

**PURCHASE AND SALE AGREEMENT
FOR
LONG TERM STORAGE CREDITS**

This Purchase and Sale Agreement (Agreement) is made this ____ day of _____, 2017, (the "Effective Date"), between the Arizona Water Banking Authority ("AWBA"), an authority established under Chapter 14, Title 45 of the Arizona Revised Statutes, added by Law 1996, Ch. 308, § 16, effective April 30, 1996, and the City of Surprise ("Surprise"), a municipal corporation of the State of Arizona (together "Parties").

RECITALS

A. WHEREAS, the AWBA desires to purchase Long-Term Storage Credits developed by Surprise pursuant to Arizona Revised Statutes Title 45, Chapter 3.1, for the benefit of meeting the AWBA's storage goals.

B. WHEREAS, Surprise is willing to sell and transfer certain Long-Term Storage Credits to AWBA upon the price, terms and conditions set forth herein.

C. WHEREAS, Surprise is authorized to sell Long-Term Storage Credits and enter into this Agreement pursuant to, inter alia, Arizona Revised Statutes Title 9, Chapter 5, Article 2 and Title 45, Chapter 3.1, Article 4.

D. WHEREAS, the Parties desire to explore a potential future water supply partnership beyond this Agreement and intend that this Agreement be a starting point for development of that potential partnership.

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 Agreement, the following terms, when capitalized, shall mean:

1.1 "ADWR" means the Arizona Department of Water Resources.

1.2 "Agreement" means this Purchase and Sale Agreement for Long-Term Storage Credits.

1.3 "AWBA" means the Arizona Water Banking Authority established by § 45-2421 or its successor.

1.4 "AWBA's Long-Term Storage Account" means the account established pursuant to Arizona Revised Statutes § 45-852.01 in the AWBA's name, account number 70-441150.0000.

- 1.5 "Long-Term Storage Credit" is as defined in Arizona Revised Statutes § 45-802.01(11).
- 1.6 "Long-Term Storage Credit Transfer Form" is a form, approved by ADWR, to effectuate the assignment of Long-Term Storage Credits, as defined in Arizona Revised Statutes § 45-854.01(B), and more specifically described in Article 3 below.
- 1.7 "Surprise" means the City of Surprise.
- 1.8 "Surprise's Long-Term Storage Account" means the Long-Term Storage account established pursuant to Arizona Revised Statutes § 45-852.01 in Surprise's name, Account No. 70-441155.0000.

ARTICLE 2 PURCHASE OF LONG-TERM STORAGE CREDITS

- 2.1 Sale and Purchase. Subject to the terms and conditions of this Agreement, Surprise agrees to sell, transfer and assign and AWBA agrees to purchase, acquire, and pay for 9,082.24 acre-feet of Long-Term Storage Credits.
- 2.2 Type of Water. It is the intent of the parties that all Long-Term Storage Credits purchased and sold under this Agreement shall retain the identity of the source of water used to generate such Long-Term Storage Credits.
- 2.3 Long-Term Storage Credits. The Long-Term Storage Credits to be sold by Surprise are stored at the underground storage facility, under the ADWR Facility Permit and ADWR Water Storage Permit set forth in Exhibit A hereto.
- 2.4 Purchase Price. The purchase price for the 9,082.24 acre-feet of Long-Term Storage Credits to be sold by Surprise under this Agreement is \$2,000,000.00 ("Purchase Price"). The Purchase Price was calculated using a per-credit price \$220.21 ($\$220.21/\text{Long-Term Storage Credit} \times 9,082.24 \text{ acre-feet of Long-Term Storage Credits} = \$2,000,000.00$ (rounded to the nearest dollar)), which is equivalent to the cost of accruing Phoenix AMA Long-Term Storage Credits at a constructed underground storage facility in 2017. The per credit price was calculated using the following formula: $\text{Per credit price} = [(\text{CAP Long Term M\&I Subcontract Capital Charge} + \text{CAP Fixed OM\&R Charge} + \text{CAP Pumping Energy Rate Charge} + \text{CAP Underground Water Storage O\&M Charge for the Phoenix AMA}) / 0.94]$. As expressed in numbers, the formula is as follows: $[(\$31 + \$87 + \$77 + \$12) / 0.94 = \$220.21$ (rounded to the nearest cent)].

