreement, the following terms, when capitalized, shall mean:

1.1 "AMENDED AGREEMENT" means this Amended Member Service Area Agreement between CAWCD and the City of Scottsdale, as amended from time to time.

1.2 "AMENDED WATER AVAILABILITY STATUS CONTRACT TO REPLENISH GROUNDWATER" means the Amended Water Availability Status Contract to Replenish Groundwater Between Central Arizona Water Conservation District and the City of Scottsdale executed concurrent with this Amended Agreement.

1.3 "AMENDED WATER AVAILABILITY STATUS RESOLUTION" is as defined in Article 1.4 of the Amended Water Availability Status Contract to Replenish Groundwater.

1.4 "ANNUAL SCHEDULE" is as defined in Article 1.5 of the Amended Water Availability Status Contract to Replenish Groundwater.

1.5 "CAP" means Central Arizona Project.

1.6 "CAWCD" means the Central Arizona Water Conservation District, a political subdivision of the State of Arizona, and any successor political subdivision.

1.7 "CONTRACT REPLENISHMENT FACILITIES" is as defined in Article 1.8 of the Amended Water Availability Status Contract to Replenish Groundwater.

1.8 "EXCESS GROUNDWATER" means the amount of Groundwater equal to the amount of Groundwater delivered by the Municipal Provider within the Service Area in a calendar year in excess of the amount of Groundwater that may be delivered by the Municipal Provider for use within the Service Area in that calendar year consistent with the applicable Assured and Adequate Water Supply Rules adopted by the Arizona Department of Water Resources for the Phoenix Active Management Area pursuant to Arizona Revised Statutes § 45-576(H). Provided, however, for purposes of this Amended Agreement, Excess Groundwater shall be the Groundwater withdrawn from wells located within the Carefree sub-basin specified in the order designating the Municipal Provider as having an assured water supply for purposes of providing a physically available supply to the Replenishment Area pursuant to Arizona Revised Statutes § 45-576.07, including any replacement wells. The amount of Excess Groundwater reported in any calendar year by the Municipal Provider shall not exceed 2,910 acre-feet.

1.9 "GROUNDWATER" is as defined in Arizona Revised Statutes § 45-101(5).

1.10 "GROUNDWATER REPLENISHMENT STATUTE" means Arizona Revised Statutes, Title 48, Chapter 22.

1.11 "INCREASED DESIGNATION" is as defined in Article 1.14 of the Amended Water Availability Status Contract to Replenish Groundwater.

1.12 "LONG-TERM WATER SUPPLY" is as defined in Article 1.17 of the Amended Water Availability Status Contract to Replenish Groundwater.

1.13 "MEMBER SERVICE AREA" is as defined in Arizona Revised Statutes § 48-3701(11).

1.14 "MUNICIPAL PROVIDER" means the City of Scottsdale, and its successors and assigns.

1.15 "OPERATIONAL RESERVE CREDIT" is as defined in Article 1.21 of the Amended Water Availability Status Contract to Replenish Groundwater.

1.16 "REPLENISHMENT ACCOUNT" is as defined in Article 1.27 of the Amended Water Availability Status Contract to Replenish Groundwater.

1.17 "REPLENISHMENT AREA" is as defined in Article 1.28 of the Amended Water Availability Status Contract to Replenish Groundwater.

1.18 "REPLENISHMENT CREDIT" is as defined in Article 1.29 of the Amended Water Availability Status Contract to Replenish Groundwater.

1.19 "REPLENISHMENT TAX" means the annual tax levied by CAWCD against the Municipal Provider in a calendar year based on the Service Area Replenishment Obligation.

1.20 "RESOLUTION" means the Resolution of the Municipal Provider regarding Membership in the Central Arizona Groundwater Replenishment District pursuant to this Amended Agreement, to be adopted pursuant to Arizona Revised Statutes § 48-3780.

1.21 "SERVICE AREA" is as defined in Arizona Revised Statutes § 45-402.31. A map of the Municipal Provider's current Service Area is attached to and incorporated into this Agreement as Exhibit A.

1.22 "SERVICE AREA REPLENISHMENT OBLIGATION" means, with respect to the Service Area, the Excess Groundwater in a particular calendar year reduced by the Operational Reserve Credits, Replenishment Credits and Statutory Reserve Credits, if any, applied by CAWCD with respect to the Service Area under Arizona Revised Statutes § 48-3772(H).

1.23 "STATUTORY RESERVE CREDIT" is as defined in Article 1.34 of the Amended Water Availability Status Contract to Replenish Groundwater.

## **ARTICLE 2 REPORTING REQUIREMENTS**

In accordance with Arizona Revised Statutes § 48-3775(B), on or before March 31 of each year after the publication of the Resolution, the Municipal Provider shall file with CAWCD and with the Director of the Department of Water Resources the report that is required to be filed under Article 14 of the Amended Water Availability Status Contract to Replenish Groundwater.

### **ARTICLE 3 REPLENISHMENT TAX**

3.1 Levy of Replenishment Tax. CAWCD shall levy the Replenishment Tax against the Municipal Provider in accordance with Arizona Revised Statutes § 48-3781.

3.2 Annual Statement. On or before the third Monday of August of each year after the publication of the Resolution, CAWCD will transmit a statement to the Municipal Provider stating the amount of the Replenishment Tax. The Replenishment Tax shall be equal to the assessment rate per acre-foot of Groundwater fixed by CAWCD for the Phoenix Active Management Area multiplied by the Service Area Replenishment Obligation.

3.3 Payment of Replenishment Tax. On or before October 15 of each year after the publication of the Resolution, the Municipal Provider shall pay to CAWCD an amount equal to the Replenishment Tax levied by CAWCD.

3.4 Interest, Cost and Penalties. If the Replenishment Tax is not paid when due, CAWCD will be entitled to interest, costs and penalties as provided by Arizona Revised Statutes § 48-3782.

### **ARTICLE 4 WATER AVAILABILITY STATUS CONTRACT TO REPLENISH GROUNDWATER**

CAWCD and the Municipal Provider shall execute concurrent with this Amended Agreement, the Amended Water Availability Status Contract to Replenish Groundwater in the form attached hereto as Exhibit B. The Municipal Provider shall accrue Operational Reserve Credits, Replenishment Credits and Statutory Reserve Credits under the Amended Water Availability Status Contract to Replenish Groundwater in advance of incurring any Service Area Replenishment Obligation under this Amended Agreement. Every year CAWCD shall first apply available Operational Reserve Credits and Replenishment Credits, and then, if necessary, apply available Statutory Reserve Credits until exhausted, against any Excess Groundwater delivered by the Municipal Provider, so that the Service Area Replenishment Obligation equals zero. If in any year, CAWCD is unable to offset all Excess Groundwater with Operational Reserve Credits, Replenishment Credits and/or Statutory Reserve Credits, and therefore, the Service Area Replenishment Obligation is greater than zero, CAWCD will replenish groundwater for the Municipal Provider at replenishment facilities located

within the Phoenix Active Management Area in accordance with Arizona Revised Statutes § 48-3771(B) and 48-3772(I).

## **ARTICLE 5 ENFORCEMENT POWERS**

5.1 Penalty for Failure to Report. If the Municipal Provider fails to timely file a Report as required by CAWCD, CAWCD may assess a penalty in accordance with Arizona Revised Statutes § 48-3775(G).

5.2 Inspections, Investigations and Audits. The CAWCD has the rights provided under Arizona Revised Statutes § 48-3783 with respect to inspections, investigations and audits.

## **ARTICLE 6 DEFAULT AND REMEDIES**

6.1 Default. The occurrence of any of the following events constitutes an event of default by the Municipal Provider:

6.1.1 The failure of the Municipal Provider to perform any term, covenant or condition of this Amended Agreement, if that failure continues for thirty days following the Municipal Provider's receipt of written notice from CAWCD.

6.1.2 The physical or legal unavailability of the Long-Term Water Supply, including any replacement for the Long-Term Water Supply.

6.1.3 (i) The filing by or against the Municipal Provider of a petition to have the Municipal Provider adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against the Municipal Provider, the same is dismissed within 60 days); (ii) the making by the Municipal Provider of any general assignment for the benefit of creditors; (iii) the appointment of a trustee or receiver to take possession of substantially all of the Municipal Provider's assets, when possession is not restored to the Municipal Provider within 60 days; or (iv) the attachment, execution or other judicial seizure of substantially all of the Municipal Provider's assets, where such seizure is not discharged within 60 days.

6.2 Remedies. If an event of default occurs, CAWCD shall have no obligation to perform any groundwater replenishment obligation with respect to the Service Area, or any other obligations under this Amended Agreement, so long as the Municipal Provider remains in default. Except as provided in Articles 5.1 and 5.2 of this Amended Agreement, this shall be the sole remedy available to CAWCD. The Municipal Provider will consult with CAWCD on curing the default.

## **ARTICLE 7 CANCELLATION OF AMENDED WATER AVAILABILITY STATUS CONTRACT TO REPLENISH GROUNDWATER**

If the Amended Water Availability Status Contract to Replenish is cancelled pursuant to Article 3 of such contract, the Parties shall be relieved of all obligations under this Amended Agreement as of the date of such cancellation.

## **ARTICLE 8 GENERAL PROVISIONS**

8.1 Binding Effect. The provisions of this Amended Agreement inure to the benefit of and bind the respective successors and assigns of the parties hereto, provided that no assignment or transfer of this Amended Agreement or any part or interest herein is valid until approved by CAWCD in its sole and absolute discretion.

8.1.1 The Municipal Provider agrees and covenants to CAWCD to execute and record any additional documentation which CAWCD may reasonably require to effectuate the intents and purposes of this Amended Agreement and the Groundwater Replenishment Statute.

8.2 Entire Agreement. This Amended Agreement constitutes the entire agreement between the parties and no understandings or obligations not expressly set forth in this Amended Agreement are binding upon the parties.

8.3 Amendments. This Amended Agreement may be modified, amended or revoked only (i) by the express written agreement of CAWCD, the Municipal Provider and the Arizona Department of Water Resources; or (ii) by amendment statutes, rules or regulations or successor statutes, rules or regulations, as contemplated by Paragraph 8.5.

8.4 Interpretation. This Amended Agreement is governed by and must be construed and interpreted in accordance with and in reference to the laws of the State of Arizona, including but not limited to the Groundwater Replenishment Statute.

8.5 Rules, Regulations and Successor Statutes. All references in this Amended Agreement to Arizona Revised Statutes include all rules and regulations promulgated by the Department under such statutes and all amendments and successor statutes, rules and regulations to such statutes, rules and regulations.

8.6 Additions to and Extensions of the Service Area. The Municipal Provider shall submit an amended Service Area map to CAWCD simultaneously with each submission of an amended Service Area map to the Arizona Department of Water Resources.

8.7 Severability. Any determination by any court of competent jurisdiction that any provision of this Amended Agreement is invalid or unenforceable does not affect the validity or enforceability of any other provision of this Amended Agreement.

8.8 Captions. All captions, titles or headings in this Amended Agreement are used for the purpose of reference and convenience only and do not limit, modify or otherwise affect any of the provisions of this Amended Agreement.

8.9 Notices. Except as otherwise required by law, any notice given in connection with this Amended Agreement must be in writing and must be given by personal delivery, overnight delivery, facsimile, or United States certified or registered mail. Any such notice must be addressed to the appropriate party at the following address (or at any other address as a party may hereafter designate by written notice given as required by this paragraph):

CAWCD: For delivery use:

Central Arizona Water Conservation District  
23636 North 7th Street  
Phoenix, Arizona 85024  
Attn: Manager, Groundwater Replenishment District

For U.S. Mail use:

Central Arizona Water Conservation District  
P.O. Box 43020  
Phoenix, Arizona 85080-3020  
Attn: Manager, Groundwater Replenishment District

Municipal  
Provider:

The City of Scottsdale  
9379 East San Salvador Drive  
Scottsdale, Arizona 85258  
Attn: General Manager, Water Resources Department

With a copy to:

The City of Scottsdale City Attorney's Office  
3939 Drinkwater Blvd.  
Scottsdale, AZ 85251

Notice is deemed to have been given on the date on which notice is personally delivered, delivered to an overnight delivery service, transmitted by facsimile, or mailed. Notice is deemed to have been received on the date on which the notice is actually received or delivery is refused.

IN WITNESS WHEREOF, the Parties to this Amended Agreement have executed this Amended Agreement as of the date first set forth above.

CAWCD: CENTRAL ARIZONA WATER CONSERVATION DISTRICT

By: \_\_\_\_\_  
Pamela Pickard

Its: President

Attest: \_\_\_\_\_  
Secretary

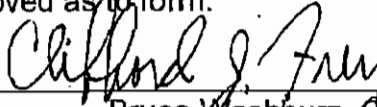
MUNICIPAL  
PROVIDER: THE CITY OF SCOTTSDALE

By: \_\_\_\_\_  
W.J. "Jim" Lane

Its: Mayor

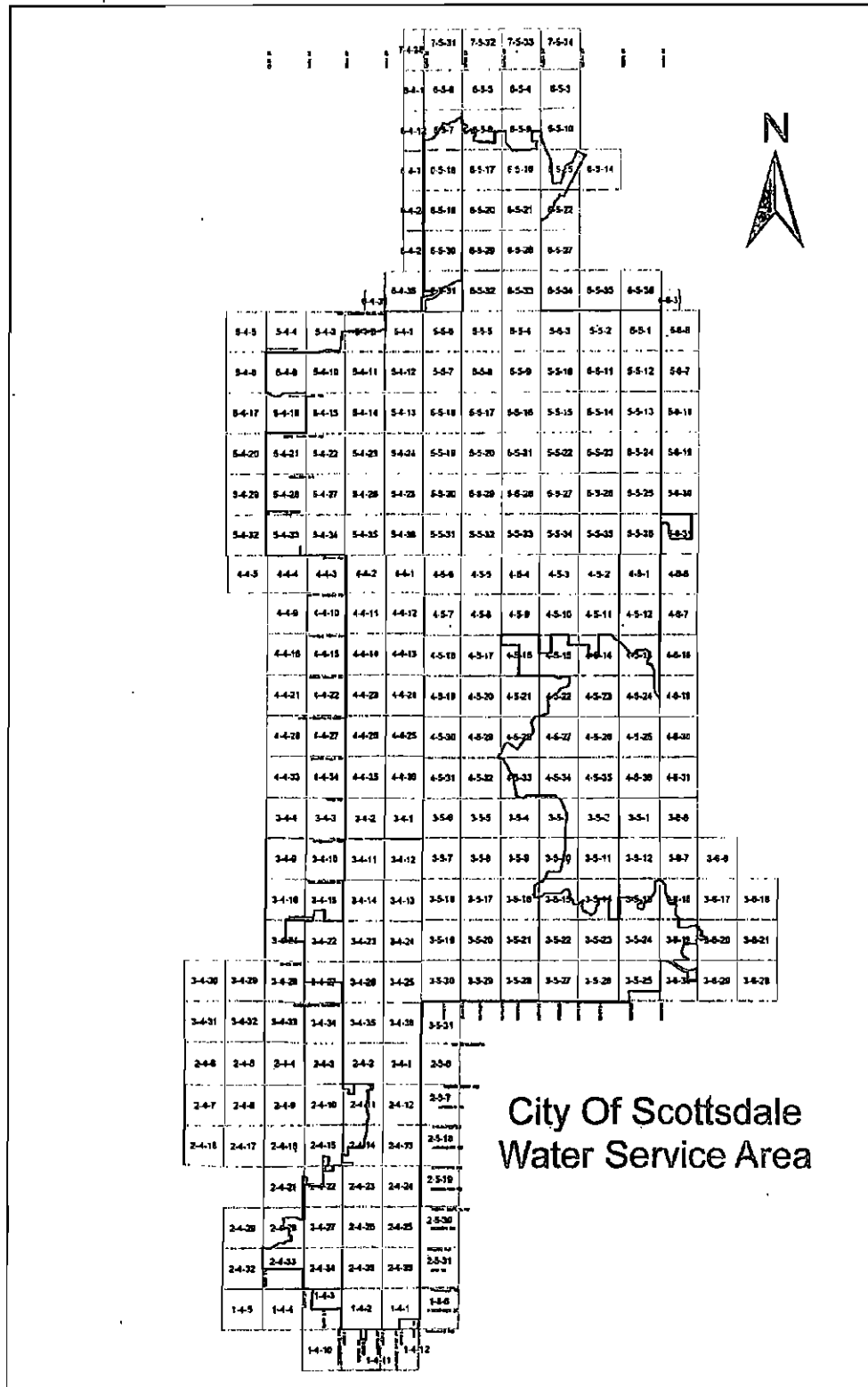
Attest: \_\_\_\_\_  
Carolyn Jagger, City Clerk

Approved as to form:

  
\_\_\_\_\_  
Bruce Washburn, City Attorney  
By: Clifford J. Frey  
Senior Assistant City Attorney

**EXHIBIT A**

**Service Area Map**



**EXHIBIT B**

Water Availability Status Contract to Replenish Groundwater  
Between Central Arizona Water Conservation District and the City of Scottsdale

**WATER AVAILABILITY STATUS  
CONTRACT TO REPLENISH GROUNDWATER  
BETWEEN  
CENTRAL ARIZONA WATER CONSERVATION DISTRICT  
AND  
THE CITY OF SCOTTSDALE  
AMENDMENT No. 1**

This Amended Water Availability Status Contract to Replenish Groundwater is made this \_\_\_\_ day of \_\_\_\_\_, 2013, between the Central Arizona Water Conservation District, a political subdivision of the State of Arizona, and the City of Scottsdale, a municipality.

**RECITALS**

A. A.R.S. § 48-3772, subsection B, paragraph 10, authorizes CAWCD to adopt resolutions granting water availability status to a member service area of a city, town or private water company upon satisfaction of the specific statutory requirements set forth therein.

B. A.R.S. § 45-576.07, subsection A, authorizes a member service area of a city, town or private water company to satisfy the water sufficiency and availability requirement for obtaining or maintaining a designation of assured water supply, through a water availability status resolution of the CAWCD Board, and upon satisfaction of other specific statutory requirements set forth in A.R.S. § 45-576.07.

C. On June 15, 2000, the Director of the Arizona Department of Water Resources found pursuant to A.R.S. § 45-576.07, subsection H, that CAWCD has the capability to grant water availability status to member service areas in the Phoenix active management area.

D. By Resolution dated October 4, 2001, CAWCD adopted the Original Water Availability Status Resolution, which granted water availability status to the Municipal Provider and approved the Original Member Service Area Agreement and the Original Water Availability Status Contract.

E. On November 21, 2001, the Municipal Provider qualified the Service Area as a Member Service Area of the Central Arizona Groundwater Replenishment District and executed the Original Member Service Area Agreement. Concurrent with the execution of the Original Member Service Area Agreement, the Municipal Provider executed the Original Water Availability Status Contract.

F. Pursuant to the Original Water Availability Status Contract, CAWCD committed to deliver up to 3,460 acre-feet of Replenishment Water per year to the Municipal Provider's Turnout.

G. Based on the Original Water Availability Status Resolution, the Original Member Service Area Agreement and the Original Water Availability Status Contract, the Arizona Department of Water Resources modified the Municipal Provider's designation of assured water supply for the Service Area on April 25, 2002, AWS No. 2002-03. The modification increased the Municipal Provider's designation by 3,460 acre-feet.

H. Pursuant to the Original Water Availability Status Contract, and as required by A.R.S. 48-3772.B.10.d and the Municipal Provider's designation of assured water supply, the Municipal Provider acquired certain lands (the "Original Land") and an associated water supply in the Harquahala Valley to serve as the Long-Term Water Supply.

I. The Municipal Provider will, at some time, sell the Original Land and the associated water supply it owns in the Harquahala Valley, which currently serves as the Long-Term Water Supply. The Municipal Provider intends to acquire other lands and an associated water supply in the Harquahala Valley to serve as the Long-Term Water Supply.

J. The Municipal Provider desires to amend the Original Water Availability Status Contract to reduce CAWCD's obligation to deliver Replenishment Water to the Municipal Provider's Turnout from 3,460 acre-feet per year to 2,910 acre-feet per year.

K. The Municipal Provider has applied to the Arizona Department of Water Resources for a modification of its designation of an assured water supply for the Service Area pursuant to Arizona Revised Statutes Title 45, Chapter 2, Article 9.

L. As permitted by Arizona Revised Statutes § 45-576.07(A), the Municipal Provider desires to satisfy the water sufficiency and availability requirement set forth in Arizona Revised Statutes § 45-576(J)(1), to enable it to modify its designation of assured water supply, through an Amended Water Availability Status Resolution of CAWCD and through this Amended Contract.

M. CAWCD has determined that it can best accomplish the requirements for granting water availability status, which are set forth in Arizona Revised Statutes §45-576.07, by executing this Amended Contract with the Municipal Provider. This Amended Contract will be a part of the Water Availability Status Resolution. This Amended Contract is authorized by Arizona Revised Statutes § 48-3772.B.9.

N. CAWCD has reviewed its requirements for transportation of Central Arizona Project Water, its contracts, subcontracts, letter agreements, excess water contracts, and other contractual obligations, its member service area and member land

requirements and has determined that it can meet those obligations and that capacity remains in the Central Arizona Project to meet the obligations undertaken in this Amended Contract.

O. The Municipal Provider intends to acquire property in the Harquahala Valley. The Municipal Provider is acquiring the property for the water rights associated with the property. The Municipal Provider intends to use these water rights to satisfy its obligation under this Amended Contract to acquire a Long-Term Water Supply.

P. The Parties desire to amend the Original Water Availability Status Contract as set forth below. Upon satisfaction of the conditions stated in Article 2(i) and (ii) of this Amended Water Availability Status Contract, this Amended Contract shall supersede and replace the Original Water Availability Status Contract.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, and intending to be legally bound, the parties hereby agree as follows:

#### **ARTICLE 1 DEFINITIONS**

As used in this Amended Contract, the following terms, when capitalized, shall mean:

- 1.1 "ADWR" means the Arizona Department of Water Resources.
- 1.2 "AMENDED CONTRACT" means this Amended Water Availability Status Contract to Replenish Groundwater between CAWCD and the City of Scottsdale, as amended from time to time.
- 1.3 "AMENDED MEMBER SERVICE AREA AGREEMENT" means the Amended Member Service Area Agreement between Central Arizona Water Conservation District and the City of Scottsdale executed concurrent with this Amended Contract, and any revisions thereof.
- 1.4 "AMENDED WATER AVAILABILITY STATUS RESOLUTION" means the amended Resolution of CAWCD granting water availability status to the Municipal Provider pursuant to this Amended Contract, to be adopted pursuant to Arizona Revised Statutes Section 48-3772.B.10.
- 1.5 "ANNUAL SCHEDULE" means the schedule of deliveries of Replenishment Water as prepared in accordance with Article 6 of this Amended Contract.
- 1.6 "CAP" means Central Arizona Project.

1.7 "CAWCD" means the Central Arizona Water Conservation District, a political subdivision of the State of Arizona, and any successor political subdivision.

1.8 "CONTRACT REPLENISHMENT FACILITIES" means the underground storage facilities, which meet the requirements of Article 5 of this Amended Contract, and any additional component constructed pursuant to Article 10 of this Amended Contract.

1.9 "CONTRACT REPLENISHMENT TAX" means the annual tax levied by CAWCD against the Municipal Provider in a calendar year calculated in accordance with Article 18 of this Amended Contract.

1.10 "EXCESS GROUNDWATER" is as defined in Article 1.8 of the Amended Member Service Area Agreement.

1.11 "EXCESS WATER RATE" means the rate established annually by CAWCD for excess CAP water used in satisfying the Central Arizona Groundwater Replenishment District's groundwater replenishment obligation.

1.12 "GROUNDWATER" is as defined in Arizona Revised Statutes § 45-101(5).

1.13 "GROUNDWATER REPLENISHMENT STATUTE" means Arizona Revised Statutes, Title 48, Chapter 22.

1.14 "INCREASED DESIGNATION" means the annual volume of water identified by ADWR in the Municipal Provider's assured water supply designation, or any modifications thereto, as being dependent upon the Amended Water Availability Status Resolution and this Amended Contract. This volume shall not exceed 2,910 acre-feet per year. The Increased Designation may only be used to satisfy the demand of those customers of the Municipal Provider served by wells located within the Carefree sub-basin.

1.15 "IRRIGATION WATER DISTRIBUTION SYSTEM" means the Municipal Provider's pump stations and transmission lines that will transport Replenishment Water from the Municipal Provider's Turnout to the Contract Replenishment Facilities and for direct delivery.

1.16 "LONG-TERM STORAGE CREDIT" is as defined in Arizona Revised Statutes § 45-802.01.11.

1.17 "LONG-TERM WATER SUPPLY" means water from any lawfully available source, including any replacement water supply, the rights to which are owned, leased or otherwise legally held by the Municipal Provider, except groundwater withdrawn from within an active management area.

1.18 "MEMBER SERVICE AREA" is as defined in Arizona Revised Statutes § 48-3701(11).

1.19 "MUNICIPAL PROVIDER" means the City of Scottsdale, a municipality, and its successors and assigns.

1.20 "MUNICIPAL PROVIDER'S TURNOUT" means the point on the CAP canal where Replenishment Water is diverted from the CAP canal into the Irrigation Water Distribution System. The Municipal Provider's Turnout is located at milepost 172.959 on the CAP canal.

1.21 "OPERATIONAL RESERVE CREDIT" means water stored underground at Contract Replenishment Facilities pursuant to Article 9 of this Amended Contract, which ADWR has credited to CAWCD's conservation district account and which CAWCD has allocated to the Replenishment Account.

1.22 "OPTION PERIOD" means the period of time from January 1, 2002 through and including December 31, 2020.

1.23 "ORIGINAL MEMBER SERVICE AREA AGREEMENT" means the Member Service Area Agreement Between Central Arizona Water Conservation District and the City of Scottsdale dated November 21, 2001.

1.24 "ORIGINAL WATER AVAILABILITY STATUS CONTRACT" means the Water Availability Status Contract to Replenish Groundwater Between CAWCD and the City of Scottsdale dated November 21, 2001.

1.25 "ORIGINAL WATER AVAILABILITY STATUS RESOLUTION" means the Resolution of CAWCD granting water availability status to the Municipal Provider, pursuant to Arizona Revised Statutes Section 48-3772.B.10, dated October 4, 2001.

1.26 "PARTIES" means one or both of the parties to this Amended Contract.

1.27 "REPLENISHMENT ACCOUNT" means the account established by CAWCD for the Municipal Provider pursuant to Article 8 of this Amended Contract.

1.28 "REPLENISHMENT AREA" means the area depicted in Exhibit A, attached and incorporated into this Amended Contract, where Replenishment Water will be stored underground pursuant to this Amended Contract, such that the Municipal Provider may physically access that water for service to its customers.

1.29 "REPLENISHMENT CREDIT" means Replenishment Water stored underground at Contract Replenishment Facilities located in the Carefree sub-basin pursuant to this Amended Contract, except water stored underground pursuant to Articles 9 and 10 of this Amended Contract, which ADWR has credited to CAWCD's conservation district account, and which CAWCD has allocated to the Replenishment Account.

1.30 "REPLENISHMENT WATER" means CAP water or water from any other lawfully available source, including the Long-term Water Supply, except groundwater withdrawn from within an active management area, delivered by CAWCD to the Municipal Provider's Turnout under the terms of this Amended Contract.

1.31 "SERVICE AREA" is as defined in Arizona Revised Statutes § 45-402.31. A map of the Municipal Provider's current Service Area is attached to and incorporated into this Amended Contract as Exhibit B.

1.32 "SERVICE AREA REPLENISHMENT OBLIGATION" is as defined in Article 1.22 of the Amended Member Service Area Agreement.

1.33 "STATUTORY RESERVE ACCOUNT" means the account established by CAWCD for the Municipal Provider pursuant to Article 8 of this Amended Contract.

1.34 "STATUTORY RESERVE CREDIT" means water stored underground at Contract Replenishment Facilities pursuant to Article 10 of this Amended Contract, which ADWR has credited to CAWCD's long-term storage account, and which CAWCD has allocated to the Statutory Reserve Account.

1.35 "UNCONTROLLABLE FORCES" means any cause beyond the control of the Party affected, including but not limited to flood, earthquake, storm, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority, and action or non-action by or failure to obtain the necessary authorizations or approvals from any governmental agency or authority not a Party to this Amended Contract, which by exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Nothing contained herein shall be construed so as to require a Party to settle any strike or labor dispute in which it is involved.

## **ARTICLE 2 EFFECTIVE DATE**

This Amended Contract shall be effective and binding when it has been executed by the Parties. However, neither Party shall be required to perform any of the obligations, or be entitled to receive any of the benefits, under this Amended Contract until: (i) the director of ADWR finds, pursuant to Arizona Revised Statutes § 45-576.07.A., that sufficient groundwater, surface water or effluent will be continuously available to satisfy the Increased Designation for at least 100 years and approves the Municipal Provider's application to modify its designation of assured water supply to include that amount of water to the designation, including issuing or granting all permits required by or pursuant to Arizona Revised Statutes § 45-576.07.A; and (ii) the Municipal Provider's modified designation that is dependent on the execution of this Amended Contract is effective. Until the two (2) conditions stated in subparagraphs (i) and (ii) of this Article 2 have been satisfied, the Original Water Availability Status

Contract will remain in full force and effect, provided, however, that the Original Water Availability Status Contract will be superseded and replaced automatically and immediately by this Amended Water Availability Status Contract upon satisfaction of these two (2) conditions.

### **ARTICLE 3 CANCELLATION**

3.1 If the Municipal Provider acquires a permanent substitute supply of water to satisfy the Increased Designation and the director of ADWR approves a modified designation of assured water supply for the Municipal Provider that incorporates the substituted supply, the Municipal Provider may cancel this Amended Contract upon written notice to CAWCD.

3.2 If the director of ADWR does not issue an order modifying the Municipal Provider's designation of assured water supply within two years of CAWCD's adoption of the Amended Water Availability Status Resolution, either Party may unilaterally cancel this Amended Contract upon written notice to the other Party.

3.3 Upon cancellation of this Amended Contract pursuant to Article 3.1 or 3.2, the Parties shall be relieved of all obligations under this Amended Contract and CAWCD shall repeal the Amended Water Availability Status Resolution. Provided, however, the following obligations shall survive cancellation of this Amended Contract: (1) the Municipal Provider's obligation to pay the Contract Replenishment Tax for any Replenishment Water delivered to the Municipal Provider's Turnout before the date of cancellation; (2) the Municipal Provider's obligation to pay for any Long-term Storage Credits purchased by the Municipal Provider pursuant to Article 11 of this Amended Contract or the Original Water Availability Status Contract before the date of cancellation; and (3) the Municipal Provider's obligation to pay the option fee as set forth in Article 11.4 for the year in which this Amended Contract is cancelled.

### **ARTICLE 4 REPLENISHMENT COMMITMENT**

4.1 CAWCD commits to deliver up to 2,910 acre-feet of Replenishment Water per year to the Municipal Provider's Turnout to satisfy the Increased Designation. The Municipal Provider commits to divert such Replenishment Water at the Municipal Provider's Turnout for storage at Contract Replenishment Facilities and/or for direct delivery to customers served by wells located within the Carefree sub-basin, in accordance with the provisions of Articles 4.2 and 4.3 below.

4.2 Each year, the Municipal Provider shall store that amount of Replenishment Water at Contract Replenishment Facilities located within the Carefree sub-basin necessary to accrue sufficient Replenishment Credits to offset its pumping of Excess Groundwater during that year. In any year, in lieu of pumping Excess Groundwater and storing Replenishment Water to offset such pumping, upon CAWCD's consent, the

Municipal Provider may deliver Replenishment Water directly to its customers served by wells located within the Carefree sub-basin as a replacement supply for Excess Groundwater that would have otherwise been pumped during that year.

4.3 In addition to its obligation under Article 4.2, the Municipal Provider shall store each year that amount of water at Contract Replenishment Facilities necessary to accrue sufficient Long-term Storage Credits to satisfy its obligations under Articles 9 and 10 of this Amended Contract.

#### **ARTICLE 5 CONTRACT REPLENISHMENT FACILITIES AND IRRIGATION WATER DISTRIBUTION SYSTEM**

5.1 All replenishment under this Amended Contract will be accomplished using permitted underground storage facilities that are financed, acquired, developed, constructed, operated and maintained by the Municipal Provider. The Municipal Provider shall be responsible for financing, acquiring, developing, constructing, operating, maintaining and replacing underground storage facilities for the storage of Replenishment Water under the terms of this Amended Contract. Such underground storage facilities shall be constructed within the Replenishment Area, at locations where the Municipal Provider may physically access the stored water for service to its customers within the Carefree sub-basin, and shall comply with the conditions imposed by ADWR, if any, relating to the Increased Designation.

5.2 CAWCD will obtain a water storage permit(s) to store Replenishment Water at the Contract Replenishment Facilities. As operator of the Contract Replenishment Facilities, the Municipal Provider shall store the amounts of Replenishment Water indicated in the Annual Schedule for delivery to the Municipal Provider's Turnout for storage at Contract Replenishment Facilities, on behalf of CAWCD, under CAWCD's water storage permit(s). Replenishment Water stored pursuant to CAWCD's water storage permit(s) at Contract Replenishment Facilities, which is determined by ADWR to meet the requirements of Long-term Storage Credits, will be credited by ADWR to CAWCD's conservation district account and CAWCD's long-term storage account in accordance with the terms of this Amended Contract.

5.3 The Municipal Provider shall be responsible for financing, acquiring, developing, constructing, operating, maintaining and replacing the Irrigation Water Distribution System. The Municipal Provider shall make available a minimum capacity of eight (8) cubic feet per second in the Irrigation Water Distribution System for the transportation of Replenishment Water delivered to the Municipal Provider's Turnout under the terms of this Amended Contract.

#### **ARTICLE 6 ANNUAL SCHEDULE**

6.1 Within 60 days of the effective date of this Amended Contract, the Municipal Provider shall submit a proposed annual schedule indicating: (1) the amounts of Replenishment Water it desires CAWCD to deliver to the Municipal Provider's Turnout during each month of the initial year of water deliveries under this Amended Contract for underground storage at Contract Replenishment Facilities located in the Carefree sub-basin; and (2) the amounts of Replenishment Water it desires CAWCD to deliver to the Municipal Provider's Turnout during each month of the initial year of water deliveries under this Amended Contract for direct delivery to customers served by wells located within the Carefree sub-basin. In preparing the proposed annual schedule, the Municipal Provider shall schedule sufficient Replenishment Water to satisfy its obligations under Article 4 of this Amended Contract. In lieu of submitting a proposed annual schedule, as required by this Article 6.1, the Municipal Provider may rely on the current schedule it has in place with CAWCD for that year.

6.2 Upon receipt of the proposed annual schedule for the initial year of water deliveries, CAWCD shall review it and after consultation with the Municipal Provider, shall make such modifications as are necessary to ensure that the amounts, times and rates of delivery to the Municipal Provider are consistent with the delivery capability of the CAP, considering, among other things, the availability of water and the delivery schedules of all other CAP water users.

6.3 Within 45 days after receipt of the proposed annual schedule for the initial year of water deliveries, CAWCD shall determine and furnish to the Municipal Provider the Annual Schedule for the initial year of water deliveries, which shall show: (1) the amounts of Replenishment Water to be delivered to the Municipal Provider's Turnout during each month of the initial year of water deliveries for underground storage at Contract Replenishment Facilities; and (2) the amounts of Replenishment Water to be delivered to the Municipal Provider's Turnout for direct delivery to customers served by wells located within the Carefree sub-basin, contingent upon the Municipal Provider remaining eligible to receive Replenishment Water under all terms contained in this Amended Contract. The Annual Schedule shall also indicate the anticipated source(s) and volume(s) of Replenishment Water that CAWCD will deliver to the Municipal Provider's Turnout during the initial year of water deliveries, (i.e., excess CAP water, the Long-Term Water Supply or other alternative water supplies.)

6.4 Beginning in 2013, on or before October 1 of each year, the Municipal Provider shall submit a proposed annual schedule indicating: (1) the amounts of Replenishment Water it desires CAWCD to deliver to the Municipal Provider's Turnout during each month of the following year for underground storage at Contract Replenishment Facilities located in the Carefree sub-basin; and (2) the amounts of Replenishment Water it desires CAWCD to deliver to the Municipal Provider's Turnout during each month of the following year for direct delivery to customers served by wells located within the Carefree sub-basin. In preparing the proposed annual schedule, the Municipal Provider shall schedule sufficient Replenishment Water to satisfy its obligations under Article 4 of this Amended Contract.

