

**PURCHASE AND SALE AGREEMENT  
FOR  
Long-Term Storage Credits**

This Purchase and Sale Agreement is made this 23rd day of January, 2018, (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, the City of Tucson ("Tucson"), a Charter City and political subdivision of the State of Arizona.

**RECITALS**

- A. The AWBA desires to purchase Long-Term Storage Credits (LTSC) developed by Tucson pursuant to Arizona Revised Statutes Title 45, Chapter 3.1, for the benefit of meeting the AWBA's storage goals.
- B. Tucson is willing to sell and transfer certain LTSCs to AWBA under the price, terms, and conditions set forth herein.

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 LTSCs.
- 1.3 "Annual LTSC Volume" means for any given year during the term of this Agreement, the annual volume of LTSCs to be acquired by the AWBA in that year as indicated in the Annual Notice submitted by AWBA to Tucson pursuant to Article 3.1 below.
- 1.4 "Annual Purchase Price" means the annual purchase price for LTSCs to be transferred pursuant to the terms of this Agreement as calculated pursuant to Article 2.3 below.
- 1.5 "AWBA" means the Arizona Water Banking Authority established by § 45-2421 or its successor
- 1.6 "LTSC" is as defined in Arizona Revised Statutes § 45-802.01(11).

- 1.7 “LTSC Transfer Form” is a form, approved by ADWR, to effectuate the assignment of LTSCs, as defined in Arizona Revised Statutes § 45-854.01(B), and more specifically described in Article 3 below.
- 1.8 “Tucson” means the City of Tucson.
- 1.9 “Tucson's Long-Term Storage Account” means the account established pursuant to Arizona Revised Statutes § 45-852.01 in Tucson's name, account No. 70-411111.

## ARTICLE 2 PURCHASE OF LTSCS

- 2.1 Sale and Purchase. Beginning in 2018, if Tucson desires to sell, transfer, and assign, and AWBA desires to purchase, accept, and pay for, LTSCs (LTSC), sale and purchase are subject to the terms and conditions of this Agreement. No more than 15,000 acre-feet (AF) of credits may be transferred in any one year of this Agreement. The total volume of LTSCs that Tucson sells and AWBA purchases during the term of this Agreement shall not exceed 45,000 AF.
- 2.2 Annual Purchase Price. The Annual Purchase Price (“AP”) for the LTSCs to be transferred pursuant to this Agreement will vary from year to year and shall be based on components of the Central Arizona Project (CAP) published rate schedule. The AP for the LTSCs to be transferred in 2018 shall be multiplied by the Annual LTSC Volume for 2018. The AP for the LTSC to be transferred pursuant to this Agreement in each year after 2018, shall be calculated as follows:

$$AP = \{[(CAP \text{ Fixed OM\&R Delivery Charge}^* + CAP \text{ Pumping Energy Rate } 1^* + CAP \text{ M\&I Long-term Subcontract Capital Charges}^* + TW \text{ Facility Fee}) / 0.93]\} \times \text{Annual LTSC Volume for the applicable year:}$$

*where*

TW Facility Fee = the Annual Facility Fee for AWBA Storage in Tucson Water Recharge Facilities, set at \$17.58 for 2018, which increases at the fixed rate of 3 percent per year.

\*As published in CAP's Annual Firm Rate Schedule for the year in which the credits are transferred.

- 2.3 Type of Water. It is the intent of the parties that all LTSC sold and purchased under this Agreement shall retain the identity of the source of water used to generate such LTSC.
- 2.4 LTSCs.

- 2.4.1 The LTSCs to be sold by Tucson are from Tucson's Long-Term Storage Account and shall be transferred to the AWBA's Account(s) subject to the terms and conditions of this Agreement.
- 2.4.2 The LTSCs to be transferred to AWBA must have been accrued by Tucson, at underground storage facilities located in the Tucson Active Management Area.
- 2.4.3 The LTSCs to be sold by Tucson were accrued—or will be accrued—at the underground storage facilities under the ADWR Facility Permit and ADWR Storage Permits set forth on Exhibit A. The Parties acknowledge that Exhibit A may be amended from time to time during the term of this Agreement to reflect amendments to Tucson's existing underground storage facility permits or to add new permitted underground storage facilities. Tucson, in its sole discretion, may determine the origin of the LTSCs it wishes to transfer to AWBA in any particular year by specifying in writing the Facility Permit Number where the credits were accrued and the Water Storage Permit Number authorizing such storage.
- 2.4.4 The AWBA agrees that any LTSCs acquired pursuant to this Agreement will be used by the AWBA for the purpose of meeting its statutory obligations to distribute said credits for the benefit of Arizona municipal and industrial (“M&I”) water users against future water shortages on the Colorado River and disruptions of operation of the CAP, as established in A.R.S. Chapter 14, Title 45, and will not be sold to any third party.
- 2.4.5 Tucson agrees to work in good faith with the AWBA and the CAP to recover and wheel AWBA supplies to other M&I water users who have “wheeling” or other arrangements with Tucson to store and deliver M&I water using Tucson infrastructure.

