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AZ CORP COMMISSION  
DOCUMENT CONTROL

Arizona Corporation Commission

DOCKETED

FEB 10 2005

Attorneys for Coronado Utilities, Inc.

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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION  
OF CORONADO UTILITIES, INC. FOR A  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO PROVIDE WASTEWATER  
SERVICE IN PINAL COUNTY, ARIZONA.

DOCKET NO. SW-04305A-05-0086

APPLICATION FOR CERTIFICATE OF  
CONVENIENCE AND NECESSITY

Pursuant to A.R.S. § 40-282 and A.A.C. R14-2-602, Coronado Utilities, Inc. ("Coronado"), an Arizona public service corporation, hereby applies to the Arizona Corporation Commission ("Commission") for an Order granting Coronado a new Certificate of Convenience and Necessity ("CC&N") to provide wastewater service in Pinal County, Arizona.

INTRODUCTION

In June 1999, BHP Copper, Inc. ("BHP") announced that it was closing down its mining operations in San Manuel, Arizona. Incidental to its mining operations, BHP also owned, operated and controlled a wastewater collection and treatment system serving the plant site operations and the community of San Manuel, which consists of approximately sixteen hundred (1600) residences and mobile homes (a population of roughly 4,000), and forty (40) commercial properties. However, the wastewater system is in need of upgrades to meet ADEQ and/or other applicable governmental requirements or guidelines for best available design control technology.<sup>1</sup> The BHP mining and processing operations at San Manuel is in closure and the company is transitioning these services. BHP is no longer in a position to continue long-term operation of the

<sup>1</sup> The current wastewater treatment facility is approximately 52 years old.

1 waste water collection and treatment system.

2 On November 10, 2004, BHP entered into a Purchase Agreement (“Agreement”) with  
3 Coronado for the sale of approximately 84 acres of real property located in Pinal County, having  
4 located thereon a wastewater treatment plant and related improvements used in connection  
5 therewith. A copy of the Agreement is attached hereto as **Exhibit 1**. The Agreement requires  
6 Coronado seek a CC&N from the Commission authorizing it to provide wastewater service to the  
7 town of San Manuel, Arizona. The Agreement also requires Coronado to seek Commission  
8 authorization for funding Coronado’s proposed modifications and upgrades to the existing  
9 wastewater treatment facility currently serving residents, and the construction of a new and  
10 modern wastewater treatment facility.

11 Pivotal Utility Management, L.L.C. (“Pivotal”), an affiliate of Coronado, has entered into  
12 a separate agreement with BHP to guaranty the performance of Coronado’s obligations under the  
13 Agreement. Pivotal has operated and managed several Arizona public service corporations,  
14 including Pine Meadows Utilities, LLC, Sweetwater Creek Utilities, Bensch Ranch Utilities,  
15 LLC, Cross Creek Ranch Water Company and Verde Santa Fe Wastewater Company.<sup>2</sup> Pivotal  
16 has also entered into an Operation and Maintenance Agreement with BHP to operate and manage  
17 the current wastewater treatment facility during construction of the new wastewater treatment  
18 plant that will eventually serve existing and future customers.

19 Coronado intends to take ownership of the existing wastewater treatment plant, and make  
20 certain short-term improvements to the facility while it constructs a new and modern wastewater  
21 treatment facility. Coronado is in the process of obtaining an Aquifer Protection Permit from the  
22 Arizona Department of Environmental Quality that will authorize it to provide wastewater service  
23 pursuant to state regulatory controls intended to protect the health and safety of wastewater  
24 customers.

25 \_\_\_\_\_  
26 <sup>2</sup> On January 1, 2005, Pivotal Operations, LLC, an affiliate of Pivotal, was created to eventually take over the  
operations and management functions of some of these utilities.



1 with a copy to Mr. Shapiro's attention, on behalf of Coronado Utilities, Inc.

2 8. A new rate schedule was developed taking into consideration the existing value of  
3 the system, as well as cost of numerous plant upgrades that will be required to ensure compliance  
4 with all state, county and local regulations. A copy and description of the new tariff rate schedule  
5 is attached hereto as **Exhibit 5**.

6 9. The estimated cost for wastewater system facility upgrades is attached hereto as  
7 **Exhibit 6**.

8 10. A detailed map indicating the area requested by this Application, and a legal  
9 description of the property, are attached hereto as **Exhibit 7**.

10 11. The manner of capitalization and methods of financing employed by Coronado  
11 will be through tax-exempt municipal bond loans obtained from Municipal Leasing Credit  
12 Corporation and granted through the Pinal County Industrial Development Authority. The  
13 proposed method of financing is more fully addressed in Coronado's concurrent Financing  
14 Application.

15 12. A general Statement of Financial Condition is attached hereto as **Exhibit 8**.

16 13. The completion date for construction of infrastructure improvements is estimated  
17 to be November 1, 2006.

18 14. The estimated numbers or customers to be served in each of the first five years of  
19 wastewater utility service to the area covered by this Application is as follows:

20 Residential

21	1 <sup>st</sup> Year:	1250
22	2 <sup>nd</sup> Year:	1354
23	3 <sup>rd</sup> Year:	1420
24	4 <sup>th</sup> Year:	1492
	5 <sup>th</sup> Year:	1564

25 15. Coronado's estimated annual operating revenue and operating expenses for each of  
26 the first five years of operation in the new area covered by this Application, more fully described

1 in Exhibit 8, is as follows:

2 WASTEWATER

3

<u>Operating Expenses</u>		<u>Operating Revenue</u>	
4 1 <sup>st</sup> Year	\$ 883,199.00	1 <sup>st</sup> Year	\$ 516,496.00
5 2 <sup>nd</sup> Year	\$ 902,501.00	2 <sup>nd</sup> Year	\$ 644,794.00
6 3 <sup>rd</sup> Year	\$ 937,037.00	3 <sup>rd</sup> Year	\$ 699,419.00
7 4 <sup>th</sup> Year	\$ 974,833.00	4 <sup>th</sup> Year	\$ 721,703.00
8 5 <sup>th</sup> Year	\$1,013,959.00	5 <sup>th</sup> Year	\$ 748,523.00

9 16. The plant cost projections by year for the next five (5) years is as follows:

10 Plant Cost Projection - Wastewater

11 1<sup>st</sup> Year - \$ 225,000  
12 2<sup>nd</sup> Year - \$3,291,000  
13 3<sup>rd</sup> Year - \$3,257,000  
14 4<sup>th</sup> Year - \$3,423,000  
15 5<sup>th</sup> Year - \$3,489,000

16 17. Water service is provided to residents within the requested area by Arizona Water  
17 Company.

