

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

This Purchase and Sale Agreement (Agreement) is made this \_\_\_\_ day of \_\_\_\_\_, 2016, (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 Active Resource Management LLC ("ARM"), an Arizona Limited Liability Company.

**RECITALS**

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

B. ARM is willing to sell and transfer certain Long-Term Storage Credits to AWBA upon 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 Long-Term Storage Credits.
- 1.3 "ARM" means Active Resource Management, LLC, an Arizona Limited Liability Company solely managed by the Vidler Water Company, a Nevada Corporation.
- 1.4 "ARM's Long-Term Storage Account" means the account established pursuant to Arizona Revised Statutes § 45-852.01 in ARM's name, account No. 70-441188.0000.
- 1.5 "AWBA" means the Arizona Water Banking Authority established by § 45-2421 or its successor.
- 1.6 "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
- 1.7 "Long-Term Storage Credit" is as defined in Arizona Revised Statutes § 45-802.01(11).

1.8 "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.

## **ARTICLE 2 PURCHASE OF LONG-TERM STORAGE CREDITS**

2.1 Sale and Purchase. Subject to the terms and conditions of this Agreement, ARM agrees to sell, transfer and assign and AWBA agrees to purchase, acquire and pay for 50,000 acre-feet of Long-Term Storage Credits as part of its adopted 2017 Plan of Operation.

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 ARM are from ARM's Long-Term Storage Account and represent credits accrued for water stored pursuant to ADWR Water Storage Permit Number 73-545695.0900 at the Roosevelt Water Conservation District Groundwater Savings Facility, ADWR Permit Number 72-545695, located in the East Salt River Valley sub-basin of the Phoenix Active Management Area.

2.4 Purchase Price. The purchase price for the 50,000 acre-feet of Long-Term Storage Credits to be sold by ARM and to be purchased by AWBA under this Agreement is \$12,500,000.00. The purchase price was calculated at a per-credit price of \$250.00 per Long-Term Storage Credit ( $\$250/\text{Long-Term Storage Credit} * 50,000 \text{ acre-feet of Long-Term Storage Credit} = \$12,500,000.00$ ).

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

3.1 Long-Term Storage Credit Transfer Form. To evidence the transfer of Long-Term Storage Credits, ARM 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 A to this Agreement. If ADWR adopts a different Long-Term Storage Credit Transfer form, then the Parties shall utilize that form instead. After ARM 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 Credit volume identified in Section 2.1 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 ARM's Long-Term Storage Account to AWBA's Account and upon ARM's receipt of wire transfer funds in the amount of the purchase price identified in Section 2.4.

4.2. Payment. Upon the decision of the Central Arizona Water Conservation District Board of Directors to deposit water storage *ad valorem* tax funds to the Arizona Water Banking Fund, ARM shall invoice the AWBA the full purchase price of \$12,500,000.00 as specified in Article 2.4 above and allow thirty (30) days for the AWBA to remit payment. In no event shall the delivery of funds for the acquisition of the Long Term Storage Credits hereunder extend beyond the due date of the invoice, unless it is extended through mutual agreement by the parties. Should the Central Arizona Water Conservation District Board of Directors fail to deposit water storage *ad valorem* tax funds to the Arizona Water Banking Fund, this agreement shall terminate without further action by the parties hereto.

4.3. Wire Transfer. The payment of sums due pursuant to this contract shall be transferred by wire transfer.

4.4. This Agreement shall terminate upon remittance of payment of the invoice or upon failure by the AWBA to remit payment by the due date specified in the invoice.

**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, ARM shall refund an amount equal to the amount paid by AWBA for such credits. ARM shall refund such amount within thirty (30) business days after either AWBA or ARM receives any notice of rejection or invalidation from ADWR. AWBA shall transfer and assign back to ARM the number of credits affected by any such rejection or invalidation. ARM'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 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 all provisions under the Agreement have been met.

**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 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 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 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. 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 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.

8.11. 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.  
Phoenix, AZ 85007

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

**ARM:**

For U.S. Mail/email:      Active Resource Management, LLC  
c/o Vidler Water Company  
3480 GS Richards BLVD, Ste 101  
Carson City, NV 89703  
Attn: Dorothy Timian-Palmer, P.E.  
President and CEO  
dorothy@vidlerwater.com

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

**ACTIVE RESOURCE MANAGEMENT, LLC,  
An Arizona Limited Liability Company**

By: \_\_\_\_\_  
Dorothy Timian-Palmer  
Its: Manager

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

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