ARTICLE 3 TIME AND MANNER OF TRANSFER

- 3.1 Long-Term Storage Credit Transfer Form. To evidence the transfer of Long-Term Storage Credits, Surprise and AWBA shall complete, sign and deliver the Long-Term Storage Credit Transfer Form to ADWR upon full execution of this Agreement. A copy of the Long-Term Storage Credit Transfer Form is attached as Exhibit B to this Agreement. After Surprise

has executed and delivered the Long-Term Storage Credit Transfer Form to AWBA, AWBA shall promptly deliver the fully executed Long-Term Storage Credit Transfer Form to ADWR.

3.2 Additional Actions and Documentation. AWBA shall pay any administrative fees established by ADWR to effectuate the transfer of Long-Term Storage Credits into AWBA's Account. The Parties shall cooperate to take such further actions and execute such further documents as may be determined by either party to be necessary or advisable in order to complete the transfer of the Long-Term Storage Credits contemplated by this Agreement.

ARTICLE 4 COMPLETION OF DELIVERY AND PAYMENT

4.1. Completion of Delivery. Delivery of the Long-Term Storage Credits to be transferred pursuant to this Agreement shall be deemed complete when ADWR notifies AWBA in writing that it has received and accepted the Long-Term Storage Credit Transfer Form and intends to transfer Long-Term Storage Credits from Surprise's Long-Term Storage Account to AWBA's Account ("ADWR Acceptance"). AWBA and Surprise shall cooperate with ADWR to facilitate completion of such transfer by ADWR.

4.2. Payment. Upon ADWR Acceptance, AWBA shall remit the Purchase Price to Surprise within thirty (30) business days.

ARTICLE 5 REJECTION OR INVALIDATION OF TRANSFER

If ADWR, pursuant to Arizona Revised Statutes § 45-854.01(C), rejects or invalidates any transfer or assignment of Long-Term Storage Credits made hereunder before AWBA has paid for such Long-Term Storage Credits, AWBA shall not be obligated to pay for the number of Long-Term Storage Credits affected by such rejection or invalidation. If such rejection or invalidation occurs after payment has been made by AWBA, Surprise shall refund an amount equal to the number of Long-Term Storage Credits affected by such rejection or invalidation times the price per acre-foot for the affected Long-Term Storage Credits, as such price is established in Article 2.4 above. Surprise shall refund such amount within thirty (30) business days after either AWBA or Surprise receives any notice of rejection or invalidation from ADWR. AWBA shall transfer and assign back to Surprise the number of credits affected by any such rejection or invalidation. Surprise's obligation to refund any payments under this Article 5 shall expire thirty (30) calendar days after ADWR has issued a non-appealable final agency decision approving the transfer and assignment of the Long-Term Storage Credits into the AWBA Account. The Parties' rights and obligations under this Article 5 shall remain in full force and effect, and shall survive termination of this Agreement for purposes of addressing a circumstance where ADWR rejects or invalidates any transfer of Long-Term Storage Credits made hereunder.

**ARTICLE 6
EFFECTIVE DATE AND TERM**

This Agreement shall be effective as of the date set forth in the introductory paragraph of this Agreement (the “Effective Date”) and shall stay in effect until completion of performance by the Parties as contemplated herein unless terminated earlier in accordance with Article 7.

**ARTICLE 7
DEFAULT AND REMEDIES**

7.1. Default. The occurrence of any of the following events constitutes an event of default by a party to this Agreement:

7.1.1 The failure of either party to perform any term, covenant, or condition of this Agreement, if that failure continues for thirty days following the receipt of written notice from the other party.

7.1.2 (i) The filing by or against either party of a petition to have the party 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 a party, the same is dismissed within sixty (60) days); (ii) the making by a party 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 party’s assets, when possession is not restored to the party within sixty (60) days; or (iv) the attachment, execution, or other judicial seizure of substantially all of a party’s assets, where such seizure is not discharged within sixty (60) days.

7.2. Remedies. If an event of default, the non-defaulting party may immediately terminate this Agreement by written notice to the defaulting party and/or may pursue any other rights available to it in law or equity. The obligation of the defaulting party to pay any amounts due but unpaid as of the date of termination under this provision shall survive such termination.

**ARTICLE 8
MISCELLANEOUS PROVISIONS**

8.1. Interpretation. This Agreement is governed by and must be construed and interpreted in accordance with and in reference to the laws of the State of Arizona, without regard to its conflicts of laws provisions. Any action to resolve any dispute regarding this Agreement shall be taken in a state court of competent jurisdiction located in Maricopa County, Arizona.

8.2. No Third-Party Beneficiaries. This Agreement is solely for the benefit of the Parties and does not create, nor shall it be construed to create, rights in any third party unless expressly provided herein. No third party may enforce the terms and conditions of this Agreement.