6.5 Upon receipt of the proposed annual schedule, CAWCD shall review it and after consultation with the Municipal Provider, shall make such modifications as are necessary to ensure that the amounts, times and rates of delivery to the Municipal Provider are consistent with the delivery capability of the CAP, considering, among other things, the availability of water and the delivery schedules of all other CAP water users.

6.6 Beginning in 2013, on or before November 15 of each year, CAWCD shall determine and furnish to the Municipal Provider the Annual Schedule for the following year, which shall show: (1) the amounts of Replenishment Water to be delivered to the Municipal Provider's Turnout during each month of that year for underground storage at Contract Replenishment Facilities; and (2) the amounts of Replenishment Water to be delivered to the Municipal Provider's Turnout for direct delivery to customers served by wells located within the Carefree sub-basin, contingent upon the Municipal Provider remaining eligible to receive Replenishment Water under all terms contained in this Amended Contract. The Annual Schedule shall also indicate the anticipated source(s) and volume(s) of Replenishment Water that CAWCD will deliver to the Municipal Provider's Turnout during the following year, (i.e., excess CAP water, the Long-Term Water Supply or other alternative water supplies).

6.7 Replenishment Water scheduled in any year under this Amended Contract may not be resold by the Municipal Provider for use outside the Service Area.

#### **ARTICLE 7 CONTRACT REPLENISHMENT OBLIGATION**

The amount of Excess Groundwater reported by the Municipal Provider under Article 14.1.2 of this Amended Contract shall constitute a contract replenishment obligation for CAWCD for the year in which the report is submitted. This contract replenishment obligation will become a part of CAWCD's total replenishment obligation for the Phoenix Active Management Area for that year, as provided in A.R.S. §48-3771. CAWCD will satisfy the contract replenishment obligation incurred pursuant to this Amended Contract by first applying all available credits in the Replenishment Account until exhausted, and then applying all available credits in the Statutory Reserve Account until exhausted.

#### **ARTICLE 8 REPLENISHMENT AND STATUTORY RESERVE ACCOUNTS**

8.1 Under the Original Water Availability Status Contract CAWCD established a Replenishment Account and a Statutory Reserve Account for the Municipal Provider.

8.2 CAWCD shall allocate to the Municipal Provider's Statutory Reserve Account that amount of water stored by the Municipal Provider at Contract Replenishment Facilities pursuant to the provisions of Article 10 of this Amended Contract during the previous

year, which ADWR has determined meets the requirements of Long-term Storage Credits and has credited to CAWCD's long-term storage account.

8.3 CAWCD shall allocate to the Replenishment Account that amount of water stored by the Municipal Provider at Contract Replenishment Facilities pursuant to this Amended Contract, excluding any water stored by the Municipal Provider under Article 10 of this Amended Contract, during the previous year, which ADWR has determined meets the requirements of Long-term Storage Credits and has credited to CAWCD's conservation district account.

#### **ARTICLE 9 ACCRUAL OF OPERATIONAL RESERVE CREDITS**

9.1 In addition to its other obligations under this Amended Contract, the Municipal Provider shall store sufficient water at Contract Replenishment Facilities to accrue at least 439 acre-feet of Operational Reserve Credits each year until the total amount of credits in the Operational Reserve Account equal 2,910 acre-feet. Under current ADWR rules and regulations, the Municipal Provider would have to take delivery of at least 461 acre-feet of water per year at Contract Replenishment Facilities to accrue 439 acre-feet of Operational Reserve Credits per year. At the Municipal Provider's election it may satisfy its obligation to accrue Operational Reserve Credits under this Article by using its own water supply and its own water storage permit(s) to accrue Long-term Storage Credits within the Replenishment Area. If the Municipal Provider so elects, each year, as soon as ADWR determines that the water stored by the Municipal Provider under this Article 9.1 meets the requirements of Long-term Storage Credits, the Municipal Provider shall transfer at least 439 acre-feet of credits to CAWCD's long-term storage account. CAWCD shall allocate such credits to the Operational Reserve Account. If in any year, the Municipal Provider does not wish to satisfy its obligation to accrue Operational Reserve Credits by accruing its own Long-term Storage Credits and transferring them to CAWCD, it may request in its proposed annual schedule that CAWCD deliver Replenishment Water to the Municipal Provider's Turnout for storage at Contract Replenishment Facilities in accordance with the terms of this Amended Contract. If CAWCD determines that it can accommodate the Municipal Provider's request, that portion of the Annual Schedule indicating the amount of Replenishment Water to be delivered to the Municipal Provider's Turnout for storage at Contract Replenishment Facilities will include the amount of Replenishment Water requested by the Municipal Provider to satisfy its obligations under this Article 9. Such Replenishment Water will be stored in accordance with the terms of this Amended Contract and will be credited to the Replenishment Account in accordance with Article 8.3 of this Amended Contract.

9.2 If at the end of any year, the Municipal Provider has failed to accrue the minimum annual amount of Operational Reserve Credits required in Article 9.1, the Municipal Provider shall notify CAWCD in writing of the projected shortfall. Along with such notice, the Municipal Provider shall submit to CAWCD a plan for accruing or otherwise

achieving the minimum annual volume of Operational Reserve Credits required in Article 9.1. This plan shall include construction of sufficient additional vadose zone wells, annual storage and recovery wells or other infrastructure necessary to meet the minimum annual schedule required in Article 9.1.

**ARTICLE 10  
ACCURAL AND MAINTENANCE OF  
MINIMUM VOLUME OF  
STATUTORY RESERVE CREDITS**

10.1 In addition to its other obligations under this Amended Contract, the Municipal Provider shall store sufficient water at Contract Replenishment Facilities to accrue at least 1,082 acre-feet of Statutory Reserve Credits each year, until the total amount of credits in the Statutory Reserve Account equal 14,550 acre-feet. Under current ADWR rules and regulations, the Municipal Provider would have to take delivery of at least 1,138 acre-feet of water per year at Contract Replenishment Facilities to accrue 1,082 acre-feet of Statutory Reserve Credits per year. At the Municipal Provider's election it may satisfy its obligation to accrue Statutory Reserve Credits by using its own water supply and its own water storage permit(s) to accrue Long-term Storage Credits within the Replenishment Area. If the Municipal Provider so elects, each year, as soon as ADWR determines that the water stored by the Municipal Provider under this Article 10.1 meets the requirements of Long-term Storage Credits, the Municipal Provider shall transfer at least 1,082 acre-feet of credits to CAWCD's long-term storage account. CAWCD shall allocate such credits to the Statutory Reserve Account. If in any year, the Municipal Provider does not wish to satisfy its obligation to accrue Statutory Reserve Credits by accruing its own Long-term Storage Credits and transferring them to CAWCD, it may request in its proposed annual schedule that CAWCD deliver Replenishment Water to the Municipal Provider's Turnout for storage at Contract Replenishment Facilities in accordance with the terms of this Amended Contract. If CAWCD determines that it can accommodate the Municipal Provider's request, that portion of the Annual Schedule indicating the amount of Replenishment Water to be delivered to the Municipal Provider's Turnout for storage at Contract Replenishment Facilities will include the amount of Replenishment Water requested by the Municipal Provider to satisfy its obligations under this Article. Such Replenishment Water will be stored in accordance with the terms of this Amended Contract and will be credited to the Statutory Reserve Account in accordance with Article 8.2 of this Amended Contract.

10.2 If at the end of any year, the Municipal Provider has failed to accrue the minimum annual amount of Statutory Reserve Credits required in Article 10.1, the Municipal Provider shall notify CAWCD in writing of the projected shortfall. Along with such notice, the Municipal Provider shall submit to CAWCD a plan for accruing or otherwise achieving the minimum annual volume of Statutory Reserve Credits required in Article 10.1. This plan shall include construction of sufficient additional vadose zone wells, annual storage and recovery wells or other infrastructure necessary to meet the minimum annual schedule required in Article 10.1.

10.3 No later than December 31, 2020, the Municipal Provider shall have accrued a minimum of 14,550 acre-feet of Statutory Reserve Credits in its Statutory Reserve Account. This 14,550 acre-feet of Statutory Reserve Credits is intended to satisfy the requirements of Arizona Revised Statutes § 45-576.07.A.5, which requires that the Municipal Provider commit to ensure that a five-year supply of water will be maintained and available for use by the Municipal Provider in years in which sufficient Replenishment Water is not available. Accordingly, the Municipal Provider shall maintain a minimum of 14,550 acre-feet of Statutory Reserve Credits in its Statutory Reserve Account at all times after December 31, 2020, except as provided in Article 10.4.

10.4 If in any year during the term of this Amended Contract, (i) sufficient Replenishment Water is not available for delivery, (ii) sufficient storage capacity at Contract Replenishment Facilities located within the Carefree sub-basin is not available to satisfy the Municipal Provider's obligation to accrue sufficient Replenishment Credits to offset its Excess Groundwater pumping for that year, or (iii) sufficient Replenishment Credits or Operational Reserve Credits are not available to satisfy the contract replenishment obligation, as defined in Article 7 of this Amended Contract, the Municipal Provider may seek CAWCD's consent to apply a maximum of 2,910 acre-feet of Statutory Reserve Credits to satisfy the contract replenishment obligation for that year. At the time it submits its request to apply Statutory Reserve Credits, the Municipal Provider shall also submit to CAWCD a plan which details how the Municipal Provider will restore the balance of Statutory Reserve Credits in the Statutory Reserve Account to an amount equal to a minimum of 14,550 acre-feet, if such request occurs after December 31, 2019, or to that amount of credits in the Statutory Reserve Account immediately prior to such request, if the request is made before 2019. If the Municipal Provider has submitted a plan to restore the balance of Statutory Reserve Credits that is acceptable to CAWCD, CAWCD shall allocate an annual maximum of 2,910 acre-feet of Statutory Reserve Credits to offset Excess Groundwater pumped by the Municipal Provider.

10.5 If at any time after December 31, 2020, the balance of Statutory Reserve Credits in the Statutory Reserve Account falls below 8,730 acre-feet, the Parties shall meet to discuss the need, if any, for additional Contract Replenishment Facilities. If CAWCD reasonably determines that additional Contract Replenishment Facilities are necessary, it shall consult with the Municipal Provider and ADWR regarding the amount of additional storage capacity required. The Municipal Provider shall finance the design, permitting and construction of an additional component of the Contract Replenishment Facilities, to be located within the Replenishment Area and/or within the Carefree sub-basin. Once construction of this additional component is complete, the Municipal Provider shall own and operate the facility to satisfy its obligations under this Amended Contract.

10.6 Except as otherwise provided in this Article, the Municipal Provider may not recover, sell, assign, pledge or otherwise transfer Statutory Reserve Credits.

**ARTICLE 11  
OPTION TO PURCHASE CAWCD  
LONG-TERM STORAGE CREDITS**

11.1 Upon the execution of this Amended Contract, the Municipal Provider shall have an option to purchase a total of 5,957.36 acre-feet of Phoenix Active Management Area Long-term Storage Credits from CAWCD. On January 1 of each year following the execution of this Amended Contract during the Option Period, the amount of CAWCD Long-term Storage Credits on which the Municipal Provider holds an option shall be reduced, on an acre-foot per acre-foot basis, by the amount of Statutory Reserve Credits accrued by the Municipal Provider during the previous year. The option shall expire on December 31, 2020, unless sooner terminated in accordance with Article 21 of this Amended Contract. CAWCD shall maintain sufficient credits in its Phoenix Active Management Area long-term storage account dedicated to the Municipal Provider to satisfy its obligation under this Article. The Municipal Provider may exercise its option in any year during the Option Period under the following conditions:

11.1.1 If sufficient Replenishment Water is not available for delivery in a given year to satisfy the demand of those customers of the Municipal Provider served by wells located within the Carefree sub-basin up to the Increased Designation, and if the total amount of Operational Reserve Credits, Replenishment Credits and Statutory Reserve Credits are insufficient to offset the Municipal Provider's pumping of Excess Groundwater, then the Municipal Provider may purchase that amount of Long-term Storage Credits from CAWCD necessary to offset the Municipal Provider's pumping of Excess Groundwater for that year, not to exceed 2,910 acre-feet; or

11.1.2 If sufficient storage capacity at Contract Replenishment Facilities, and/or transportation capacity in the Irrigation Water Distribution System is not available to satisfy the Municipal Provider's obligation to accrue sufficient Replenishment Credits to offset its pumping of Excess Groundwater for that year, and if the total amount of Operational Reserve Credits, Replenishment Credits and Statutory Reserve Credits are insufficient to offset the Municipal Provider's pumping of Excess Groundwater, then the Municipal Provider may purchase that amount of Long-term Storage Credits from CAWCD necessary to offset the Municipal Provider's pumping of Excess Groundwater for that year, not to exceed 2,910 acre-feet.

11.2 If, in any year during the Option Period, the Municipal Provider wishes to exercise its option to purchase CAWCD Long-term Storage Credits, it shall submit a written request to CAWCD, which sets forth the amount of Long-term Storage Credits the Municipal Provider wishes to purchase and sufficient information for CAWCD to determine whether the conditions of Article 11.1.1 or 11.1.2 have been met.

11.3 CAWCD shall determine whether the Municipal Provider's request to purchase CAWCD Long-term Storage Credits satisfies the conditions of Article 11.1.1 or 11.1.2 above and, if so, shall establish the purchase price for such credits. The price for CAWCD Long-term Storage Credits purchased under this Article shall be established by

CAWCD, and shall equal CAWCD's cost to replace an equivalent amount of Long-term Storage Credits. Within sixty days of the Municipal Provider's request to purchase CAWCD Long-term Storage Credits, CAWCD shall notify the Municipal Provider in writing whether the request satisfies the conditions of Article 11.1.1 or 11.1.2, and if so, the price for each acre-foot of Long-term Storage Credit to be purchased. The Municipal Provider shall have sixty days after receipt of CAWCD's notice to pay CAWCD the purchase price for the Long-term Storage Credits it wishes to purchase. Upon receipt of payment, CAWCD shall transfer the credits to its conservation district account and shall allocate the credits to the Replenishment Account.

11.4 Regardless of whether any CAWCD Long-term Storage Credits are purchased under this Article, each year during the Option Period, the Municipal Provider shall pay CAWCD an option fee. The option fee shall be calculated by CAWCD on or before May 15<sup>th</sup> of each year during the Option Period and shall be included as a component of the annual Contract Replenishment Tax. The option fee shall be calculated according to the following formula:

$$\text{Option Fee} = (\text{OA} \times \text{C}) \times \text{I}$$

Where:

OA = the option amount, or the amount of CAWCD Long-term Storage Credits on which the Municipal Provider holds an option as of April 30<sup>th</sup> of the year in which the calculation is being made, as computed in accordance with Article 11.1 above.

C = the Excess Water Rate for the year in which the calculation is being made.

I = the weighted average annual interest rate earned by CAWCD for the year preceding the year in which the calculation is being made.

11.5 If the Municipal Provider is in default under Article 20 of this Amended Contract because it is late in paying the option fee, the option will not expire. However, the Municipal Provider shall have no right to exercise the option until the default has been cured.

## **ARTICLE 12 INTERRUPTIONS AND REDUCTIONS**

CAWCD may temporarily discontinue or reduce the quantity of Replenishment Water to be furnished to the Municipal Provider as herein provided for the purposes of investigation, inspection, construction, testing, maintenance, repair, or replacement of

any of the CAP facilities or any part thereof. CAWCD may also temporarily discontinue or reduce the quantity of Replenishment Water to be furnished to the Municipal Provider if there is insufficient Replenishment Water or CAP delivery capacity to deliver the Municipal Provider's water order, the water orders of contractors of excess water service, and all water deliveries scheduled pursuant to a contract with the United States or a subcontract with the United States and CAWCD providing for CAP water service for a period of 50 years or more. So far as feasible, CAWCD shall attempt to coordinate any such discontinuance or reduction with the Municipal Provider and to give the Municipal Provider due notice in advance of such discontinuance or reduction. In case of emergency, no notice need be given. The United States, its officers, agents, and employees, and CAWCD, its officers, agents, and employees, shall not be liable for damages when, for any reason whatsoever, any interruption, discontinuance, or reduction in delivery of water occurs. If any such discontinuance or temporary reduction results in deliveries to the Municipal Provider of less Replenishment Water than what has been paid for in advance, the Municipal Provider shall be reimbursed or credited for the proportionate amount of such advance payments.

#### **ARTICLE 13 QUALITY OF WATER**

CAWCD does not warrant the quality of any Replenishment Water furnished under this Amended Contract and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of any Replenishment Water. The Municipal Provider waives its right to make a claim against CAWCD, the United States or other CAP water users because of changes in water quality caused by the commingling of Replenishment Water with other water.

#### **ARTICLE 14 REPORTING REQUIREMENTS**

**14.1 Annual Reports.** On or before March 31 of each year after the conditions set forth in Article 2 of this Amended Contract are satisfied, the Municipal Provider shall file a report with CAWCD and ADWR that contains the following information for the preceding calendar year, which is the reporting year:

**14.1.1** The amount of Groundwater withdrawn by the Municipal Provider from wells located within the Carefree sub-basin and delivered to its customers.

**14.1.2** The amount of Excess Groundwater withdrawn by the Municipal Provider and delivered to its customers, and the basis for the calculation of the amount of Excess Groundwater delivered. The total amount of Excess Groundwater reported in any calendar year by the Municipal Provider shall not exceed 2,910 acre-feet.

**14.1.3** The amount of Replenishment Water that the Municipal Provider stored at Contract Replenishment Facilities located within the Carefree sub-basin pursuant to the provisions of this Amended Contract, except Replenishment Water stored pursuant

to Article 10 of this Amended Contract.

14.1.4 The amount of Replenishment Water that the Municipal Provider stored at Contract Replenishment Facilities pursuant to the provisions of Article 10 of this Amended Contract.

14.1.5 The amount of Replenishment Water that the Municipal Provider delivered for direct use to its customers served by wells located within the Carefree sub-basin.

14.1.6 Such other information as CAWCD may reasonably require.

14.2 Records. The Municipal Provider shall maintain current and accurate records of the information required to be included in the Reports.

14.3 Form of Reports. CAWCD shall determine the form of the reports to be submitted by the Municipal Provider in order to carry out the purposes of the Groundwater Replenishment Statute.

#### **ARTICLE 15 MEMBER SERVICE AREA AGREEMENT AND CONTRACT REPLENISHMENT OBLIGATION**

CAWCD and the Municipal Provider shall execute, concurrent with this Amended Contract, the Amended Member Service Area Agreement in the form attached hereto as Exhibit C. The Municipal Provider shall accrue Operational Reserve Credits, Replenishment Credits and Statutory Reserve Credits under this Amended Contract in advance of incurring any Service Area Replenishment Obligation under the Amended Member Service Area Agreement. As provided in Article 7 of this Amended Contract, every year, CAWCD shall apply available Operational Reserve Credits, Replenishment Credits, and, if necessary, Statutory Reserve Credits, against any Excess Groundwater delivered by the Municipal Provider to satisfy the contract replenishment obligation, so that the Service Area Replenishment Obligation equals zero.

#### **ARTICLE 16 LONG-TERM WATER SUPPLY**

16.1 The Municipal Provider shall acquire a permanent legal right to a long-term water supply, which satisfies the following conditions:

16.1.1 The water supply shall be legally and physically available to the Municipal Provider within the meaning of Arizona law.

16.1.2 The volume of the water supply shall be sufficient to satisfy the Increased Designation and the obligations undertaken by CAWCD and the Municipal Provider under this Amended Contract.

16.1.3 The water supply shall be available to CAWCD at locations and flow rates that are acceptable to CAWCD. CAWCD will act reasonably and will consult with the Municipal Provider in determining the times and flow rates for delivery of the water supply. CAWCD may require that the water supply be provided at times and flow rates that are different from the times and flow rates that Replenishment Water is delivered to the Municipal Provider's Turnout.

16.1.4 If the water supply is to be introduced into the CAP aqueduct system, the Municipal Provider shall ensure that such introduction complies with CAWCD Board-adopted policies, including but not limited to policies regarding water quality and transportation of non-Project water, and state and federal law in effect at the time of such introduction.

16.1.5 The water supply shall comply with all conditions imposed by ADWR in its order modifying the Municipal Provider's designation of assured water supply, and granting the Increased Designation.

16.2 The Municipal Provider shall hold the Long-Term Water Supply exclusively for CAWCD's future use in meeting the obligations undertaken by CAWCD under this Amended Contract and the Amended Water Availability Status Resolution, as required by A.R.S. § 48-3772.B.10.d.

16.3 If for any reason, the selected Long-Term Water Supply becomes unavailable or no longer satisfies the conditions of Article 16.1, the Municipal Provider shall acquire a replacement Long-Term Water Supply and shall hold the replacement Long-Term Water Supply exclusively for CAWCD's future use in meeting the obligations undertaken by CAWCD under this Amended Contract and the Amended Water Availability Status Resolution, as required by A.R.S. § 48-3772.B.10.d.

16.4 CAWCD will accept, as the Long-Term Water Supply of the Municipal Provider, any water supply or replacement water supply acquired by the Municipal Provider that satisfies the applicable conditions of Section 16.1. CAWCD will notify the Municipal Provider in writing that CAWCD has accepted a water supply or replacement water supply as the Long-Term Water Supply of the Municipal Provider.

#### **ARTICLE 17 WATER SUPPLIES TO BE USED FOR REPLENISHMENT**

17.1 CAWCD will use excess CAP water to satisfy the Annual Schedule as long as excess CAP water is available for such purposes. For any year that CAWCD determines, in its sole discretion, that sufficient excess CAP water is not available to satisfy all or a portion of the Annual Schedule, CAWCD shall have the right to use the Long-Term Water Supply to satisfy the Annual Schedule. However, CAWCD shall give

the Municipal Provider at least three years advance written notice before requiring the use of the Long-Term Water Supply to satisfy the Annual Schedule.

17.2 For any year that CAWCD determines, in its sole discretion, that sufficient excess CAP water is not available to satisfy all or a portion of the Annual Schedule, CAWCD will use the Long-Term Water Supply to satisfy the Annual Schedule unless such use cannot be accomplished in compliance with existing statutes, and CAWCD Board-adopted policies. If CAWCD cannot use the Long-Term Water Supply, it shall notify the Municipal Provider in writing and explain the reasons why the Long-Term Water Supply cannot be used to satisfy the Annual Schedule.

#### **ARTICLE 18 CONTRACT REPLENISHMENT TAX**

18.1 CAWCD shall levy the Contract Replenishment Tax annually. The Contract Replenishment Tax shall be based on an assessment rate established annually by CAWCD for this Amended Contract, plus the option fee described in Article 11.4. The assessment rate will be a per acre-foot rate. It may differ from the assessment rate for Member Service Areas in the Phoenix Active Management Area and/or the assessment rate under other Contracts for Replenishment.

18.2 The annual assessment rate for this Amended Contract shall consist of, but not be limited to: (1) CAWCD's cost (if any) of acquiring water supplies to satisfy the Annual Schedule; (2) CAWCD's rate for transporting water supplies to the Contract Replenishment Facilities; (3) CAWCD's cost (if any) of underground storage; and (4) an administrative component, which shall be equal to: (1) CAWCD's cost to administer this Amended Contract, or (2) the administrative component of the Phoenix Active Management Area replenishment assessment, whichever is greater.

18.3 Notwithstanding the provisions of Arizona Revised Statutes §48-3781, on or before June 1 of each year after the execution of this Amended Contract, CAWCD will transmit a statement to the Municipal Provider stating the amount of the annual Contract Replenishment Tax. The annual Contract Replenishment Tax will be equal to the annual assessment rate established pursuant to Article 18.2 of this Amended Contract multiplied by the total volume of Replenishment Water identified in the Annual Schedule for the then current year, plus the option fee described in Article 11.4.

18.4 Notwithstanding the provisions of Arizona Revised Statutes §48-3781, on or before July 15 of each year after the execution of this Amended Contract, the Municipal Provider shall pay to CAWCD an amount equal to the Contract Replenishment Tax levied by CAWCD.

18.5 If the Contract Replenishment Tax is not paid when due, CAWCD will be entitled to interest, costs and penalties as provided by Arizona Revised Statutes § 48-3782. Further, if the Contract Replenishment Tax is not paid when due, CAWCD shall not be obligated to satisfy the Annual Schedule.

**ARTICLE 19  
UNCONTROLLABLE FORCES**

Neither Party to this Amended Contract shall be considered in default in the performance of any of its obligations under this Amended Contract when a failure of performance is due to Uncontrollable Forces. Any Party rendered unable to fulfill any of its obligations under this Amended Contract by reason of an Uncontrollable Force shall give prompt written notice of such fact to the other Party and shall exercise due diligence to remove such inability.

**ARTICLE 20  
DEFAULT AND REMEDIES**

20.1 Default. The occurrence of any of the following events constitutes an event of default by the Municipal Provider.

20.1.1 The failure of the Municipal Provider to perform any term, covenant or condition of this Amended Contract or the Amended Member Service Area Agreement, if that failure continues for thirty (30) days following the Municipal Provider's receipt of written notice from CAWCD.

20.1.2 The physical or legal unavailability of the Long-Term Water Supply, including any replacement for the Long-Term Water Supply.

20.1.3 (i) The filing by or against the Municipal Provider of a petition to have the Municipal Provider adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against the Municipal Provider, the same is dismissed within 60 days); (ii) the making by the Municipal Provider of any general assignment for the benefit of creditors; (iii) the appointment of a trustee or receiver to take possession of substantially all of the Municipal Provider's assets, when possession is not restored to the Municipal Provider within 60 days; or (iv) the attachment, execution or other judicial seizure of substantially all of the Municipal Provider's assets, where such seizure is not discharged within 60 days.

20.2 Remedies. If an event of default occurs, CAWCD shall have only the following remedies:

20.2.1 CAWCD shall have no obligation to deliver Replenishment Water under this Amended Contract and the Municipal Provider shall have no right to the delivery of Replenishment Water under this Amended Contract so long as the Municipal Provider remains in default. The Municipal Provider will consult with CAWCD on curing the default.

20.2.2 CAWCD shall have the right to seek recovery of any amounts due to be paid under this Amended Contract before the default.

**ARTICLE 21  
DISPOSITION OF OPERATIONAL RESERVE,  
STATUTORY RESERVE AND  
REPLENISHMENT CREDITS  
ON CANCELLATION**

If this Amended Contract is cancelled pursuant to Article 3, CAWCD shall satisfy any outstanding contract replenishment obligation in accordance with Article 7 of this Amended Contract. After satisfaction of the contract replenishment obligation, CAWCD shall transfer from its long-term storage account to the Municipal Provider that amount of Phoenix AMA Long-term Storage Credits equal to the amount of Replenishment Credits and Operational Reserve Credits remaining in the Replenishment Account. CAWCD shall have two years after the effective date of cancellation of this Amended Contract to transfer its Phoenix AMA Long-term Storage Credits, pursuant to this Article 21. CAWCD shall also transfer to the Municipal Provider the Statutory Reserve Credits remaining in the Statutory Reserve Account after satisfaction of the contract replenishment obligation. CAWCD shall transfer the Statutory Reserve Credits within 180 days after the effective date of cancellation of this Amended Contract. Further, the option to purchase Long-term Storage Credits set forth in Article 11 of this Amended Contract shall terminate upon such cancellation.

**ARTICLE 22  
GENERAL PROVISIONS**

**22.1 Binding Effect.** The provisions of this Amended Contract inure to the benefit of and bind the respective successors and assigns of the parties hereto, provided that no assignment or transfer of this Amended Contract or any part or interest herein is valid until approved by CAWCD in its sole and absolute discretion.

**22.1.1** The Municipal Provider agrees and covenants to CAWCD to execute and record any additional documentation which CAWCD may reasonably require to effectuate the intents and purposes of this Amended Contract and the Groundwater Replenishment Statute.

**22.2 Entire Agreement.** This Amended Contract constitutes the entire agreement between the parties and no understandings or obligations not expressly set forth in this Amended Contract are binding upon the parties.

**22.3 Amendments.** This Amended Contract may be modified, amended or revoked only (i) by express written agreement of CAWCD, the Municipal Provider and ADWR; or (ii) by amendment statutes, rules or regulations or successor statutes, rules or regulations, as contemplated by Section 22.5.

**22.4 Interpretation.** This Amended Contract is governed by and must be construed and interpreted in accordance with and in reference to the laws of the State of Arizona, including but not limited to the Groundwater Replenishment Statute.

**22.5 Rules, Regulations and Successor Statutes.** All references in this Amended Contract to Arizona Revised Statutes include all rules and regulations promulgated by the ADWR under such statutes and all amendments and successor statutes, rules and regulations to such statutes, rules and regulations.

**22.6 Severability.** Any determination by any court of competent jurisdiction that any provision of this Amended Contract is invalid or unenforceable does not affect the validity or enforceability of any other provision of this Amended Contract.

**22.7 Captions.** All captions, titles or headings in this Amended Contract are used for the purpose of reference and convenience only and do not limit, modify or otherwise affect any of the provisions of this Amended Contract.

**22.8 Notices.** Except as otherwise required by law, any notice given in connection with this Amended Contract must be in writing and must be given by personal delivery, overnight delivery, facsimile, or United States certified or registered mail. Any such notice must be addressed to the appropriate party at the following address (or at any other address as a party may hereafter designate by written notice given as required by this paragraph):

CAWCD:

For delivery use:

Central Arizona Water Conservation District  
23636 North 7<sup>th</sup> Street  
Phoenix, AZ 85024  
Attn: Manager, Groundwater Replenishment District

For U.S. Mail use:

Central Arizona Water Conservation District  
P.O. Box 43020  
Phoenix, AZ 85080-3020  
Attn: Manager, Groundwater Replenishment District

MUNICIPAL  
PROVIDER:

The City of Scottsdale  
9379 East San Salvador Drive  
Scottsdale, AZ 85258  
Attn: General Manager, Water Resources Dept.

With a copy to:

The City of Scottsdale City Attorney's Office  
3939 Drinkwater Blvd.  
Scottsdale, AZ 85251

Notice is deemed to have been given on the date on which notice is personally delivered, delivered to an overnight delivery service, transmitted by facsimile, or mailed. Notice is deemed to have been received on the date on which the notice is actually received or delivery is refused.

IN WITNESS WHEREOF, the Parties to this Amended Contract have executed this Contract as of the date first set forth above.

CAWCD: CENTRAL ARIZONA WATER CONSERVATION DISTRICT

By: \_\_\_\_\_  
Pamela Pickard

Its: President

Attest: \_\_\_\_\_  
Secretary

MUNICIPAL  
PROVIDER: THE CITY OF SCOTTSDALE

By: \_\_\_\_\_  
W.J. "Jim" Lane

Its: Mayor

Attest: \_\_\_\_\_  
Carolyn Jagger, City Clerk

Approved as to form:

\_\_\_\_\_  
Bruce Washburn, City Attorney  
By: Clifford J. Frey  
Senior Assistant City Attorney

Contract No. 2000-200-COS-A1

**EXHIBIT A**  
**Replenishment Area Map**

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Exhibit "B" to Contract 2000-199-COS-A1  
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**EXHIBIT B**

Service Area Map

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Exhibit "B" to Contract 2000-199-COS-A1  
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**EXHIBIT C**

**Member Service Area Agreement Between  
Central Arizona Water Conservation District and the City of Scottsdale**

**ATTACHMENT H**

**WATER AVAILABILITY STATUS CONTRACT TO  
REPLENISH GROUNDWATER  
BETWEEN  
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT  
AND  
THE CITY OF SCOTTSDALE**

**WATER AVAILABILITY STATUS  
CONTRACT TO REPLENISH GROUNDWATER  
BETWEEN  
CENTRAL ARIZONA WATER CONSERVATION DISTRICT  
AND  
THE CITY OF SCOTTSDALE  
AMENDMENT No. 1**

This Amended Water Availability Status Contract to Replenish Groundwater is made this \_\_\_\_ day of \_\_\_\_\_, 2013, between the Central Arizona Water Conservation District, a political subdivision of the State of Arizona, and the City of Scottsdale, a municipality.

**RECITALS**

A. A.R.S. § 48-3772, subsection B, paragraph 10, authorizes CAWCD to adopt resolutions granting water availability status to a member service area of a city, town or private water company upon satisfaction of the specific statutory requirements set forth therein.

B. A.R.S. § 45-576.07, subsection A, authorizes a member service area of a city, town or private water company to satisfy the water sufficiency and availability requirement for obtaining or maintaining a designation of assured water supply, through a water availability status resolution of the CAWCD Board, and upon satisfaction of other specific statutory requirements set forth in A.R.S. § 45-576.07.

C. On June 15, 2000, the Director of the Arizona Department of Water Resources found pursuant to A.R.S. § 45-576.07, subsection H, that CAWCD has the capability to grant water availability status to member service areas in the Phoenix active management area.

D. By Resolution dated October 4, 2001, CAWCD adopted the Original Water Availability Status Resolution, which granted water availability status to the Municipal Provider and approved the Original Member Service Area Agreement and the Original Water Availability Status Contract.

E. On November 21, 2001, the Municipal Provider qualified the Service Area as a Member Service Area of the Central Arizona Groundwater Replenishment District and executed the Original Member Service Area Agreement. Concurrent with the execution of the Original Member Service Area Agreement, the Municipal Provider executed the Original Water Availability Status Contract.

F. Pursuant to the Original Water Availability Status Contract, CAWCD committed to deliver up to 3,460 acre-feet of Replenishment Water per year to the Municipal Provider's Turnout.

G. Based on the Original Water Availability Status Resolution, the Original Member Service Area Agreement and the Original Water Availability Status Contract, the Arizona Department of Water Resources modified the Municipal Provider's designation of assured water supply for the Service Area on April 25, 2002, AWS No. 2002-03. The modification increased the Municipal Provider's designation by 3,460 acre-feet.

H. Pursuant to the Original Water Availability Status Contract, and as required by A.R.S. 48-3772.B.10.d and the Municipal Provider's designation of assured water supply, the Municipal Provider acquired certain lands (the "Original Land") and an associated water supply in the Harquahala Valley to serve as the Long-Term Water Supply.

I. The Municipal Provider will, at some time, sell the Original Land and the associated water supply it owns in the Harquahala Valley, which currently serves as the Long-Term Water Supply. The Municipal Provider intends to acquire other lands and an associated water supply in the Harquahala Valley to serve as the Long-Term Water Supply.

J. The Municipal Provider desires to amend the Original Water Availability Status Contract to reduce CAWCD's obligation to deliver Replenishment Water to the Municipal Provider's Turnout from 3,460 acre-feet per year to 2,910 acre-feet per year.

K. The Municipal Provider has applied to the Arizona Department of Water Resources for a modification of its designation of an assured water supply for the Service Area pursuant to Arizona Revised Statutes Title 45, Chapter 2, Article 9.

L. As permitted by Arizona Revised Statutes § 45-576.07(A), the Municipal Provider desires to satisfy the water sufficiency and availability requirement set forth in Arizona Revised Statutes § 45-576(J)(1), to enable it to modify its designation of assured water supply, through an Amended Water Availability Status Resolution of CAWCD and through this Amended Contract.

M. CAWCD has determined that it can best accomplish the requirements for granting water availability status, which are set forth in Arizona Revised Statutes §45-576.07, by executing this Amended Contract with the Municipal Provider. This Amended Contract will be a part of the Water Availability Status Resolution. This Amended Contract is authorized by Arizona Revised Statutes § 48-3772.B.9.

N. CAWCD has reviewed its requirements for transportation of Central Arizona Project Water, its contracts, subcontracts, letter agreements, excess water contracts, and other contractual obligations, its member service area and member land

requirements and has determined that it can meet those obligations and that capacity remains in the Central Arizona Project to meet the obligations undertaken in this Amended Contract.

O. The Municipal Provider intends to acquire property in the Harquahala Valley. The Municipal Provider is acquiring the property for the water rights associated with the property. The Municipal Provider intends to use these water rights to satisfy its obligation under this Amended Contract to acquire a Long-Term Water Supply.