18 18. Coronado shall obtain all appropriate city, county and/or state agency approvals  
19 required to provide wastewater service in the requested area.

20 19. Arizona Department of Environmental Quality ("ADEQ") Approvals to Construct  
21 concerning facilities to serve the requested extension area will be provided to the Commission as  
22 soon as Coronado receives them.

23 20. Coronado is preparing to file an application for an Aquifer Protection Permit with  
24 ADEQ. In addition, Pivotal – which has obtained a CAAG § 208 Plan that will be used for  
25 Coronado's operations – is not required to amend its current plan due to the location of the  
26 proposed new wastewater treatment facility. See Exhibit 9.



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COPY hand-delivered this <sup>10<sup>th</sup></sup> day of February, 2005:

James Dorf, Chief of Finance and Reg. Analyst  
Utilities Division  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, AZ 85007

Jim Fisher, Executive Consultant  
Utilities Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

By:   
162623181/12923.001

# **EXHIBIT**

**1**

**PURCHASE AGREEMENT**

between

**BHP COPPER INC.,**  
a Delaware corporation, as Seller

and

**CORONADO UTILITIES, INC.,**  
an Arizona corporation, as Buyer

**FIRST AMERICAN TITLE INSURANCE COMPANY,**  
Escrow No. NCS-771-122963

**PURCHASE AGREEMENT**

**First American Title Insurance Company**  
**Escrow No. \_\_\_\_\_**

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**PURCHASE AGREEMENT**

**First American Title Insurance Company**  
Escrow No. \_\_\_\_\_

This Purchase Agreement (this "Agreement") is made as of the 1st day of November, 2004 (the "Agreement Date"), by and between **BHP COPPER INC.**, a Delaware corporation ("Seller"), and **CORONADO UTILITIES, INC.**, an Arizona Corporation ("Buyer")

**RECITALS**

A. Seller is the owner of the Property (as defined in Paragraph 2 below), consisting of approximately 84 acres of real property located in Pinal County, Arizona, having located thereon a Wastewater Treatment Plant (as defined in Paragraph 2(b) below) and related improvements used in connection therewith.

B. Seller desires to sell to Buyer and Buyer desires to purchase from Seller, the Property, in accordance with and subject to the terms and conditions set forth in this Agreement.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller hereby agree as follows:

1. **Agreement; Escrow Instructions.**

(a) Agreement. This Agreement shall constitute an agreement between Seller and Buyer for the purchase and sale of the Property.

(b) Escrow Instructions. This Agreement shall constitute Escrow Instructions to First American Title Insurance Company ("Escrow Agent"), as to matters set forth herein pertaining to Escrow Agent. Buyer and Seller hereby agree to the terms of the printed escrow instructions attached hereto as Exhibit "A" (the "Printed Instructions"); provided, however, that in the event of a conflict between the terms of this Agreement and the terms of the Printed Instructions, the terms of this Agreement shall prevail.

2. **The Property.** The property that is the subject of this Agreement consists of the following (collectively, the "Property"):

(a) Land. That certain land legally described in Exhibit "B" attached hereto, but excluding any and all mineral rights (the "Land") The Land shall also include all water rights appurtenant to the Land; provided that, Buyer shall only be entitled to use any available water for its own purposes and such restriction shall be set forth in the deed transferring the Property.

(b) Improvements. All existing buildings, structures and other improvements located upon or appurtenant to the Land, including, without limitation: a wastewater collection system, a pre-treatment facility, including a manually cleaned bar screen, grit removal, and a 6-inch throat parshall flume tank with recording meter to measure flow; a primary treatment facility, including a primary settling tank, anaerobic digester and sludge drying beds; primary oxidation ponds; an office and laboratory building (including all lab equipment, office furniture and supplies, computer, etc.); a storage building (including all related spare parts for the existing wastewater treatment plant); all paving, walkways, road improvements, and all other improvements located on the Land (collectively, the "Wastewater Treatment Plant").

(c) Appurtenances. To the extent owned by Seller, all appurtenances, hereditaments, easements, and all other rights, privileges, and entitlements belonging to or running with the Land, including, but not limited to, all rights, obligations and easements in favor of or burdening the Property, all awards for damage to the Land or taking by eminent domain, and all transferable zoning and land use entitlements and development rights pertaining to the Land (collectively, the "Appurtenances"). The Land, the Wastewater Treatment Plant, and the Appurtenances are collectively referred to herein as the "Real Property."

(d) Tangible Personal Property. All of Seller's right, title, and interest in and to all tangible personal property described in Exhibit "C" attached hereto and incorporated herein by this reference (collectively, the "Personal Property").

**3. Opening of Escrow and Closing.**

(a) Opening. The escrow established hereunder (the "Escrow") shall be deemed to open (the "Opening of Escrow") when three (3) copies of this Agreement executed by Buyer and Seller have been delivered to and are accepted by Escrow Agent. Escrow Agent shall give Buyer and Seller prompt written notice of the date of Opening of Escrow.