8.3. Non-Discrimination. The Parties shall comply with State Executive Order No. 75-5, as amended by State Executive Order No. 2009-09, and all other applicable federal and state laws, rules and regulations relating to equal opportunity and non-discrimination, including the American with Disabilities Act.

8.4. Conflict of Interest. The Parties to this Agreement are hereby notified of A.R.S. § 38-511.

8.5. Permits. The Parties shall obtain and maintain all licenses, permits and authority necessary to perform their obligations pursuant to this Agreement, and shall comply with all applicable state, federal and local laws, including but not limited to those regarding employment insurance, disability insurance and worker's compensation. This Agreement does not relieve either party from any obligation or responsibility imposed upon it by law.

8.6. No Employment. Neither Party shall be considered an officer, employee or agent of the other. No monitoring or supervisory responsibility over the other Party's activities arises on the part of the other arises or as a result of, or pursuant to, this Agreement other than as expressly provided herein.

8.7. Severability. The provisions of this Agreement are severable to the extent that if any provision is held unenforceable under applicable law, the remaining provisions of the Agreement shall remain in effect.

8.8. Books, Records and Inspections. All books, accounts, reports, files and other records relating to this Agreement shall be subject at all reasonable times to inspection and audit by the State of Arizona and the AWBA for five (5) years after the completion of the Agreement. Such records shall be produced at such state offices as are designated by the State of Arizona and the AWBA.

8.9. Indemnification. Each Party to this Agreement is independently responsible in the event of its own negligence. Neither Party agrees to indemnify the other Party.

8.10. Resolution of Disputes. The Parties may pursue any remedy at law or equity, including but not limited to injunctive relief to enforce this Agreement. The remedy(ies) set forth herein are not exclusive and election of one remedy does not preclude the use of other remedies.

8.11. Amendments. This Agreement may be modified, amended or revoked only by the express written agreement of the parties hereto.

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

8.13. Waiver. No delay in exercising any right or remedy shall constitute a waiver unless such right or remedy is waived in writing signed by the waiving party. A waiver by any party of any

right or remedy hereunder shall not be construed as a waiver of any other right or remedy, whether pursuant to the same or a different term, condition or covenant.

8.14. Captions. All captions, titles, or headings in this 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 Agreement.

8.15. Rules, Regulations and Amendment or Successor Statutes. All references in this Agreement to the Arizona Revised Statutes include all rules and regulations promulgated by ADWR under such statutes and all amendment statutes and successor statutes, rules, and regulations to such statutes, rules, and regulations existing as of the date of this Agreement.

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

AWBA:

For personal delivery: Manager
Arizona Water Banking Authority
1110 W. Washington St., Suite 310
Phoenix, AZ 85007

For U.S. Mail/email: Manager
Arizona Water Banking Authority
P.O. Box 36020
Phoenix, Arizona 85067-6020
voconnell@azwater.gov

CITY OF SURPRISE:

For U.S. Mail/email: Water Resource Management Director
City of Surprise
16000 N. Civic Center Plaza
Surprise, Arizona 85374

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, mailed or emailed. 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 Agreement have executed this Agreement as of the date first set forth above.

ARIZONA WATER BANKING AUTHORITY

By: _____
Thomas Buschatzke
Its: Chairperson

ATTEST: _____
Kathryn A. Sorensen
Secretary

CITY OF SURPRISE

By: _____
Sharon Wolcott
Its: Mayor

ATTEST: _____
Sherry Aguilar
City Council Clerk

APPROVED AS TO FORM:

Robert Wingo, City Attorney

EXHIBIT A
to
Purchase and Sale Agreement for Long Term Storage Credits

ADWR FACILITY PERMIT and ADWR WATER STORAGE PERMIT

Facility Name	ADWR Facility Permit No.	ADWR Water Storage Permit No.	ADWR Long-Term Storage Account No.	Credits (AF)	Water Source
Agua Fria Managed	71-569775.0006	73-569775.1100	70-441155.0000	3962.26	CAP
Agua Fria Constructed	71-569776.0007	73-569776.1100	70-441155.0000	1068.24	CAP
Tonopah Desert	71-5933005.0002	73-593305.1200	70-441155.0000	1324.57	CAP
Hieroglyphic Mountain	71-584466.0003	73-584466.0900	70-441155.0000	2727.17	CAP

EXHIBIT B
to
Purchase and Sale Agreement for Long Term Storage Credits

ADWR LONG-TERM STORAGE CREDIT TRANSFER FORM A.R.S. § 45-854.01