

COMMERCIAL WATER SALES AGREEMENT

THIS COMMERCIAL WATER SALES AGREEMENT (this "Agreement"), dated as of is entered into by and between _____, an irrigation district organized and existing as a municipal corporation under the laws of the State of Arizona ("Seller"), and _____ ("Purchaser").

WHEREAS, the parties desire to enter into a contract for the sale and purchase of non-potable water on the terms and conditions set forth herein.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Agreement. Subject to and in accordance with the provisions of this Agreement, Seller agrees to sell non-potable water to Buyer, and Buyer agrees to purchase, in the following amounts and at the following described purchase price, non potable water from Seller for use in Buyer's construction operations.

A. Quantity: _____ +/- gallons

B. Method of Delivery: _____ (metered pump/water truck size & qty)

C. Delivery Site: Beloat and 207th Ave (Eastside) N/S of Canal Not blocking Traffic

D. Purchase Price: \$3.00 per 1000 gal + Contract Fee (\$100) - \$ _____ down

E. Hours of Operations: Daylight Hours Only

2. Term. The term of this Agreement is for _____ days beginning on _____, and terminating on _____.

3. Purpose of use. Purchaser agrees that the water sold to Purchaser pursuant to this Agreement shall be used for construction purposes only, and shall in all events be applied and used for lawful purposes consistent with the terms of this Agreement and with all applicable laws, rules and regulations, including those of Seller, and of all federal, state and/or municipal governmental authorities having jurisdiction.

4. Disclaimer of Warranties. SELLER DOES NOT WARRANT THE QUALITY OF THE WATER DELIVERED TO PURCHASER PURSUANT TO THIS AGREEMENT, AND PURCHASER EXPRESSLY ASSUMES THE RESPONSIBILITY TO TEST, MONITOR AND INVESTIGATE THE SUITABILITY OF SUCH WATER FOR PURCHASER'S USES. SELLER DISCLAIMS ANY WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, WARRANTIES OF MERCHANTABILITY, AND DISCLAIMS ANY IMPLIED WARRANTIES, STATUTORY OR OTHERWISE, CONCERNING ANY WATER PURCHASED PURSUANT TO THIS AGREEMENT. PURCHASER ACQUIRES ALL WATER PURCHASED PURSUANT TO THIS AGREEMENT IN ITS "AS-IS" CONDITION AND COVENANTS WITH SELLER THAT PURCHASER SHALL TREAT OR OTHERWISE MANAGE SUCH WATER IN A MANNER CONSISTENT WITH APPLICABLE GOVERNMENTAL LAWS, RULES AND REGULATIONS.

5. Payment/Breach.

5.1 Payment. Payment for all water purchased pursuant to this Agreement shall be made in advance and shall be in the form of cash, cashiers check, certified funds or wire transfer. Upon receipt of payment as provided hereunder, Seller shall deliver "seals" to Purchaser indicating the number of water deliveries that Purchaser is entitled to receive; such seals to be surrendered to Seller's agent as water is received. From time to time during the Term, the Parties may agree on additional quantities of water to be sold to Purchaser, with Purchaser pre-paying therefor and receiving seals that shall be surrendered to Seller's agent upon each delivery water made pursuant to this Agreement.

5.1.1 Sales Taxes. Any taxes imposed on sales of water delivered to Purchaser pursuant to this Agreement, which Seller is required to pay or collect ("Sales Taxes"), shall be paid or reimbursed by Purchaser to Seller in addition to the Purchase Price for the water. If Purchaser furnishes Seller with a timely and valid resale or other exemption certificate or proof of export acceptable to the relevant taxing authority, then Sales Taxes will not be added to the Purchase Price; provided, however, if Seller is ever required to pay such Sales Taxes, Purchaser will promptly reimburse Seller for such Sales Taxes, together with any interest and penalties related thereto.

5.2 Breach. In the event a party to this Agreement fails to do an act promised or refrain from doing an act prohibited, a default shall have occurred, and the non-defaulting Party may declare a breach. If a breach is declared by the Seller, in addition to all other remedies available to Seller, Seller may immediately cease delivery of water and pursue any and all other remedies available to Seller.