(b) Closing Date. The Escrow shall be deemed to close (the "Closing") upon recordation of the Deed (as hereinafter defined) by Escrow Agent. Subject to the terms and conditions of this Agreement, the Closing shall occur on the date that is fifteen (15) days after the date upon which Buyer delivers to Seller and Escrow Agent the Approvals Satisfaction Notice (as defined in Paragraph 7(a)). The Closing shall occur at the office of Escrow Agent or at such other location in Maricopa County, Arizona as the parties may mutually specify in writing.

**4. Purchase Price.**

(a) Amount. The total purchase price (the "Purchase Price") that Buyer agrees to pay for the Property is Three Hundred Twenty-Five Thousand and No/100 Dollars (\$325,000.00).

(b) Payment. The Purchase Price, of \$325,000.00, shall be paid by the application of the Improvement Credit (as defined below) of \$249,999.00 and the Additional Consideration (as defined below) of \$75,001.00, and increased or reduced by such funds as are required to take into account the prorations and other adjustments required by this Agreement,

shall be deposited by Buyer with Escrow Agent for the account of Seller, in cash or funds immediately available in Phoenix, Arizona, on or before the Closing Date.

(c) Improvements Credit. Buyer shall receive a credit to the Purchase Price at Closing in the amount of Two Hundred Forty-nine Thousand Nine Hundred Ninety-nine and No/100 Dollars (\$249,999.00) in consideration of Buyer's agreement to design, permit, construct and fund the construction of the Golf Course Improvements (as defined in Paragraph 15(a)(ii) below) (the "Improvements Credit").

(d) Additional Consideration. Upon the completion of the Wastewater Treatment Plant Improvements in accordance with the plans approved by Arizona Corporation Commission (ACC), Arizona Department of Environmental Quality (ADEQ) and Seller pursuant to Paragraph 16(a), but in no event later than August 10, 2006, Buyer shall pay to Seller the sum of Seventy-five Thousand One and No/100 Dollars (\$75,001.00) in cash or immediately available United States funds (the "Additional Closing Consideration"). The provisions of this Paragraph 4(d) shall survive Closing.

**5. Inspection; Property Information; Entry on Property; Guaranty; Letter of Credit.**

(a) Inspection. Buyer hereby acknowledges that Buyer has been given an opportunity to examine, inspect and investigate the Property and all improvements located thereon. Buyer has determined that Buyer will proceed with the purchase of the Property based upon the examinations, inspections and investigations conducted by Buyer and not in reliance on any statements, representations, inducements or agreements of Seller or Seller's agents in connection with the sale of the Property.

(b) Property Information. Buyer acknowledges receipt from Seller prior to the Opening of Escrow of the materials described in Exhibit "D" (collectively, the "Property Information").

(c) Right of Entry. During the term of this Agreement, Buyer, its agents and designees shall have, in addition to any rights of entry Buyer may have or acquire pursuant to the Operation and Management Agreement referenced in Paragraph 8(b)(iii), the right to enter upon the Property for the purpose of performing any engineering, surveying or related work, and conducting geological, soil, drainage, engineering, archaeological, and environmental tests and such other studies and investigations as Buyer deems reasonably necessary or appropriate. As a condition to such entry upon the Property, (i) Buyer shall give to Seller at least two (2) days' prior written notice of Buyer's intent to enter upon the Property, (ii) after such notice by Buyer, Buyer shall deliver to Seller evidence of insurance as may be required by Seller, and (iii) if requested by Seller, Buyer's agents and/or designees are accompanied by a representative of Seller. Buyer shall not perform any invasive testing upon the Property without Seller's prior written consent. Buyer hereby releases Seller from any and all claims and liability which may arise from Buyer's entry upon and activities upon the Property in connection with the right of entry granted to Buyer in this paragraph, and Buyer shall defend, indemnify and hold Seller harmless for, from and against all claims, demands, actions, liabilities and obligations (including, but not limited to, mechanics' and materialmen's liens) arising from any exercise of the rights granted under this paragraph, if requested by the Seller (except those arising from the acts or

omissions of Seller, its employees, agents or contractors), which indemnification obligation shall survive the Closing or the termination or cancellation of this Agreement. Buyer shall promptly restore the Property substantially to its condition existing immediately prior to any entry upon the Property pursuant to this Paragraph (except for any changes in the condition resulting from the acts of Seller, its employees, agents or contractors).

(d) Reclaimed Water Pipeline Easement Agreement. On or before March 31, 2005, Seller and Buyer shall in good faith attempt to negotiate the form of an easement agreement, whereby Seller shall grant to Buyer a pipeline easement across a portion of Seller's remaining property (the "Reclaimed Water Pipeline Easement") for the purpose of constructing, operating and maintaining a water line for the transport of reclaimed water between the Property and the San Manuel Golf Course (the "Golf Course").

(e) Reclaimed Water Covenants, Conditions and Restrictions. On or before March 31, 2005, Seller and Buyer shall in good faith attempt to negotiate the form of covenants, conditions and restrictions (the "Reclaimed Water CC&Rs") to be recorded against the Property, pursuant to which Buyer shall, for so long as the Golf Course is used as a golf course or the Wastewater Treatment Plant is used as a wastewater treatment plant, covenant to (i) construct reclaimed water facilities for the purpose of supplying reclaimed water to the Golf Course within twenty-one (21) months of the Agreement Date; (ii) provide reclaimed water to the Golf Course in available quantities and at such priority as required by the Golf Course; and (iii) provide reclaimed water to the Golf Course at no more than the power costs expended to pump the reclaimed water to the Golf Course, provided such rate shall be in accordance with the approved rate tariff.

(f) Access Easement. On or before March 31, 2005, Seller and Buyer shall in good faith attempt to negotiate the form of an easement agreement whereby Seller shall grant to Buyer an easement to access a portion of Seller's remaining property (the "Access Easement") to be recorded at Closing, for the purpose of ingress and egress to the Property to and from the "north plant gate" of Seller's property.