P. The Parties desire to amend the Original Water Availability Status Contract as set forth below. Upon satisfaction of the conditions stated in Article 2(i) and (ii) of this Amended Water Availability Status Contract, this Amended Contract shall supersede and replace the Original Water Availability Status Contract.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, and intending to be legally bound, the parties hereby agree as follows:

#### **ARTICLE 1 DEFINITIONS**

As used in this Amended Contract, the following terms, when capitalized, shall mean:

- 1.1 "ADWR" means the Arizona Department of Water Resources.
- 1.2 "AMENDED CONTRACT" means this Amended Water Availability Status Contract to Replenish Groundwater between CAWCD and the City of Scottsdale, as amended from time to time.
- 1.3 "AMENDED MEMBER SERVICE AREA AGREEMENT" means the Amended Member Service Area Agreement between Central Arizona Water Conservation District and the City of Scottsdale executed concurrent with this Amended Contract, and any revisions thereof.
- 1.4 "AMENDED WATER AVAILABILITY STATUS RESOLUTION" means the amended Resolution of CAWCD granting water availability status to the Municipal Provider pursuant to this Amended Contract, to be adopted pursuant to Arizona Revised Statutes Section 48-3772.B.10.
- 1.5 "ANNUAL SCHEDULE" means the schedule of deliveries of Replenishment Water as prepared in accordance with Article 6 of this Amended Contract.
- 1.6 "CAP" means Central Arizona Project.

1.7 "CAWCD" means the Central Arizona Water Conservation District, a political subdivision of the State of Arizona, and any successor political subdivision.

1.8 "CONTRACT REPLENISHMENT FACILITIES" means the underground storage facilities, which meet the requirements of Article 5 of this Amended Contract, and any additional component constructed pursuant to Article 10 of this Amended Contract.

1.9 "CONTRACT REPLENISHMENT TAX" means the annual tax levied by CAWCD against the Municipal Provider in a calendar year calculated in accordance with Article 18 of this Amended Contract.

1.10 "EXCESS GROUNDWATER" is as defined in Article 1.8 of the Amended Member Service Area Agreement.

1.11 "EXCESS WATER RATE" means the rate established annually by CAWCD for excess CAP water used in satisfying the Central Arizona Groundwater Replenishment District's groundwater replenishment obligation.

1.12 "GROUNDWATER" is as defined in Arizona Revised Statutes § 45-101(5).

1.13 "GROUNDWATER REPLENISHMENT STATUTE" means Arizona Revised Statutes, Title 48, Chapter 22.

1.14 "INCREASED DESIGNATION" means the annual volume of water identified by ADWR in the Municipal Provider's assured water supply designation, or any modifications thereto, as being dependent upon the Amended Water Availability Status Resolution and this Amended Contract. This volume shall not exceed 2,910 acre-feet per year. The Increased Designation may only be used to satisfy the demand of those customers of the Municipal Provider served by wells located within the Carefree sub-basin.

1.15 "IRRIGATION WATER DISTRIBUTION SYSTEM" means the Municipal Provider's pump stations and transmission lines that will transport Replenishment Water from the Municipal Provider's Turnout to the Contract Replenishment Facilities and for direct delivery.

1.16 "LONG-TERM STORAGE CREDIT" is as defined in Arizona Revised Statutes § 45-802.01.11.

1.17 "LONG-TERM WATER SUPPLY" means water from any lawfully available source, including any replacement water supply, the rights to which are owned, leased or otherwise legally held by the Municipal Provider, except groundwater withdrawn from within an active management area.

1.18 "MEMBER SERVICE AREA" is as defined in Arizona Revised Statutes § 48-3701(11).

1.19 "MUNICIPAL PROVIDER" means the City of Scottsdale, a municipality, and its successors and assigns.

1.20 "MUNICIPAL PROVIDER'S TURNOUT" means the point on the CAP canal where Replenishment Water is diverted from the CAP canal into the Irrigation Water Distribution System. The Municipal Provider's Turnout is located at milepost 172.959 on the CAP canal.

1.21 "OPERATIONAL RESERVE CREDIT" means water stored underground at Contract Replenishment Facilities pursuant to Article 9 of this Amended Contract, which ADWR has credited to CAWCD's conservation district account and which CAWCD has allocated to the Replenishment Account.

1.22 "OPTION PERIOD" means the period of time from January 1, 2002 through and including December 31, 2020.

1.23 "ORIGINAL MEMBER SERVICE AREA AGREEMENT" means the Member Service Area Agreement Between Central Arizona Water Conservation District and the City of Scottsdale dated November 21, 2001.

1.24 "ORIGINAL WATER AVAILABILITY STATUS CONTRACT" means the Water Availability Status Contract to Replenish Groundwater Between CAWCD and the City of Scottsdale dated November 21, 2001.

1.25 "ORIGINAL WATER AVAILABILITY STATUS RESOLUTION" means the Resolution of CAWCD granting water availability status to the Municipal Provider, pursuant to Arizona Revised Statutes Section 48-3772.B.10, dated October 4, 2001.

1.26 "PARTIES" means one or both of the parties to this Amended Contract.

1.27 "REPLENISHMENT ACCOUNT" means the account established by CAWCD for the Municipal Provider pursuant to Article 8 of this Amended Contract.

1.28 "REPLENISHMENT AREA" means the area depicted in Exhibit A, attached and incorporated into this Amended Contract, where Replenishment Water will be stored underground pursuant to this Amended Contract, such that the Municipal Provider may physically access that water for service to its customers.

1.29 "REPLENISHMENT CREDIT" means Replenishment Water stored underground at Contract Replenishment Facilities located in the Carefree sub-basin pursuant to this Amended Contract, except water stored underground pursuant to Articles 9 and 10 of this Amended Contract, which ADWR has credited to CAWCD's conservation district account, and which CAWCD has allocated to the Replenishment Account.

1.30 "REPLENISHMENT WATER" means CAP water or water from any other lawfully available source, including the Long-term Water Supply, except groundwater withdrawn from within an active management area, delivered by CAWCD to the Municipal Provider's Turnout under the terms of this Amended Contract.

1.31 "SERVICE AREA" is as defined in Arizona Revised Statutes § 45-402.31. A map of the Municipal Provider's current Service Area is attached to and incorporated into this Amended Contract as Exhibit B.

1.32 "SERVICE AREA REPLENISHMENT OBLIGATION" is as defined in Article 1.22 of the Amended Member Service Area Agreement.

1.33 "STATUTORY RESERVE ACCOUNT" means the account established by CAWCD for the Municipal Provider pursuant to Article 8 of this Amended Contract.

1.34 "STATUTORY RESERVE CREDIT" means water stored underground at Contract Replenishment Facilities pursuant to Article 10 of this Amended Contract, which ADWR has credited to CAWCD's long-term storage account, and which CAWCD has allocated to the Statutory Reserve Account.

1.35 "UNCONTROLLABLE FORCES" means any cause beyond the control of the Party affected, including but not limited to flood, earthquake, storm, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority, and action or non-action by or failure to obtain the necessary authorizations or approvals from any governmental agency or authority not a Party to this Amended Contract, which by exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Nothing contained herein shall be construed so as to require a Party to settle any strike or labor dispute in which it is involved.

## **ARTICLE 2 EFFECTIVE DATE**

This Amended Contract shall be effective and binding when it has been executed by the Parties. However, neither Party shall be required to perform any of the obligations, or be entitled to receive any of the benefits, under this Amended Contract until: (i) the director of ADWR finds, pursuant to Arizona Revised Statutes § 45-576.07.A., that sufficient groundwater, surface water or effluent will be continuously available to satisfy the Increased Designation for at least 100 years and approves the Municipal Provider's application to modify its designation of assured water supply to include that amount of water to the designation, including issuing or granting all permits required by or pursuant to Arizona Revised Statutes § 45-576.07.A; and (ii) the Municipal Provider's modified designation that is dependent on the execution of this Amended Contract is effective. Until the two (2) conditions stated in subparagraphs (i) and (ii) of this Article 2 have been satisfied, the Original Water Availability Status

Contract will remain in full force and effect, provided, however, that the Original Water Availability Status Contract will be superseded and replaced automatically and immediately by this Amended Water Availability Status Contract upon satisfaction of these two (2) conditions.

### **ARTICLE 3 CANCELLATION**

3.1 If the Municipal Provider acquires a permanent substitute supply of water to satisfy the Increased Designation and the director of ADWR approves a modified designation of assured water supply for the Municipal Provider that incorporates the substituted supply, the Municipal Provider may cancel this Amended Contract upon written notice to CAWCD.

3.2 If the director of ADWR does not issue an order modifying the Municipal Provider's designation of assured water supply within two years of CAWCD's adoption of the Amended Water Availability Status Resolution, either Party may unilaterally cancel this Amended Contract upon written notice to the other Party.

3.3 Upon cancellation of this Amended Contract pursuant to Article 3.1 or 3.2, the Parties shall be relieved of all obligations under this Amended Contract and CAWCD shall repeal the Amended Water Availability Status Resolution. Provided, however, the following obligations shall survive cancellation of this Amended Contract: (1) the Municipal Provider's obligation to pay the Contract Replenishment Tax for any Replenishment Water delivered to the Municipal Provider's Turnout before the date of cancellation; (2) the Municipal Provider's obligation to pay for any Long-term Storage Credits purchased by the Municipal Provider pursuant to Article 11 of this Amended Contract or the Original Water Availability Status Contract before the date of cancellation; and (3) the Municipal Provider's obligation to pay the option fee as set forth in Article 11.4 for the year in which this Amended Contract is cancelled.

### **ARTICLE 4 REPLENISHMENT COMMITMENT**

4.1 CAWCD commits to deliver up to 2,910 acre-feet of Replenishment Water per year to the Municipal Provider's Turnout to satisfy the Increased Designation. The Municipal Provider commits to divert such Replenishment Water at the Municipal Provider's Turnout for storage at Contract Replenishment Facilities and/or for direct delivery to customers served by wells located within the Carefree sub-basin, in accordance with the provisions of Articles 4.2 and 4.3 below.

4.2 Each year, the Municipal Provider shall store that amount of Replenishment Water at Contract Replenishment Facilities located within the Carefree sub-basin necessary to accrue sufficient Replenishment Credits to offset its pumping of Excess Groundwater during that year. In any year, in lieu of pumping Excess Groundwater and storing Replenishment Water to offset such pumping, upon CAWCD's consent, the

Municipal Provider may deliver Replenishment Water directly to its customers served by wells located within the Carefree sub-basin as a replacement supply for Excess Groundwater that would have otherwise been pumped during that year.

4.3 In addition to its obligation under Article 4.2, the Municipal Provider shall store each year that amount of water at Contract Replenishment Facilities necessary to accrue sufficient Long-term Storage Credits to satisfy its obligations under Articles 9 and 10 of this Amended Contract.

#### **ARTICLE 5 CONTRACT REPLENISHMENT FACILITIES AND IRRIGATION WATER DISTRIBUTION SYSTEM**

5.1 All replenishment under this Amended Contract will be accomplished using permitted underground storage facilities that are financed, acquired, developed, constructed, operated and maintained by the Municipal Provider. The Municipal Provider shall be responsible for financing, acquiring, developing, constructing, operating, maintaining and replacing underground storage facilities for the storage of Replenishment Water under the terms of this Amended Contract. Such underground storage facilities shall be constructed within the Replenishment Area, at locations where the Municipal Provider may physically access the stored water for service to its customers within the Carefree sub-basin, and shall comply with the conditions imposed by ADWR, if any, relating to the Increased Designation.

5.2 CAWCD will obtain a water storage permit(s) to store Replenishment Water at the Contract Replenishment Facilities. As operator of the Contract Replenishment Facilities, the Municipal Provider shall store the amounts of Replenishment Water indicated in the Annual Schedule for delivery to the Municipal Provider's Turnout for storage at Contract Replenishment Facilities, on behalf of CAWCD, under CAWCD's water storage permit(s). Replenishment Water stored pursuant to CAWCD's water storage permit(s) at Contract Replenishment Facilities, which is determined by ADWR to meet the requirements of Long-term Storage Credits, will be credited by ADWR to CAWCD's conservation district account and CAWCD's long-term storage account in accordance with the terms of this Amended Contract.

5.3 The Municipal Provider shall be responsible for financing, acquiring, developing, constructing, operating, maintaining and replacing the Irrigation Water Distribution System. The Municipal Provider shall make available a minimum capacity of eight (8) cubic feet per second in the Irrigation Water Distribution System for the transportation of Replenishment Water delivered to the Municipal Provider's Turnout under the terms of this Amended Contract.

#### **ARTICLE 6 ANNUAL SCHEDULE**

6.1 Within 60 days of the effective date of this Amended Contract, the Municipal Provider shall submit a proposed annual schedule indicating: (1) the amounts of Replenishment Water it desires CAWCD to deliver to the Municipal Provider's Turnout during each month of the initial year of water deliveries under this Amended Contract for underground storage at Contract Replenishment Facilities located in the Carefree sub-basin; and (2) the amounts of Replenishment Water it desires CAWCD to deliver to the Municipal Provider's Turnout during each month of the initial year of water deliveries under this Amended Contract for direct delivery to customers served by wells located within the Carefree sub-basin. In preparing the proposed annual schedule, the Municipal Provider shall schedule sufficient Replenishment Water to satisfy its obligations under Article 4 of this Amended Contract. In lieu of submitting a proposed annual schedule, as required by this Article 6.1, the Municipal Provider may rely on the current schedule it has in place with CAWCD for that year.

6.2 Upon receipt of the proposed annual schedule for the initial year of water deliveries, CAWCD shall review it and after consultation with the Municipal Provider, shall make such modifications as are necessary to ensure that the amounts, times and rates of delivery to the Municipal Provider are consistent with the delivery capability of the CAP, considering, among other things, the availability of water and the delivery schedules of all other CAP water users.

6.3 Within 45 days after receipt of the proposed annual schedule for the initial year of water deliveries, CAWCD shall determine and furnish to the Municipal Provider the Annual Schedule for the initial year of water deliveries, which shall show: (1) the amounts of Replenishment Water to be delivered to the Municipal Provider's Turnout during each month of the initial year of water deliveries for underground storage at Contract Replenishment Facilities; and (2) the amounts of Replenishment Water to be delivered to the Municipal Provider's Turnout for direct delivery to customers served by wells located within the Carefree sub-basin, contingent upon the Municipal Provider remaining eligible to receive Replenishment Water under all terms contained in this Amended Contract. The Annual Schedule shall also indicate the anticipated source(s) and volume(s) of Replenishment Water that CAWCD will deliver to the Municipal Provider's Turnout during the initial year of water deliveries, (i.e., excess CAP water, the Long-Term Water Supply or other alternative water supplies.)

6.4 Beginning in 2013, on or before October 1 of each year, the Municipal Provider shall submit a proposed annual schedule indicating: (1) the amounts of Replenishment Water it desires CAWCD to deliver to the Municipal Provider's Turnout during each month of the following year for underground storage at Contract Replenishment Facilities located in the Carefree sub-basin; and (2) the amounts of Replenishment Water it desires CAWCD to deliver to the Municipal Provider's Turnout during each month of the following year for direct delivery to customers served by wells located within the Carefree sub-basin. In preparing the proposed annual schedule, the Municipal Provider shall schedule sufficient Replenishment Water to satisfy its obligations under Article 4 of this Amended Contract.

6.5 Upon receipt of the proposed annual schedule, CAWCD shall review it and after consultation with the Municipal Provider, shall make such modifications as are necessary to ensure that the amounts, times and rates of delivery to the Municipal Provider are consistent with the delivery capability of the CAP, considering, among other things, the availability of water and the delivery schedules of all other CAP water users.

6.6 Beginning in 2013, on or before November 15 of each year, CAWCD shall determine and furnish to the Municipal Provider the Annual Schedule for the following year, which shall show: (1) the amounts of Replenishment Water to be delivered to the Municipal Provider's Turnout during each month of that year for underground storage at Contract Replenishment Facilities; and (2) the amounts of Replenishment Water to be delivered to the Municipal Provider's Turnout for direct delivery to customers served by wells located within the Carefree sub-basin, contingent upon the Municipal Provider remaining eligible to receive Replenishment Water under all terms contained in this Amended Contract. The Annual Schedule shall also indicate the anticipated source(s) and volume(s) of Replenishment Water that CAWCD will deliver to the Municipal Provider's Turnout during the following year, (i.e., excess CAP water, the Long-Term Water Supply or other alternative water supplies).

6.7 Replenishment Water scheduled in any year under this Amended Contract may not be resold by the Municipal Provider for use outside the Service Area.

## **ARTICLE 7 CONTRACT REPLENISHMENT OBLIGATION**

The amount of Excess Groundwater reported by the Municipal Provider under Article 14.1.2 of this Amended Contract shall constitute a contract replenishment obligation for CAWCD for the year in which the report is submitted. This contract replenishment obligation will become a part of CAWCD's total replenishment obligation for the Phoenix Active Management Area for that year, as provided in A.R.S. §48-3771. CAWCD will satisfy the contract replenishment obligation incurred pursuant to this Amended Contract by first applying all available credits in the Replenishment Account until exhausted, and then applying all available credits in the Statutory Reserve Account until exhausted.

## **ARTICLE 8 REPLENISHMENT AND STATUTORY RESERVE ACCOUNTS**

8.1 Under the Original Water Availability Status Contract CAWCD established a Replenishment Account and a Statutory Reserve Account for the Municipal Provider.

8.2 CAWCD shall allocate to the Municipal Provider's Statutory Reserve Account that amount of water stored by the Municipal Provider at Contract Replenishment Facilities pursuant to the provisions of Article 10 of this Amended Contract during the previous

year, which ADWR has determined meets the requirements of Long-term Storage Credits and has credited to CAWCD's long-term storage account.

8.3 CAWCD shall allocate to the Replenishment Account that amount of water stored by the Municipal Provider at Contract Replenishment Facilities pursuant to this Amended Contract, excluding any water stored by the Municipal Provider under Article 10 of this Amended Contract, during the previous year, which ADWR has determined meets the requirements of Long-term Storage Credits and has credited to CAWCD's conservation district account.

## **ARTICLE 9 ACCRUAL OF OPERATIONAL RESERVE CREDITS**

9.1 In addition to its other obligations under this Amended Contract, the Municipal Provider shall store sufficient water at Contract Replenishment Facilities to accrue at least 439 acre-feet of Operational Reserve Credits each year until the total amount of credits in the Operational Reserve Account equal 2,910 acre-feet. Under current ADWR rules and regulations, the Municipal Provider would have to take delivery of at least 461 acre-feet of water per year at Contract Replenishment Facilities to accrue 439 acre-feet of Operational Reserve Credits per year. At the Municipal Provider's election it may satisfy its obligation to accrue Operational Reserve Credits under this Article by using its own water supply and its own water storage permit(s) to accrue Long-term Storage Credits within the Replenishment Area. If the Municipal Provider so elects, each year, as soon as ADWR determines that the water stored by the Municipal Provider under this Article 9.1 meets the requirements of Long-term Storage Credits, the Municipal Provider shall transfer at least 439 acre-feet of credits to CAWCD's long-term storage account. CAWCD shall allocate such credits to the Operational Reserve Account. If in any year, the Municipal Provider does not wish to satisfy its obligation to accrue Operational Reserve Credits by accruing its own Long-term Storage Credits and transferring them to CAWCD, it may request in its proposed annual schedule that CAWCD deliver Replenishment Water to the Municipal Provider's Turnout for storage at Contract Replenishment Facilities in accordance with the terms of this Amended Contract. If CAWCD determines that it can accommodate the Municipal Provider's request, that portion of the Annual Schedule indicating the amount of Replenishment Water to be delivered to the Municipal Provider's Turnout for storage at Contract Replenishment Facilities will include the amount of Replenishment Water requested by the Municipal Provider to satisfy its obligations under this Article 9. Such Replenishment Water will be stored in accordance with the terms of this Amended Contract and will be credited to the Replenishment Account in accordance with Article 8.3 of this Amended Contract.

9.2 If at the end of any year, the Municipal Provider has failed to accrue the minimum annual amount of Operational Reserve Credits required in Article 9.1, the Municipal Provider shall notify CAWCD in writing of the projected shortfall. Along with such notice, the Municipal Provider shall submit to CAWCD a plan for accruing or otherwise

achieving the minimum annual volume of Operational Reserve Credits required in Article 9.1. This plan shall include construction of sufficient additional vadose zone wells, annual storage and recovery wells or other infrastructure necessary to meet the minimum annual schedule required in Article 9.1.

**ARTICLE 10  
ACCRUAL AND MAINTENANCE OF  
MINIMUM VOLUME OF  
STATUTORY RESERVE CREDITS**

10.1 In addition to its other obligations under this Amended Contract, the Municipal Provider shall store sufficient water at Contract Replenishment Facilities to accrue at least 1,082 acre-feet of Statutory Reserve Credits each year, until the total amount of credits in the Statutory Reserve Account equal 14,550 acre-feet. Under current ADWR rules and regulations, the Municipal Provider would have to take delivery of at least 1,138 acre-feet of water per year at Contract Replenishment Facilities to accrue 1,082 acre-feet of Statutory Reserve Credits per year. At the Municipal Provider's election it may satisfy its obligation to accrue Statutory Reserve Credits by using its own water supply and its own water storage permit(s) to accrue Long-term Storage Credits within the Replenishment Area. If the Municipal Provider so elects, each year, as soon as ADWR determines that the water stored by the Municipal Provider under this Article 10.1 meets the requirements of Long-term Storage Credits, the Municipal Provider shall transfer at least 1,082 acre-feet of credits to CAWCD's long-term storage account. CAWCD shall allocate such credits to the Statutory Reserve Account. If in any year, the Municipal Provider does not wish to satisfy its obligation to accrue Statutory Reserve Credits by accruing its own Long-term Storage Credits and transferring them to CAWCD, it may request in its proposed annual schedule that CAWCD deliver Replenishment Water to the Municipal Provider's Turnout for storage at Contract Replenishment Facilities in accordance with the terms of this Amended Contract. If CAWCD determines that it can accommodate the Municipal Provider's request, that portion of the Annual Schedule indicating the amount of Replenishment Water to be delivered to the Municipal Provider's Turnout for storage at Contract Replenishment Facilities will include the amount of Replenishment Water requested by the Municipal Provider to satisfy its obligations under this Article. Such Replenishment Water will be stored in accordance with the terms of this Amended Contract and will be credited to the Statutory Reserve Account in accordance with Article 8.2 of this Amended Contract.

10.2 If at the end of any year, the Municipal Provider has failed to accrue the minimum annual amount of Statutory Reserve Credits required in Article 10.1, the Municipal Provider shall notify CAWCD in writing of the projected shortfall. Along with such notice, the Municipal Provider shall submit to CAWCD a plan for accruing or otherwise achieving the minimum annual volume of Statutory Reserve Credits required in Article 10.1. This plan shall include construction of sufficient additional vadose zone wells, annual storage and recovery wells or other infrastructure necessary to meet the minimum annual schedule required in Article 10.1.

10.3 No later than December 31, 2020, the Municipal Provider shall have accrued a minimum of 14,550 acre-feet of Statutory Reserve Credits in its Statutory Reserve Account. This 14,550 acre-feet of Statutory Reserve Credits is intended to satisfy the requirements of Arizona Revised Statutes § 45-576.07.A.5, which requires that the Municipal Provider commit to ensure that a five-year supply of water will be maintained and available for use by the Municipal Provider in years in which sufficient Replenishment Water is not available. Accordingly, the Municipal Provider shall maintain a minimum of 14,550 acre-feet of Statutory Reserve Credits in its Statutory Reserve Account at all times after December 31, 2020, except as provided in Article 10.4.

10.4 If in any year during the term of this Amended Contract, (i) sufficient Replenishment Water is not available for delivery, (ii) sufficient storage capacity at Contract Replenishment Facilities located within the Carefree sub-basin is not available to satisfy the Municipal Provider's obligation to accrue sufficient Replenishment Credits to offset its Excess Groundwater pumping for that year, or (iii) sufficient Replenishment Credits or Operational Reserve Credits are not available to satisfy the contract replenishment obligation, as defined in Article 7 of this Amended Contract, the Municipal Provider may seek CAWCD's consent to apply a maximum of 2,910 acre-feet of Statutory Reserve Credits to satisfy the contract replenishment obligation for that year. At the time it submits its request to apply Statutory Reserve Credits, the Municipal Provider shall also submit to CAWCD a plan which details how the Municipal Provider will restore the balance of Statutory Reserve Credits in the Statutory Reserve Account to an amount equal to a minimum of 14,550 acre-feet, if such request occurs after December 31, 2019, or to that amount of credits in the Statutory Reserve Account immediately prior to such request, if the request is made before 2019. If the Municipal Provider has submitted a plan to restore the balance of Statutory Reserve Credits that is acceptable to CAWCD, CAWCD shall allocate an annual maximum of 2,910 acre-feet of Statutory Reserve Credits to offset Excess Groundwater pumped by the Municipal Provider.

10.5 If at any time after December 31, 2020, the balance of Statutory Reserve Credits in the Statutory Reserve Account falls below 8,730 acre-feet, the Parties shall meet to discuss the need, if any, for additional Contract Replenishment Facilities. If CAWCD reasonably determines that additional Contract Replenishment Facilities are necessary, it shall consult with the Municipal Provider and ADWR regarding the amount of additional storage capacity required. The Municipal Provider shall finance the design, permitting and construction of an additional component of the Contract Replenishment Facilities, to be located within the Replenishment Area and/or within the Carefree sub-basin. Once construction of this additional component is complete, the Municipal Provider shall own and operate the facility to satisfy its obligations under this Amended Contract.

10.6 Except as otherwise provided in this Article, the Municipal Provider may not recover, sell, assign, pledge or otherwise transfer Statutory Reserve Credits.

**ARTICLE 11  
OPTION TO PURCHASE CAWCD  
LONG-TERM STORAGE CREDITS**

11.1 Upon the execution of this Amended Contract, the Municipal Provider shall have an option to purchase a total of 5,957.36 acre-feet of Phoenix Active Management Area Long-term Storage Credits from CAWCD. On January 1 of each year following the execution of this Amended Contract during the Option Period, the amount of CAWCD Long-term Storage Credits on which the Municipal Provider holds an option shall be reduced, on an acre-foot per acre-foot basis, by the amount of Statutory Reserve Credits accrued by the Municipal Provider during the previous year. The option shall expire on December 31, 2020, unless sooner terminated in accordance with Article 21 of this Amended Contract. CAWCD shall maintain sufficient credits in its Phoenix Active Management Area long-term storage account dedicated to the Municipal Provider to satisfy its obligation under this Article. The Municipal Provider may exercise its option in any year during the Option Period under the following conditions:

11.1.1 If sufficient Replenishment Water is not available for delivery in a given year to satisfy the demand of those customers of the Municipal Provider served by wells located within the Carefree sub-basin up to the Increased Designation, and if the total amount of Operational Reserve Credits, Replenishment Credits and Statutory Reserve Credits are insufficient to offset the Municipal Provider's pumping of Excess Groundwater, then the Municipal Provider may purchase that amount of Long-term Storage Credits from CAWCD necessary to offset the Municipal Provider's pumping of Excess Groundwater for that year, not to exceed 2,910 acre-feet; or

11.1.2 If sufficient storage capacity at Contract Replenishment Facilities, and/or transportation capacity in the Irrigation Water Distribution System is not available to satisfy the Municipal Provider's obligation to accrue sufficient Replenishment Credits to offset its pumping of Excess Groundwater for that year, and if the total amount of Operational Reserve Credits, Replenishment Credits and Statutory Reserve Credits are insufficient to offset the Municipal Provider's pumping of Excess Groundwater, then the Municipal Provider may purchase that amount of Long-term Storage Credits from CAWCD necessary to offset the Municipal Provider's pumping of Excess Groundwater for that year, not to exceed 2,910 acre-feet.

11.2 If, in any year during the Option Period, the Municipal Provider wishes to exercise its option to purchase CAWCD Long-term Storage Credits, it shall submit a written request to CAWCD, which sets forth the amount of Long-term Storage Credits the Municipal Provider wishes to purchase and sufficient information for CAWCD to determine whether the conditions of Article 11.1.1 or 11.1.2 have been met.

11.3 CAWCD shall determine whether the Municipal Provider's request to purchase CAWCD Long-term Storage Credits satisfies the conditions of Article 11.1.1 or 11.1.2 above and, if so, shall establish the purchase price for such credits. The price for CAWCD Long-term Storage Credits purchased under this Article shall be established by

CAWCD, and shall equal CAWCD's cost to replace an equivalent amount of Long-term Storage Credits. Within sixty days of the Municipal Provider's request to purchase CAWCD Long-term Storage Credits, CAWCD shall notify the Municipal Provider in writing whether the request satisfies the conditions of Article 11.1.1 or 11.1.2, and if so, the price for each acre-foot of Long-term Storage Credit to be purchased. The Municipal Provider shall have sixty days after receipt of CAWCD's notice to pay CAWCD the purchase price for the Long-term Storage Credits it wishes to purchase. Upon receipt of payment, CAWCD shall transfer the credits to its conservation district account and shall allocate the credits to the Replenishment Account.

11.4 Regardless of whether any CAWCD Long-term Storage Credits are purchased under this Article, each year during the Option Period, the Municipal Provider shall pay CAWCD an option fee. The option fee shall be calculated by CAWCD on or before May 15<sup>th</sup> of each year during the Option Period and shall be included as a component of the annual Contract Replenishment Tax. The option fee shall be calculated according to the following formula:

$$\text{Option Fee} = (\text{OA} \times \text{C}) \times \text{I}$$

Where:

OA = the option amount, or the amount of CAWCD Long-term Storage Credits on which the Municipal Provider holds an option as of April 30<sup>th</sup> of the year in which the calculation is being made, as computed in accordance with Article 11.1 above.

C = the Excess Water Rate for the year in which the calculation is being made.

I = the weighted average annual interest rate earned by CAWCD for the year preceding the year in which the calculation is being made.

11.5 If the Municipal Provider is in default under Article 20 of this Amended Contract because it is late in paying the option fee, the option will not expire. However, the Municipal Provider shall have no right to exercise the option until the default has been cured.

## **ARTICLE 12 INTERRUPTIONS AND REDUCTIONS**

CAWCD may temporarily discontinue or reduce the quantity of Replenishment Water to be furnished to the Municipal Provider as herein provided for the purposes of investigation, inspection, construction, testing, maintenance, repair, or replacement of

any of the CAP facilities or any part thereof. CAWCD may also temporarily discontinue or reduce the quantity of Replenishment Water to be furnished to the Municipal Provider if there is insufficient Replenishment Water or CAP delivery capacity to deliver the Municipal Provider's water order, the water orders of contractors of excess water service, and all water deliveries scheduled pursuant to a contract with the United States or a subcontract with the United States and CAWCD providing for CAP water service for a period of 50 years or more. So far as feasible, CAWCD shall attempt to coordinate any such discontinuance or reduction with the Municipal Provider and to give the Municipal Provider due notice in advance of such discontinuance or reduction. In case of emergency, no notice need be given. The United States, its officers, agents, and employees, and CAWCD, its officers, agents, and employees, shall not be liable for damages when, for any reason whatsoever, any interruption, discontinuance, or reduction in delivery of water occurs. If any such discontinuance or temporary reduction results in deliveries to the Municipal Provider of less Replenishment Water than what has been paid for in advance, the Municipal Provider shall be reimbursed or credited for the proportionate amount of such advance payments.

### **ARTICLE 13 QUALITY OF WATER**

CAWCD does not warrant the quality of any Replenishment Water furnished under this Amended Contract and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of any Replenishment Water. The Municipal Provider waives its right to make a claim against CAWCD, the United States or other CAP water users because of changes in water quality caused by the commingling of Replenishment Water with other water.

### **ARTICLE 14 REPORTING REQUIREMENTS**

**14.1 Annual Reports.** On or before March 31 of each year after the conditions set forth in Article 2 of this Amended Contract are satisfied, the Municipal Provider shall file a report with CAWCD and ADWR that contains the following information for the preceding calendar year, which is the reporting year:

14.1.1 The amount of Groundwater withdrawn by the Municipal Provider from wells located within the Carefree sub-basin and delivered to its customers.

14.1.2 The amount of Excess Groundwater withdrawn by the Municipal Provider and delivered to its customers, and the basis for the calculation of the amount of Excess Groundwater delivered. The total amount of Excess Groundwater reported in any calendar year by the Municipal Provider shall not exceed 2,910 acre-feet.

14.1.3 The amount of Replenishment Water that the Municipal Provider stored at Contract Replenishment Facilities located within the Carefree sub-basin pursuant to the provisions of this Amended Contract, except Replenishment Water stored pursuant

to Article 10 of this Amended Contract.

14.1.4 The amount of Replenishment Water that the Municipal Provider stored at Contract Replenishment Facilities pursuant to the provisions of Article 10 of this Amended Contract.

14.1.5 The amount of Replenishment Water that the Municipal Provider delivered for direct use to its customers served by wells located within the Carefree sub-basin.

14.1.6 Such other information as CAWCD may reasonably require.

14.2 Records. The Municipal Provider shall maintain current and accurate records of the information required to be included in the Reports.

14.3 Form of Reports. CAWCD shall determine the form of the reports to be submitted by the Municipal Provider in order to carry out the purposes of the Groundwater Replenishment Statute.

#### **ARTICLE 15 MEMBER SERVICE AREA AGREEMENT AND CONTRACT REPLENISHMENT OBLIGATION**

CAWCD and the Municipal Provider shall execute, concurrent with this Amended Contract, the Amended Member Service Area Agreement in the form attached hereto as Exhibit C. The Municipal Provider shall accrue Operational Reserve Credits, Replenishment Credits and Statutory Reserve Credits under this Amended Contract in advance of incurring any Service Area Replenishment Obligation under the Amended Member Service Area Agreement. As provided in Article 7 of this Amended Contract, every year, CAWCD shall apply available Operational Reserve Credits, Replenishment Credits, and, if necessary, Statutory Reserve Credits, against any Excess Groundwater delivered by the Municipal Provider to satisfy the contract replenishment obligation, so that the Service Area Replenishment Obligation equals zero.

#### **ARTICLE 16 LONG-TERM WATER SUPPLY**

16.1 The Municipal Provider shall acquire a permanent legal right to a long-term water supply, which satisfies the following conditions:

16.1.1 The water supply shall be legally and physically available to the Municipal Provider within the meaning of Arizona law.

16.1.2 The volume of the water supply shall be sufficient to satisfy the Increased Designation and the obligations undertaken by CAWCD and the Municipal Provider under this Amended Contract.

16.1.3 The water supply shall be available to CAWCD at locations and flow rates that are acceptable to CAWCD. CAWCD will act reasonably and will consult with the Municipal Provider in determining the times and flow rates for delivery of the water supply. CAWCD may require that the water supply be provided at times and flow rates that are different from the times and flow rates that Replenishment Water is delivered to the Municipal Provider's Turnout.

16.1.4 If the water supply is to be introduced into the CAP aqueduct system, the Municipal Provider shall ensure that such introduction complies with CAWCD Board-adopted policies, including but not limited to policies regarding water quality and transportation of non-Project water, and state and federal law in effect at the time of such introduction.

16.1.5 The water supply shall comply with all conditions imposed by ADWR in its order modifying the Municipal Provider's designation of assured water supply, and granting the Increased Designation.

16.2 The Municipal Provider shall hold the Long-Term Water Supply exclusively for CAWCD's future use in meeting the obligations undertaken by CAWCD under this Amended Contract and the Amended Water Availability Status Resolution, as required by A.R.S. § 48-3772.B.10.d.

16.3 If for any reason, the selected Long-Term Water Supply becomes unavailable or no longer satisfies the conditions of Article 16.1, the Municipal Provider shall acquire a replacement Long-Term Water Supply and shall hold the replacement Long-Term Water Supply exclusively for CAWCD's future use in meeting the obligations undertaken by CAWCD under this Amended Contract and the Amended Water Availability Status Resolution, as required by A.R.S. § 48-3772.B.10.d.

16.4 CAWCD will accept, as the Long-Term Water Supply of the Municipal Provider, any water supply or replacement water supply acquired by the Municipal Provider that satisfies the applicable conditions of Section 16.1. CAWCD will notify the Municipal Provider in writing that CAWCD has accepted a water supply or replacement water supply as the Long-Term Water Supply of the Municipal Provider.

## **ARTICLE 17 WATER SUPPLIES TO BE USED FOR REPLENISHMENT**

17.1 CAWCD will use excess CAP water to satisfy the Annual Schedule as long as excess CAP water is available for such purposes. For any year that CAWCD determines, in its sole discretion, that sufficient excess CAP water is not available to satisfy all or a portion of the Annual Schedule, CAWCD shall have the right to use the Long-Term Water Supply to satisfy the Annual Schedule. However, CAWCD shall give

the Municipal Provider at least three years advance written notice before requiring the use of the Long-Term Water Supply to satisfy the Annual Schedule.