5.2.1 Remedies. IN NO EVENT WILL PURCHASER SEEK OR RECOVER DAMAGES OR OTHERWISE FROM SELLER IN ANY CLAIM OR CAUSE OF ACTION, WHETHER BASED ON CONTRACT, BREACH OF WARRANTY OR TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE AND STRICT LIABILITY) IN EXCESS OF THE PRICE PAID FOR THE SPECIFIC DELIVERY OF WATER AS TO WHICH THE CLAIM IS MADE. SELLER SHALL NOT BE LIABLE TO PURCHASER FOR LOSS OF PROFITS OR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, WHETHER SUCH CLAIMS ARE BASED ON NEGLIGENCE, BREACH OF WARRANTY, STRICT LIABILITY IN TORT OR ANY OTHER CAUSE OF ACTION.

6. Indemnification and Insurance.

6.1 Indemnification. To the fullest extent allowable under law, Purchaser, on behalf of Purchaser and its insurers, waives, releases and discharges Seller and/or any of Seller's affiliates, agents, officers, directors, employees, representatives and insurers from and against any and all suits, actions, legal and administrative proceedings, claims, demands, penalties, costs and expenses and any resulting loss of use or business interruption in connection therewith (the "Claims"), regardless of the cause (even if such Claim is caused by the negligent or intentional acts, omissions, or misconduct of Seller or any of Seller's affiliates, agents, officers, directors, employees, representatives or insurers. Purchaser will look only to any insurance coverage Purchaser may elect to maintain (regardless whether Purchaser actually obtains any such coverage or whether such coverage is sufficient) with respect to the Claims Tenant is hereby waiving, releasing and discharging under this Section. Any insurance Purchaser maintains must permit or include a waiver of subrogation in favor of Seller consistent with the provisions of this Section. Furthermore, Seller assumes no responsibility whatsoever for loss or damages that may be suffered by Purchaser occasioned by any water shortage, or for any other cause whatsoever; including water shortages caused by drought or because of demands on the Seller for service beyond its available supply. This

contract shall at all times be subject to prior rights of shareholders in the Buckeye Water Conservation & Drainage District to receive water and Purchaser hereby expressly waives, on behalf of Purchaser, and/or any of Purchaser's affiliates, agents, officers, directors, employees, representatives and insurers any claim for loss as a result of the inability of Seller to deliver water as provided hereunder. Purchaser knows, understands and agrees the nature of the Seller's business is such that it cannot be the guarantor of water availability, and Purchaser expressly assumes the risk of unavailability of water. In the event of any unavailability of water for delivery to Purchaser pursuant to this Agreement, Purchaser, as its only available remedy, may recover the Purchase Price relating to any such quantities of water that were unavailable.

6.2 Insurance. Purchaser will at all times during the Term, at Purchaser's sole cost and expense, maintain the insurance this Section 6.2 requires.

6.2.1 Liability Insurance. Purchaser will maintain commercial general liability insurance providing coverage at least as broad as a current ISO form on an "occurrence" basis, with minimum limits of \$1,000,000 each occurrence and \$5,000,000 general aggregate (which may include umbrella coverages). Purchaser's liability insurance will (i) name Seller and Seller's affiliates, agents, officers, directors, employees, and representatives as additional insureds with respect to all matters arising out of the occupancy or use of the Premises or Property by Tenant; (ii) be primary to any other insurance maintained by the Landlord Parties; and (iii) be placed and maintained with companies rated at least "A/VII" by A.M. Best Insurance Service and otherwise reasonably satisfactory to Landlord. Such insurance may have a reasonable deductible but may not include self-insured retention in excess of \$25,000. If Tenant's liability insurance is provided under a blanket policy, the above coverage limits must be made specifically applicable to the Premises on a "per location" basis. Tenant will deliver an ACORD Form 27 (or equivalent) certificate or other evidence of insurance satisfactory to Landlord (i) prior to any use or occupancy of the Premises by Tenant, (ii) not later than 30 days prior to the expiration of any current policy or certificate, and (iii) at such other times as Landlord may reasonably request.