(g) Lift Station Easement. On or before March 31, 2005, Seller and Buyer shall in good faith attempt to negotiate the form of an easement agreement whereby Seller shall grant to Buyer an easement over and across certain portions of Seller's property for purposes of accessing the two lift stations which comprise a portion of the Personal Property (the "Lift Station Easement").

(h) Guaranty. An affiliate of Buyer, Pivotal Utility Management, LLC, a Colorado limited liability company ("Pivotal"), shall enter into a guaranty (the "Guaranty"), the form of which is attached hereto as Exhibit "E", pursuant to which Pivotal shall agree to guaranty the performance of all of the Buyer's obligations under this Agreement.

(i) Failure to Agree. If Buyer and Seller have not agreed as to the form and substance of the Reclaimed Water Pipeline Easement Agreement, the Reclaimed Water CC&Rs, and/or the Access Easement, on or before the applicable time period set forth above, such date shall be automatically extended for an additional thirty (30) days, but only with respect to such agreement(s) that have not been agreed to by the parties. If at the end of such additional

thirty (30) day time period, Buyer and Seller have not agreed as to the form and substance of any such agreement(s), then Seller, in its sole and absolute discretion, may terminate this Agreement, whereupon, except for any indemnities that survive termination of this Agreement, neither Buyer nor Seller shall have any further responsibility or liability under this Agreement. The failure to agree upon the Reclaimed Water Pipeline Easement Agreement, the Reclaimed Water CC&Rs, and/or the Access Easement shall not constitute a default by the parties hereunder, and shall therefore not trigger collection of the Letter of Credit (as defined in Paragraph 5(i) below).

(j) Letter of Credit. Pivotal and Seller are parties to that certain Operation and Maintenance Agreement dated of even date herewith (the "O&M Agreement") pursuant to which Pivotal operates and maintains the existing Wastewater Treatment Plant. Under the terms of the O&M Agreement, Pivotal furnished an irrevocable letter of credit to Seller in the amount of \$200,000.00 (the "LOC") to cover the performance of all terms, conditions and provisions by Pivotal under the O&M Agreement. The LOC shall also secure the performance of all conditions and obligations of Buyer under this Agreement. The LOC shall be released by Seller within ten (10) days of the later of (i) the date the existing Wastewater Treatment Plant is shut down and the new Wastewater Treatment Plant is fully operation, or (ii) the date the Golf Course Improvements (as defined in Paragraph 15(a)(ii) below) are complete and operational.

**6. Title Review Contingency.**

(a) Title Commitment. Within forty-five (45) days after Opening of Escrow, Escrow Agent shall prepare and deliver to Buyer and Seller a title commitment for the Property together with legible copies of all Schedule B and other recorded items referred to therein (the "Title Commitment").

(b) Objection by Buyer: Amendments. Buyer shall be entitled to object to any matters disclosed by the Title Commitment by delivering written notice of objection (the "Objection Notice") to Seller and to Escrow Agent on or before fifteen (15) days after Buyer's receipt of the Title Commitment. Any Objection Notice delivered by Buyer pursuant to this paragraph shall specify in reasonable detail any matter to which Buyer objects. If Escrow Agent subsequently issues any amendment to the Title Commitment showing any additional exception to title other than the Permitted Exceptions (as hereinafter defined), Buyer shall be entitled to object to any such additional exception by delivering an Objection Notice to Seller and to Escrow Agent on or before five (5) days after Buyer's receipt of the amendment to the Title Commitment. If Buyer fails to deliver an Objection Notice objecting to any matter set forth in the Title Commitment, or any subsequent amendment to the Title Commitment, within the relevant time period prescribed above, Buyer shall be conclusively deemed to have approved such matters. Except as otherwise provided in Paragraph 6(c), Seller shall have no obligation to cure or remove any title matter objected to by Buyer.

(c) Cure by Seller. If Buyer timely delivers any Objection Notice pursuant to Paragraph 6(b) above, Seller shall deliver a written notice (a "Response") to Buyer and to Escrow Agent within fifteen (15) days after receipt of such Objection Notice, which Response shall state any actions which Seller intends to take and their anticipated effect on the matters to which Buyer has objected. If Seller fails to deliver a Response within such fifteen (15) day period, then Seller shall be deemed to have delivered a Response indicating that it will not remove any of the matter(s) objected to by Buyer. If the Response does not state an intention to

fully remove each matter to which Buyer has objected, Buyer shall deliver to Seller and Escrow Agent within fifteen (15) days after Buyer receives the Response a written notice (a "Reply") stating Buyer's election either (i) to terminate this Agreement, or (ii) to waive Buyer's objections (on the condition that Seller accomplishes any objectives described by Seller in the Response). If Buyer fails to make a timely election pursuant to the preceding sentence, Buyer shall be deemed conclusively to have elected to terminate according to clause (i) of the preceding sentence. If Buyer has conditionally waived an objection (based upon Seller's agreement to take specified action as set forth in Seller's Response), and the condition is not satisfied by the Closing Date, Buyer shall have the right, as its sole remedy therefor, either to (i) terminate this Agreement on the Closing Date, (ii) proceed with this transaction and waive such objection, or (iii) take the action set forth in Seller's Response that Seller agreed to do, and if such action results in Buyer having actual out-of-pocket costs or expenses, Buyer may reduce the Purchase Price by the amount of such actual out-of-pocket costs or expenses of Buyer. In the event that the amount of any such actual out-of-pocket costs or expenses referred to in the preceding sentence exceeds the amount of the Purchase Price, then Seller shall pay such amount to Buyer at Closing. If Buyer fails to make a timely written election regarding a condition that is not satisfied by Seller as of the Closing Date as set forth above, Buyer shall be deemed conclusively to have elected to waive such objection according to clause (ii) of the fifth (5<sup>th</sup>) sentence of this paragraph. In the event that Buyer waives an objection, Buyer shall be deemed to have approved the item with respect to which the objection was made and such exception shall be part of the Permitted Exceptions hereunder. Seller agrees not to suffer, permit or otherwise allow the placement of any additional consensual liens, consensual encumbrances or easements against the Property following Opening of Escrow unless they are deemed Permitted Exceptions or are consented to by Buyer, which consent shall not be unreasonably withheld or delayed. The Closing shall be extended if (and to the minimum extent) reasonably necessary to provide the parties the periods contemplated in Paragraphs 6(b) and 6(c) to, as applicable, deliver an Objection Notice, Response and/or a Reply.