17.2 For any year that CAWCD determines, in its sole discretion, that sufficient excess CAP water is not available to satisfy all or a portion of the Annual Schedule, CAWCD will use the Long-Term Water Supply to satisfy the Annual Schedule unless such use cannot be accomplished in compliance with existing statutes, and CAWCD Board-adopted policies. If CAWCD cannot use the Long-Term Water Supply, it shall notify the Municipal Provider in writing and explain the reasons why the Long-Term Water Supply cannot be used to satisfy the Annual Schedule.

## **ARTICLE 18**

### **CONTRACT REPLENISHMENT TAX**

18.1 CAWCD shall levy the Contract Replenishment Tax annually. The Contract Replenishment Tax shall be based on an assessment rate established annually by CAWCD for this Amended Contract, plus the option fee described in Article 11.4. The assessment rate will be a per acre-foot rate. It may differ from the assessment rate for Member Service Areas in the Phoenix Active Management Area and/or the assessment rate under other Contracts for Replenishment.

18.2 The annual assessment rate for this Amended Contract shall consist of, but not be limited to: (1) CAWCD's cost (if any) of acquiring water supplies to satisfy the Annual Schedule; (2) CAWCD's rate for transporting water supplies to the Contract Replenishment Facilities; (3) CAWCD's cost (if any) of underground storage; and (4) an administrative component, which shall be equal to: (1) CAWCD's cost to administer this Amended Contract, or (2) the administrative component of the Phoenix Active Management Area replenishment assessment, whichever is greater.

18.3 Notwithstanding the provisions of Arizona Revised Statutes §48-3781, on or before June 1 of each year after the execution of this Amended Contract, CAWCD will transmit a statement to the Municipal Provider stating the amount of the annual Contract Replenishment Tax. The annual Contract Replenishment Tax will be equal to the annual assessment rate established pursuant to Article 18.2 of this Amended Contract multiplied by the total volume of Replenishment Water identified in the Annual Schedule for the then current year, plus the option fee described in Article 11.4.

18.4 Notwithstanding the provisions of Arizona Revised Statutes §48-3781, on or before July 15 of each year after the execution of this Amended Contract, the Municipal Provider shall pay to CAWCD an amount equal to the Contract Replenishment Tax levied by CAWCD.

18.5 If the Contract Replenishment Tax is not paid when due, CAWCD will be entitled to interest, costs and penalties as provided by Arizona Revised Statutes § 48-3782. Further, if the Contract Replenishment Tax is not paid when due, CAWCD shall not be obligated to satisfy the Annual Schedule.

## **ARTICLE 19 UNCONTROLLABLE FORCES**

Neither Party to this Amended Contract shall be considered in default in the performance of any of its obligations under this Amended Contract when a failure of performance is due to Uncontrollable Forces. Any Party rendered unable to fulfill any of its obligations under this Amended Contract by reason of an Uncontrollable Force shall give prompt written notice of such fact to the other Party and shall exercise due diligence to remove such inability.

## **ARTICLE 20 DEFAULT AND REMEDIES**

20.1 **Default.** The occurrence of any of the following events constitutes an event of default by the Municipal Provider.

20.1.1 The failure of the Municipal Provider to perform any term, covenant or condition of this Amended Contract or the Amended Member Service Area Agreement, if that failure continues for thirty (30) days following the Municipal Provider's receipt of written notice from CAWCD.

20.1.2 The physical or legal unavailability of the Long-Term Water Supply, including any replacement for the Long-Term Water Supply.

20.1.3 (i) The filing by or against the Municipal Provider of a petition to have the Municipal Provider adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against the Municipal Provider, the same is dismissed within 60 days); (ii) the making by the Municipal Provider of any general assignment for the benefit of creditors; (iii) the appointment of a trustee or receiver to take possession of substantially all of the Municipal Provider's assets, when possession is not restored to the Municipal Provider within 60 days; or (iv) the attachment, execution or other judicial seizure of substantially all of the Municipal Provider's assets, where such seizure is not discharged within 60 days.

20.2 **Remedies.** If an event of default occurs, CAWCD shall have only the following remedies:

20.2.1 CAWCD shall have no obligation to deliver Replenishment Water under this Amended Contract and the Municipal Provider shall have no right to the delivery of Replenishment Water under this Amended Contract so long as the Municipal Provider remains in default. The Municipal Provider will consult with CAWCD on curing the default.

20.2.2 CAWCD shall have the right to seek recovery of any amounts due to be paid under this Amended Contract before the default.

**ARTICLE 21  
DISPOSITION OF OPERATIONAL RESERVE,  
STATUTORY RESERVE AND  
REPLENISHMENT CREDITS  
ON CANCELLATION**

If this Amended Contract is cancelled pursuant to Article 3, CAWCD shall satisfy any outstanding contract replenishment obligation in accordance with Article 7 of this Amended Contract. After satisfaction of the contract replenishment obligation, CAWCD shall transfer from its long-term storage account to the Municipal Provider that amount of Phoenix AMA Long-term Storage Credits equal to the amount of Replenishment Credits and Operational Reserve Credits remaining in the Replenishment Account. CAWCD shall have two years after the effective date of cancellation of this Amended Contract to transfer its Phoenix AMA Long-term Storage Credits, pursuant to this Article 21. CAWCD shall also transfer to the Municipal Provider the Statutory Reserve Credits remaining in the Statutory Reserve Account after satisfaction of the contract replenishment obligation. CAWCD shall transfer the Statutory Reserve Credits within 180 days after the effective date of cancellation of this Amended Contract. Further, the option to purchase Long-term Storage Credits set forth in Article 11 of this Amended Contract shall terminate upon such cancellation.

**ARTICLE 22  
GENERAL PROVISIONS**

22.1 Binding Effect. The provisions of this Amended Contract inure to the benefit of and bind the respective successors and assigns of the parties hereto, provided that no assignment or transfer of this Amended Contract or any part or interest herein is valid until approved by CAWCD in its sole and absolute discretion.

22.1.1 The Municipal Provider agrees and covenants to CAWCD to execute and record any additional documentation which CAWCD may reasonably require to effectuate the intents and purposes of this Amended Contract and the Groundwater Replenishment Statute.

22.2 Entire Agreement. This Amended Contract constitutes the entire agreement between the parties and no understandings or obligations not expressly set forth in this Amended Contract are binding upon the parties.

22.3 Amendments. This Amended Contract may be modified, amended or revoked only (i) by express written agreement of CAWCD, the Municipal Provider and ADWR; or (ii) by amendment statutes, rules or regulations or successor statutes, rules or regulations, as contemplated by Section 22.5.

22.4 Interpretation. This Amended Contract is governed by and must be construed and interpreted in accordance with and in reference to the laws of the State of Arizona, including but not limited to the Groundwater Replenishment Statute.

**22.5 Rules, Regulations and Successor Statutes.** All references in this Amended Contract to Arizona Revised Statutes include all rules and regulations promulgated by the ADWR under such statutes and all amendments and successor statutes, rules and regulations to such statutes, rules and regulations.

**22.6 Severability.** Any determination by any court of competent jurisdiction that any provision of this Amended Contract is invalid or unenforceable does not affect the validity or enforceability of any other provision of this Amended Contract.

**22.7 Captions.** All captions, titles or headings in this Amended Contract are used for the purpose of reference and convenience only and do not limit, modify or otherwise affect any of the provisions of this Amended Contract.

**22.8 Notices.** Except as otherwise required by law, any notice given in connection with this Amended Contract must be in writing and must be given by personal delivery, overnight delivery, facsimile, or United States certified or registered mail. Any such notice must be addressed to the appropriate party at the following address (or at any other address as a party may hereafter designate by written notice given as required by this paragraph):

CAWCD:

For delivery use:

Central Arizona Water Conservation District  
23636 North 7<sup>th</sup> Street  
Phoenix, AZ 85024  
Attn: Manager, Groundwater Replenishment District

For U.S. Mail use:

Central Arizona Water Conservation District  
P.O. Box 43020  
Phoenix, AZ 85080-3020  
Attn: Manager, Groundwater Replenishment District

MUNICIPAL  
PROVIDER:

The City of Scottsdale  
9379 East San Salvador Drive  
Scottsdale, AZ 85258  
Attn: General Manager, Water Resources Dept.

With a copy to:

The City of Scottsdale City Attorney's Office  
3939 Drinkwater Blvd.  
Scottsdale, AZ 85251

Notice is deemed to have been given on the date on which notice is personally delivered, delivered to an overnight delivery service, transmitted by facsimile, or mailed. Notice is deemed to have been received on the date on which the notice is actually received or delivery is refused.

IN WITNESS WHEREOF, the Parties to this Amended Contract have executed this Contract as of the date first set forth above.

CAWCD: CENTRAL ARIZONA WATER CONSERVATION DISTRICT

By: \_\_\_\_\_  
Pamela Pickard

Its: \_\_\_\_\_  
President

Attest: \_\_\_\_\_  
Secretary

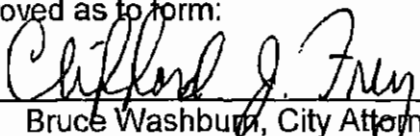
MUNICIPAL  
PROVIDER: THE CITY OF SCOTTSDALE

By: \_\_\_\_\_  
W.J. "Jim" Lane

Its: \_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_  
Carolyn Jagger, City Clerk

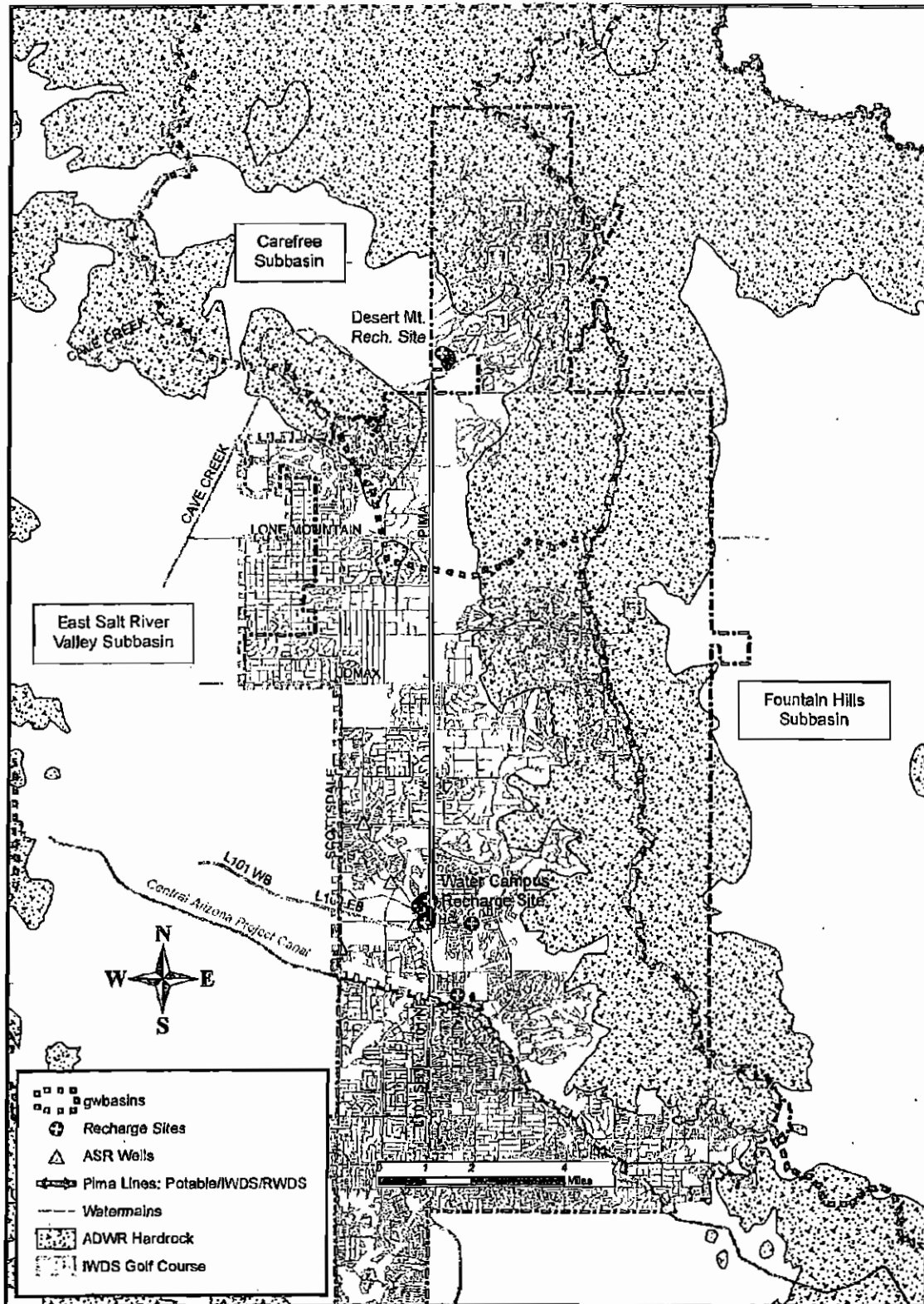
Approved as to form:

  
\_\_\_\_\_  
Bruce Washburn, City Attorney

By: Clifford J. Frey  
Senior Assistant City Attorney

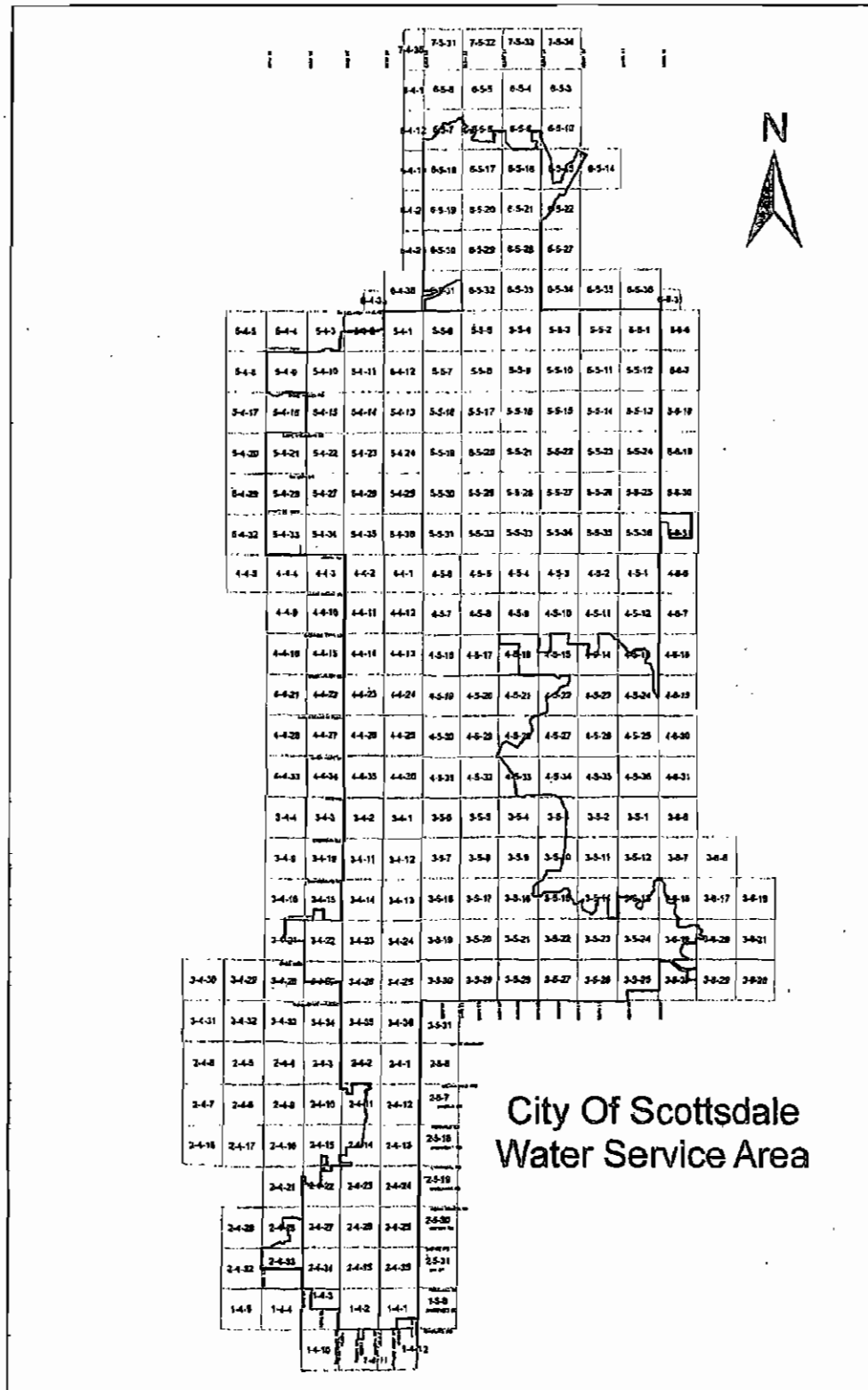
**EXHIBIT A**

**Replenishment Area Map**



**EXHIBIT B**

**Service Area Map**



**EXHIBIT C**

Member Service Area Agreement Between  
Central Arizona Water Conservation District and the City of Scottsdale

**MEMBER SERVICE AREA AGREEMENT  
BETWEEN  
CENTRAL ARIZONA WATER CONSERVATION DISTRICT  
AND  
THE CITY OF SCOTTSDALE  
AMENDMENT NO. 1**

This Amended Member Service Area Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 2013, between the Central Arizona Water Conservation District, a political subdivision of the State of Arizona, and the City of Scottsdale, a municipality.

**RECITALS**

A. The Municipal Provider is engaged in the business of providing water utility service within the Service Area.

B. By Resolution dated October 4, 2001, CAWCD adopted the Original Water Availability Status Resolution, which granted water availability status to the Municipal Provider and approved the Original Member Service Area Agreement and the Original Water Availability Status Contract.

C. On November 21, 2001, the Municipal Provider qualified the Service Area as a Member Service Area of the Central Arizona Groundwater Replenishment District and executed the Original Member Service Area Agreement. Concurrent with the execution of the Original Member Service Area Agreement, the Municipal Provider executed the Original Water Availability Status Contract.

D. Pursuant to the Original Water Availability Status Contract, CAWCD committed to deliver up to 3,460 acre-feet of Replenishment Water per year to the Municipal Provider's Turnout.

E. Based on the Original Water Availability Status Resolution, the Original Member Service Area Agreement and the Original Water Availability Status Contract, the Arizona Department of Water Resources modified the Municipal Provider's designation of assured water supply for the Service Area on April 25, 2002, AWS No. 2002-03. The modification increased the Municipal Provider's designation by 3,460 acre-feet.

F. Pursuant to the Original Water Availability Status Contract, and as required by A.R.S. 48-3772.B.10.d and the Municipal Provider's designation of assured water supply, the Municipal Provider acquired certain lands (the "Original Lands") and an associated water supply in the Harquahala Valley to serve as the Long-Term Water Supply.

G. The Municipal Provider will, at some time, sell the Original Land and the associated water supply it owns in the Harquahala Valley, which currently serves as the Long-Term Water Supply. The Municipal Provider intends to acquire other lands and an associated water supply in the Harquahala Valley to serve as the Long-Term Water Supply.

H. The Municipal Provider desires to amend the Original Water Availability Status Contract to reduce CAWCD's obligation to deliver Replenishment Water to the Municipal Provider's Turnout from 3,460 acre-feet per year to 2,910 acre-feet per year.

I. The Municipal Provider has applied to the Arizona Department of Water Resources for a modification of its designation of an assured water supply for the Service Area pursuant to Arizona Revised Statutes Title 45, Chapter 2, Article 9.

J. Amending the Original Water Availability Status Contract and modifying the Municipal Provider's designation of assured water supply requires conforming amendments to the Member Service Area Agreement. Accordingly, the parties desire to amend the Original Member Service Area Agreement. This Amended Agreement will be effective immediately and automatically upon the satisfaction of the conditions stated in Articles 2(i) and 2(ii) of the Amended Water Availability Status Contract.

K. As permitted by Arizona Revised Statutes § 45-576.07(A), the Municipal Provider desires to satisfy the water sufficiency and availability requirement set forth in Arizona Revised Statutes Section 45-576(J)(1), to enable it to modify its designation of assured water supply through a Water Availability Status Resolution of CAWCD. In order for CAWCD to adopt a resolution granting Water Availability Status to the Municipal Provider, Arizona Revised Statutes Section 48-3772.B.10 requires that the Municipal Provider qualify the Service Area as a Member Service Area pursuant to the Groundwater Replenishment Statute. As a Member Service Area, the Municipal Provider will be a member of the Central Arizona Groundwater Replenishment District, an operating subdivision of CAWCD.

L. To qualify the Service Area as a Member Service Area, the Groundwater Replenishment Statute requires the Municipal Provider to execute and deliver this Amended Agreement in accordance with Arizona Revised Statutes § 48-3780.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, and intending to be legally bound, the parties hereby agree as follows:

#### **ARTICLE 1 DEFINITIONS**

As used in this Amended Agreement, the following terms, when capitalized, shall mean:

1.1 "AMENDED AGREEMENT" means this Amended Member Service Area Agreement between CAWCD and the City of Scottsdale, as amended from time to time.

1.2 "AMENDED WATER AVAILABILITY STATUS CONTRACT TO REPLENISH GROUNDWATER" means the Amended Water Availability Status Contract to Replenish Groundwater Between Central Arizona Water Conservation District and the City of Scottsdale executed concurrent with this Amended Agreement.

1.3 "AMENDED WATER AVAILABILITY STATUS RESOLUTION" is as defined in Article 1.4 of the Amended Water Availability Status Contract to Replenish Groundwater.

1.4 "ANNUAL SCHEDULE" is as defined in Article 1.5 of the Amended Water Availability Status Contract to Replenish Groundwater.

1.5 "CAP" means Central Arizona Project.

1.6 "CAWCD" means the Central Arizona Water Conservation District, a political subdivision of the State of Arizona, and any successor political subdivision.

1.7 "CONTRACT REPLENISHMENT FACILITIES" is as defined in Article 1.8 of the Amended Water Availability Status Contract to Replenish Groundwater.

1.8 "EXCESS GROUNDWATER" means the amount of Groundwater equal to the amount of Groundwater delivered by the Municipal Provider within the Service Area in a calendar year in excess of the amount of Groundwater that may be delivered by the Municipal Provider for use within the Service Area in that calendar year consistent with the applicable Assured and Adequate Water Supply Rules adopted by the Arizona Department of Water Resources for the Phoenix Active Management Area pursuant to Arizona Revised Statutes § 45-576(H). Provided, however, for purposes of this Amended Agreement, Excess Groundwater shall be the Groundwater withdrawn from wells located within the Carefree sub-basin specified in the order designating the Municipal Provider as having an assured water supply for purposes of providing a physically available supply to the Replenishment Area pursuant to Arizona Revised Statutes § 45-576.07, including any replacement wells. The amount of Excess Groundwater reported in any calendar year by the Municipal Provider shall not exceed 2,910 acre-feet.

1.9 "GROUNDWATER" is as defined in Arizona Revised Statutes § 45-101(5).

1.10 "GROUNDWATER REPLENISHMENT STATUTE" means Arizona Revised Statutes, Title 48, Chapter 22.

1.11 "INCREASED DESIGNATION" is as defined in Article 1.14 of the Amended Water Availability Status Contract to Replenish Groundwater.

1.12 "LONG-TERM WATER SUPPLY" is as defined in Article 1.17 of the Amended Water Availability Status Contract to Replenish Groundwater.

1.13 "MEMBER SERVICE AREA" is as defined in Arizona Revised Statutes § 48-3701(11).

1.14 "MUNICIPAL PROVIDER" means the City of Scottsdale, and its successors and assigns.

1.15 "OPERATIONAL RESERVE CREDIT" is as defined in Article 1.21 of the Amended Water Availability Status Contract to Replenish Groundwater.

1.16 "REPLENISHMENT ACCOUNT" is as defined in Article 1.27 of the Amended Water Availability Status Contract to Replenish Groundwater.

1.17 "REPLENISHMENT AREA" is as defined in Article 1.28 of the Amended Water Availability Status Contract to Replenish Groundwater.

1.18 "REPLENISHMENT CREDIT" is as defined in Article 1.29 of the Amended Water Availability Status Contract to Replenish Groundwater.

1.19 "REPLENISHMENT TAX" means the annual tax levied by CAWCD against the Municipal Provider in a calendar year based on the Service Area Replenishment Obligation.

1.20 "RESOLUTION" means the Resolution of the Municipal Provider regarding Membership in the Central Arizona Groundwater Replenishment District pursuant to this Amended Agreement, to be adopted pursuant to Arizona Revised Statutes § 48-3780.

1.21 "SERVICE AREA" is as defined in Arizona Revised Statutes § 45-402.31. A map of the Municipal Provider's current Service Area is attached to and incorporated into this Agreement as Exhibit A.

1.22 "SERVICE AREA REPLENISHMENT OBLIGATION" means, with respect to the Service Area, the Excess Groundwater in a particular calendar year reduced by the Operational Reserve Credits, Replenishment Credits and Statutory Reserve Credits, if any, applied by CAWCD with respect to the Service Area under Arizona Revised Statutes § 48-3772(H).

1.23 "STATUTORY RESERVE CREDIT" is as defined in Article 1.34 of the Amended Water Availability Status Contract to Replenish Groundwater.

## **ARTICLE 2 REPORTING REQUIREMENTS**

In accordance with Arizona Revised Statutes § 48-3775(B), on or before March 31 of each year after the publication of the Resolution, the Municipal Provider shall file with CAWCD and with the Director of the Department of Water Resources the report that is required to be filed under Article 14 of the Amended Water Availability Status Contract to Replenish Groundwater.

### **ARTICLE 3 REPLENISHMENT TAX**

3.1 Levy of Replenishment Tax. CAWCD shall levy the Replenishment Tax against the Municipal Provider in accordance with Arizona Revised Statutes § 48-3781.

3.2 Annual Statement. On or before the third Monday of August of each year after the publication of the Resolution, CAWCD will transmit a statement to the Municipal Provider stating the amount of the Replenishment Tax. The Replenishment Tax shall be equal to the assessment rate per acre-foot of Groundwater fixed by CAWCD for the Phoenix Active Management Area multiplied by the Service Area Replenishment Obligation.

3.3 Payment of Replenishment Tax. On or before October 15 of each year after the publication of the Resolution, the Municipal Provider shall pay to CAWCD an amount equal to the Replenishment Tax levied by CAWCD.

3.4 Interest, Cost and Penalties. If the Replenishment Tax is not paid when due, CAWCD will be entitled to interest, costs and penalties as provided by Arizona Revised Statutes § 48-3782.

### **ARTICLE 4 WATER AVAILABILITY STATUS CONTRACT TO REPLENISH GROUNDWATER**

CAWCD and the Municipal Provider shall execute concurrent with this Amended Agreement, the Amended Water Availability Status Contract to Replenish Groundwater in the form attached hereto as Exhibit B. The Municipal Provider shall accrue Operational Reserve Credits, Replenishment Credits and Statutory Reserve Credits under the Amended Water Availability Status Contract to Replenish Groundwater in advance of incurring any Service Area Replenishment Obligation under this Amended Agreement. Every year CAWCD shall first apply available Operational Reserve Credits and Replenishment Credits, and then, if necessary, apply available Statutory Reserve Credits until exhausted, against any Excess Groundwater delivered by the Municipal Provider, so that the Service Area Replenishment Obligation equals zero. If in any year, CAWCD is unable to offset all Excess Groundwater with Operational Reserve Credits, Replenishment Credits and/or Statutory Reserve Credits, and therefore, the Service Area Replenishment Obligation is greater than zero, CAWCD will replenish groundwater for the Municipal Provider at replenishment facilities located

within the Phoenix Active Management Area in accordance with Arizona Revised Statutes § 48-3771(B) and 48-3772(I).

## **ARTICLE 5 ENFORCEMENT POWERS**

5.1 Penalty for Failure to Report. If the Municipal Provider fails to timely file a Report as required by CAWCD, CAWCD may assess a penalty in accordance with Arizona Revised Statutes § 48-3775(G).

5.2 Inspections, Investigations and Audits. The CAWCD has the rights provided under Arizona Revised Statutes § 48-3783 with respect to inspections, investigations and audits.

## **ARTICLE 6 DEFAULT AND REMEDIES**

6.1 Default. The occurrence of any of the following events constitutes an event of default by the Municipal Provider:

6.1.1 The failure of the Municipal Provider to perform any term, covenant or condition of this Amended Agreement, if that failure continues for thirty days following the Municipal Provider's receipt of written notice from CAWCD.

6.1.2 The physical or legal unavailability of the Long-Term Water Supply, including any replacement for the Long-Term Water Supply.

6.1.3 (i) The filing by or against the Municipal Provider of a petition to have the Municipal Provider adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against the Municipal Provider, the same is dismissed within 60 days); (ii) the making by the Municipal Provider of any general assignment for the benefit of creditors; (iii) the appointment of a trustee or receiver to take possession of substantially all of the Municipal Provider's assets, when possession is not restored to the Municipal Provider within 60 days; or (iv) the attachment, execution or other judicial seizure of substantially all of the Municipal Provider's assets, where such seizure is not discharged within 60 days.

6.2 Remedies. If an event of default occurs, CAWCD shall have no obligation to perform any groundwater replenishment obligation with respect to the Service Area, or any other obligations under this Amended Agreement, so long as the Municipal Provider remains in default. Except as provided in Articles 5.1 and 5.2 of this Amended Agreement, this shall be the sole remedy available to CAWCD. The Municipal Provider will consult with CAWCD on curing the default.

## **ARTICLE 7 CANCELLATION OF AMENDED WATER AVAILABILITY**

**STATUS CONTRACT TO REPLENISH GROUNDWATER**

If the Amended Water Availability Status Contract to Replenish is cancelled pursuant to Article 3 of such contract, the Parties shall be relieved of all obligations under this Amended Agreement as of the date of such cancellation.

**ARTICLE 8  
GENERAL PROVISIONS**

8.1 Binding Effect. The provisions of this Amended Agreement inure to the benefit of and bind the respective successors and assigns of the parties hereto, provided that no assignment or transfer of this Amended Agreement or any part or interest herein is valid until approved by CAWCD in its sole and absolute discretion.

8.1.1 The Municipal Provider agrees and covenants to CAWCD to execute and record any additional documentation which CAWCD may reasonably require to effectuate the intents and purposes of this Amended Agreement and the Groundwater Replenishment Statute.

8.2 Entire Agreement. This Amended Agreement constitutes the entire agreement between the parties and no understandings or obligations not expressly set forth in this Amended Agreement are binding upon the parties.

8.3 Amendments. This Amended Agreement may be modified, amended or revoked only (i) by the express written agreement of CAWCD, the Municipal Provider and the Arizona Department of Water Resources; or (ii) by amendment statutes, rules or regulations or successor statutes, rules or regulations, as contemplated by Paragraph 8.5.

8.4 Interpretation. This Amended Agreement is governed by and must be construed and interpreted in accordance with and in reference to the laws of the State of Arizona, including but not limited to the Groundwater Replenishment Statute.

8.5 Rules, Regulations and Successor Statutes. All references in this Amended Agreement to Arizona Revised Statutes include all rules and regulations promulgated by the Department under such statutes and all amendments and successor statutes, rules and regulations to such statutes, rules and regulations.

8.6 Additions to and Extensions of the Service Area. The Municipal Provider shall submit an amended Service Area map to CAWCD simultaneously with each submission of an amended Service Area map to the Arizona Department of Water Resources.

8.7 Severability. Any determination by any court of competent jurisdiction that any provision of this Amended Agreement is invalid or unenforceable does not affect the validity or enforceability of any other provision of this Amended Agreement.

8.8 Captions. All captions, titles or headings in this Amended Agreement are used for the purpose of reference and convenience only and do not limit, modify or otherwise affect any of the provisions of this Amended Agreement.

8.9 Notices. Except as otherwise required by law, any notice given in connection with this Amended Agreement must be in writing and must be given by personal delivery, overnight delivery, facsimile, or United States certified or registered mail. Any such notice must be addressed to the appropriate party at the following address (or at any other address as a party may hereafter designate by written notice given as required by this paragraph):

CAWCD: For delivery use:

Central Arizona Water Conservation District  
23636 North 7th Street  
Phoenix, Arizona 85024  
Attn: Manager, Groundwater Replenishment District

For U.S. Mail use:

Central Arizona Water Conservation District  
P.O. Box 43020  
Phoenix, Arizona 85080-3020  
Attn: Manager, Groundwater Replenishment District

Municipal  
Provider:

The City of Scottsdale  
9379 East San Salvador Drive  
Scottsdale, Arizona 85258  
Attn: General Manager, Water Resources Department

With a copy to:

The City of Scottsdale City Attorney's Office  
3939 Drinkwater Blvd.  
Scottsdale, AZ 85251

Notice is deemed to have been given on the date on which notice is personally delivered, delivered to an overnight delivery service, transmitted by facsimile, or mailed. Notice is deemed to have been received on the date on which the notice is actually received or delivery is refused.

IN WITNESS WHEREOF, the Parties to this Amended Agreement have executed this Amended Agreement as of the date first set forth above.

CAWCD: CENTRAL ARIZONA WATER CONSERVATION DISTRICT

By: \_\_\_\_\_  
Pamela Pickard

Its: President

Attest: \_\_\_\_\_  
Secretary

MUNICIPAL  
PROVIDER: THE CITY OF SCOTTSDALE

By: \_\_\_\_\_  
W.J. "Jim" Lane

Its: Mayor

Attest: \_\_\_\_\_  
Carolyn Jagger, City Clerk

Approved as to form:

\_\_\_\_\_  
Bruce Washburn, City Attorney  
By: Clifford J. Frey  
Senior Assistant City Attorney

Contract No. 2000-199-COS-A1

**EXHIBIT A**

**Service Area Map**

10587874v1

Page 1 of 1

Exhibit "C" to Contract 2000-200-COS-A1  
Page 11 of 12

10587169v1

Contract No. 2000-199-COS-A1

**EXHIBIT B**

Water Availability Status Contract to Replenish Groundwater  
Between Central Arizona Water Conservation District and the City of Scottsdale

10587874v1

Page 1 of 1

Exhibit "C" to Contract 2000-200-COS-A1  
Page 12 of 12

10587169v1

**MEMBER SERVICE AREA AGREEMENT  
BETWEEN  
CENTRAL ARIZONA WATER CONSERVATION DISTRICT  
AND  
THE CITY OF SCOTTSDALE  
AMENDMENT NO. 1**

This Amended Member Service Area Agreement is made this \_\_\_\_ day of \_\_\_\_\_, 2013, between the Central Arizona Water Conservation District, a political subdivision of the State of Arizona, and the City of Scottsdale, a municipality.

**RECITALS**

A. The Municipal Provider is engaged in the business of providing water utility service within the Service Area.

B. By Resolution dated October 4, 2001, CAWCD adopted the Original Water Availability Status Resolution, which granted water availability status to the Municipal Provider and approved the Original Member Service Area Agreement and the Original Water Availability Status Contract.

C. On November 21, 2001, the Municipal Provider qualified the Service Area as a Member Service Area of the Central Arizona Groundwater Replenishment District and executed the Original Member Service Area Agreement. Concurrent with the execution of the Original Member Service Area Agreement, the Municipal Provider executed the Original Water Availability Status Contract.

D. Pursuant to the Original Water Availability Status Contract, CAWCD committed to deliver up to 3,460 acre-feet of Replenishment Water per year to the Municipal Provider's Turnout.

E. Based on the Original Water Availability Status Resolution, the Original Member Service Area Agreement and the Original Water Availability Status Contract, the Arizona Department of Water Resources modified the Municipal Provider's designation of assured water supply for the Service Area on April 25, 2002, AWS No. 2002-03. The modification increased the Municipal Provider's designation by 3,460 acre-feet.

F. Pursuant to the Original Water Availability Status Contract, and as required by A.R.S. 48-3772.B.10.d and the Municipal Provider's designation of assured water supply, the Municipal Provider acquired certain lands (the "Original Lands") and an associated water supply in the Harquahala Valley to serve as the Long-Term Water Supply.

G. The Municipal Provider will, at some time, sell the Original Land and the associated water supply it owns in the Harquahala Valley, which currently serves as the Long-Term Water Supply. The Municipal Provider intends to acquire other lands and an associated water supply in the Harquahala Valley to serve as the Long-Term Water Supply.