7. Successors and Assigns. This Agreement shall be binding upon the successors and assigns of Purchaser and Seller. Notwithstanding the foregoing, Purchaser shall have no right to assign its rights under this Agreement without first obtaining the prior written consent of Seller, which consent may be withheld by Seller in Seller's sole and absolute discretion.

8. Non-Waiver. The failure of Seller to insist in any one or more instances upon the full and complete performance of any of the terms and conditions of this Agreement to be performed on the part of Purchaser, or to take any action permitted as a result thereof, shall not be construed as a waiver or relinquishment of the right to insist upon full and complete performance of the same, or any other covenant or condition, either in the past or in the future. The acceptance by Seller of sums less than may be due and owing it at any time shall not be construed as an accord and satisfaction.

9. Enforcement. The provisions of this Agreement may be enforced by either Seller or Purchaser, and any violation or obligation in connection with this Agreement may be restrained or enforced, as applicable, by any court of competent jurisdiction. If any party employs an attorney to enforce the provisions contained herein and prevails in such action, the prevailing party shall be entitled to recover from the other party its costs and reasonable attorneys' fees incurred in connection with the action.

10. Integration; Modification. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. The provisions hereof may be abrogated, modified, rescinded or amended in whole or in part only by written instrument executed by both Seller and Purchaser.

11. Governing Law. This Agreement is entered into in the State of Arizona and shall be governed by and construed under the laws thereof.

12. Headings. The headings used in this Agreement are for convenience only and are not intended to affect the meaning of any provision of this Agreement.

13. Severability. In the event any portion of this Agreement shall be determined to be invalid, such invalidity shall not render the remaining portions of this Agreement void, unless the deletion of the invalid portion shall materially and substantially alter the rights of the parties under the remaining portions of this Agreement.

14. Notice. In order to be effective, all notices, demands, instructions, approvals or other communications required or permitted to be given hereunder must be in writing and must be sent by personal delivery, by United States registered or certified mail (postage prepaid), or by an independent overnight courier service, addressed to the addresses as specified below, or at such other place as either party may designate to the other party by written notice given in accordance with this Section 14. Notices given by mail are deemed delivered within four business days after the party sending the notice deposits the notice with the United States Post Office. Notices delivered by courier are deemed delivered on the next business day after the day the party delivering the notice timely deposits the notice with the courier for overnight (next day).

If to Seller:

Mr. Noel Carter
General Manager
Buckeye Water Conservation & Drainage District
Post Office Box 1726
Buckeye, Arizona 85326-00127
Facsimile: (623) 386-7789
Email completed copy to: jsims@bwccd.com

With a copy to:

If to Purchaser:

15. Cancellation. Seller, pursuant to Arizona Revised Statutes Section 38-511, as amended, may cancel any contract it is a party to within three (3) years after its execution and without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the Seller is, at any time while the contract or any extension thereof is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract. In the event Seller elects to exercise its rights under Section 38-511, Arizona Revised Statutes, as amended, it agrees to properly give notice to the Purchaser of such election.

16. Confidentiality. Seller and Purchaser hereby agree that each of them will hold in confidence the terms of this Agreement and all technical and business information either party discloses to the other, except for such information which (i) is in the public domain at the time it is disclosed by one party to the other, (ii) becomes part of the public domain by publication or otherwise through no fault of either party, or (iii) is required to be disclosed by law or a court order. Seller and Purchaser further agree that neither of them will use any technical or business information disclosed to them hereunder for any purpose other than the performance of this Agreement.

17. Effectiveness. This Agreement shall become effective when fully executed; the persons executing this Agreement represent and warrant they are so authorized to execute this Agreement on behalf of their respective principals.

IN WITNESS WHEREOF, Seller and Purchaser have executed this Commercial Water Sales Agreement as of the date first set forth above.

SELLER:

The Buckeye Water Conservation and Drainage District, an irrigation district organized and existing as a municipal corporation under the laws of the State of Arizona

By: Noel Carter
Its: General Manager

PURCHASER:

By:
Its:
Contact Information
Ph
Address