(d) Permitted Exceptions. As used in this Agreement, the term "Permitted Exceptions" collectively shall mean (i) the exceptions to title reflected in the Title Commitment and all amendment(s) to the Title Commitment, which are approved (or deemed approved) by Buyer pursuant to this Paragraph 6; (ii) any matters created by or arising from the act, omission or acquiescence of Buyer, its affiliates, employees, agents, contractors, subcontractors or representatives; (iii) any unpaid taxes and assessments which Buyer is required to pay under Paragraph 20; (iv) any other matters approved or deemed approved by Buyer or which are permitted under or in connection with this Agreement; (v) any matters which are contemplated by this Agreement or which are consistent with the proposed development plan for the Property; and (vi) any matters which do not materially and adversely affect the economic burden or development obligation of Buyer upon the Property.

(e) Title Insurance. Upon and as a condition to Buyer's obligation to close Escrow, Escrow Agent shall be unconditionally committed to furnish to Buyer a standard coverage owner's policy of title insurance issued by First American Title Insurance Company in the full amount of the Purchase Price for the Property, insuring fee simple title to the entire interest of the Property in Buyer subject only to the Permitted Exceptions and to the usual exceptions, conditions and stipulations appearing in Escrow Agent's standard printed form of policy (the "Title Policy"). Seller shall pay the premium for a standard coverage owner's policy

for Buyer, and Buyer shall pay the remainder of the premium for the extended coverage owner's policy for Buyer, if any, and for any endorsements requested by Buyer, if any; except that if Seller offers any endorsements ("Curative Endorsements") to the title insurance policy to cure or otherwise address any title matter objected to by Buyer in an Objection Notice (and Buyer accepts such Curative Endorsements), Seller shall pay the cost of such Curative Endorsements.

7. Approvals Contingency.

(a) Approvals. From and after the Opening of Escrow, Buyer shall diligently and in good faith attempt to satisfy the following conditions (collectively, the "Approvals Requirements"):

(i) CC&N Approval. Buyer shall obtain a Certificate of Convenience and Necessity ("CC&N") from the Arizona Corporation Commission ("ACC") that authorizes Buyer to provide sewer services to the town of San Manuel and covers the proposed modifications and upgrades of the existing Wastewater Treatment Plant ("WWTP"), or construction of new WWTP facilities to be undertaken by Buyer.

(ii) APP Approval. Buyer shall obtain an Aquifer Protection Program Permit ("APP Permit") from the Arizona Department of Environmental Quality ("ADEQ") applicable to the modifications proposed and upgrades of the existing WWTP, or construction of a new WWTP, to be undertaken by Buyer. Buyer and Seller shall cooperate to designate Buyer as the owner of the Property for APP Permit purposes effective as of the Closing Date or such earlier time in BHP's sole discretion.

Promptly upon satisfaction of the Approvals Requirements, Buyer shall deliver a notice to Seller thereof and shall include with such notice copies of the CC&N, the APP Permit and such other information as is reasonably necessary to evidence satisfaction of the Approvals Requirements (collectively, the "Approvals Satisfaction Notice"). Seller shall reasonably cooperate with Buyer, without cost or liability to Seller, in Buyer's efforts to satisfy the Approvals Requirements.

(b) Approvals Contingency Date. Subject to the final sentence of this Paragraph 7(b), in the event Buyer does not deliver to Seller the Approvals Satisfaction Notice on or before December 1, 2005 (the "Approvals Contingency Date"), Seller, at Seller's sole discretion and as its sole remedy may: (A) waive the Approvals contingency by delivering to Buyer and Escrow Agent written notice of waiver on or before the Approvals Contingency Date and proceed to the Closing on or before the Closing Date or (B) terminate this Agreement by delivering a written termination to Buyer and Escrow Agent on or after the Approvals Contingency Date, whereupon Seller shall be entitled to draw upon the full amount of the LOC and Buyer shall deliver to Seller the Property Information and other documents in accordance with Paragraph 5(a). Seller shall be deemed to have elected to terminate under (B) if it fails to timely deliver any notice of election. Notwithstanding anything to the contrary appearing herein in the event of an "excusable delay" as set forth in Paragraph 16(g) hereof, the Approvals Contingency Date shall be extended for such amount of time as agreed to by the parties in accordance with the provisions of Paragraph 16(g) or if the parties are unable to agree, such

Approval Contingency Date shall be extended for a period of thirty (30) days or such additional amount of time reasonably necessary for Buyer to overcome or cure the "excusable delay."

8. Closing Conditions.

(a) Buyer Conditions. In addition to the other conditions set forth in this Agreement, the obligation of Buyer to purchase the Property is subject to the satisfaction as of the Closing of the following conditions (the "Buyer's Conditions to Closing"), any of which may be waived in whole or in part by Buyer in writing at or prior to the applicable deadline set forth in this Agreement (or, if this Agreement does not state a specific deadline, at or prior to the Closing):

(i) Representations, Warranties and Covenants. The representations and warranties of Seller set forth herein shall be true on and as of the Closing Date with the same force and effect as if such representations and warranties were made on and as of the Closing Date. In addition, all covenants required to be performed by Seller as of Closing shall have been performed pursuant to the terms of this Agreement.