H. The Municipal Provider desires to amend the Original Water Availability Status Contract to reduce CAWCD's obligation to deliver Replenishment Water to the Municipal Provider's Turnout from 3,460 acre-feet per year to 2,910 acre-feet per year.

I. The Municipal Provider has applied to the Arizona Department of Water Resources for a modification of its designation of an assured water supply for the Service Area pursuant to Arizona Revised Statutes Title 45, Chapter 2, Article 9.

J. Amending the Original Water Availability Status Contract and modifying the Municipal Provider's designation of assured water supply requires conforming amendments to the Member Service Area Agreement. Accordingly, the parties desire to amend the Original Member Service Area Agreement. This Amended Agreement will be effective immediately and automatically upon the satisfaction of the conditions stated in Articles 2(i) and 2(ii) of the Amended Water Availability Status Contract.

K. As permitted by Arizona Revised Statutes § 45-576.07(A), the Municipal Provider desires to satisfy the water sufficiency and availability requirement set forth in Arizona Revised Statutes Section 45-576(J)(1), to enable it to modify its designation of assured water supply through a Water Availability Status Resolution of CAWCD. In order for CAWCD to adopt a resolution granting Water Availability Status to the Municipal Provider, Arizona Revised Statutes Section 48-3772.B.10 requires that the Municipal Provider qualify the Service Area as a Member Service Area pursuant to the Groundwater Replenishment Statute. As a Member Service Area, the Municipal Provider will be a member of the Central Arizona Groundwater Replenishment District, an operating subdivision of CAWCD.

L. To qualify the Service Area as a Member Service Area, the Groundwater Replenishment Statute requires the Municipal Provider to execute and deliver this Amended Agreement in accordance with Arizona Revised Statutes § 48-3780.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, and intending to be legally bound, the parties hereby agree as follows:

## **ARTICLE 1 DEFINITIONS**

As used in this Amended Agreement, the following terms, when capitalized, shall mean:

1.1 "AMENDED AGREEMENT" means this Amended Member Service Area Agreement between CAWCD and the City of Scottsdale, as amended from time to time.

1.2 "AMENDED WATER AVAILABILITY STATUS CONTRACT TO REPLENISH GROUNDWATER" means the Amended Water Availability Status Contract to Replenish Groundwater Between Central Arizona Water Conservation District and the City of Scottsdale executed concurrent with this Amended Agreement.

1.3 "AMENDED WATER AVAILABILITY STATUS RESOLUTION" is as defined in Article 1.4 of the Amended Water Availability Status Contract to Replenish Groundwater.

1.4 "ANNUAL SCHEDULE" is as defined in Article 1.5 of the Amended Water Availability Status Contract to Replenish Groundwater.

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1.6 "CAWCD" means the Central Arizona Water Conservation District, a political subdivision of the State of Arizona, and any successor political subdivision.

1.7 "CONTRACT REPLENISHMENT FACILITIES" is as defined in Article 1.8 of the Amended Water Availability Status Contract to Replenish Groundwater.

1.8 "EXCESS GROUNDWATER" means the amount of Groundwater equal to the amount of Groundwater delivered by the Municipal Provider within the Service Area in a calendar year in excess of the amount of Groundwater that may be delivered by the Municipal Provider for use within the Service Area in that calendar year consistent with the applicable Assured and Adequate Water Supply Rules adopted by the Arizona Department of Water Resources for the Phoenix Active Management Area pursuant to Arizona Revised Statutes § 45-576(H). Provided, however, for purposes of this Amended Agreement, Excess Groundwater shall be the Groundwater withdrawn from wells located within the Carefree sub-basin specified in the order designating the Municipal Provider as having an assured water supply for purposes of providing a physically available supply to the Replenishment Area pursuant to Arizona Revised Statutes § 45-576.07, including any replacement wells. The amount of Excess Groundwater reported in any calendar year by the Municipal Provider shall not exceed 2,910 acre-feet.

1.9 "GROUNDWATER" is as defined in Arizona Revised Statutes § 45-101(5).

1.10 "GROUNDWATER REPLENISHMENT STATUTE" means Arizona Revised Statutes, Title 48, Chapter 22.

1.11 "INCREASED DESIGNATION" is as defined in Article 1.14 of the Amended Water Availability Status Contract to Replenish Groundwater.

1.12 "LONG-TERM WATER SUPPLY" is as defined in Article 1.17 of the Amended Water Availability Status Contract to Replenish Groundwater.

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1.14 "MUNICIPAL PROVIDER" means the City of Scottsdale, and its successors and assigns.

1.15 "OPERATIONAL RESERVE CREDIT" is as defined in Article 1.21 of the Amended Water Availability Status Contract to Replenish Groundwater.

1.16 "REPLENISHMENT ACCOUNT" is as defined in Article 1.27 of the Amended Water Availability Status Contract to Replenish Groundwater.

1.17 "REPLENISHMENT AREA" is as defined in Article 1.28 of the Amended Water Availability Status Contract to Replenish Groundwater.

1.18 "REPLENISHMENT CREDIT" is as defined in Article 1.29 of the Amended Water Availability Status Contract to Replenish Groundwater.

1.19 "REPLENISHMENT TAX" means the annual tax levied by CAWCD against the Municipal Provider in a calendar year based on the Service Area Replenishment Obligation.

1.20 "RESOLUTION" means the Resolution of the Municipal Provider regarding Membership in the Central Arizona Groundwater Replenishment District pursuant to this Amended Agreement, to be adopted pursuant to Arizona Revised Statutes § 48-3780.

1.21 "SERVICE AREA" is as defined in Arizona Revised Statutes § 45-402.31. A map of the Municipal Provider's current Service Area is attached to and incorporated into this Agreement as Exhibit A.

1.22 "SERVICE AREA REPLENISHMENT OBLIGATION" means, with respect to the Service Area, the Excess Groundwater in a particular calendar year reduced by the Operational Reserve Credits, Replenishment Credits and Statutory Reserve Credits, if any, applied by CAWCD with respect to the Service Area under Arizona Revised Statutes § 48-3772(H).

1.23 "STATUTORY RESERVE CREDIT" is as defined in Article 1.34 of the Amended Water Availability Status Contract to Replenish Groundwater.

## **ARTICLE 2 REPORTING REQUIREMENTS**

In accordance with Arizona Revised Statutes § 48-3775(B), on or before March 31 of each year after the publication of the Resolution, the Municipal Provider shall file with CAWCD and with the Director of the Department of Water Resources the report that is required to be filed under Article 14 of the Amended Water Availability Status Contract to Replenish Groundwater.

### **ARTICLE 3 REPLENISHMENT TAX**

3.1 Levy of Replenishment Tax. CAWCD shall levy the Replenishment Tax against the Municipal Provider in accordance with Arizona Revised Statutes § 48-3781.

3.2 Annual Statement. On or before the third Monday of August of each year after the publication of the Resolution, CAWCD will transmit a statement to the Municipal Provider stating the amount of the Replenishment Tax. The Replenishment Tax shall be equal to the assessment rate per acre-foot of Groundwater fixed by CAWCD for the Phoenix Active Management Area multiplied by the Service Area Replenishment Obligation.

3.3 Payment of Replenishment Tax. On or before October 15 of each year after the publication of the Resolution, the Municipal Provider shall pay to CAWCD an amount equal to the Replenishment Tax levied by CAWCD.

3.4 Interest, Cost and Penalties. If the Replenishment Tax is not paid when due, CAWCD will be entitled to interest, costs and penalties as provided by Arizona Revised Statutes § 48-3782.

### **ARTICLE 4 WATER AVAILABILITY STATUS CONTRACT TO REPLENISH GROUNDWATER**

CAWCD and the Municipal Provider shall execute concurrent with this Amended Agreement, the Amended Water Availability Status Contract to Replenish Groundwater in the form attached hereto as Exhibit B. The Municipal Provider shall accrue Operational Reserve Credits, Replenishment Credits and Statutory Reserve Credits under the Amended Water Availability Status Contract to Replenish Groundwater in advance of incurring any Service Area Replenishment Obligation under this Amended Agreement. Every year CAWCD shall first apply available Operational Reserve Credits and Replenishment Credits, and then, if necessary, apply available Statutory Reserve Credits until exhausted, against any Excess Groundwater delivered by the Municipal Provider, so that the Service Area Replenishment Obligation equals zero. If in any year, CAWCD is unable to offset all Excess Groundwater with Operational Reserve Credits, Replenishment Credits and/or Statutory Reserve Credits, and therefore, the Service Area Replenishment Obligation is greater than zero, CAWCD will replenish groundwater for the Municipal Provider at replenishment facilities located

within the Phoenix Active Management Area in accordance with Arizona Revised Statutes § 48-3771(B) and 48-3772(I).

## **ARTICLE 5 ENFORCEMENT POWERS**

5.1 Penalty for Failure to Report. If the Municipal Provider fails to timely file a Report as required by CAWCD, CAWCD may assess a penalty in accordance with Arizona Revised Statutes § 48-3775(G).

5.2 Inspections, Investigations and Audits. The CAWCD has the rights provided under Arizona Revised Statutes § 48-3783 with respect to inspections, investigations and audits.

## **ARTICLE 6 DEFAULT AND REMEDIES**

6.1 Default. The occurrence of any of the following events constitutes an event of default by the Municipal Provider:

6.1.1 The failure of the Municipal Provider to perform any term, covenant or condition of this Amended Agreement, if that failure continues for thirty days following the Municipal Provider's receipt of written notice from CAWCD.

6.1.2 The physical or legal unavailability of the Long-Term Water Supply, including any replacement for the Long-Term Water Supply.

6.1.3 (i) The filing by or against the Municipal Provider of a petition to have the Municipal Provider adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against the Municipal Provider, the same is dismissed within 60 days); (ii) the making by the Municipal Provider of any general assignment for the benefit of creditors; (iii) the appointment of a trustee or receiver to take possession of substantially all of the Municipal Provider's assets, when possession is not restored to the Municipal Provider within 60 days; or (iv) the attachment, execution or other judicial seizure of substantially all of the Municipal Provider's assets, where such seizure is not discharged within 60 days.

6.2 Remedies. If an event of default occurs, CAWCD shall have no obligation to perform any groundwater replenishment obligation with respect to the Service Area, or any other obligations under this Amended Agreement, so long as the Municipal Provider remains in default. Except as provided in Articles 5.1 and 5.2 of this Amended Agreement, this shall be the sole remedy available to CAWCD. The Municipal Provider will consult with CAWCD on curing the default.

## **ARTICLE 7 CANCELLATION OF AMENDED WATER AVAILABILITY STATUS CONTRACT TO REPLENISH GROUNDWATER**

~~If the Amended Water Availability Status Contract to Replenish is cancelled pursuant to Article 3 of such contract, the Parties shall be relieved of all obligations under this Amended Agreement as of the date of such cancellation.~~

## **ARTICLE 8 GENERAL PROVISIONS**

8.1 Binding Effect. The provisions of this Amended Agreement inure to the benefit of and bind the respective successors and assigns of the parties hereto, provided that no assignment or transfer of this Amended Agreement or any part or interest herein is valid until approved by CAWCD in its sole and absolute discretion.

8.1.1 The Municipal Provider agrees and covenants to CAWCD to execute and record any additional documentation which CAWCD may reasonably require to effectuate the intents and purposes of this Amended Agreement and the Groundwater Replenishment Statute.

8.2 Entire Agreement. This Amended Agreement constitutes the entire agreement between the parties and no understandings or obligations not expressly set forth in this Amended Agreement are binding upon the parties.

8.3 Amendments. This Amended Agreement may be modified, amended or revoked only (i) by the express written agreement of CAWCD, the Municipal Provider and the Arizona Department of Water Resources; or (ii) by amendment statutes, rules or regulations or successor statutes, rules or regulations, as contemplated by Paragraph 8.5.

8.4 Interpretation. This Amended Agreement is governed by and must be construed and interpreted in accordance with and in reference to the laws of the State of Arizona, including but not limited to the Groundwater Replenishment Statute.

8.5 Rules, Regulations and Successor Statutes. All references in this Amended Agreement to Arizona Revised Statutes include all rules and regulations promulgated by the Department under such statutes and all amendments and successor statutes, rules and regulations to such statutes, rules and regulations.

8.6 Additions to and Extensions of the Service Area. The Municipal Provider shall submit an amended Service Area map to CAWCD simultaneously with each submission of an amended Service Area map to the Arizona Department of Water Resources.

8.7 Severability. Any determination by any court of competent jurisdiction that any provision of this Amended Agreement is invalid or unenforceable does not affect the validity or enforceability of any other provision of this Amended Agreement.

~~8.8 Captions.~~ All captions, titles or headings in this Amended Agreement are used for the purpose of reference and convenience only and do not limit, modify or otherwise affect any of the provisions of this Amended Agreement.

8.9 Notices. Except as otherwise required by law, any notice given in connection with this Amended Agreement must be in writing and must be given by personal delivery, overnight delivery, facsimile, or United States certified or registered mail. Any such notice must be addressed to the appropriate party at the following address (or at any other address as a party may hereafter designate by written notice given as required by this paragraph):

CAWCD: For delivery use:

Central Arizona Water Conservation District  
23636 North 7th Street  
Phoenix, Arizona 85024  
Attn: Manager, Groundwater Replenishment District

For U.S. Mail use:

Central Arizona Water Conservation District  
P.O. Box 43020  
Phoenix, Arizona 85080-3020  
Attn: Manager, Groundwater Replenishment District

Municipal  
Provider:

The City of Scottsdale  
9379 East San Salvador Drive  
Scottsdale, Arizona 85258  
Attn: General Manager, Water Resources Department

With a copy to:

The City of Scottsdale City Attorney's Office  
3939 Drinkwater Blvd.  
Scottsdale, AZ 85251

Notice is deemed to have been given on the date on which notice is personally delivered, delivered to an overnight delivery service, transmitted by facsimile, or mailed. Notice is deemed to have been received on the date on which the notice is actually received or delivery is refused.

~~IN WITNESS WHEREOF, the Parties to this Amended Agreement have~~  
executed this Amended Agreement as of the date first set forth above.

CAWCD: CENTRAL ARIZONA WATER CONSERVATION DISTRICT

By: \_\_\_\_\_  
Pamela Pickard

Its: President

Attest: \_\_\_\_\_  
Secretary

MUNICIPAL  
PROVIDER: THE CITY OF SCOTTSDALE

By: \_\_\_\_\_  
W.J. "Jim" Lane

Its: Mayor

Attest: \_\_\_\_\_  
Carolyn Jagger, City Clerk

Approved as to form:

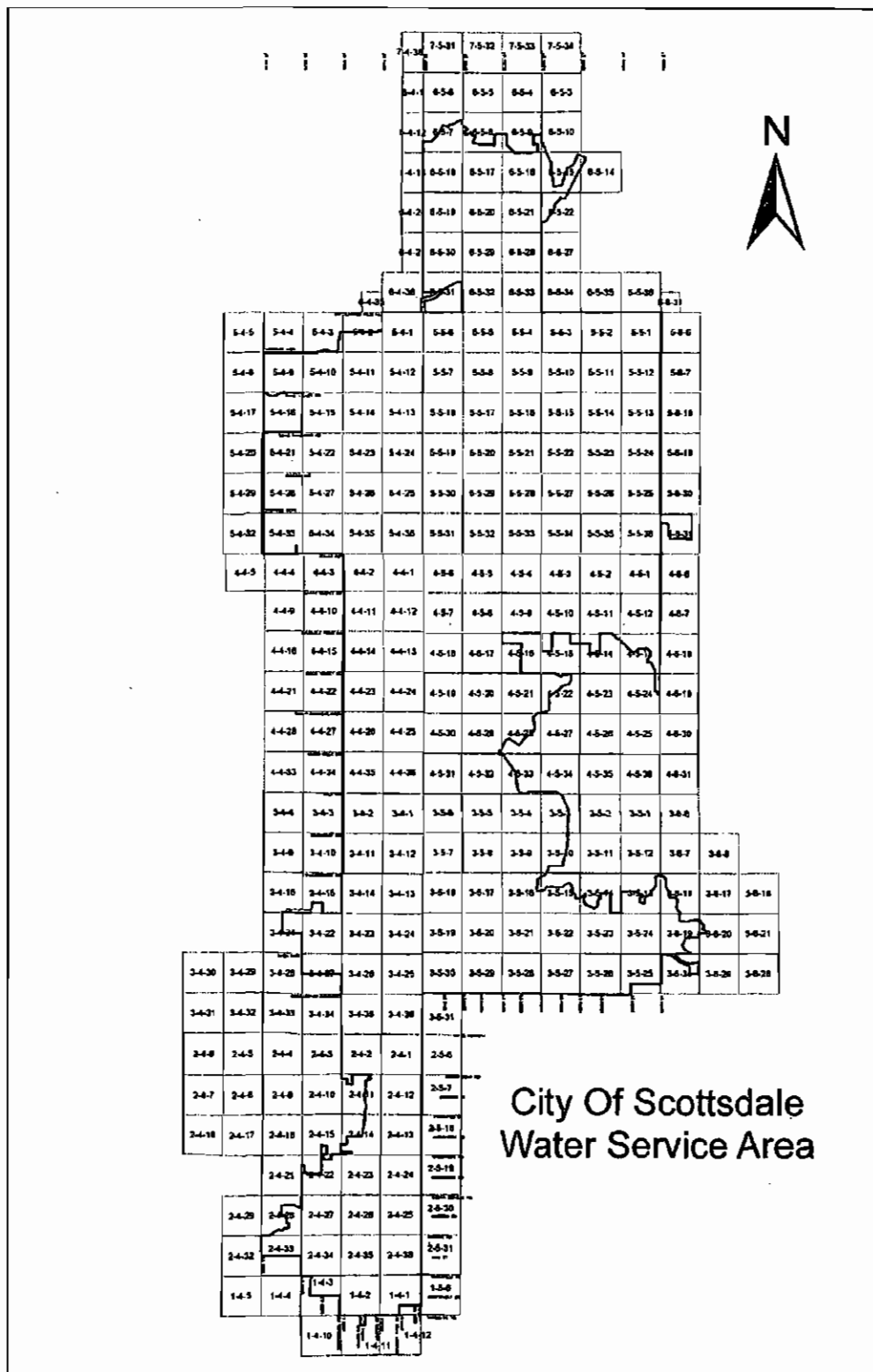
Clifford J. Frey  
Bruce Washburn, City Attorney

By: Clifford J. Frey  
Senior Assistant City Attorney

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**EXHIBIT A**

**Service Area Map**



**EXHIBIT B**

Water Availability Status Contract to Replenish Groundwater  
Between Central Arizona Water Conservation District and the City of Scottsdale

**WATER AVAILABILITY STATUS  
CONTRACT TO REPLENISH GROUNDWATER  
BETWEEN  
CENTRAL ARIZONA WATER CONSERVATION DISTRICT  
AND  
THE CITY OF SCOTTSDALE  
AMENDMENT No. 1**

This Amended Water Availability Status Contract to Replenish Groundwater is made this \_\_\_\_ day of \_\_\_\_\_, 2013, between the Central Arizona Water Conservation District, a political subdivision of the State of Arizona, and the City of Scottsdale, a municipality.

**RECITALS**

A. A.R.S. § 48-3772, subsection B, paragraph 10, authorizes CAWCD to adopt resolutions granting water availability status to a member service area of a city, town or private water company upon satisfaction of the specific statutory requirements set forth therein.

B. A.R.S. § 45-576.07, subsection A, authorizes a member service area of a city, town or private water company to satisfy the water sufficiency and availability requirement for obtaining or maintaining a designation of assured water supply, through a water availability status resolution of the CAWCD Board, and upon satisfaction of other specific statutory requirements set forth in A.R.S. § 45-576.07.

C. On June 15, 2000, the Director of the Arizona Department of Water Resources found pursuant to A.R.S. § 45-576.07, subsection H, that CAWCD has the capability to grant water availability status to member service areas in the Phoenix active management area.

D. By Resolution dated October 4, 2001, CAWCD adopted the Original Water Availability Status Resolution, which granted water availability status to the Municipal Provider and approved the Original Member Service Area Agreement and the Original Water Availability Status Contract.

E. On November 21, 2001, the Municipal Provider qualified the Service Area as a Member Service Area of the Central Arizona Groundwater Replenishment District and executed the Original Member Service Area Agreement. Concurrent with the execution of the Original Member Service Area Agreement, the Municipal Provider executed the Original Water Availability Status Contract.

F. Pursuant to the Original Water Availability Status Contract, CAWCD committed to deliver up to 3,460 acre-feet of Replenishment Water per year to the Municipal Provider's Turnout.

G. Based on the Original Water Availability Status Resolution, the Original Member Service Area Agreement and the Original Water Availability Status Contract, the Arizona Department of Water Resources modified the Municipal Provider's designation of assured water supply for the Service Area on April 25, 2002, AWS No. 2002-03. The modification increased the Municipal Provider's designation by 3,460 acre-feet.

H. Pursuant to the Original Water Availability Status Contract, and as required by A.R.S. 48-3772.B.10.d and the Municipal Provider's designation of assured water supply, the Municipal Provider acquired certain lands (the "Original Land") and an associated water supply in the Harquahala Valley to serve as the Long-Term Water Supply.

I. The Municipal Provider will, at some time, sell the Original Land and the associated water supply it owns in the Harquahala Valley, which currently serves as the Long-Term Water Supply. The Municipal Provider intends to acquire other lands and an associated water supply in the Harquahala Valley to serve as the Long-Term Water Supply.

J. The Municipal Provider desires to amend the Original Water Availability Status Contract to reduce CAWCD's obligation to deliver Replenishment Water to the Municipal Provider's Turnout from 3,460 acre-feet per year to 2,910 acre-feet per year.

K. The Municipal Provider has applied to the Arizona Department of Water Resources for a modification of its designation of an assured water supply for the Service Area pursuant to Arizona Revised Statutes Title 45, Chapter 2, Article 9.

L. As permitted by Arizona Revised Statutes § 45-576.07(A), the Municipal Provider desires to satisfy the water sufficiency and availability requirement set forth in Arizona Revised Statutes § 45-576(J)(1), to enable it to modify its designation of assured water supply, through an Amended Water Availability Status Resolution of CAWCD and through this Amended Contract.

M. CAWCD has determined that it can best accomplish the requirements for granting water availability status, which are set forth in Arizona Revised Statutes §45-576.07, by executing this Amended Contract with the Municipal Provider. This Amended Contract will be a part of the Water Availability Status Resolution. This Amended Contract is authorized by Arizona Revised Statutes § 48-3772.B.9.

N. CAWCD has reviewed its requirements for transportation of Central Arizona Project Water, its contracts, subcontracts, letter agreements, excess water contracts, and other contractual obligations, its member service area and member land

requirements and has determined that it can meet those obligations and that capacity remains in the Central Arizona Project to meet the obligations undertaken in this Amended Contract.

O. The Municipal Provider intends to acquire property in the Harquahala Valley. The Municipal Provider is acquiring the property for the water rights associated with the property. The Municipal Provider intends to use these water rights to satisfy its obligation under this Amended Contract to acquire a Long-Term Water Supply.

P. The Parties desire to amend the Original Water Availability Status Contract as set forth below. Upon satisfaction of the conditions stated in Article 2(i) and (ii) of this Amended Water Availability Status Contract, this Amended Contract shall supersede and replace the Original Water Availability Status Contract.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, and intending to be legally bound, the parties hereby agree as follows:

#### **ARTICLE 1 DEFINITIONS**

As used in this Amended Contract, the following terms, when capitalized, shall mean:

1.1 "ADWR" means the Arizona Department of Water Resources.

1.2 "AMENDED CONTRACT" means this Amended Water Availability Status Contract to Replenish Groundwater between CAWCD and the City of Scottsdale, as amended from time to time.

1.3 "AMENDED MEMBER SERVICE AREA AGREEMENT" means the Amended Member Service Area Agreement between Central Arizona Water Conservation District and the City of Scottsdale executed concurrent with this Amended Contract, and any revisions thereof.

1.4 "AMENDED WATER AVAILABILITY STATUS RESOLUTION" means the amended Resolution of CAWCD granting water availability status to the Municipal Provider pursuant to this Amended Contract, to be adopted pursuant to Arizona Revised Statutes Section 48-3772.B.10.

1.5 "ANNUAL SCHEDULE" means the schedule of deliveries of Replenishment Water as prepared in accordance with Article 6 of this Amended Contract.

1.6 "CAP" means Central Arizona Project.

1.7 "CAWCD" means the Central Arizona Water Conservation District, a political subdivision of the State of Arizona, and any successor political subdivision.

1.8 "CONTRACT REPLENISHMENT FACILITIES" means the underground storage facilities, which meet the requirements of Article 5 of this Amended Contract, and any additional component constructed pursuant to Article 10 of this Amended Contract.

1.9 "CONTRACT REPLENISHMENT TAX" means the annual tax levied by CAWCD against the Municipal Provider in a calendar year calculated in accordance with Article 18 of this Amended Contract.

1.10 "EXCESS GROUNDWATER" is as defined in Article 1.8 of the Amended Member Service Area Agreement.

1.11 "EXCESS WATER RATE" means the rate established annually by CAWCD for excess CAP water used in satisfying the Central Arizona Groundwater Replenishment District's groundwater replenishment obligation.

1.12 "GROUNDWATER" is as defined in Arizona Revised Statutes § 45-101(5).

1.13 "GROUNDWATER REPLENISHMENT STATUTE" means Arizona Revised Statutes, Title 48, Chapter 22.

1.14 "INCREASED DESIGNATION" means the annual volume of water identified by ADWR in the Municipal Provider's assured water supply designation, or any modifications thereto, as being dependent upon the Amended Water Availability Status Resolution and this Amended Contract. This volume shall not exceed 2,910 acre-feet per year. The Increased Designation may only be used to satisfy the demand of those customers of the Municipal Provider served by wells located within the Carefree sub-basin.

1.15 "IRRIGATION WATER DISTRIBUTION SYSTEM" means the Municipal Provider's pump stations and transmission lines that will transport Replenishment Water from the Municipal Provider's Turnout to the Contract Replenishment Facilities and for direct delivery.

1.16 "LONG-TERM STORAGE CREDIT" is as defined in Arizona Revised Statutes § 45-802.01.11.

1.17 "LONG-TERM WATER SUPPLY" means water from any lawfully available source, including any replacement water supply, the rights to which are owned, leased or otherwise legally held by the Municipal Provider, except groundwater withdrawn from within an active management area.

1.18 "MEMBER SERVICE AREA" is as defined in Arizona Revised Statutes § 48-3701(11).

1.19 "MUNICIPAL PROVIDER" means the City of Scottsdale, a municipality, and its successors and assigns.

1.20 "MUNICIPAL PROVIDER'S TURNOUT" means the point on the CAP canal where Replenishment Water is diverted from the CAP canal into the Irrigation Water Distribution System. The Municipal Provider's Turnout is located at milepost 172.959 on the CAP canal.

1.21 "OPERATIONAL RESERVE CREDIT" means water stored underground at Contract Replenishment Facilities pursuant to Article 9 of this Amended Contract, which ADWR has credited to CAWCD's conservation district account and which CAWCD has allocated to the Replenishment Account.

1.22 "OPTION PERIOD" means the period of time from January 1, 2002 through and including December 31, 2020.

1.23 "ORIGINAL MEMBER SERVICE AREA AGREEMENT" means the Member Service Area Agreement Between Central Arizona Water Conservation District and the City of Scottsdale dated November 21, 2001.

1.24 "ORIGINAL WATER AVAILABILITY STATUS CONTRACT" means the Water Availability Status Contract to Replenish Groundwater Between CAWCD and the City of Scottsdale dated November 21, 2001.

1.25 "ORIGINAL WATER AVAILABILITY STATUS RESOLUTION" means the Resolution of CAWCD granting water availability status to the Municipal Provider, pursuant to Arizona Revised Statutes Section 48-3772.B.10, dated October 4, 2001.

1.26 "PARTIES" means one or both of the parties to this Amended Contract.

1.27 "REPLENISHMENT ACCOUNT" means the account established by CAWCD for the Municipal Provider pursuant to Article 8 of this Amended Contract.

1.28 "REPLENISHMENT AREA" means the area depicted in Exhibit A, attached and incorporated into this Amended Contract, where Replenishment Water will be stored underground pursuant to this Amended Contract, such that the Municipal Provider may physically access that water for service to its customers.

1.29 "REPLENISHMENT CREDIT" means Replenishment Water stored underground at Contract Replenishment Facilities located in the Carefree sub-basin pursuant to this Amended Contract, except water stored underground pursuant to Articles 9 and 10 of this Amended Contract, which ADWR has credited to CAWCD's conservation district account, and which CAWCD has allocated to the Replenishment Account.

1.30 "REPLENISHMENT WATER" means CAP water or water from any other lawfully available source, including the Long-term Water Supply, except groundwater withdrawn from within an active management area, delivered by CAWCD to the Municipal Provider's Turnout under the terms of this Amended Contract.

1.31 "SERVICE AREA" is as defined in Arizona Revised Statutes § 45-402.31. A map of the Municipal Provider's current Service Area is attached to and incorporated into this Amended Contract as Exhibit B.

1.32 "SERVICE AREA REPLENISHMENT OBLIGATION" is as defined in Article 1.22 of the Amended Member Service Area Agreement.

1.33 "STATUTORY RESERVE ACCOUNT" means the account established by CAWCD for the Municipal Provider pursuant to Article 8 of this Amended Contract.

1.34 "STATUTORY RESERVE CREDIT" means water stored underground at Contract Replenishment Facilities pursuant to Article 10 of this Amended Contract, which ADWR has credited to CAWCD's long-term storage account, and which CAWCD has allocated to the Statutory Reserve Account.

1.35 "UNCONTROLLABLE FORCES" means any cause beyond the control of the Party affected, including but not limited to flood, earthquake, storm, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority, and action or non-action by or failure to obtain the necessary authorizations or approvals from any governmental agency or authority not a Party to this Amended Contract, which by exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Nothing contained herein shall be construed so as to require a Party to settle any strike or labor dispute in which it is involved.

## **ARTICLE 2 EFFECTIVE DATE**

This Amended Contract shall be effective and binding when it has been executed by the Parties. However, neither Party shall be required to perform any of the obligations, or be entitled to receive any of the benefits, under this Amended Contract until: (i) the director of ADWR finds, pursuant to Arizona Revised Statutes § 45-576.07.A., that sufficient groundwater, surface water or effluent will be continuously available to satisfy the Increased Designation for at least 100 years and approves the Municipal Provider's application to modify its designation of assured water supply to include that amount of water to the designation, including issuing or granting all permits required by or pursuant to Arizona Revised Statutes § 45-576.07.A; and (ii) the Municipal Provider's modified designation that is dependent on the execution of this Amended Contract is effective. Until the two (2) conditions stated in subparagraphs (i) and (ii) of this Article 2 have been satisfied, the Original Water Availability Status

Contract will remain in full force and effect, provided, however, that the Original Water Availability Status Contract will be superseded and replaced automatically and immediately by this Amended Water Availability Status Contract upon satisfaction of these two (2) conditions.

### **ARTICLE 3 CANCELLATION**

3.1 If the Municipal Provider acquires a permanent substitute supply of water to satisfy the Increased Designation and the director of ADWR approves a modified designation of assured water supply for the Municipal Provider that incorporates the substituted supply, the Municipal Provider may cancel this Amended Contract upon written notice to CAWCD.

3.2 If the director of ADWR does not issue an order modifying the Municipal Provider's designation of assured water supply within two years of CAWCD's adoption of the Amended Water Availability Status Resolution, either Party may unilaterally cancel this Amended Contract upon written notice to the other Party.

3.3 Upon cancellation of this Amended Contract pursuant to Article 3.1 or 3.2, the Parties shall be relieved of all obligations under this Amended Contract and CAWCD shall repeal the Amended Water Availability Status Resolution. Provided, however, the following obligations shall survive cancellation of this Amended Contract: (1) the Municipal Provider's obligation to pay the Contract Replenishment Tax for any Replenishment Water delivered to the Municipal Provider's Turnout before the date of cancellation; (2) the Municipal Provider's obligation to pay for any Long-term Storage Credits purchased by the Municipal Provider pursuant to Article 11 of this Amended Contract or the Original Water Availability Status Contract before the date of cancellation; and (3) the Municipal Provider's obligation to pay the option fee as set forth in Article 11.4 for the year in which this Amended Contract is cancelled.

### **ARTICLE 4 REPLENISHMENT COMMITMENT**

4.1 CAWCD commits to deliver up to 2,910 acre-feet of Replenishment Water per year to the Municipal Provider's Turnout to satisfy the Increased Designation. The Municipal Provider commits to divert such Replenishment Water at the Municipal Provider's Turnout for storage at Contract Replenishment Facilities and/or for direct delivery to customers served by wells located within the Carefree sub-basin, in accordance with the provisions of Articles 4.2 and 4.3 below.

4.2 Each year, the Municipal Provider shall store that amount of Replenishment Water at Contract Replenishment Facilities located within the Carefree sub-basin necessary to accrue sufficient Replenishment Credits to offset its pumping of Excess Groundwater during that year. In any year, in lieu of pumping Excess Groundwater and storing Replenishment Water to offset such pumping, upon CAWCD's consent, the

Municipal Provider may deliver Replenishment Water directly to its customers served by wells located within the Carefree sub-basin as a replacement supply for Excess Groundwater that would have otherwise been pumped during that year.

4.3 In addition to its obligation under Article 4.2, the Municipal Provider shall store each year that amount of water at Contract Replenishment Facilities necessary to accrue sufficient Long-term Storage Credits to satisfy its obligations under Articles 9 and 10 of this Amended Contract.

#### **ARTICLE 5 CONTRACT REPLENISHMENT FACILITIES AND IRRIGATION WATER DISTRIBUTION SYSTEM**

5.1 All replenishment under this Amended Contract will be accomplished using permitted underground storage facilities that are financed, acquired, developed, constructed, operated and maintained by the Municipal Provider. The Municipal Provider shall be responsible for financing, acquiring, developing, constructing, operating, maintaining and replacing underground storage facilities for the storage of Replenishment Water under the terms of this Amended Contract. Such underground storage facilities shall be constructed within the Replenishment Area, at locations where the Municipal Provider may physically access the stored water for service to its customers within the Carefree sub-basin, and shall comply with the conditions imposed by ADWR, if any, relating to the Increased Designation.

5.2 CAWCD will obtain a water storage permit(s) to store Replenishment Water at the Contract Replenishment Facilities. As operator of the Contract Replenishment Facilities, the Municipal Provider shall store the amounts of Replenishment Water indicated in the Annual Schedule for delivery to the Municipal Provider's Turnout for storage at Contract Replenishment Facilities, on behalf of CAWCD, under CAWCD's water storage permit(s). Replenishment Water stored pursuant to CAWCD's water storage permit(s) at Contract Replenishment Facilities, which is determined by ADWR to meet the requirements of Long-term Storage Credits, will be credited by ADWR to CAWCD's conservation district account and CAWCD's long-term storage account in accordance with the terms of this Amended Contract.

5.3 The Municipal Provider shall be responsible for financing, acquiring, developing, constructing, operating, maintaining and replacing the Irrigation Water Distribution System. The Municipal Provider shall make available a minimum capacity of eight (8) cubic feet per second in the Irrigation Water Distribution System for the transportation of Replenishment Water delivered to the Municipal Provider's Turnout under the terms of this Amended Contract.

#### **ARTICLE 6 ANNUAL SCHEDULE**

6.1 Within 60 days of the effective date of this Amended Contract, the Municipal Provider shall submit a proposed annual schedule indicating: (1) the amounts of Replenishment Water it desires CAWCD to deliver to the Municipal Provider's Turnout during each month of the initial year of water deliveries under this Amended Contract for underground storage at Contract Replenishment Facilities located in the Carefree sub-basin; and (2) the amounts of Replenishment Water it desires CAWCD to deliver to the Municipal Provider's Turnout during each month of the initial year of water deliveries under this Amended Contract for direct delivery to customers served by wells located within the Carefree sub-basin. In preparing the proposed annual schedule, the Municipal Provider shall schedule sufficient Replenishment Water to satisfy its obligations under Article 4 of this Amended Contract. In lieu of submitting a proposed annual schedule, as required by this Article 6.1, the Municipal Provider may rely on the current schedule it has in place with CAWCD for that year.