### **ARTICLE 3 TIME AND MANNER OF TRANSFER**

- 3.1 Annual Notice. On or before February 15<sup>th</sup> of each year during the term of this Agreement, AWBA shall notify Tucson if it desires to purchase LTSCs, and if so, the volume of LTSCs it desires to acquire from Tucson during such year. On or before March 1<sup>st</sup> of each year during the term of this Agreement, Tucson shall respond to AWBA's notification indicating if it desires to sell LTSCs, and if so, the volume of LTSCs it desires to sell, to AWBA during such year. Any volume transferred as a result of this Agreement will be the "Annual LTSC Volume."
- 3.2 LTSC Transfer Form. Each year during the term of this Agreement, Tucson and AWBA shall coordinate in the fall to complete, sign, and deliver the LTSC Transfer Form to evidence the transfer of the Annual LTSC Volume for that year. A copy of the LTSC Transfer Form is attached as Exhibit B to this Agreement. If ADWR adopts a different LTSC Transfer form, then the Parties shall utilize that form instead. On or before March

31<sup>st</sup> of each year during the term of this Agreement, AWBA shall submit a fully executed LTSC Transfer Form to ADWR.

- 3.3 Additional Actions and Documentation. AWBA shall pay any administrative fees established by ADWR to process the transfer of LTSCs into AWBA's Account(s). 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 LTSCs contemplated by this Agreement.

#### **ARTICLE 4 COMPLETION OF DELIVERY AND PAYMENT**

- 4.1 Completion of Delivery. Delivery of the Annual LTSC Volume for a particular year shall be deemed complete when ADWR notifies AWBA in writing that it has received and accepted the LTSC Transfer Form and intends to transfer LTSC equal to the Annual LTSC Volume for such year from Tucson's Long-Term Storage Account to AWBA's Account(s).
- 4.2 Payment. Each year during the term of this Agreement, within thirty (30) days after receiving written notification from ADWR that it has received and accepted the LTSC Transfer Form and intends to transfer the Annual LTSC Volume to AWBA Account(s), AWBA shall pay Tucson the AP as calculated pursuant to Article 2.2 above. Provided however, each year during the term of this Agreement, AWBA shall pay Tucson the AP no later than December 31<sup>st</sup> of the applicable year.
- 4.3 Non-availability of Funds. Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of the Agreement, this Agreement may be terminated by the State at the end of the period for which funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

#### **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 LTSCs made hereunder before AWBA has paid for such LTSCs, AWBA shall not be obligated to pay for the number of LTSCs affected by such rejection or invalidation. If such rejection or invalidation occurs after payment has been made by AWBA, Tucson shall refund an amount equal to the number of LTSCs affected by such rejection or invalidation times the AP for such credits. Tucson shall refund such amount within twenty (20) business days after either AWBA or Tucson receives any notice of rejection or invalidation from

ADWR. AWBA shall transfer and assign back to Tucson the number of credits affected by any such rejection or invalidation. Tucson's obligation to refund any payments under this Article 5 shall expire thirty (30) days after ADWR has issued a non-appealable final agency decision approving the transfer and assignment of the LTSCs into AWBA Account(s). 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 LTSCs 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"). The term of this Agreement is three (3) years.

## **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 (30) 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 occurs, 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 Tucson's Warranty of Title. Tucson warrants that to the best of its actual knowledge it has good and marketable title to the LTSCs that are the subject of this Agreement and agrees to convey marketable title to such LTSCs free and clear of all liens and encumbrances. Tucson shall warrant and defend title against all persons claiming by or through Tucson and no other.
- 8.3 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.
- 8.4 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.
- 8.5 Conflict of Interest. The parties to this Agreement are hereby notified of A.R.S. § 38-511.
- 8.6 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.
- 8.7 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.
- 8.8 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.
- 8.9 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.
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- 8.10 Indemnification. Each party to this Agreement is independently responsible in the event of its own negligence. Neither party agrees to indemnify the other party.