(ii) Title Policy. Escrow Agent shall be unconditionally committed to issue to Buyer the owner's policy of title insurance described in Paragraph 6.

(iii) No Default Under Operation and Management Agreement. There shall be no material breach or default by Seller or its successor and assigns of the O&M Agreement dated the same date as the Agreement Date, between Seller and Pivotal or Buyer relating to the operation and management of the Wastewater Treatment Plant, or any event that, with the giving of notice or passage of time, or both, would constitute a material default under the Operation and Management Agreement.

If the Closing fails to occur on or prior to the Closing Date because a Buyer's Condition to Closing is not satisfied, then Buyer shall elect by written notice delivered to Seller and Escrow Agent on or before 5:00 p.m. on the Closing Date to either (a) waive all unsatisfied Buyer's Condition(s) to Closing and proceed with the Closing on that date which is three (3) business days after the Closing Date (provided that Seller also agrees in writing to waive such condition if such condition also is a Seller's Condition to Closing) or (b) terminate this Agreement. If Buyer fails to deliver the written notice described in the preceding sentence, then Buyer shall be deemed to have elected to waive and proceed pursuant to option (a). Notwithstanding the foregoing, if the failure of a Buyer's Condition to Closing is caused by a default by Seller, Buyer shall have the right to exercise the remedies described in Paragraph 18(a) below.

(b) Seller Conditions. In addition to the other conditions set forth in this Agreement, the obligation of Seller to convey the Property is subject to the satisfaction as of the Closing of the following conditions (the "Seller's Conditions to Closing"), any of which may be waived in whole or in part by Seller in writing at or prior to the applicable deadline set forth in this Agreement (or, if this Agreement does not state a specific deadline, at or prior to the Closing):

(i) Representations, Warranties and Covenants. The representations and warranties of Buyer set forth herein shall be true on and as of the Closing Date with the same

force and effect as if such representations and warranties were made on and as of the Closing Date. In addition, all covenants required to be performed by Buyer as of Closing shall have been performed pursuant to the terms of this Agreement.

(ii) Approvals. Buyer shall have satisfied the Approvals Requirements in accordance with Paragraph 7.

(iii) No Default Under Operation and Management Agreement. There shall be no material breach or default by Pivotal or its successor and assigns of the O&M Agreement dated the same date as the Agreement Date, between Seller and Pivotal or Buyer relating to the operation and management of the Wastewater Treatment Plant, or any event that, with the giving of notice or passage of time, or both, would constitute a material default under the Operation and Management Agreement.

If the Closing fails to occur on or prior to the Closing Date because a Seller's Condition to Closing is not satisfied, then Seller shall elect by written notice delivered to Buyer and Escrow Agent on or before 5:00 p.m. on the Closing Date to either (a) waive all unsatisfied Seller's Condition(s) to Closing and proceed with the Closing on that date which is three (3) business days after the Closing Date (provided that Buyer also agrees in writing to waive such condition if such condition also is a Buyer's Condition to Closing) or (b) terminate this Agreement, whereupon Seller shall have the right to exercise the remedies described in Paragraph 17(a) below and Buyer shall deliver to Seller the Property Information and other documents in accordance with Paragraphs 5(a) or (c) extend the Closing Date for up to thirty (30) days. If Seller fails to deliver the written notice described above, then Seller shall be deemed to have elected to extend the Closing Date pursuant to option (c).

9. **Representations; Warranties and Covenants of Buyer**. Buyer acknowledges, covenants, represents and warrants to Seller that the following are true, accurate and complete in all material respects as of the Agreement Date and will be true, accurate and complete as of Closing in all material respects, and in entering into this Agreement Seller is relying upon, the following:

(a) Due Organization, Etc. Buyer is an Arizona corporation duly formed, validly existing and in good standing under the laws of the State of Arizona. Buyer's execution and delivery of this Agreement, and the consummation of the transactions contemplated and required hereby will not result in any violation of, or default under, any terms or provision of any agreement, instrument, mortgage, loan agreement or similar document to which Buyer is a party or by which Buyer is bound. Buyer further represents that it is not a partner or joint venturer with Seller in connection with the transactions contemplated by this Agreement, and that it is entering into this Agreement and any other contract, instrument and document contemplated hereby, voluntarily and solely for its own benefit.

(b) No Litigation. There is no litigation, investigation or proceeding pending or, to the knowledge of Buyer, contemplated or threatened against Buyer which would impair or adversely affect Buyer's ability to perform its obligations under this Agreement or any other instrument or document related hereto.

(c) No Warranties. Except as expressly provided in this Agreement, Buyer has not relied on, any representations, warranties, guarantees, or promises (oral, written or implied) regarding the condition of the Property or the suitability of the Property for Buyer's intended use or any other use.