6.2 Upon receipt of the proposed annual schedule for the initial year of water deliveries, CAWCD shall review it and after consultation with the Municipal Provider, shall make such modifications as are necessary to ensure that the amounts, times and rates of delivery to the Municipal Provider are consistent with the delivery capability of the CAP, considering, among other things, the availability of water and the delivery schedules of all other CAP water users.

6.3 Within 45 days after receipt of the proposed annual schedule for the initial year of water deliveries, CAWCD shall determine and furnish to the Municipal Provider the Annual Schedule for the initial year of water deliveries, which shall show: (1) the amounts of Replenishment Water to be delivered to the Municipal Provider's Turnout during each month of the initial year of water deliveries for underground storage at Contract Replenishment Facilities; and (2) the amounts of Replenishment Water to be delivered to the Municipal Provider's Turnout for direct delivery to customers served by wells located within the Carefree sub-basin, contingent upon the Municipal Provider remaining eligible to receive Replenishment Water under all terms contained in this Amended Contract. The Annual Schedule shall also indicate the anticipated source(s) and volume(s) of Replenishment Water that CAWCD will deliver to the Municipal Provider's Turnout during the initial year of water deliveries, (i.e., excess CAP water, the Long-Term Water Supply or other alternative water supplies.)

6.4 Beginning in 2013, on or before October 1 of each year, the Municipal Provider shall submit a proposed annual schedule indicating: (1) the amounts of Replenishment Water it desires CAWCD to deliver to the Municipal Provider's Turnout during each month of the following year for underground storage at Contract Replenishment Facilities located in the Carefree sub-basin; and (2) the amounts of Replenishment Water it desires CAWCD to deliver to the Municipal Provider's Turnout during each month of the following year for direct delivery to customers served by wells located within the Carefree sub-basin. In preparing the proposed annual schedule, the Municipal Provider shall schedule sufficient Replenishment Water to satisfy its obligations under Article 4 of this Amended Contract.

6.5 Upon receipt of the proposed annual schedule, CAWCD shall review it and after consultation with the Municipal Provider, shall make such modifications as are necessary to ensure that the amounts, times and rates of delivery to the Municipal Provider are consistent with the delivery capability of the CAP, considering, among other things, the availability of water and the delivery schedules of all other CAP water users.

6.6 Beginning in 2013, on or before November 15 of each year, CAWCD shall determine and furnish to the Municipal Provider the Annual Schedule for the following year, which shall show: (1) the amounts of Replenishment Water to be delivered to the Municipal Provider's Turnout during each month of that year for underground storage at Contract Replenishment Facilities; and (2) the amounts of Replenishment Water to be delivered to the Municipal Provider's Turnout for direct delivery to customers served by wells located within the Carefree sub-basin, contingent upon the Municipal Provider remaining eligible to receive Replenishment Water under all terms contained in this Amended Contract. The Annual Schedule shall also indicate the anticipated source(s) and volume(s) of Replenishment Water that CAWCD will deliver to the Municipal Provider's Turnout during the following year, (i.e., excess CAP water, the Long-Term Water Supply or other alternative water supplies).

6.7 Replenishment Water scheduled in any year under this Amended Contract may not be resold by the Municipal Provider for use outside the Service Area.

#### **ARTICLE 7 CONTRACT REPLENISHMENT OBLIGATION**

The amount of Excess Groundwater reported by the Municipal Provider under Article 14.1.2 of this Amended Contract shall constitute a contract replenishment obligation for CAWCD for the year in which the report is submitted. This contract replenishment obligation will become a part of CAWCD's total replenishment obligation for the Phoenix Active Management Area for that year, as provided in A.R.S. §48-3771. CAWCD will satisfy the contract replenishment obligation incurred pursuant to this Amended Contract by first applying all available credits in the Replenishment Account until exhausted, and then applying all available credits in the Statutory Reserve Account until exhausted.

#### **ARTICLE 8 REPLENISHMENT AND STATUTORY RESERVE ACCOUNTS**

8.1 Under the Original Water Availability Status Contract CAWCD established a Replenishment Account and a Statutory Reserve Account for the Municipal Provider.

8.2 CAWCD shall allocate to the Municipal Provider's Statutory Reserve Account that amount of water stored by the Municipal Provider at Contract Replenishment Facilities pursuant to the provisions of Article 10 of this Amended Contract during the previous

year, which ADWR has determined meets the requirements of Long-term Storage Credits and has credited to CAWCD's long-term storage account.

8.3 CAWCD shall allocate to the Replenishment Account that amount of water stored by the Municipal Provider at Contract Replenishment Facilities pursuant to this Amended Contract, excluding any water stored by the Municipal Provider under Article 10 of this Amended Contract, during the previous year, which ADWR has determined meets the requirements of Long-term Storage Credits and has credited to CAWCD's conservation district account.

#### **ARTICLE 9 ACCRUAL OF OPERATIONAL RESERVE CREDITS**

9.1 In addition to its other obligations under this Amended Contract, the Municipal Provider shall store sufficient water at Contract Replenishment Facilities to accrue at least 439 acre-feet of Operational Reserve Credits each year until the total amount of credits in the Operational Reserve Account equal 2,910 acre-feet. Under current ADWR rules and regulations, the Municipal Provider would have to take delivery of at least 461 acre-feet of water per year at Contract Replenishment Facilities to accrue 439 acre-feet of Operational Reserve Credits per year. At the Municipal Provider's election it may satisfy its obligation to accrue Operational Reserve Credits under this Article by using its own water supply and its own water storage permit(s) to accrue Long-term Storage Credits within the Replenishment Area. If the Municipal Provider so elects, each year, as soon as ADWR determines that the water stored by the Municipal Provider under this Article 9.1 meets the requirements of Long-term Storage Credits, the Municipal Provider shall transfer at least 439 acre-feet of credits to CAWCD's long-term storage account. CAWCD shall allocate such credits to the Operational Reserve Account. If in any year, the Municipal Provider does not wish to satisfy its obligation to accrue Operational Reserve Credits by accruing its own Long-term Storage Credits and transferring them to CAWCD, it may request in its proposed annual schedule that CAWCD deliver Replenishment Water to the Municipal Provider's Turnout for storage at Contract Replenishment Facilities in accordance with the terms of this Amended Contract. If CAWCD determines that it can accommodate the Municipal Provider's request, that portion of the Annual Schedule indicating the amount of Replenishment Water to be delivered to the Municipal Provider's Turnout for storage at Contract Replenishment Facilities will include the amount of Replenishment Water requested by the Municipal Provider to satisfy its obligations under this Article 9. Such Replenishment Water will be stored in accordance with the terms of this Amended Contract and will be credited to the Replenishment Account in accordance with Article 8.3 of this Amended Contract.

9.2 If at the end of any year, the Municipal Provider has failed to accrue the minimum annual amount of Operational Reserve Credits required in Article 9.1, the Municipal Provider shall notify CAWCD in writing of the projected shortfall. Along with such notice, the Municipal Provider shall submit to CAWCD a plan for accruing or otherwise

achieving the minimum annual volume of Operational Reserve Credits required in Article 9.1. This plan shall include construction of sufficient additional vadose zone wells, annual storage and recovery wells or other infrastructure necessary to meet the minimum annual schedule required in Article 9.1.

**ARTICLE 10  
ACCRUAL AND MAINTENANCE OF  
MINIMUM VOLUME OF  
STATUTORY RESERVE CREDITS**

10.1 In addition to its other obligations under this Amended Contract, the Municipal Provider shall store sufficient water at Contract Replenishment Facilities to accrue at least 1,082 acre-feet of Statutory Reserve Credits each year, until the total amount of credits in the Statutory Reserve Account equal 14,550 acre-feet. Under current ADWR rules and regulations, the Municipal Provider would have to take delivery of at least 1,138 acre-feet of water per year at Contract Replenishment Facilities to accrue 1,082 acre-feet of Statutory Reserve Credits per year. At the Municipal Provider's election it may satisfy its obligation to accrue Statutory Reserve Credits by using its own water supply and its own water storage permit(s) to accrue Long-term Storage Credits within the Replenishment Area. If the Municipal Provider so elects, each year, as soon as ADWR determines that the water stored by the Municipal Provider under this Article 10.1 meets the requirements of Long-term Storage Credits, the Municipal Provider shall transfer at least 1,082 acre-feet of credits to CAWCD's long-term storage account. CAWCD shall allocate such credits to the Statutory Reserve Account. If in any year, the Municipal Provider does not wish to satisfy its obligation to accrue Statutory Reserve Credits by accruing its own Long-term Storage Credits and transferring them to CAWCD, it may request in its proposed annual schedule that CAWCD deliver Replenishment Water to the Municipal Provider's Turnout for storage at Contract Replenishment Facilities in accordance with the terms of this Amended Contract. If CAWCD determines that it can accommodate the Municipal Provider's request, that portion of the Annual Schedule indicating the amount of Replenishment Water to be delivered to the Municipal Provider's Turnout for storage at Contract Replenishment Facilities will include the amount of Replenishment Water requested by the Municipal Provider to satisfy its obligations under this Article. Such Replenishment Water will be stored in accordance with the terms of this Amended Contract and will be credited to the Statutory Reserve Account in accordance with Article 8.2 of this Amended Contract.

10.2 If at the end of any year, the Municipal Provider has failed to accrue the minimum annual amount of Statutory Reserve Credits required in Article 10.1, the Municipal Provider shall notify CAWCD in writing of the projected shortfall. Along with such notice, the Municipal Provider shall submit to CAWCD a plan for accruing or otherwise achieving the minimum annual volume of Statutory Reserve Credits required in Article 10.1. This plan shall include construction of sufficient additional vadose zone wells, annual storage and recovery wells or other infrastructure necessary to meet the minimum annual schedule required in Article 10.1.

10.3 No later than December 31, 2020, the Municipal Provider shall have accrued a minimum of 14,550 acre-feet of Statutory Reserve Credits in its Statutory Reserve Account. This 14,550 acre-feet of Statutory Reserve Credits is intended to satisfy the requirements of Arizona Revised Statutes § 45-576.07.A.5, which requires that the Municipal Provider commit to ensure that a five-year supply of water will be maintained and available for use by the Municipal Provider in years in which sufficient Replenishment Water is not available. Accordingly, the Municipal Provider shall maintain a minimum of 14,550 acre-feet of Statutory Reserve Credits in its Statutory Reserve Account at all times after December 31, 2020, except as provided in Article 10.4.

10.4 If in any year during the term of this Amended Contract, (i) sufficient Replenishment Water is not available for delivery, (ii) sufficient storage capacity at Contract Replenishment Facilities located within the Carefree sub-basin is not available to satisfy the Municipal Provider's obligation to accrue sufficient Replenishment Credits to offset its Excess Groundwater pumping for that year, or (iii) sufficient Replenishment Credits or Operational Reserve Credits are not available to satisfy the contract replenishment obligation, as defined in Article 7 of this Amended Contract, the Municipal Provider may seek CAWCD's consent to apply a maximum of 2,910 acre-feet of Statutory Reserve Credits to satisfy the contract replenishment obligation for that year. At the time it submits its request to apply Statutory Reserve Credits, the Municipal Provider shall also submit to CAWCD a plan which details how the Municipal Provider will restore the balance of Statutory Reserve Credits in the Statutory Reserve Account to an amount equal to a minimum of 14,550 acre-feet, if such request occurs after December 31, 2019, or to that amount of credits in the Statutory Reserve Account immediately prior to such request, if the request is made before 2019. If the Municipal Provider has submitted a plan to restore the balance of Statutory Reserve Credits that is acceptable to CAWCD, CAWCD shall allocate an annual maximum of 2,910 acre-feet of Statutory Reserve Credits to offset Excess Groundwater pumped by the Municipal Provider.

10.5 If at any time after December 31, 2020, the balance of Statutory Reserve Credits in the Statutory Reserve Account falls below 8,730 acre-feet, the Parties shall meet to discuss the need, if any, for additional Contract Replenishment Facilities. If CAWCD reasonably determines that additional Contract Replenishment Facilities are necessary, it shall consult with the Municipal Provider and ADWR regarding the amount of additional storage capacity required. The Municipal Provider shall finance the design, permitting and construction of an additional component of the Contract Replenishment Facilities, to be located within the Replenishment Area and/or within the Carefree sub-basin. Once construction of this additional component is complete, the Municipal Provider shall own and operate the facility to satisfy its obligations under this Amended Contract.

10.6 Except as otherwise provided in this Article, the Municipal Provider may not recover, sell, assign, pledge or otherwise transfer Statutory Reserve Credits.

**ARTICLE 11  
OPTION TO PURCHASE CAWCD  
LONG-TERM STORAGE CREDITS**

11.1 Upon the execution of this Amended Contract, the Municipal Provider shall have an option to purchase a total of 5,957.36 acre-feet of Phoenix Active Management Area Long-term Storage Credits from CAWCD. On January 1 of each year following the execution of this Amended Contract during the Option Period, the amount of CAWCD Long-term Storage Credits on which the Municipal Provider holds an option shall be reduced, on an acre-foot per acre-foot basis, by the amount of Statutory Reserve Credits accrued by the Municipal Provider during the previous year. The option shall expire on December 31, 2020, unless sooner terminated in accordance with Article 21 of this Amended Contract. CAWCD shall maintain sufficient credits in its Phoenix Active Management Area long-term storage account dedicated to the Municipal Provider to satisfy its obligation under this Article. The Municipal Provider may exercise its option in any year during the Option Period under the following conditions:

11.1.1 If sufficient Replenishment Water is not available for delivery in a given year to satisfy the demand of those customers of the Municipal Provider served by wells located within the Carefree sub-basin up to the Increased Designation, and if the total amount of Operational Reserve Credits, Replenishment Credits and Statutory Reserve Credits are insufficient to offset the Municipal Provider's pumping of Excess Groundwater, then the Municipal Provider may purchase that amount of Long-term Storage Credits from CAWCD necessary to offset the Municipal Provider's pumping of Excess Groundwater for that year, not to exceed 2,910 acre-feet; or

11.1.2 If sufficient storage capacity at Contract Replenishment Facilities, and/or transportation capacity in the Irrigation Water Distribution System is not available to satisfy the Municipal Provider's obligation to accrue sufficient Replenishment Credits to offset its pumping of Excess Groundwater for that year, and if the total amount of Operational Reserve Credits, Replenishment Credits and Statutory Reserve Credits are insufficient to offset the Municipal Provider's pumping of Excess Groundwater, then the Municipal Provider may purchase that amount of Long-term Storage Credits from CAWCD necessary to offset the Municipal Provider's pumping of Excess Groundwater for that year, not to exceed 2,910 acre-feet.

11.2 If, in any year during the Option Period, the Municipal Provider wishes to exercise its option to purchase CAWCD Long-term Storage Credits, it shall submit a written request to CAWCD, which sets forth the amount of Long-term Storage Credits the Municipal Provider wishes to purchase and sufficient information for CAWCD to determine whether the conditions of Article 11.1.1 or 11.1.2 have been met.

11.3 CAWCD shall determine whether the Municipal Provider's request to purchase CAWCD Long-term Storage Credits satisfies the conditions of Article 11.1.1 or 11.1.2 above and, if so, shall establish the purchase price for such credits. The price for CAWCD Long-term Storage Credits purchased under this Article shall be established by

CAWCD, and shall equal CAWCD's cost to replace an equivalent amount of Long-term Storage Credits. Within sixty days of the Municipal Provider's request to purchase CAWCD Long-term Storage Credits, CAWCD shall notify the Municipal Provider in writing whether the request satisfies the conditions of Article 11.1.1 or 11.1.2, and if so, the price for each acre-foot of Long-term Storage Credit to be purchased. The Municipal Provider shall have sixty days after receipt of CAWCD's notice to pay CAWCD the purchase price for the Long-term Storage Credits it wishes to purchase. Upon receipt of payment, CAWCD shall transfer the credits to its conservation district account and shall allocate the credits to the Replenishment Account.

11.4 Regardless of whether any CAWCD Long-term Storage Credits are purchased under this Article, each year during the Option Period, the Municipal Provider shall pay CAWCD an option fee. The option fee shall be calculated by CAWCD on or before May 15<sup>th</sup> of each year during the Option Period and shall be included as a component of the annual Contract Replenishment Tax. The option fee shall be calculated according to the following formula:

$$\text{Option Fee} = (\text{OA} \times \text{C}) \times \text{I}$$

Where:

OA = the option amount, or the amount of CAWCD Long-term Storage Credits on which the Municipal Provider holds an option as of April 30<sup>th</sup> of the year in which the calculation is being made, as computed in accordance with Article 11.1 above.

C = the Excess Water Rate for the year in which the calculation is being made.

I = the weighted average annual interest rate earned by CAWCD for the year preceding the year in which the calculation is being made.

11.5 If the Municipal Provider is in default under Article 20 of this Amended Contract because it is late in paying the option fee, the option will not expire. However, the Municipal Provider shall have no right to exercise the option until the default has been cured.

## **ARTICLE 12 INTERRUPTIONS AND REDUCTIONS**

CAWCD may temporarily discontinue or reduce the quantity of Replenishment Water to be furnished to the Municipal Provider as herein provided for the purposes of investigation, inspection, construction, testing, maintenance, repair, or replacement of

any of the CAP facilities or any part thereof. CAWCD may also temporarily discontinue or reduce the quantity of Replenishment Water to be furnished to the Municipal Provider if there is insufficient Replenishment Water or CAP delivery capacity to deliver the Municipal Provider's water order, the water orders of contractors of excess water service, and all water deliveries scheduled pursuant to a contract with the United States or a subcontract with the United States and CAWCD providing for CAP water service for a period of 50 years or more. So far as feasible, CAWCD shall attempt to coordinate any such discontinuance or reduction with the Municipal Provider and to give the Municipal Provider due notice in advance of such discontinuance or reduction. In case of emergency, no notice need be given. The United States, its officers, agents, and employees, and CAWCD, its officers, agents, and employees, shall not be liable for damages when, for any reason whatsoever, any interruption, discontinuance, or reduction in delivery of water occurs. If any such discontinuance or temporary reduction results in deliveries to the Municipal Provider of less Replenishment Water than what has been paid for in advance, the Municipal Provider shall be reimbursed or credited for the proportionate amount of such advance payments.

### **ARTICLE 13 QUALITY OF WATER**

CAWCD does not warrant the quality of any Replenishment Water furnished under this Amended Contract and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of any Replenishment Water. The Municipal Provider waives its right to make a claim against CAWCD, the United States or other CAP water users because of changes in water quality caused by the commingling of Replenishment Water with other water.

### **ARTICLE 14 REPORTING REQUIREMENTS**

14.1 Annual Reports. On or before March 31 of each year after the conditions set forth in Article 2 of this Amended Contract are satisfied, the Municipal Provider shall file a report with CAWCD and ADWR that contains the following information for the preceding calendar year, which is the reporting year:

14.1.1 The amount of Groundwater withdrawn by the Municipal Provider from wells located within the Carefree sub-basin and delivered to its customers.

14.1.2 The amount of Excess Groundwater withdrawn by the Municipal Provider and delivered to its customers, and the basis for the calculation of the amount of Excess Groundwater delivered. The total amount of Excess Groundwater reported in any calendar year by the Municipal Provider shall not exceed 2,910 acre-feet.

14.1.3 The amount of Replenishment Water that the Municipal Provider stored at Contract Replenishment Facilities located within the Carefree sub-basin pursuant to the provisions of this Amended Contract, except Replenishment Water stored pursuant

to Article 10 of this Amended Contract.

14.1.4 The amount of Replenishment Water that the Municipal Provider stored at Contract Replenishment Facilities pursuant to the provisions of Article 10 of this Amended Contract.

14.1.5 The amount of Replenishment Water that the Municipal Provider delivered for direct use to its customers served by wells located within the Carefree sub-basin.

14.1.6 Such other information as CAWCD may reasonably require.

14.2 Records. The Municipal Provider shall maintain current and accurate records of the information required to be included in the Reports.

14.3 Form of Reports. CAWCD shall determine the form of the reports to be submitted by the Municipal Provider in order to carry out the purposes of the Groundwater Replenishment Statute.

#### **ARTICLE 15 MEMBER SERVICE AREA AGREEMENT AND CONTRACT REPLENISHMENT OBLIGATION**

CAWCD and the Municipal Provider shall execute, concurrent with this Amended Contract, the Amended Member Service Area Agreement in the form attached hereto as Exhibit C. The Municipal Provider shall accrue Operational Reserve Credits, Replenishment Credits and Statutory Reserve Credits under this Amended Contract in advance of incurring any Service Area Replenishment Obligation under the Amended Member Service Area Agreement. As provided in Article 7 of this Amended Contract, every year, CAWCD shall apply available Operational Reserve Credits, Replenishment Credits, and, if necessary, Statutory Reserve Credits, against any Excess Groundwater delivered by the Municipal Provider to satisfy the contract replenishment obligation, so that the Service Area Replenishment Obligation equals zero.

#### **ARTICLE 16 LONG-TERM WATER SUPPLY**

16.1 The Municipal Provider shall acquire a permanent legal right to a long-term water supply, which satisfies the following conditions:

16.1.1 The water supply shall be legally and physically available to the Municipal Provider within the meaning of Arizona law.

16.1.2 The volume of the water supply shall be sufficient to satisfy the Increased Designation and the obligations undertaken by CAWCD and the Municipal Provider under this Amended Contract.

16.1.3 The water supply shall be available to CAWCD at locations and flow rates that are acceptable to CAWCD. CAWCD will act reasonably and will consult with the Municipal Provider in determining the times and flow rates for delivery of the water supply. CAWCD may require that the water supply be provided at times and flow rates that are different from the times and flow rates that Replenishment Water is delivered to the Municipal Provider's Turnout.

16.1.4 If the water supply is to be introduced into the CAP aqueduct system, the Municipal Provider shall ensure that such introduction complies with CAWCD Board-adopted policies, including but not limited to policies regarding water quality and transportation of non-Project water, and state and federal law in effect at the time of such introduction.

16.1.5 The water supply shall comply with all conditions imposed by ADWR in its order modifying the Municipal Provider's designation of assured water supply, and granting the Increased Designation.

16.2 The Municipal Provider shall hold the Long-Term Water Supply exclusively for CAWCD's future use in meeting the obligations undertaken by CAWCD under this Amended Contract and the Amended Water Availability Status Resolution, as required by A.R.S. § 48-3772.B.10.d.

16.3 If for any reason, the selected Long-Term Water Supply becomes unavailable or no longer satisfies the conditions of Article 16.1, the Municipal Provider shall acquire a replacement Long-Term Water Supply and shall hold the replacement Long-Term Water Supply exclusively for CAWCD's future use in meeting the obligations undertaken by CAWCD under this Amended Contract and the Amended Water Availability Status Resolution, as required by A.R.S. § 48-3772.B.10.d.

16.4 CAWCD will accept, as the Long-Term Water Supply of the Municipal Provider, any water supply or replacement water supply acquired by the Municipal Provider that satisfies the applicable conditions of Section 16.1. CAWCD will notify the Municipal Provider in writing that CAWCD has accepted a water supply or replacement water supply as the Long-Term Water Supply of the Municipal Provider.

#### **ARTICLE 17 WATER SUPPLIES TO BE USED FOR REPLENISHMENT**

17.1 CAWCD will use excess CAP water to satisfy the Annual Schedule as long as excess CAP water is available for such purposes. For any year that CAWCD determines, in its sole discretion, that sufficient excess CAP water is not available to satisfy all or a portion of the Annual Schedule, CAWCD shall have the right to use the Long-Term Water Supply to satisfy the Annual Schedule. However, CAWCD shall give

the Municipal Provider at least three years advance written notice before requiring the use of the Long-Term Water Supply to satisfy the Annual Schedule.

17.2 For any year that CAWCD determines, in its sole discretion, that sufficient excess CAP water is not available to satisfy all or a portion of the Annual Schedule, CAWCD will use the Long-Term Water Supply to satisfy the Annual Schedule unless such use cannot be accomplished in compliance with existing statutes, and CAWCD Board-adopted policies. If CAWCD cannot use the Long-Term Water Supply, it shall notify the Municipal Provider in writing and explain the reasons why the Long-Term Water Supply cannot be used to satisfy the Annual Schedule.

#### **ARTICLE 18 CONTRACT REPLENISHMENT TAX**

18.1 CAWCD shall levy the Contract Replenishment Tax annually. The Contract Replenishment Tax shall be based on an assessment rate established annually by CAWCD for this Amended Contract, plus the option fee described in Article 11.4. The assessment rate will be a per acre-foot rate. It may differ from the assessment rate for Member Service Areas in the Phoenix Active Management Area and/or the assessment rate under other Contracts for Replenishment.

18.2 The annual assessment rate for this Amended Contract shall consist of, but not be limited to: (1) CAWCD's cost (if any) of acquiring water supplies to satisfy the Annual Schedule; (2) CAWCD's rate for transporting water supplies to the Contract Replenishment Facilities; (3) CAWCD's cost (if any) of underground storage; and (4) an administrative component, which shall be equal to: (1) CAWCD's cost to administer this Amended Contract, or (2) the administrative component of the Phoenix Active Management Area replenishment assessment, whichever is greater.

18.3 Notwithstanding the provisions of Arizona Revised Statutes §48-3781, on or before June 1 of each year after the execution of this Amended Contract, CAWCD will transmit a statement to the Municipal Provider stating the amount of the annual Contract Replenishment Tax. The annual Contract Replenishment Tax will be equal to the annual assessment rate established pursuant to Article 18.2 of this Amended Contract multiplied by the total volume of Replenishment Water identified in the Annual Schedule for the then current year, plus the option fee described in Article 11.4.

18.4 Notwithstanding the provisions of Arizona Revised Statutes §48-3781, on or before July 15 of each year after the execution of this Amended Contract, the Municipal Provider shall pay to CAWCD an amount equal to the Contract Replenishment Tax levied by CAWCD.

18.5 If the Contract Replenishment Tax is not paid when due, CAWCD will be entitled to interest, costs and penalties as provided by Arizona Revised Statutes § 48-3782. Further, if the Contract Replenishment Tax is not paid when due, CAWCD shall not be obligated to satisfy the Annual Schedule.

**ARTICLE 19  
UNCONTROLLABLE FORCES**

Neither Party to this Amended Contract shall be considered in default in the performance of any of its obligations under this Amended Contract when a failure of performance is due to Uncontrollable Forces. Any Party rendered unable to fulfill any of its obligations under this Amended Contract by reason of an Uncontrollable Force shall give prompt written notice of such fact to the other Party and shall exercise due diligence to remove such inability.

**ARTICLE 20  
DEFAULT AND REMEDIES**

**20.1 Default.** The occurrence of any of the following events constitutes an event of default by the Municipal Provider.

20.1.1 The failure of the Municipal Provider to perform any term, covenant or condition of this Amended Contract or the Amended Member Service Area Agreement, if that failure continues for thirty (30) days following the Municipal Provider's receipt of written notice from CAWCD.

20.1.2 The physical or legal unavailability of the Long-Term Water Supply, including any replacement for the Long-Term Water Supply.

20.1.3 (i) The filing by or against the Municipal Provider of a petition to have the Municipal Provider adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against the Municipal Provider, the same is dismissed within 60 days); (ii) the making by the Municipal Provider of any general assignment for the benefit of creditors; (iii) the appointment of a trustee or receiver to take possession of substantially all of the Municipal Provider's assets, when possession is not restored to the Municipal Provider within 60 days; or (iv) the attachment, execution or other judicial seizure of substantially all of the Municipal Provider's assets, where such seizure is not discharged within 60 days.

**20.2 Remedies.** If an event of default occurs, CAWCD shall have only the following remedies:

20.2.1 CAWCD shall have no obligation to deliver Replenishment Water under this Amended Contract and the Municipal Provider shall have no right to the delivery of Replenishment Water under this Amended Contract so long as the Municipal Provider remains in default. The Municipal Provider will consult with CAWCD on curing the default.

20.2.2 CAWCD shall have the right to seek recovery of any amounts due to be paid under this Amended Contract before the default.

**ARTICLE 21  
DISPOSITION OF OPERATIONAL RESERVE,  
STATUTORY RESERVE AND  
REPLENISHMENT CREDITS  
ON CANCELLATION**

If this Amended Contract is cancelled pursuant to Article 3, CAWCD shall satisfy any outstanding contract replenishment obligation in accordance with Article 7 of this Amended Contract. After satisfaction of the contract replenishment obligation, CAWCD shall transfer from its long-term storage account to the Municipal Provider that amount of Phoenix AMA Long-term Storage Credits equal to the amount of Replenishment Credits and Operational Reserve Credits remaining in the Replenishment Account. CAWCD shall have two years after the effective date of cancellation of this Amended Contract to transfer its Phoenix AMA Long-term Storage Credits, pursuant to this Article 21. CAWCD shall also transfer to the Municipal Provider the Statutory Reserve Credits remaining in the Statutory Reserve Account after satisfaction of the contract replenishment obligation. CAWCD shall transfer the Statutory Reserve Credits within 180 days after the effective date of cancellation of this Amended Contract. Further, the option to purchase Long-term Storage Credits set forth in Article 11 of this Amended Contract shall terminate upon such cancellation.

**ARTICLE 22  
GENERAL PROVISIONS**

**22.1 Binding Effect.** The provisions of this Amended Contract inure to the benefit of and bind the respective successors and assigns of the parties hereto, provided that no assignment or transfer of this Amended Contract or any part or interest herein is valid until approved by CAWCD in its sole and absolute discretion.

**22.1.1** The Municipal Provider agrees and covenants to CAWCD to execute and record any additional documentation which CAWCD may reasonably require to effectuate the intents and purposes of this Amended Contract and the Groundwater Replenishment Statute.

**22.2 Entire Agreement.** This Amended Contract constitutes the entire agreement between the parties and no understandings or obligations not expressly set forth in this Amended Contract are binding upon the parties.

**22.3 Amendments.** This Amended Contract may be modified, amended or revoked only (i) by express written agreement of CAWCD, the Municipal Provider and ADWR; or (ii) by amendment statutes, rules or regulations or successor statutes, rules or regulations, as contemplated by Section 22.5.

**22.4 Interpretation.** This Amended Contract is governed by and must be construed and interpreted in accordance with and in reference to the laws of the State of Arizona, including but not limited to the Groundwater Replenishment Statute.

22.5 Rules, Regulations and Successor Statutes. All references in this Amended Contract to Arizona Revised Statutes include all rules and regulations promulgated by the ADWR under such statutes and all amendments and successor statutes, rules and regulations to such statutes, rules and regulations.

22.6 Severability. Any determination by any court of competent jurisdiction that any provision of this Amended Contract is invalid or unenforceable does not affect the validity or enforceability of any other provision of this Amended Contract.

22.7 Captions. All captions, titles or headings in this Amended Contract are used for the purpose of reference and convenience only and do not limit, modify or otherwise affect any of the provisions of this Amended Contract.

22.8 Notices. Except as otherwise required by law, any notice given in connection with this Amended Contract must be in writing and must be given by personal delivery, overnight delivery, facsimile, or United States certified or registered mail. Any such notice must be addressed to the appropriate party at the following address (or at any other address as a party may hereafter designate by written notice given as required by this paragraph):

CAWCD:

For delivery use:

Central Arizona Water Conservation District  
23636 North 7<sup>th</sup> Street  
Phoenix, AZ 85024  
Attn: Manager, Groundwater Replenishment District

For U.S. Mail use:

Central Arizona Water Conservation District  
P.O. Box 43020  
Phoenix, AZ 85080-3020  
Attn: Manager, Groundwater Replenishment District

MUNICIPAL  
PROVIDER:

The City of Scottsdale  
9379 East San Salvador Drive  
Scottsdale, AZ 85258  
Attn: General Manager, Water Resources Dept.

With a copy to:

The City of Scottsdale City Attorney's Office  
3939 Drinkwater Blvd.  
Scottsdale, AZ 85251

Notice is deemed to have been given on the date on which notice is personally delivered, delivered to an overnight delivery service, transmitted by facsimile, or mailed. Notice is deemed to have been received on the date on which the notice is actually received or delivery is refused.

IN WITNESS WHEREOF, the Parties to this Amended Contract have executed this Contract as of the date first set forth above.

CAWCD: CENTRAL ARIZONA WATER CONSERVATION DISTRICT

By: \_\_\_\_\_  
Pamela Pickard

Its: President

Attest: \_\_\_\_\_  
Secretary

MUNICIPAL  
PROVIDER: THE CITY OF SCOTTSDALE

By: \_\_\_\_\_  
W.J. "Jim" Lane

Its: Mayor

Attest: \_\_\_\_\_  
Carolyn Jagger, City Clerk

Approved as to form:

\_\_\_\_\_  
Bruce Washburn, City Attorney  
By: Clifford J. Frey  
Senior Assistant City Attorney

**EXHIBIT A**

**Replenishment Area Map**

**EXHIBIT B**  
**Service Area Map**

**EXHIBIT C**

**Member Service Area Agreement Between  
Central Arizona Water Conservation District and the City of Scottsdale**

**WATER AVAILABILITY STATUS  
CONTRACT TO REPLENISH GROUNDWATER  
BETWEEN  
CENTRAL ARIZONA WATER CONSERVATION DISTRICT  
AND  
THE CITY OF SCOTTSDALE  
AMENDMENT No. 1**

This Amended Water Availability Status Contract to Replenish Groundwater is made this \_\_\_\_ day of \_\_\_\_\_, 2013, between the Central Arizona Water Conservation District, a political subdivision of the State of Arizona, and the City of Scottsdale, a municipality.

**RECITALS**

A. A.R.S. § 48-3772, subsection B, paragraph 10, authorizes CAWCD to adopt resolutions granting water availability status to a member service area of a city, town or private water company upon satisfaction of the specific statutory requirements set forth therein.

B. A.R.S. § 45-576.07, subsection A, authorizes a member service area of a city, town or private water company to satisfy the water sufficiency and availability requirement for obtaining or maintaining a designation of assured water supply, through a water availability status resolution of the CAWCD Board, and upon satisfaction of other specific statutory requirements set forth in A.R.S. § 45-576.07.

C. On June 15, 2000, the Director of the Arizona Department of Water Resources found pursuant to A.R.S. § 45-576.07, subsection H, that CAWCD has the capability to grant water availability status to member service areas in the Phoenix active management area.

D. By Resolution dated October 4, 2001, CAWCD adopted the Original Water Availability Status Resolution, which granted water availability status to the Municipal Provider and approved the Original Member Service Area Agreement and the Original Water Availability Status Contract.

E. On November 21, 2001, the Municipal Provider qualified the Service Area as a Member Service Area of the Central Arizona Groundwater Replenishment District and executed the Original Member Service Area Agreement. Concurrent with the execution of the Original Member Service Area Agreement, the Municipal Provider executed the Original Water Availability Status Contract.

F. Pursuant to the Original Water Availability Status Contract, CAWCD committed to deliver up to 3,460 acre-feet of Replenishment Water per year to the Municipal Provider's Turnout.

G. Based on the Original Water Availability Status Resolution, the Original Member Service Area Agreement and the Original Water Availability Status Contract, the Arizona Department of Water Resources modified the Municipal Provider's designation of assured water supply for the Service Area on April 25, 2002, AWS No. 2002-03. The modification increased the Municipal Provider's designation by 3,460 acre-feet.

H. Pursuant to the Original Water Availability Status Contract, and as required by A.R.S. 48-3772.B.10.d and the Municipal Provider's designation of assured water supply, the Municipal Provider acquired certain lands (the "Original Land") and an associated water supply in the Harquahala Valley to serve as the Long-Term Water Supply.

I. The Municipal Provider will, at some time, sell the Original Land and the associated water supply it owns in the Harquahala Valley, which currently serves as the Long-Term Water Supply. The Municipal Provider intends to acquire other lands and an associated water supply in the Harquahala Valley to serve as the Long-Term Water Supply.

J. The Municipal Provider desires to amend the Original Water Availability Status Contract to reduce CAWCD's obligation to deliver Replenishment Water to the Municipal Provider's Turnout from 3,460 acre-feet per year to 2,910 acre-feet per year.

K. The Municipal Provider has applied to the Arizona Department of Water Resources for a modification of its designation of an assured water supply for the Service Area pursuant to Arizona Revised Statutes Title 45, Chapter 2, Article 9.

L. As permitted by Arizona Revised Statutes § 45-576.07(A), the Municipal Provider desires to satisfy the water sufficiency and availability requirement set forth in Arizona Revised Statutes § 45-576(J)(1), to enable it to modify its designation of assured water supply, through an Amended Water Availability Status Resolution of CAWCD and through this Amended Contract.