- 8.11 Resolution of Disputes. The parties shall attempt to resolve all claims, disputes, controversies, or other matters in question between the parties arising out of, or relating to, this Agreement (“Dispute”) promptly, equitably, and in a good faith manner. Any Dispute arising out of this Agreement is subject to arbitration to the extent required by A.R.S. § 12-133 and § 12-1518. The prevailing party in such arbitration may seek enforcement of such award in any court of competent jurisdiction. Each party agrees to submit to the jurisdiction of any such court solely for purposes of the enforcement of such arbitration decision and for no other purpose.
- 8.12 Amendments. This Agreement may be modified, amended or revoked only by the express written agreement of the parties hereto.
- 8.13 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.
- 8.14 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.
- 8.15 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.
- 8.16 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.
- 8.17 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, 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):

**AWBA:**

For delivery and U.S. Mail use:

Manager  
 Arizona Water Banking Authority  
 3550 N. Central Avenue, 2nd Floor  
 Phoenix, Arizona 85012

**TUCSON:**

For delivery and U.S. Mail use:

c/o Water Director  
 Tucson Water  
 310 W. Alameda  
 Tucson, Arizona 85726-7210

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.

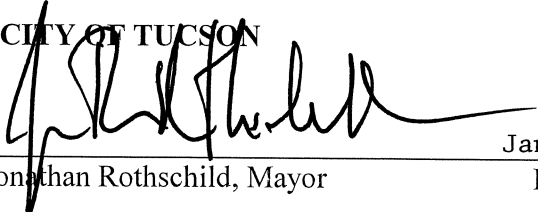
IN WITNESS WHEREOF, the parties to this Agreement have executed this Agreement as of the date first set forth above.

**ARIZONA WATER BANKING AUTHORITY**


By: \_\_\_\_\_  
Thomas Buschatzke, Chairperson                      Date

ATTEST: \_\_\_\_\_  
Kathryn Sorensen, Secretary                      Date

**THE CITY OF TUCSON**

By:  \_\_\_\_\_  
Jonathan Rothschild, Mayor                      January 23, 2018  
Date

ATTEST:  \_\_\_\_\_  
Roger Randolph                      January 23, 2018  
City Clerk                      Date

APPROVED AS TO FORM:  
 \_\_\_\_\_  
Principal Assistant City Attorney



**EXHIBIT A**  
**to**  
**Purchase and Sale Agreement for LTSCs**

**LTSCS**

<b>Facility Name</b>	<b>ADWR Facility Permit No.</b>	<b>ADWR Water Storage Permit No.</b>	<b>Credits (AF)</b>	<b>Year(s) Earned</b>	<b>Water Source</b>
CAVSARP	71-591928.0001	73.591925.0000			CAP
SAVSARP	71-211276.0003	73.211276.0001			CAP

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

**ADWR LTSC TRANSFER FORM A.R.S. § 45-854.01**

ARIZONA DEPARTMENT OF WATER RESOURCES  
Water Planning & Permitting Division  
1110 West Washington St., Suite 310  
Phoenix, Arizona 85007  
Telephone (602) 771-8599  
Fax (602) 771-8689

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

For Official Use Only DATE RECEIVED: _____
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The fee for a Long-Term Storage Credit Transfer is \$250.00 per water storage transfer. Only one transaction may be requested per form. Payment may be made by cash, check, or credit card. Checks should be made payable to the Arizona Department of Water Resources. Failure to enclose the fee will cause the form to be returned. Fees for a Long-Term Credit Transfer are authorized by A.A.C. R12-18-104.

**[FOR SELLER]**

\_\_\_\_\_  
Name of Seller

\_\_\_\_\_  
Long-Term Storage Account No.

\_\_\_\_\_  
Contact Person/Telephone Number

\_\_\_\_\_  
Facility Permit Number (where source water was stored)

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
Water Storage Permit Number (authority to store source water)

\_\_\_\_\_  
City/State/Zip

\_\_\_\_\_  
Email

Number of long-term storage credits (in acre-feet) transferred by type(s) of water and year credits were earned.

Type: \_\_\_\_\_ acre-feet \_\_\_\_\_ year earned \_\_\_\_\_

Type: \_\_\_\_\_ acre-feet \_\_\_\_\_ year earned \_\_\_\_\_

**[FOR BUYER]**

\_\_\_\_\_  
Name of Buyer

If the transfer includes long-term storage credits earned from the storage of Central Arizona Project (CAP) water in an Active Management Area (AMA), please state:

\_\_\_\_\_  
Contact Person/Telephone Number

1. The date of Buyer's formation (if Buyer is a legal entity): \_\_\_\_\_

\_\_\_\_\_  
Mailing Address

2. The amount of groundwater withdrawn by Buyer in the AMA during the calendar year that the credits were earned:  
\_\_\_\_\_

\_\_\_\_\_  
City/State/Zip

a. The groundwater right number(s) the Buyer withdrew the groundwater pursuant to:  
\_\_\_\_\_

\_\_\_\_\_  
Email

\_\_\_\_\_  
Long -Term Storage Account No. (if any)

*Required Signature Block is on Page 2*