(d) Investigation of Property by Buyer. Buyer acknowledges (i) that Buyer has visited and inspected the Property, that Buyer is familiar with the conditions under which any work must be accomplished, and that, except for Seller's express representations, warranties, covenants and other obligations made in this Agreement, the Deed and any other closing documents executed and delivered by Seller to Buyer pursuant to this Agreement, BUYER IS PURCHASING THE PROPERTY AND ANY IMPROVEMENTS NOW OR HEREAFTER MADE THERETO IN "AS IS" AND "WHERE IS" CONDITION, WITH ALL FAULTS; (ii) that pursuant to the terms of this Agreement, Buyer has been given the opportunity to examine, inspect and investigate the Property, all improvements located thereon, the subsurface of the Property and all soil, engineering, environmental and other conditions and requirements of the Property and any personal property; (iii) that pursuant to the terms of this Agreement, Buyer has been given the opportunity to investigate all zoning, building and governmental regulatory matters pertaining to the Property and the use and development thereof; (iv) that, except for Seller's express representations, warranties, covenants and other obligations made in this Agreement, upon consummation of the transaction contemplated hereby, Buyer will purchase the Property based upon the examinations, inspections and investigations conducted by Buyer (or on Buyer's behalf) and not in reliance on any statements, representations, inducements or agreements of Seller or Seller's agents in connection with the Property, its zoning, its fitness or merchantability for any particular use or purpose, availability of water or utilities, soil or environmental conditions, encroachments which would be disclosed by either an inspection of the Property or a survey, flooding and such other matters as might be disclosed or determined by an examination of the Property and independent inquiry with respect thereto; (v) that any engineering data, soils reports or other information that Seller or any other party may have delivered or shall deliver to Buyer pertaining to the Property is furnished without any representation or warranty whatsoever and that such information is furnished solely for the convenience of Buyer, and Seller shall have no liability whatsoever with respect to the sufficiency or accuracy of any investigations, the records thereof, or the interpretations set forth therein; and (vi) except as specifically set forth in this Agreement, the Reclaimed Water Pipeline Easement and the Access Easement, that Seller shall have no responsibility, liability or obligation respecting the Property subsequent to Closing. Notwithstanding anything to the contrary appearing in the preceding provisions of this Paragraph 9(d), to Seller's knowledge, such information is true and accurate and Seller has no actual knowledge that such information is untrue, inaccurate or misleading in any material respect.

(e) Release by Buyer. Except as provided in Paragraph 10(d) hereof, Buyer hereby waives and releases Seller from all rights of action under applicable federal, state, local and common law, including the Comprehensive Environmental Response Compensation and Liability Act, as amended, which Buyer may have, or may in the future have, against Seller arising out of the presence of contamination or hazardous materials on, under or emanating from the Property, or arising out of the physical condition of the Property or any adjacent property, including liability relating to the closure of the Wastewater Treatment Plant, as upgraded or modified.

(f) Indemnification by Buyer. Buyer shall indemnify, defend and hold Seller harmless for, from and against any and all costs, claims, expenses (including, without limitation, all court costs and attorneys' fees) or other liabilities arising out of or related to:

(i) Any acts or omissions of Buyer or Buyer's employees, agents, contractors, licensees or invitees upon or with respect to the Property;

(ii) The presence or potential presence of contamination or hazardous materials on, under or emanating from the Property, subject to Paragraph 10(d).

(g) Interstate Land Sales Full Disclosure Act. To assure that Seller's operations qualify for exemption from the Interstate Land Sales Full Disclosure Act (the "Act"), Buyer represents and warrants that: (i) Buyer is a duly organized and validly existing business entity; (ii) Buyer is purchasing the Property for its own use and development; (iii) Buyer has been represented in the negotiations regarding the subject purchase by a representative of its own choosing; and (iv) Buyer does not intend for this transaction to be subject to the Act.

(h) Financial Assurances. Buyer represents that it has sufficient financial resources to fulfill its obligations contained in this Agreement.

(i) Governmental Approvals. Buyer covenants that it shall use its good faith diligent efforts to obtain any and all necessary governmental or quasi-governmental approvals and shall submit all applications for governmental approvals relating to the Property, including but not limited the applications and submittals relating to obtaining the CC&N and APP Permit, on a timely basis, and that Buyer shall maintain, and shall take any all actions reasonably necessary to maintain, all Governmental Approvals in full force and effect. This covenant shall survive Closing and shall not lapse.

(j) Limitation. Except as otherwise provided herein, the warranties and representations of Buyer set forth in this Paragraph 9 shall survive Closing for a period of one (1) year (the "Limitation Period") and thereafter shall lapse. Seller agrees for itself and its successors and assigns to commence any legal action for breach of any such warranty and representation (if at all) within the Limitation Period, and Seller for itself and successors and assigns hereby waives all rights and remedies against Buyer, its successors and assigns arising out of or in connection with any alleged breach of warranty or representation as to which a legal action has not been commenced within the Limitation Period.

**10. Representations, Warranties and Covenants of Seller.** Seller acknowledges, represents and warrants to Buyer that, except as otherwise disclosed in this Agreement, the Property Information, or the Title Commitment (or any amendment thereto), the following are true, accurate and complete in all material respects as of the Agreement Date and will be true, accurate and complete as of Closing in all material respects, and in entering into this Agreement, Buyer is relying upon the following:

(a) Due Organization, Etc. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and Seller is in good standing and duly qualified to transact business in the State of Arizona. The transaction contemplated by this Agreement, and the execution and delivery of all documents required

herein, and its performance hereunder has been duly authorized by Seller. The execution and delivery of this Agreement and any other documents required herein and the consummation of the transactions contemplated hereby and thereby will not result in any violation of, or default under, any term or provision of any agreement, instrument, mortgage, loan or similar documents to which Seller is a party of or by which Seller is bound. Seller further represents that it is not a partner or joint venturer with Buyer in connection with the transactions contemplated by this Agreement, and that it is entering into this Agreement and any other contract, instrument and document contemplated hereby, voluntarily and solely for its own benefit.

(b) Foreign Person. Seller is not a "foreign person" as such term is defined under the Internal Revenue Code § 1445.

(c) Limitations; Additional Items.

(i) Seller does not warrant or represent the accuracy or completeness of the Property Information or any reports, studies or plans furnished to Buyer by Seller or at Seller's direction and shall have no liability to Buyer in connection therewith.

(ii) The warranties and representations of Seller set forth in this Paragraph 10 and at the end of Paragraph 9(a) shall survive Closing for a period of one (1) year (the "Limitation Period") and thereafter shall lapse. Buyer agrees for itself and its successors and assigns to commence any legal action for breach of any such warranty and representation (if at all) within the Limitation Period, and, except for costs, claims, and expenses described in Paragraph 10(d), Buyer for itself and its successors and assigns hereby waives all rights and remedies against Seller, its successors and assigns arising out of or in connection with any alleged breach of warranty or representation as to which a legal action has not been commenced within the Limitation Period.