M. CAWCD has determined that it can best accomplish the requirements for granting water availability status, which are set forth in Arizona Revised Statutes §45-576.07, by executing this Amended Contract with the Municipal Provider. This Amended Contract will be a part of the Water Availability Status Resolution. This Amended Contract is authorized by Arizona Revised Statutes § 48-3772.B.9.

N. CAWCD has reviewed its requirements for transportation of Central Arizona Project Water, its contracts, subcontracts, letter agreements, excess water contracts, and other contractual obligations, its member service area and member land

requirements and has determined that it can meet those obligations and that capacity remains in the Central Arizona Project to meet the obligations undertaken in this Amended Contract.

O. The Municipal Provider intends to acquire property in the Harquahala Valley. The Municipal Provider is acquiring the property for the water rights associated with the property. The Municipal Provider intends to use these water rights to satisfy its obligation under this Amended Contract to acquire a Long-Term Water Supply.

P. The Parties desire to amend the Original Water Availability Status Contract as set forth below. Upon satisfaction of the conditions stated in Article 2(i) and (ii) of this Amended Water Availability Status Contract, this Amended Contract shall supersede and replace the Original Water Availability Status Contract.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, and intending to be legally bound, the parties hereby agree as follows:

#### **ARTICLE 1 DEFINITIONS**

As used in this Amended Contract, the following terms, when capitalized, shall mean:

- 1.1 "ADWR" means the Arizona Department of Water Resources.
- 1.2 "AMENDED CONTRACT" means this Amended Water Availability Status Contract to Replenish Groundwater between CAWCD and the City of Scottsdale, as amended from time to time.
- 1.3 "AMENDED MEMBER SERVICE AREA AGREEMENT" means the Amended Member Service Area Agreement between Central Arizona Water Conservation District and the City of Scottsdale executed concurrent with this Amended Contract, and any revisions thereof.
- 1.4 "AMENDED WATER AVAILABILITY STATUS RESOLUTION" means the amended Resolution of CAWCD granting water availability status to the Municipal Provider pursuant to this Amended Contract, to be adopted pursuant to Arizona Revised Statutes Section 48-3772.B.10.
- 1.5 "ANNUAL SCHEDULE" means the schedule of deliveries of Replenishment Water as prepared in accordance with Article 6 of this Amended Contract.
- 1.6 "CAP" means Central Arizona Project.

1.7 "CAWCD" means the Central Arizona Water Conservation District, a political subdivision of the State of Arizona, and any successor political subdivision.

1.8 "CONTRACT REPLENISHMENT FACILITIES" means the underground storage facilities, which meet the requirements of Article 5 of this Amended Contract, and any additional component constructed pursuant to Article 10 of this Amended Contract.

1.9 "CONTRACT REPLENISHMENT TAX" means the annual tax levied by CAWCD against the Municipal Provider in a calendar year calculated in accordance with Article 18 of this Amended Contract.

1.10 "EXCESS GROUNDWATER" is as defined in Article 1.8 of the Amended Member Service Area Agreement.

1.11 "EXCESS WATER RATE" means the rate established annually by CAWCD for excess CAP water used in satisfying the Central Arizona Groundwater Replenishment District's groundwater replenishment obligation.

1.12 "GROUNDWATER" is as defined in Arizona Revised Statutes § 45-101(5).

1.13 "GROUNDWATER REPLENISHMENT STATUTE" means Arizona Revised Statutes, Title 48, Chapter 22.

1.14 "INCREASED DESIGNATION" means the annual volume of water identified by ADWR in the Municipal Provider's assured water supply designation, or any modifications thereto, as being dependent upon the Amended Water Availability Status Resolution and this Amended Contract. This volume shall not exceed 2,910 acre-feet per year. The Increased Designation may only be used to satisfy the demand of those customers of the Municipal Provider served by wells located within the Carefree sub-basin.

1.15 "IRRIGATION WATER DISTRIBUTION SYSTEM" means the Municipal Provider's pump stations and transmission lines that will transport Replenishment Water from the Municipal Provider's Turnout to the Contract Replenishment Facilities and for direct delivery.

1.16 "LONG-TERM STORAGE CREDIT" is as defined in Arizona Revised Statutes § 45-802.01.11.

1.17 "LONG-TERM WATER SUPPLY" means water from any lawfully available source, including any replacement water supply, the rights to which are owned, leased or otherwise legally held by the Municipal Provider, except groundwater withdrawn from within an active management area.

1.18 "MEMBER SERVICE AREA" is as defined in Arizona Revised Statutes § 48-3701(11).

1.19 "MUNICIPAL PROVIDER" means the City of Scottsdale, a municipality, and its successors and assigns.

1.20 "MUNICIPAL PROVIDER'S TURNOUT" means the point on the CAP canal where Replenishment Water is diverted from the CAP canal into the Irrigation Water Distribution System. The Municipal Provider's Turnout is located at milepost 172.959 on the CAP canal.

1.21 "OPERATIONAL RESERVE CREDIT" means water stored underground at Contract Replenishment Facilities pursuant to Article 9 of this Amended Contract, which ADWR has credited to CAWCD's conservation district account and which CAWCD has allocated to the Replenishment Account.

1.22 "OPTION PERIOD" means the period of time from January 1, 2002 through and including December 31, 2020.

1.23 "ORIGINAL MEMBER SERVICE AREA AGREEMENT" means the Member Service Area Agreement Between Central Arizona Water Conservation District and the City of Scottsdale dated November 21, 2001.

1.24 "ORIGINAL WATER AVAILABILITY STATUS CONTRACT" means the Water Availability Status Contract to Replenish Groundwater Between CAWCD and the City of Scottsdale dated November 21, 2001.

1.25 "ORIGINAL WATER AVAILABILITY STATUS RESOLUTION" means the Resolution of CAWCD granting water availability status to the Municipal Provider, pursuant to Arizona Revised Statutes Section 48-3772.B.10, dated October 4, 2001.

1.26 "PARTIES" means one or both of the parties to this Amended Contract.

1.27 "REPLENISHMENT ACCOUNT" means the account established by CAWCD for the Municipal Provider pursuant to Article 8 of this Amended Contract.

1.28 "REPLENISHMENT AREA" means the area depicted in Exhibit A, attached and incorporated into this Amended Contract, where Replenishment Water will be stored underground pursuant to this Amended Contract, such that the Municipal Provider may physically access that water for service to its customers.

1.29 "REPLENISHMENT CREDIT" means Replenishment Water stored underground at Contract Replenishment Facilities located in the Carefree sub-basin pursuant to this Amended Contract, except water stored underground pursuant to Articles 9 and 10 of this Amended Contract, which ADWR has credited to CAWCD's conservation district account, and which CAWCD has allocated to the Replenishment Account.

1.30 "REPLENISHMENT WATER" means CAP water or water from any other lawfully available source, including the Long-term Water Supply, except groundwater withdrawn from within an active management area, delivered by CAWCD to the Municipal Provider's Turnout under the terms of this Amended Contract.

1.31 "SERVICE AREA" is as defined in Arizona Revised Statutes § 45-402.31. A map of the Municipal Provider's current Service Area is attached to and incorporated into this Amended Contract as Exhibit B.

1.32 "SERVICE AREA REPLENISHMENT OBLIGATION" is as defined in Article 1.22 of the Amended Member Service Area Agreement.

1.33 "STATUTORY RESERVE ACCOUNT" means the account established by CAWCD for the Municipal Provider pursuant to Article 8 of this Amended Contract.

1.34 "STATUTORY RESERVE CREDIT" means water stored underground at Contract Replenishment Facilities pursuant to Article 10 of this Amended Contract, which ADWR has credited to CAWCD's long-term storage account, and which CAWCD has allocated to the Statutory Reserve Account.

1.35 "UNCONTROLLABLE FORCES" means any cause beyond the control of the Party affected, including but not limited to flood, earthquake, storm, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority, and action or non-action by or failure to obtain the necessary authorizations or approvals from any governmental agency or authority not a Party to this Amended Contract, which by exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Nothing contained herein shall be construed so as to require a Party to settle any strike or labor dispute in which it is involved.

## **ARTICLE 2 EFFECTIVE DATE**

This Amended Contract shall be effective and binding when it has been executed by the Parties. However, neither Party shall be required to perform any of the obligations, or be entitled to receive any of the benefits, under this Amended Contract until: (i) the director of ADWR finds, pursuant to Arizona Revised Statutes § 45-576.07.A., that sufficient groundwater, surface water or effluent will be continuously available to satisfy the Increased Designation for at least 100 years and approves the Municipal Provider's application to modify its designation of assured water supply to include that amount of water to the designation, including issuing or granting all permits required by or pursuant to Arizona Revised Statutes § 45-576.07.A; and (ii) the Municipal Provider's modified designation that is dependent on the execution of this Amended Contract is effective. Until the two (2) conditions stated in subparagraphs (i) and (ii) of this Article 2 have been satisfied, the Original Water Availability Status

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Contract will remain in full force and effect, provided, however, that the Original Water Availability Status Contract will be superseded and replaced automatically and immediately by this Amended Water Availability Status Contract upon satisfaction of these two (2) conditions.

### **ARTICLE 3 CANCELLATION**

3.1 If the Municipal Provider acquires a permanent substitute supply of water to satisfy the Increased Designation and the director of ADWR approves a modified designation of assured water supply for the Municipal Provider that incorporates the substituted supply, the Municipal Provider may cancel this Amended Contract upon written notice to CAWCD.

3.2 If the director of ADWR does not issue an order modifying the Municipal Provider's designation of assured water supply within two years of CAWCD's adoption of the Amended Water Availability Status Resolution, either Party may unilaterally cancel this Amended Contract upon written notice to the other Party.

3.3 Upon cancellation of this Amended Contract pursuant to Article 3.1 or 3.2, the Parties shall be relieved of all obligations under this Amended Contract and CAWCD shall repeal the Amended Water Availability Status Resolution. Provided, however, the following obligations shall survive cancellation of this Amended Contract: (1) the Municipal Provider's obligation to pay the Contract Replenishment Tax for any Replenishment Water delivered to the Municipal Provider's Turnout before the date of cancellation; (2) the Municipal Provider's obligation to pay for any Long-term Storage Credits purchased by the Municipal Provider pursuant to Article 11 of this Amended Contract or the Original Water Availability Status Contract before the date of cancellation; and (3) the Municipal Provider's obligation to pay the option fee as set forth in Article 11.4 for the year in which this Amended Contract is cancelled.

### **ARTICLE 4 REPLENISHMENT COMMITMENT**

4.1 CAWCD commits to deliver up to 2,910 acre-feet of Replenishment Water per year to the Municipal Provider's Turnout to satisfy the Increased Designation. The Municipal Provider commits to divert such Replenishment Water at the Municipal Provider's Turnout for storage at Contract Replenishment Facilities and/or for direct delivery to customers served by wells located within the Carefree sub-basin, in accordance with the provisions of Articles 4.2 and 4.3 below.

4.2 Each year, the Municipal Provider shall store that amount of Replenishment Water at Contract Replenishment Facilities located within the Carefree sub-basin necessary to accrue sufficient Replenishment Credits to offset its pumping of Excess Groundwater during that year. In any year, in lieu of pumping Excess Groundwater and storing Replenishment Water to offset such pumping, upon CAWCD's consent, the

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Municipal Provider may deliver Replenishment Water directly to its customers served by wells located within the Carefree sub-basin as a replacement supply for Excess Groundwater that would have otherwise been pumped during that year.

4.3 In addition to its obligation under Article 4.2, the Municipal Provider shall store each year that amount of water at Contract Replenishment Facilities necessary to accrue sufficient Long-term Storage Credits to satisfy its obligations under Articles 9 and 10 of this Amended Contract.

## **ARTICLE 5 CONTRACT REPLENISHMENT FACILITIES AND IRRIGATION WATER DISTRIBUTION SYSTEM**

5.1 All replenishment under this Amended Contract will be accomplished using permitted underground storage facilities that are financed, acquired, developed, constructed, operated and maintained by the Municipal Provider. The Municipal Provider shall be responsible for financing, acquiring, developing, constructing, operating, maintaining and replacing underground storage facilities for the storage of Replenishment Water under the terms of this Amended Contract. Such underground storage facilities shall be constructed within the Replenishment Area, at locations where the Municipal Provider may physically access the stored water for service to its customers within the Carefree sub-basin, and shall comply with the conditions imposed by ADWR, if any, relating to the Increased Designation.

5.2 CAWCD will obtain a water storage permit(s) to store Replenishment Water at the Contract Replenishment Facilities. As operator of the Contract Replenishment Facilities, the Municipal Provider shall store the amounts of Replenishment Water indicated in the Annual Schedule for delivery to the Municipal Provider's Turnout for storage at Contract Replenishment Facilities, on behalf of CAWCD, under CAWCD's water storage permit(s). Replenishment Water stored pursuant to CAWCD's water storage permit(s) at Contract Replenishment Facilities, which is determined by ADWR to meet the requirements of Long-term Storage Credits, will be credited by ADWR to CAWCD's conservation district account and CAWCD's long-term storage account in accordance with the terms of this Amended Contract.

5.3 The Municipal Provider shall be responsible for financing, acquiring, developing, constructing, operating, maintaining and replacing the Irrigation Water Distribution System. The Municipal Provider shall make available a minimum capacity of eight (8) cubic feet per second in the Irrigation Water Distribution System for the transportation of Replenishment Water delivered to the Municipal Provider's Turnout under the terms of this Amended Contract.

## **ARTICLE 6 ANNUAL SCHEDULE**

6.1 Within 60 days of the effective date of this Amended Contract, the Municipal Provider shall submit a proposed annual schedule indicating: (1) the amounts of Replenishment Water it desires CAWCD to deliver to the Municipal Provider's Turnout during each month of the initial year of water deliveries under this Amended Contract for underground storage at Contract Replenishment Facilities located in the Carefree sub-basin; and (2) the amounts of Replenishment Water it desires CAWCD to deliver to the Municipal Provider's Turnout during each month of the initial year of water deliveries under this Amended Contract for direct delivery to customers served by wells located within the Carefree sub-basin. In preparing the proposed annual schedule, the Municipal Provider shall schedule sufficient Replenishment Water to satisfy its obligations under Article 4 of this Amended Contract. In lieu of submitting a proposed annual schedule, as required by this Article 6.1, the Municipal Provider may rely on the current schedule it has in place with CAWCD for that year.

6.2 Upon receipt of the proposed annual schedule for the initial year of water deliveries, CAWCD shall review it and after consultation with the Municipal Provider, shall make such modifications as are necessary to ensure that the amounts, times and rates of delivery to the Municipal Provider are consistent with the delivery capability of the CAP, considering, among other things, the availability of water and the delivery schedules of all other CAP water users.

6.3 Within 45 days after receipt of the proposed annual schedule for the initial year of water deliveries, CAWCD shall determine and furnish to the Municipal Provider the Annual Schedule for the initial year of water deliveries, which shall show: (1) the amounts of Replenishment Water to be delivered to the Municipal Provider's Turnout during each month of the initial year of water deliveries for underground storage at Contract Replenishment Facilities; and (2) the amounts of Replenishment Water to be delivered to the Municipal Provider's Turnout for direct delivery to customers served by wells located within the Carefree sub-basin, contingent upon the Municipal Provider remaining eligible to receive Replenishment Water under all terms contained in this Amended Contract. The Annual Schedule shall also indicate the anticipated source(s) and volume(s) of Replenishment Water that CAWCD will deliver to the Municipal Provider's Turnout during the initial year of water deliveries, (i.e., excess CAP water, the Long-Term Water Supply or other alternative water supplies.)

6.4 Beginning in 2013, on or before October 1 of each year, the Municipal Provider shall submit a proposed annual schedule indicating: (1) the amounts of Replenishment Water it desires CAWCD to deliver to the Municipal Provider's Turnout during each month of the following year for underground storage at Contract Replenishment Facilities located in the Carefree sub-basin; and (2) the amounts of Replenishment Water it desires CAWCD to deliver to the Municipal Provider's Turnout during each month of the following year for direct delivery to customers served by wells located within the Carefree sub-basin. In preparing the proposed annual schedule, the Municipal Provider shall schedule sufficient Replenishment Water to satisfy its obligations under Article 4 of this Amended Contract.

6.5 Upon receipt of the proposed annual schedule, CAWCD shall review it and after consultation with the Municipal Provider, shall make such modifications as are necessary to ensure that the amounts, times and rates of delivery to the Municipal Provider are consistent with the delivery capability of the CAP, considering, among other things, the availability of water and the delivery schedules of all other CAP water users.

6.6 Beginning in 2013, on or before November 15 of each year, CAWCD shall determine and furnish to the Municipal Provider the Annual Schedule for the following year, which shall show: (1) the amounts of Replenishment Water to be delivered to the Municipal Provider's Turnout during each month of that year for underground storage at Contract Replenishment Facilities; and (2) the amounts of Replenishment Water to be delivered to the Municipal Provider's Turnout for direct delivery to customers served by wells located within the Carefree sub-basin, contingent upon the Municipal Provider remaining eligible to receive Replenishment Water under all terms contained in this Amended Contract. The Annual Schedule shall also indicate the anticipated source(s) and volume(s) of Replenishment Water that CAWCD will deliver to the Municipal Provider's Turnout during the following year, (i.e., excess CAP water, the Long-Term Water Supply or other alternative water supplies).

6.7 Replenishment Water scheduled in any year under this Amended Contract may not be resold by the Municipal Provider for use outside the Service Area.

## **ARTICLE 7 CONTRACT REPLENISHMENT OBLIGATION**

The amount of Excess Groundwater reported by the Municipal Provider under Article 14.1.2 of this Amended Contract shall constitute a contract replenishment obligation for CAWCD for the year in which the report is submitted. This contract replenishment obligation will become a part of CAWCD's total replenishment obligation for the Phoenix Active Management Area for that year, as provided in A.R.S. §48-3771. CAWCD will satisfy the contract replenishment obligation incurred pursuant to this Amended Contract by first applying all available credits in the Replenishment Account until exhausted, and then applying all available credits in the Statutory Reserve Account until exhausted.

## **ARTICLE 8 REPLENISHMENT AND STATUTORY RESERVE ACCOUNTS**

8.1 Under the Original Water Availability Status Contract CAWCD established a Replenishment Account and a Statutory Reserve Account for the Municipal Provider.

8.2 CAWCD shall allocate to the Municipal Provider's Statutory Reserve Account that amount of water stored by the Municipal Provider at Contract Replenishment Facilities pursuant to the provisions of Article 10 of this Amended Contract during the previous

year, which ADWR has determined meets the requirements of Long-term Storage Credits and has credited to CAWCD's long-term storage account.

8.3 CAWCD shall allocate to the Replenishment Account that amount of water stored by the Municipal Provider at Contract Replenishment Facilities pursuant to this Amended Contract, excluding any water stored by the Municipal Provider under Article 10 of this Amended Contract, during the previous year, which ADWR has determined meets the requirements of Long-term Storage Credits and has credited to CAWCD's conservation district account.

## **ARTICLE 9 ACCRUAL OF OPERATIONAL RESERVE CREDITS**

9.1 In addition to its other obligations under this Amended Contract, the Municipal Provider shall store sufficient water at Contract Replenishment Facilities to accrue at least 439 acre-feet of Operational Reserve Credits each year until the total amount of credits in the Operational Reserve Account equal 2,910 acre-feet. Under current ADWR rules and regulations, the Municipal Provider would have to take delivery of at least 461 acre-feet of water per year at Contract Replenishment Facilities to accrue 439 acre-feet of Operational Reserve Credits per year. At the Municipal Provider's election it may satisfy its obligation to accrue Operational Reserve Credits under this Article by using its own water supply and its own water storage permit(s) to accrue Long-term Storage Credits within the Replenishment Area. If the Municipal Provider so elects, each year, as soon as ADWR determines that the water stored by the Municipal Provider under this Article 9.1 meets the requirements of Long-term Storage Credits, the Municipal Provider shall transfer at least 439 acre-feet of credits to CAWCD's long-term storage account. CAWCD shall allocate such credits to the Operational Reserve Account. If in any year, the Municipal Provider does not wish to satisfy its obligation to accrue Operational Reserve Credits by accruing its own Long-term Storage Credits and transferring them to CAWCD, it may request in its proposed annual schedule that CAWCD deliver Replenishment Water to the Municipal Provider's Turnout for storage at Contract Replenishment Facilities in accordance with the terms of this Amended Contract. If CAWCD determines that it can accommodate the Municipal Provider's request, that portion of the Annual Schedule indicating the amount of Replenishment Water to be delivered to the Municipal Provider's Turnout for storage at Contract Replenishment Facilities will include the amount of Replenishment Water requested by the Municipal Provider to satisfy its obligations under this Article 9. Such Replenishment Water will be stored in accordance with the terms of this Amended Contract and will be credited to the Replenishment Account in accordance with Article 8.3 of this Amended Contract.

9.2 If at the end of any year, the Municipal Provider has failed to accrue the minimum annual amount of Operational Reserve Credits required in Article 9.1, the Municipal Provider shall notify CAWCD in writing of the projected shortfall. Along with such notice, the Municipal Provider shall submit to CAWCD a plan for accruing or otherwise

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achieving the minimum annual volume of Operational Reserve Credits required in Article 9.1. This plan shall include construction of sufficient additional vadose zone wells, annual storage and recovery wells or other infrastructure necessary to meet the minimum annual schedule required in Article 9.1.

**ARTICLE 10  
ACCRUAL AND MAINTENANCE OF  
MINIMUM VOLUME OF  
STATUTORY RESERVE CREDITS**

10.1 In addition to its other obligations under this Amended Contract, the Municipal Provider shall store sufficient water at Contract Replenishment Facilities to accrue at least 1,082 acre-feet of Statutory Reserve Credits each year, until the total amount of credits in the Statutory Reserve Account equal 14,550 acre-feet. Under current ADWR rules and regulations, the Municipal Provider would have to take delivery of at least 1,138 acre-feet of water per year at Contract Replenishment Facilities to accrue 1,082 acre-feet of Statutory Reserve Credits per year. At the Municipal Provider's election it may satisfy its obligation to accrue Statutory Reserve Credits by using its own water supply and its own water storage permit(s) to accrue Long-term Storage Credits within the Replenishment Area. If the Municipal Provider so elects, each year, as soon as ADWR determines that the water stored by the Municipal Provider under this Article 10.1 meets the requirements of Long-term Storage Credits, the Municipal Provider shall transfer at least 1,082 acre-feet of credits to CAWCD's long-term storage account. CAWCD shall allocate such credits to the Statutory Reserve Account. If in any year, the Municipal Provider does not wish to satisfy its obligation to accrue Statutory Reserve Credits by accruing its own Long-term Storage Credits and transferring them to CAWCD, it may request in its proposed annual schedule that CAWCD deliver Replenishment Water to the Municipal Provider's Turnout for storage at Contract Replenishment Facilities in accordance with the terms of this Amended Contract. If CAWCD determines that it can accommodate the Municipal Provider's request, that portion of the Annual Schedule indicating the amount of Replenishment Water to be delivered to the Municipal Provider's Turnout for storage at Contract Replenishment Facilities will include the amount of Replenishment Water requested by the Municipal Provider to satisfy its obligations under this Article. Such Replenishment Water will be stored in accordance with the terms of this Amended Contract and will be credited to the Statutory Reserve Account in accordance with Article 8.2 of this Amended Contract.

10.2 If at the end of any year, the Municipal Provider has failed to accrue the minimum annual amount of Statutory Reserve Credits required in Article 10.1, the Municipal Provider shall notify CAWCD in writing of the projected shortfall. Along with such notice, the Municipal Provider shall submit to CAWCD a plan for accruing or otherwise achieving the minimum annual volume of Statutory Reserve Credits required in Article 10.1. This plan shall include construction of sufficient additional vadose zone wells, annual storage and recovery wells or other infrastructure necessary to meet the minimum annual schedule required in Article 10.1.

10.3 No later than December 31, 2020, the Municipal Provider shall have accrued a minimum of 14,550 acre-feet of Statutory Reserve Credits in its Statutory Reserve Account. This 14,550 acre-feet of Statutory Reserve Credits is intended to satisfy the requirements of Arizona Revised Statutes § 45-576.07.A.5, which requires that the Municipal Provider commit to ensure that a five-year supply of water will be maintained and available for use by the Municipal Provider in years in which sufficient Replenishment Water is not available. Accordingly, the Municipal Provider shall maintain a minimum of 14,550 acre-feet of Statutory Reserve Credits in its Statutory Reserve Account at all times after December 31, 2020, except as provided in Article 10.4.

10.4 If in any year during the term of this Amended Contract, (i) sufficient Replenishment Water is not available for delivery, (ii) sufficient storage capacity at Contract Replenishment Facilities located within the Carefree sub-basin is not available to satisfy the Municipal Provider's obligation to accrue sufficient Replenishment Credits to offset its Excess Groundwater pumping for that year, or (iii) sufficient Replenishment Credits or Operational Reserve Credits are not available to satisfy the contract replenishment obligation, as defined in Article 7 of this Amended Contract, the Municipal Provider may seek CAWCD's consent to apply a maximum of 2,910 acre-feet of Statutory Reserve Credits to satisfy the contract replenishment obligation for that year. At the time it submits its request to apply Statutory Reserve Credits, the Municipal Provider shall also submit to CAWCD a plan which details how the Municipal Provider will restore the balance of Statutory Reserve Credits in the Statutory Reserve Account to an amount equal to a minimum of 14,550 acre-feet, if such request occurs after December 31, 2019, or to that amount of credits in the Statutory Reserve Account immediately prior to such request, if the request is made before 2019. If the Municipal Provider has submitted a plan to restore the balance of Statutory Reserve Credits that is acceptable to CAWCD, CAWCD shall allocate an annual maximum of 2,910 acre-feet of Statutory Reserve Credits to offset Excess Groundwater pumped by the Municipal Provider.

10.5 If at any time after December 31, 2020, the balance of Statutory Reserve Credits in the Statutory Reserve Account falls below 8,730 acre-feet, the Parties shall meet to discuss the need, if any, for additional Contract Replenishment Facilities. If CAWCD reasonably determines that additional Contract Replenishment Facilities are necessary, it shall consult with the Municipal Provider and ADWR regarding the amount of additional storage capacity required. The Municipal Provider shall finance the design, permitting and construction of an additional component of the Contract Replenishment Facilities, to be located within the Replenishment Area and/or within the Carefree sub-basin. Once construction of this additional component is complete, the Municipal Provider shall own and operate the facility to satisfy its obligations under this Amended Contract.

10.6 Except as otherwise provided in this Article, the Municipal Provider may not recover, sell, assign, pledge or otherwise transfer Statutory Reserve Credits.

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**ARTICLE 11**  
**OPTION TO PURCHASE CAWCD**  
**LONG-TERM STORAGE CREDITS**

11.1 Upon the execution of this Amended Contract, the Municipal Provider shall have an option to purchase a total of 5,957.36 acre-feet of Phoenix Active Management Area Long-term Storage Credits from CAWCD. On January 1 of each year following the execution of this Amended Contract during the Option Period, the amount of CAWCD Long-term Storage Credits on which the Municipal Provider holds an option shall be reduced, on an acre-foot per acre-foot basis, by the amount of Statutory Reserve Credits accrued by the Municipal Provider during the previous year. The option shall expire on December 31, 2020, unless sooner terminated in accordance with Article 21 of this Amended Contract. CAWCD shall maintain sufficient credits in its Phoenix Active Management Area long-term storage account dedicated to the Municipal Provider to satisfy its obligation under this Article. The Municipal Provider may exercise its option in any year during the Option Period under the following conditions:

11.1.1 If sufficient Replenishment Water is not available for delivery in a given year to satisfy the demand of those customers of the Municipal Provider served by wells located within the Carefree sub-basin up to the Increased Designation, and if the total amount of Operational Reserve Credits, Replenishment Credits and Statutory Reserve Credits are insufficient to offset the Municipal Provider's pumping of Excess Groundwater, then the Municipal Provider may purchase that amount of Long-term Storage Credits from CAWCD necessary to offset the Municipal Provider's pumping of Excess Groundwater for that year, not to exceed 2,910 acre-feet; or

11.1.2 If sufficient storage capacity at Contract Replenishment Facilities, and/or transportation capacity in the Irrigation Water Distribution System is not available to satisfy the Municipal Provider's obligation to accrue sufficient Replenishment Credits to offset its pumping of Excess Groundwater for that year, and if the total amount of Operational Reserve Credits, Replenishment Credits and Statutory Reserve Credits are insufficient to offset the Municipal Provider's pumping of Excess Groundwater, then the Municipal Provider may purchase that amount of Long-term Storage Credits from CAWCD necessary to offset the Municipal Provider's pumping of Excess Groundwater for that year, not to exceed 2,910 acre-feet.

11.2 If, in any year during the Option Period, the Municipal Provider wishes to exercise its option to purchase CAWCD Long-term Storage Credits, it shall submit a written request to CAWCD, which sets forth the amount of Long-term Storage Credits the Municipal Provider wishes to purchase and sufficient information for CAWCD to determine whether the conditions of Article 11.1.1 or 11.1.2 have been met.

11.3 CAWCD shall determine whether the Municipal Provider's request to purchase CAWCD Long-term Storage Credits satisfies the conditions of Article 11.1.1 or 11.1.2 above and, if so, shall establish the purchase price for such credits. The price for CAWCD Long-term Storage Credits purchased under this Article shall be established by

CAWCD, and shall equal CAWCD's cost to replace an equivalent amount of Long-term Storage Credits. Within sixty days of the Municipal Provider's request to purchase CAWCD Long-term Storage Credits, CAWCD shall notify the Municipal Provider in writing whether the request satisfies the conditions of Article 11.1.1 or 11.1.2, and if so, the price for each acre-foot of Long-term Storage Credit to be purchased. The Municipal Provider shall have sixty days after receipt of CAWCD's notice to pay CAWCD the purchase price for the Long-term Storage Credits it wishes to purchase. Upon receipt of payment, CAWCD shall transfer the credits to its conservation district account and shall allocate the credits to the Replenishment Account.

11.4 Regardless of whether any CAWCD Long-term Storage Credits are purchased under this Article, each year during the Option Period, the Municipal Provider shall pay CAWCD an option fee. The option fee shall be calculated by CAWCD on or before May 15<sup>th</sup> of each year during the Option Period and shall be included as a component of the annual Contract Replenishment Tax. The option fee shall be calculated according to the following formula:

$$\text{Option Fee} = (\text{OA} \times \text{C}) \times \text{I}$$

Where:

OA = the option amount, or the amount of CAWCD Long-term Storage Credits on which the Municipal Provider holds an option as of April 30<sup>th</sup> of the year in which the calculation is being made, as computed in accordance with Article 11.1 above.

C = the Excess Water Rate for the year in which the calculation is being made.

I = the weighted average annual interest rate earned by CAWCD for the year preceding the year in which the calculation is being made.

11.5 If the Municipal Provider is in default under Article 20 of this Amended Contract because it is late in paying the option fee, the option will not expire. However, the Municipal Provider shall have no right to exercise the option until the default has been cured.

## **ARTICLE 12 INTERRUPTIONS AND REDUCTIONS**

CAWCD may temporarily discontinue or reduce the quantity of Replenishment Water to be furnished to the Municipal Provider as herein provided for the purposes of investigation, inspection, construction, testing, maintenance, repair, or replacement of

any of the CAP facilities or any part thereof. CAWCD may also temporarily discontinue or reduce the quantity of Replenishment Water to be furnished to the Municipal Provider if there is insufficient Replenishment Water or CAP delivery capacity to deliver the Municipal Provider's water order, the water orders of contractors of excess water service, and all water deliveries scheduled pursuant to a contract with the United States or a subcontract with the United States and CAWCD providing for CAP water service for a period of 50 years or more. So far as feasible, CAWCD shall attempt to coordinate any such discontinuance or reduction with the Municipal Provider and to give the Municipal Provider due notice in advance of such discontinuance or reduction. In case of emergency, no notice need be given. The United States, its officers, agents, and employees, and CAWCD, its officers, agents, and employees, shall not be liable for damages when, for any reason whatsoever, any interruption, discontinuance, or reduction in delivery of water occurs. If any such discontinuance or temporary reduction results in deliveries to the Municipal Provider of less Replenishment Water than what has been paid for in advance, the Municipal Provider shall be reimbursed or credited for the proportionate amount of such advance payments.

### **ARTICLE 13 QUALITY OF WATER**

CAWCD does not warrant the quality of any Replenishment Water furnished under this Amended Contract and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of any Replenishment Water. The Municipal Provider waives its right to make a claim against CAWCD, the United States or other CAP water users because of changes in water quality caused by the commingling of Replenishment Water with other water.

### **ARTICLE 14 REPORTING REQUIREMENTS**

**14.1 Annual Reports.** On or before March 31 of each year after the conditions set forth in Article 2 of this Amended Contract are satisfied, the Municipal Provider shall file a report with CAWCD and ADWR that contains the following information for the preceding calendar year, which is the reporting year:

14.1.1 The amount of Groundwater withdrawn by the Municipal Provider from wells located within the Carefree sub-basin and delivered to its customers.

14.1.2 The amount of Excess Groundwater withdrawn by the Municipal Provider and delivered to its customers, and the basis for the calculation of the amount of Excess Groundwater delivered. The total amount of Excess Groundwater reported in any calendar year by the Municipal Provider shall not exceed 2,910 acre-feet.

14.1.3 The amount of Replenishment Water that the Municipal Provider stored at Contract Replenishment Facilities located within the Carefree sub-basin pursuant to the provisions of this Amended Contract, except Replenishment Water stored pursuant

to Article 10 of this Amended Contract.

14.1.4 The amount of Replenishment Water that the Municipal Provider stored at Contract Replenishment Facilities pursuant to the provisions of Article 10 of this Amended Contract.

14.1.5 The amount of Replenishment Water that the Municipal Provider delivered for direct use to its customers served by wells located within the Carefree sub-basin.

14.1.6 Such other information as CAWCD may reasonably require.

14.2 Records. The Municipal Provider shall maintain current and accurate records of the information required to be included in the Reports.

14.3 Form of Reports. CAWCD shall determine the form of the reports to be submitted by the Municipal Provider in order to carry out the purposes of the Groundwater Replenishment Statute.

## **ARTICLE 15 MEMBER SERVICE AREA AGREEMENT AND CONTRACT REPLENISHMENT OBLIGATION**

CAWCD and the Municipal Provider shall execute, concurrent with this Amended Contract, the Amended Member Service Area Agreement in the form attached hereto as Exhibit C. The Municipal Provider shall accrue Operational Reserve Credits, Replenishment Credits and Statutory Reserve Credits under this Amended Contract in advance of incurring any Service Area Replenishment Obligation under the Amended Member Service Area Agreement. As provided in Article 7 of this Amended Contract, every year, CAWCD shall apply available Operational Reserve Credits, Replenishment Credits, and, if necessary, Statutory Reserve Credits, against any Excess Groundwater delivered by the Municipal Provider to satisfy the contract replenishment obligation, so that the Service Area Replenishment Obligation equals zero.

## **ARTICLE 16 LONG-TERM WATER SUPPLY**

16.1 The Municipal Provider shall acquire a permanent legal right to a long-term water supply, which satisfies the following conditions:

16.1.1 The water supply shall be legally and physically available to the Municipal Provider within the meaning of Arizona law.

16.1.2 The volume of the water supply shall be sufficient to satisfy the Increased Designation and the obligations undertaken by CAWCD and the Municipal Provider under this Amended Contract.

16.1.3 The water supply shall be available to CAWCD at locations and flow rates that are acceptable to CAWCD. CAWCD will act reasonably and will consult with the Municipal Provider in determining the times and flow rates for delivery of the water supply. CAWCD may require that the water supply be provided at times and flow rates that are different from the times and flow rates that Replenishment Water is delivered to the Municipal Provider's Turnout.

16.1.4 If the water supply is to be introduced into the CAP aqueduct system, the Municipal Provider shall ensure that such introduction complies with CAWCD Board-adopted policies, including but not limited to policies regarding water quality and transportation of non-Project water, and state and federal law in effect at the time of such introduction.

16.1.5 The water supply shall comply with all conditions imposed by ADWR in its order modifying the Municipal Provider's designation of assured water supply, and granting the Increased Designation.

16.2 The Municipal Provider shall hold the Long-Term Water Supply exclusively for CAWCD's future use in meeting the obligations undertaken by CAWCD under this Amended Contract and the Amended Water Availability Status Resolution, as required by A.R.S. § 48-3772.B.10.d.

16.3 If for any reason, the selected Long-Term Water Supply becomes unavailable or no longer satisfies the conditions of Article 16.1, the Municipal Provider shall acquire a replacement Long-Term Water Supply and shall hold the replacement Long-Term Water Supply exclusively for CAWCD's future use in meeting the obligations undertaken by CAWCD under this Amended Contract and the Amended Water Availability Status Resolution, as required by A.R.S. § 48-3772.B.10.d.

16.4 CAWCD will accept, as the Long-Term Water Supply of the Municipal Provider, any water supply or replacement water supply acquired by the Municipal Provider that satisfies the applicable conditions of Section 16.1. CAWCD will notify the Municipal Provider in writing that CAWCD has accepted a water supply or replacement water supply as the Long-Term Water Supply of the Municipal Provider.

## **ARTICLE 17 WATER SUPPLIES TO BE USED FOR REPLENISHMENT**

17.1 CAWCD will use excess CAP water to satisfy the Annual Schedule as long as excess CAP water is available for such purposes. For any year that CAWCD determines, in its sole discretion, that sufficient excess CAP water is not available to satisfy all or a portion of the Annual Schedule, CAWCD shall have the right to use the Long-Term Water Supply to satisfy the Annual Schedule. However, CAWCD shall give

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the Municipal Provider at least three years advance written notice before requiring the use of the Long-Term Water Supply to satisfy the Annual Schedule.

17.2 For any year that CAWCD determines, in its sole discretion, that sufficient excess CAP water is not available to satisfy all or a portion of the Annual Schedule, CAWCD will use the Long-Term Water Supply to satisfy the Annual Schedule unless such use cannot be accomplished in compliance with existing statutes, and CAWCD Board-adopted policies. If CAWCD cannot use the Long-Term Water Supply, it shall notify the Municipal Provider in writing and explain the reasons why the Long-Term Water Supply cannot be used to satisfy the Annual Schedule.

## **ARTICLE 18 CONTRACT REPLENISHMENT TAX**

18.1 CAWCD shall levy the Contract Replenishment Tax annually. The Contract Replenishment Tax shall be based on an assessment rate established annually by CAWCD for this Amended Contract, plus the option fee described in Article 11.4. The assessment rate will be a per acre-foot rate. It may differ from the assessment rate for Member Service Areas in the Phoenix Active Management Area and/or the assessment rate under other Contracts for Replenishment.

18.2 The annual assessment rate for this Amended Contract shall consist of, but not be limited to: (1) CAWCD's cost (if any) of acquiring water supplies to satisfy the Annual Schedule; (2) CAWCD's rate for transporting water supplies to the Contract Replenishment Facilities; (3) CAWCD's cost (if any) of underground storage; and (4) an administrative component, which shall be equal to: (1) CAWCD's cost to administer this Amended Contract, or (2) the administrative component of the Phoenix Active Management Area replenishment assessment, whichever is greater.

18.3 Notwithstanding the provisions of Arizona Revised Statutes §48-3781, on or before June 1 of each year after the execution of this Amended Contract, CAWCD will transmit a statement to the Municipal Provider stating the amount of the annual Contract Replenishment Tax. The annual Contract Replenishment Tax will be equal to the annual assessment rate established pursuant to Article 18.2 of this Amended Contract multiplied by the total volume of Replenishment Water identified in the Annual Schedule for the then current year, plus the option fee described in Article 11.4.

18.4 Notwithstanding the provisions of Arizona Revised Statutes §48-3781, on or before July 15 of each year after the execution of this Amended Contract, the Municipal Provider shall pay to CAWCD an amount equal to the Contract Replenishment Tax levied by CAWCD.

18.5 If the Contract Replenishment Tax is not paid when due, CAWCD will be entitled to interest, costs and penalties as provided by Arizona Revised Statutes § 48-3782. Further, if the Contract Replenishment Tax is not paid when due, CAWCD shall not be obligated to satisfy the Annual Schedule.

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**ARTICLE 19**  
**UNCONTROLLABLE FORCES**

Neither Party to this Amended Contract shall be considered in default in the performance of any of its obligations under this Amended Contract when a failure of performance is due to Uncontrollable Forces. Any Party rendered unable to fulfill any of its obligations under this Amended Contract by reason of an Uncontrollable Force shall give prompt written notice of such fact to the other Party and shall exercise due diligence to remove such inability.

**ARTICLE 20**  
**DEFAULT AND REMEDIES**

**20.1    Default.** The occurrence of any of the following events constitutes an event of default by the Municipal Provider.

20.1.1 The failure of the Municipal Provider to perform any term, covenant or condition of this Amended Contract or the Amended Member Service Area Agreement, if that failure continues for thirty (30) days following the Municipal Provider's receipt of written notice from CAWCD.

20.1.2 The physical or legal unavailability of the Long-Term Water Supply, including any replacement for the Long-Term Water Supply.

20.1.3 (i) The filing by or against the Municipal Provider of a petition to have the Municipal Provider adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against the Municipal Provider, the same is dismissed within 60 days); (ii) the making by the Municipal Provider of any general assignment for the benefit of creditors; (iii) the appointment of a trustee or receiver to take possession of substantially all of the Municipal Provider's assets, when possession is not restored to the Municipal Provider within 60 days; or (iv) the attachment, execution or other judicial seizure of substantially all of the Municipal Provider's assets, where such seizure is not discharged within 60 days.

**20.2    Remedies.** If an event of default occurs, CAWCD shall have only the following remedies:

20.2.1 CAWCD shall have no obligation to deliver Replenishment Water under this Amended Contract and the Municipal Provider shall have no right to the delivery of Replenishment Water under this Amended Contract so long as the Municipal Provider remains in default. The Municipal Provider will consult with CAWCD on curing the default.

20.2.2 CAWCD shall have the right to seek recovery of any amounts due to be paid under this Amended Contract before the default.

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**ARTICLE 21**  
**DISPOSITION OF OPERATIONAL RESERVE,**  
**STATUTORY RESERVE AND**  
**REPLENISHMENT CREDITS**  
**ON CANCELLATION**

If this Amended Contract is cancelled pursuant to Article 3, CAWCD shall satisfy any outstanding contract replenishment obligation in accordance with Article 7 of this Amended Contract. After satisfaction of the contract replenishment obligation, CAWCD shall transfer from its long-term storage account to the Municipal Provider that amount of Phoenix AMA Long-term Storage Credits equal to the amount of Replenishment Credits and Operational Reserve Credits remaining in the Replenishment Account. CAWCD shall have two years after the effective date of cancellation of this Amended Contract to transfer its Phoenix AMA Long-term Storage Credits, pursuant to this Article 21. CAWCD shall also transfer to the Municipal Provider the Statutory Reserve Credits remaining in the Statutory Reserve Account after satisfaction of the contract replenishment obligation. CAWCD shall transfer the Statutory Reserve Credits within 180 days after the effective date of cancellation of this Amended Contract. Further, the option to purchase Long-term Storage Credits set forth in Article 11 of this Amended Contract shall terminate upon such cancellation.

**ARTICLE 22**  
**GENERAL PROVISIONS**

**22.1 Binding Effect.** The provisions of this Amended Contract inure to the benefit of and bind the respective successors and assigns of the parties hereto, provided that no assignment or transfer of this Amended Contract or any part or interest herein is valid until approved by CAWCD in its sole and absolute discretion.

22.1.1 The Municipal Provider agrees and covenants to CAWCD to execute and record any additional documentation which CAWCD may reasonably require to effectuate the intents and purposes of this Amended Contract and the Groundwater Replenishment Statute.

**22.2 Entire Agreement.** This Amended Contract constitutes the entire agreement between the parties and no understandings or obligations not expressly set forth in this Amended Contract are binding upon the parties.

**22.3 Amendments.** This Amended Contract may be modified, amended or revoked only (i) by express written agreement of CAWCD, the Municipal Provider and ADWR; or (ii) by amendment statutes, rules or regulations or successor statutes, rules or regulations, as contemplated by Section 22.5.

**22.4 Interpretation.** This Amended Contract is governed by and must be construed and interpreted in accordance with and in reference to the laws of the State of Arizona, including but not limited to the Groundwater Replenishment Statute.

**22.5 Rules, Regulations and Successor Statutes.** All references in this Amended Contract to Arizona Revised Statutes include all rules and regulations promulgated by the ADWR under such statutes and all amendments and successor statutes, rules and regulations to such statutes, rules and regulations.

**22.6 Severability.** Any determination by any court of competent jurisdiction that any provision of this Amended Contract is invalid or unenforceable does not affect the validity or enforceability of any other provision of this Amended Contract.

**22.7 Captions.** All captions, titles or headings in this Amended Contract are used for the purpose of reference and convenience only and do not limit, modify or otherwise affect any of the provisions of this Amended Contract.

**22.8 Notices.** Except as otherwise required by law, any notice given in connection with this Amended Contract must be in writing and must be given by personal delivery, overnight delivery, facsimile, or United States certified or registered mail. Any such notice must be addressed to the appropriate party at the following address (or at any other address as a party may hereafter designate by written notice given as required by this paragraph):

CAWCD:

For delivery use:

Central Arizona Water Conservation District  
23636 North 7<sup>th</sup> Street  
Phoenix, AZ 85024  
Attn: Manager, Groundwater Replenishment District

For U.S. Mail use:

Central Arizona Water Conservation District  
P.O. Box 43020  
Phoenix, AZ 85080-3020  
Attn: Manager, Groundwater Replenishment District

MUNICIPAL  
PROVIDER:

The City of Scottsdale  
9379 East San Salvador Drive  
Scottsdale, AZ 85258  
Attn: General Manager, Water Resources Dept.

With a copy to:

The City of Scottsdale City Attorney's Office  
3939 Drinkwater Blvd.  
Scottsdale, AZ 85251

Notice is deemed to have been given on the date on which notice is personally delivered, delivered to an overnight delivery service, transmitted by facsimile, or mailed. Notice is deemed to have been received on the date on which the notice is actually received or delivery is refused.

IN WITNESS WHEREOF, the Parties to this Amended Contract have executed this Contract as of the date first set forth above.

CAWCD: CENTRAL ARIZONA WATER CONSERVATION DISTRICT

By: \_\_\_\_\_  
Pamela Pickard

Its: President

Attest: \_\_\_\_\_  
Secretary

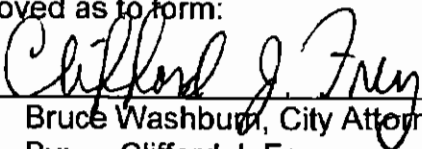
MUNICIPAL  
PROVIDER: THE CITY OF SCOTTSDALE

By: \_\_\_\_\_  
W.J. "Jim" Lane

Its: Mayor

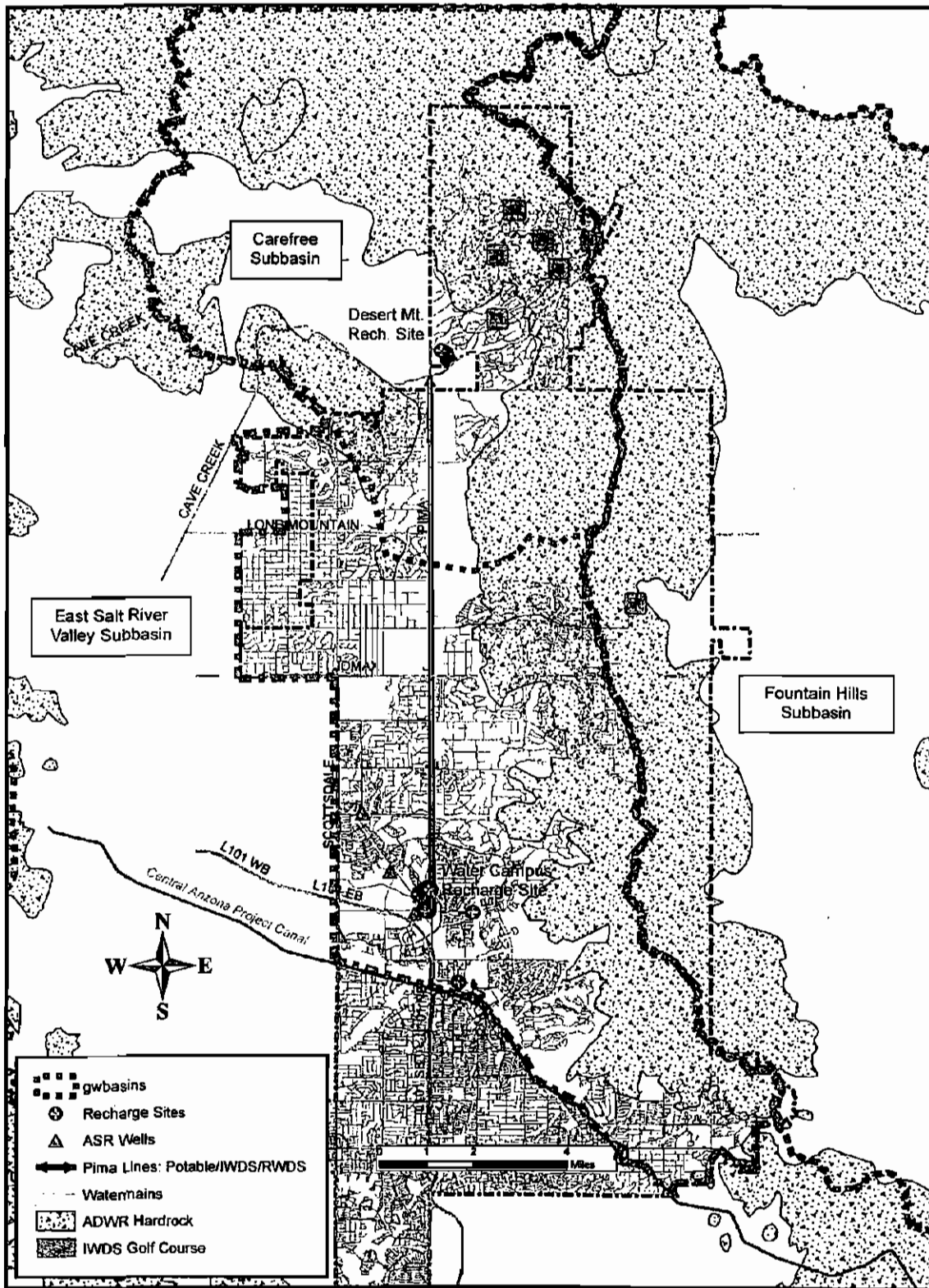
Attest: \_\_\_\_\_  
Carolyn Jagger, City Clerk

Approved as to form:

  
\_\_\_\_\_  
Bruce Washburn, City Attorney  
By: Clifford J. Frey  
Senior Assistant City Attorney

**EXHIBIT A**

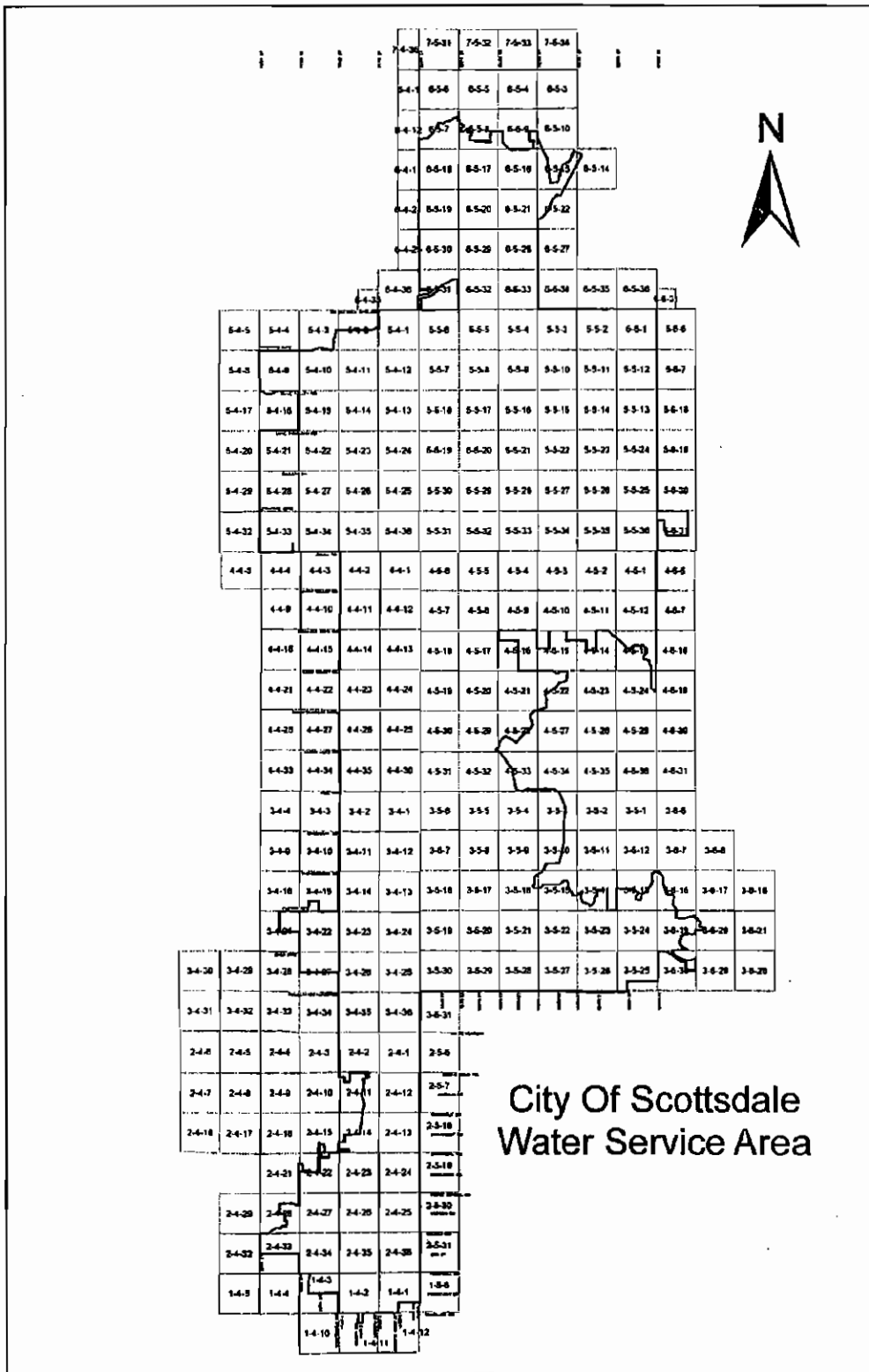
**Replenishment Area Map**



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**EXHIBIT B**

**Service Area Map**



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**EXHIBIT C**

**Member Service Area Agreement Between  
Central Arizona Water Conservation District and the City of Scottsdale**

**MEMBER SERVICE AREA AGREEMENT  
BETWEEN  
CENTRAL ARIZONA WATER CONSERVATION DISTRICT  
AND  
THE CITY OF SCOTTSDALE  
AMENDMENT NO. 1**

This Amended Member Service Area Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 2013, between the Central Arizona Water Conservation District, a political subdivision of the State of Arizona, and the City of Scottsdale, a municipality.

**RECITALS**

A. The Municipal Provider is engaged in the business of providing water utility service within the Service Area.

B. By Resolution dated October 4, 2001, CAWCD adopted the Original Water Availability Status Resolution, which granted water availability status to the Municipal Provider and approved the Original Member Service Area Agreement and the Original Water Availability Status Contract.

C. On November 21, 2001, the Municipal Provider qualified the Service Area as a Member Service Area of the Central Arizona Groundwater Replenishment District and executed the Original Member Service Area Agreement. Concurrent with the execution of the Original Member Service Area Agreement, the Municipal Provider executed the Original Water Availability Status Contract.

D. Pursuant to the Original Water Availability Status Contract, CAWCD committed to deliver up to 3,460 acre-feet of Replenishment Water per year to the Municipal Provider's Turnout.

E. Based on the Original Water Availability Status Resolution, the Original Member Service Area Agreement and the Original Water Availability Status Contract, the Arizona Department of Water Resources modified the Municipal Provider's designation of assured water supply for the Service Area on April 25, 2002, AWS No. 2002-03. The modification increased the Municipal Provider's designation by 3,460 acre-feet.

F. Pursuant to the Original Water Availability Status Contract, and as required by A.R.S. 48-3772.B.10.d and the Municipal Provider's designation of assured water supply, the Municipal Provider acquired certain lands (the "Original Lands") and an associated water supply in the Harquahala Valley to serve as the Long-Term Water Supply.

G. The Municipal Provider will, at some time, sell the Original Land and the associated water supply it owns in the Harquahala Valley, which currently serves as the Long-Term Water Supply. The Municipal Provider intends to acquire other lands and an associated water supply in the Harquahala Valley to serve as the Long-Term Water Supply.

H. The Municipal Provider desires to amend the Original Water Availability Status Contract to reduce CAWCD's obligation to deliver Replenishment Water to the Municipal Provider's Turnout from 3,460 acre-feet per year to 2,910 acre-feet per year.

I. The Municipal Provider has applied to the Arizona Department of Water Resources for a modification of its designation of an assured water supply for the Service Area pursuant to Arizona Revised Statutes Title 45, Chapter 2, Article 9.

J. Amending the Original Water Availability Status Contract and modifying the Municipal Provider's designation of assured water supply requires conforming amendments to the Member Service Area Agreement. Accordingly, the parties desire to amend the Original Member Service Area Agreement. This Amended Agreement will be effective immediately and automatically upon the satisfaction of the conditions stated in Articles 2(i) and 2(ii) of the Amended Water Availability Status Contract.

K. As permitted by Arizona Revised Statutes § 45-576.07(A), the Municipal Provider desires to satisfy the water sufficiency and availability requirement set forth in Arizona Revised Statutes Section 45-576(J)(1), to enable it to modify its designation of assured water supply through a Water Availability Status Resolution of CAWCD. In order for CAWCD to adopt a resolution granting Water Availability Status to the Municipal Provider, Arizona Revised Statutes Section 48-3772.B.10 requires that the Municipal Provider qualify the Service Area as a Member Service Area pursuant to the Groundwater Replenishment Statute. As a Member Service Area, the Municipal Provider will be a member of the Central Arizona Groundwater Replenishment District, an operating subdivision of CAWCD.

L. To qualify the Service Area as a Member Service Area, the Groundwater Replenishment Statute requires the Municipal Provider to execute and deliver this Amended Agreement in accordance with Arizona Revised Statutes § 48-3780.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, and intending to be legally bound, the parties hereby agree as follows:

#### **ARTICLE 1 DEFINITIONS**

As used in this Amended Agreement, the following terms, when capitalized, shall mean:

1.1 "AMENDED AGREEMENT" means this Amended Member Service Area Agreement between CAWCD and the City of Scottsdale, as amended from time to time.

1.2 "AMENDED WATER AVAILABILITY STATUS CONTRACT TO REPLENISH GROUNDWATER" means the Amended Water Availability Status Contract to Replenish Groundwater Between Central Arizona Water Conservation District and the City of Scottsdale executed concurrent with this Amended Agreement.

1.3 "AMENDED WATER AVAILABILITY STATUS RESOLUTION" is as defined in Article 1.4 of the Amended Water Availability Status Contract to Replenish Groundwater.

1.4 "ANNUAL SCHEDULE" is as defined in Article 1.5 of the Amended Water Availability Status Contract to Replenish Groundwater.

1.5 "CAP" means Central Arizona Project.

1.6 "CAWCD" means the Central Arizona Water Conservation District, a political subdivision of the State of Arizona, and any successor political subdivision.

1.7 "CONTRACT REPLENISHMENT FACILITIES" is as defined in Article 1.8 of the Amended Water Availability Status Contract to Replenish Groundwater.

1.8 "EXCESS GROUNDWATER" means the amount of Groundwater equal to the amount of Groundwater delivered by the Municipal Provider within the Service Area in a calendar year in excess of the amount of Groundwater that may be delivered by the Municipal Provider for use within the Service Area in that calendar year consistent with the applicable Assured and Adequate Water Supply Rules adopted by the Arizona Department of Water Resources for the Phoenix Active Management Area pursuant to Arizona Revised Statutes § 45-576(H). Provided, however, for purposes of this Amended Agreement, Excess Groundwater shall be the Groundwater withdrawn from wells located within the Carefree sub-basin specified in the order designating the Municipal Provider as having an assured water supply for purposes of providing a physically available supply to the Replenishment Area pursuant to Arizona Revised Statutes § 45-576.07, including any replacement wells. The amount of Excess Groundwater reported in any calendar year by the Municipal Provider shall not exceed 2,910 acre-feet.

1.9 "GROUNDWATER" is as defined in Arizona Revised Statutes § 45-101(5).

1.10 "GROUNDWATER REPLENISHMENT STATUTE" means Arizona Revised Statutes, Title 48, Chapter 22.

1.11 "INCREASED DESIGNATION" is as defined in Article 1.14 of the Amended Water Availability Status Contract to Replenish Groundwater.

1.12 "LONG-TERM WATER SUPPLY" is as defined in Article 1.17 of the Amended Water Availability Status Contract to Replenish Groundwater.

1.13 "MEMBER SERVICE AREA" is as defined in Arizona Revised Statutes § 48-3701(11).

1.14 "MUNICIPAL PROVIDER" means the City of Scottsdale, and its successors and assigns.

1.15 "OPERATIONAL RESERVE CREDIT" is as defined in Article 1.21 of the Amended Water Availability Status Contract to Replenish Groundwater.

1.16 "REPLENISHMENT ACCOUNT" is as defined in Article 1.27 of the Amended Water Availability Status Contract to Replenish Groundwater.

1.17 "REPLENISHMENT AREA" is as defined in Article 1.28 of the Amended Water Availability Status Contract to Replenish Groundwater.

1.18 "REPLENISHMENT CREDIT" is as defined in Article 1.29 of the Amended Water Availability Status Contract to Replenish Groundwater.

1.19 "REPLENISHMENT TAX" means the annual tax levied by CAWCD against the Municipal Provider in a calendar year based on the Service Area Replenishment Obligation.

1.20 "RESOLUTION" means the Resolution of the Municipal Provider regarding Membership in the Central Arizona Groundwater Replenishment District pursuant to this Amended Agreement, to be adopted pursuant to Arizona Revised Statutes § 48-3780.

1.21 "SERVICE AREA" is as defined in Arizona Revised Statutes § 45-402.31. A map of the Municipal Provider's current Service Area is attached to and incorporated into this Agreement as Exhibit A.

1.22 "SERVICE AREA REPLENISHMENT OBLIGATION" means, with respect to the Service Area, the Excess Groundwater in a particular calendar year reduced by the Operational Reserve Credits, Replenishment Credits and Statutory Reserve Credits, if any, applied by CAWCD with respect to the Service Area under Arizona Revised Statutes § 48-3772(H).

1.23 "STATUTORY RESERVE CREDIT" is as defined in Article 1.34 of the Amended Water Availability Status Contract to Replenish Groundwater.

## **ARTICLE 2 REPORTING REQUIREMENTS**

In accordance with Arizona Revised Statutes § 48-3775(B), on or before March 31 of each year after the publication of the Resolution, the Municipal Provider shall file with CAWCD and with the Director of the Department of Water Resources the report that is required to be filed under Article 14 of the Amended Water Availability Status Contract to Replenish Groundwater.

### **ARTICLE 3 REPLENISHMENT TAX**

3.1 Levy of Replenishment Tax. CAWCD shall levy the Replenishment Tax against the Municipal Provider in accordance with Arizona Revised Statutes § 48-3781.

3.2 Annual Statement. On or before the third Monday of August of each year after the publication of the Resolution, CAWCD will transmit a statement to the Municipal Provider stating the amount of the Replenishment Tax. The Replenishment Tax shall be equal to the assessment rate per acre-foot of Groundwater fixed by CAWCD for the Phoenix Active Management Area multiplied by the Service Area Replenishment Obligation.

3.3 Payment of Replenishment Tax. On or before October 15 of each year after the publication of the Resolution, the Municipal Provider shall pay to CAWCD an amount equal to the Replenishment Tax levied by CAWCD.

3.4 Interest, Cost and Penalties. If the Replenishment Tax is not paid when due, CAWCD will be entitled to interest, costs and penalties as provided by Arizona Revised Statutes § 48-3782.

### **ARTICLE 4 WATER AVAILABILITY STATUS CONTRACT TO REPLENISH GROUNDWATER**

CAWCD and the Municipal Provider shall execute concurrent with this Amended Agreement, the Amended Water Availability Status Contract to Replenish Groundwater in the form attached hereto as Exhibit B. The Municipal Provider shall accrue Operational Reserve Credits, Replenishment Credits and Statutory Reserve Credits under the Amended Water Availability Status Contract to Replenish Groundwater in advance of incurring any Service Area Replenishment Obligation under this Amended Agreement. Every year CAWCD shall first apply available Operational Reserve Credits and Replenishment Credits, and then, if necessary, apply available Statutory Reserve Credits until exhausted, against any Excess Groundwater delivered by the Municipal Provider, so that the Service Area Replenishment Obligation equals zero. If in any year, CAWCD is unable to offset all Excess Groundwater with Operational Reserve Credits, Replenishment Credits and/or Statutory Reserve Credits, and therefore, the Service Area Replenishment Obligation is greater than zero, CAWCD will replenish groundwater for the Municipal Provider at replenishment facilities located

within the Phoenix Active Management Area in accordance with Arizona Revised Statutes § 48-3771(B) and 48-3772(I).

## **ARTICLE 5 ENFORCEMENT POWERS**

5.1 Penalty for Failure to Report. If the Municipal Provider fails to timely file a Report as required by CAWCD, CAWCD may assess a penalty in accordance with Arizona Revised Statutes § 48-3775(G).

5.2 Inspections, Investigations and Audits. The CAWCD has the rights provided under Arizona Revised Statutes § 48-3783 with respect to inspections, investigations and audits.

## **ARTICLE 6 DEFAULT AND REMEDIES**

6.1 Default. The occurrence of any of the following events constitutes an event of default by the Municipal Provider:

6.1.1 The failure of the Municipal Provider to perform any term, covenant or condition of this Amended Agreement, if that failure continues for thirty days following the Municipal Provider's receipt of written notice from CAWCD.

6.1.2 The physical or legal unavailability of the Long-Term Water Supply, including any replacement for the Long-Term Water Supply.

6.1.3 (i) The filing by or against the Municipal Provider of a petition to have the Municipal Provider adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against the Municipal Provider, the same is dismissed within 60 days); (ii) the making by the Municipal Provider of any general assignment for the benefit of creditors; (iii) the appointment of a trustee or receiver to take possession of substantially all of the Municipal Provider's assets, when possession is not restored to the Municipal Provider within 60 days; or (iv) the attachment, execution or other judicial seizure of substantially all of the Municipal Provider's assets, where such seizure is not discharged within 60 days.

6.2 Remedies. If an event of default occurs, CAWCD shall have no obligation to perform any groundwater replenishment obligation with respect to the Service Area, or any other obligations under this Amended Agreement, so long as the Municipal Provider remains in default. Except as provided in Articles 5.1 and 5.2 of this Amended Agreement, this shall be the sole remedy available to CAWCD. The Municipal Provider will consult with CAWCD on curing the default.

## **ARTICLE 7 CANCELLATION OF AMENDED WATER AVAILABILITY**

**STATUS CONTRACT TO REPLENISH GROUNDWATER**

If the Amended Water Availability Status Contract to Replenish is cancelled pursuant to Article 3 of such contract, the Parties shall be relieved of all obligations under this Amended Agreement as of the date of such cancellation.

**ARTICLE 8  
GENERAL PROVISIONS**

8.1 Binding Effect. The provisions of this Amended Agreement inure to the benefit of and bind the respective successors and assigns of the parties hereto, provided that no assignment or transfer of this Amended Agreement or any part or interest herein is valid until approved by CAWCD in its sole and absolute discretion.

8.1.1 The Municipal Provider agrees and covenants to CAWCD to execute and record any additional documentation which CAWCD may reasonably require to effectuate the intents and purposes of this Amended Agreement and the Groundwater Replenishment Statute.

8.2 Entire Agreement. This Amended Agreement constitutes the entire agreement between the parties and no understandings or obligations not expressly set forth in this Amended Agreement are binding upon the parties.

8.3 Amendments. This Amended Agreement may be modified, amended or revoked only (i) by the express written agreement of CAWCD, the Municipal Provider and the Arizona Department of Water Resources; or (ii) by amendment statutes, rules or regulations or successor statutes, rules or regulations, as contemplated by Paragraph 8.5.

8.4 Interpretation. This Amended Agreement is governed by and must be construed and interpreted in accordance with and in reference to the laws of the State of Arizona, including but not limited to the Groundwater Replenishment Statute.

8.5 Rules, Regulations and Successor Statutes. All references in this Amended Agreement to Arizona Revised Statutes include all rules and regulations promulgated by the Department under such statutes and all amendments and successor statutes, rules and regulations to such statutes, rules and regulations.

8.6 Additions to and Extensions of the Service Area. The Municipal Provider shall submit an amended Service Area map to CAWCD simultaneously with each submission of an amended Service Area map to the Arizona Department of Water Resources.

8.7 Severability. Any determination by any court of competent jurisdiction that any provision of this Amended Agreement is invalid or unenforceable does not affect the validity or enforceability of any other provision of this Amended Agreement.

8.8 Captions. All captions, titles or headings in this Amended Agreement are used for the purpose of reference and convenience only and do not limit, modify or otherwise affect any of the provisions of this Amended Agreement.

8.9 Notices. Except as otherwise required by law, any notice given in connection with this Amended Agreement must be in writing and must be given by personal delivery, overnight delivery, facsimile, or United States certified or registered mail. Any such notice must be addressed to the appropriate party at the following address (or at any other address as a party may hereafter designate by written notice given as required by this paragraph):

CAWCD: For delivery use:

Central Arizona Water Conservation District  
23636 North 7th Street  
Phoenix, Arizona 85024  
Attn: Manager, Groundwater Replenishment District

For U.S. Mail use:

Central Arizona Water Conservation District  
P.O. Box 43020  
Phoenix, Arizona 85080-3020  
Attn: Manager, Groundwater Replenishment District

Municipal  
Provider:

The City of Scottsdale  
9379 East San Salvador Drive  
Scottsdale, Arizona 85258  
Attn: General Manager, Water Resources Department

With a copy to:

The City of Scottsdale City Attorney's Office  
3939 Drinkwater Blvd.  
Scottsdale, AZ 85251

Notice is deemed to have been given on the date on which notice is personally delivered, delivered to an overnight delivery service, transmitted by facsimile, or mailed. Notice is deemed to have been received on the date on which the notice is actually received or delivery is refused.

IN WITNESS WHEREOF, the Parties to this Amended Agreement have executed this Amended Agreement as of the date first set forth above.

CAWCD: CENTRAL ARIZONA WATER CONSERVATION DISTRICT

By: \_\_\_\_\_  
Pamela Pickard

Its: President

Attest: \_\_\_\_\_  
Secretary

MUNICIPAL  
PROVIDER: THE CITY OF SCOTTSDALE

By: \_\_\_\_\_  
W.J. "Jim" Lane

Its: Mayor

Attest: \_\_\_\_\_  
Carolyn Jagger, City Clerk

Approved as to form:

\_\_\_\_\_  
Bruce Washburn, City Attorney  
By: Clifford J. Frey  
Senior Assistant City Attorney

Contract No. 2000-199-COS-A1

**EXHIBIT A**  
**Service Area Map**

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Exhibit "C" to Contract 2000-200-COS-A1  
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Contract No. 2000-199-COS-A1

**EXHIBIT B**

**Water Availability Status Contract to Replenish Groundwater  
Between Central Arizona Water Conservation District and the City of Scottsdale**

10587874v1

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Exhibit "C" to Contract 2000-200-COS-A1

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**Bruce Washburn**

**City Attorney**

3939 N. Drinkwater Blvd.  
Scottsdale, AZ 85251

PHONE 480-312-2405

FAX 480-312-2548

## MEMORANDUM

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**TO:** Honorable Mayor and City Council  
**FROM:** Clifford J. Frey, Senior Assistant City Attorney  
**DATE:** January 22, 2013  
**RE:** Item No. 15 – Harquahala Land Purchase – Supplemental Documents

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Your Honor and Members of the City Council,

Staff in the City Attorney's Office is in the process of finalizing the materials for this item. The materials will be forwarded to you and posted on the web in advance of the February 5, 2013 City Council Meeting.