(d) Indemnity by Seller.

(e) Demolition of Existing WWTP. If Buyer (a) constructs and obtains all required permits for a new WWTP, (b) completes full start-up of the new WWTP, and (c) notifies BHP in writing that the existing WWTP facilities are no longer utilized and ready to be decommissioned, Seller will, within a reasonable period of time, demolish the existing WWTP, and conduct the cleanup of the 2.231-acre parcel of real property surrounding the existing WWTP, as described on Exhibit "K" attached hereto, required under applicable regulations.

11. **Action at Closing by Seller.** On or before the Closing Date, Seller shall deliver or cause to be delivered to Escrow Agent (if not otherwise delivered prior thereto) all of the following instruments dated as of or prior to the Closing Date, fully executed by Seller and, if appropriate, acknowledged:

- (a) A Special Warranty Deed in the form attached hereto as Exhibit "F" (the "Deed"), conveying title to the Property to Buyer;
- (b) A bill of sale in the form of Exhibit "G" attached hereto (the "Bill of Sale");
- (c) Affidavit of Value for the Property;
- (d) Affidavit of Non-Foreign Person in the form of Exhibit "H";
- (e) A non-exclusive assignment of contracts, substantially in the form of Exhibit "T" attached hereto (the "Non-Exclusive Assignment of Contracts") assigning to Buyer (without any representation or warranty);
- (f) Reclaimed Water Pipeline Easement;
- (g) Reclaimed Water CC&Rs;
- (h) Access Easement;
- (i) Guaranty;
- (j) Lift Station Easement; and
- (k) Such other funds, instruments, or documents as may be reasonably necessary to fulfill the covenants and obligations to be performed by Seller pursuant to this Agreement.

12. **Action at Closing by Buyer.** On or before the Closing Date (unless otherwise required under this Agreement to be delivered earlier), Buyer shall deliver or cause to be delivered to Escrow Agent (if not otherwise delivered prior thereto) all of the following, and with respect to any instruments or documents referred to below, all such items shall be dated as of or prior to the Closing Date, fully executed by Buyer and, if appropriate, acknowledged:

- (a) All funds referred to in Paragraph 4 necessary to pay the Purchase Price and all funds necessary to pay any other amounts due under this Agreement at the Closing;
- (b) Affidavit of Value for the Property;
- (c) Non-Exclusive Assignment of Contracts
- (d) Reclaimed Water Pipeline Easement;
- (e) Reclaimed Water CC&Rs;

- (f) Access Easement;
- (g) Lift Station Easement;
- (h) Guaranty; and
- (i) Such other funds, instruments, or documents as are reasonably necessary to fulfill the covenants and obligations to be performed by Buyer pursuant to this Agreement.

13. **Possession; Use of Property.** Seller shall deliver actual possession of the Property to Buyer at the Closing. Buyer's use of the Property shall be subject to the Permitted Exceptions, and the terms, covenants and conditions of Buyer set forth in this Agreement. The provisions of this Paragraph shall survive the Closing.

14. **Brokerage.** Buyer and Seller each represent to the other that it has not dealt with any real estate broker or any other party entitled to a commission, broker's fee or other similar compensation in connection with the sale of the Property by Seller to Buyer. Buyer and Seller each agree to indemnify, protect, defend and hold the other harmless for, from and against any expense, including, without limitation, attorneys' and accountants' fees, claims, actions, suits or demands for payment of any commission, finder's fee or other sum initiated by any broker, commission agent or other person which such party or its representatives has engaged or retained or with which it has had discussions concerning the transaction contemplated by this Agreement. The representations and indemnifications set forth in this Paragraph 14 shall survive Closing and shall not merge into any deed or other instrument delivered at Closing.

15. **Development Approvals; Submittals.**

(a) Prior to the commencement of any work or submittal for any governmental or quasi-governmental permits, approvals, authorizations, licenses, franchises or certificates of occupancy with respect to the Property, Buyer shall submit the following items to Seller for its review, comment, and where indicated, approval:

(i) **Property Improvements.** Buyer's plans and specifications for any work to be done and any improvements to be installed in any part of the Property, including, but not limited to, upgrading or modification of the existing WWTP, and/or construction of a new WWTP, other improvements, grading and drainage, landscaping, roadways, walls, pipelines and other utilities (the "Wastewater Treatment Plant (WWTP) Improvements"), together with Buyer's total project cost estimate.

(ii) **Golf Course Pipeline and Transfer Pond Improvements.** Buyer's plans and specifications for any work to be done and any improvements to be installed or permits to be obtained relating to construction of the reclaim water pipeline to transfer effluent water to the Golf Course and the transfer ponds to receive and retain reclaim water (the "Golf Course Improvements"). Seller shall have the right to approve or disapprove such plans and specifications for the Golf Course Improvements, as well as the cost thereof prior to the inclusion of such in the CC&N and APP applications.

(iii) CC&N. Within ninety (90) days from the Agreement Date, Buyer shall submit a complete application for a CC&N to be submitted to the ACC to authorize Buyer to provide sewer services to the town of San Manuel and to modify or upgrade the existing WWTP or to construct a new WWTP.

(iv) Service Territory Area. Buyer and Seller shall work together to prepare the service territory plan under the CC&N. In the event Seller's Plant Site is excluded from the Service Territory area, then Buyer shall provide sewer services, if Seller requests, at rates pursuant to the ACC's service extension provisions.

(v) Aquifer Protection Program Permit. Within one hundred twenty (120) days from the Agreement Date, Buyer shall submit to Seller for its review, comment and prior approval (such approval shall not be unreasonably withheld, and in no case will the review process take more than fifteen (15) business days), a draft application for an APP Permit to be submitted to the ADEQ to cover the Wastewater Treatment Plant Improvements to be constructed by Buyer. Buyer shall submit the application within five (5) days of receiving written approval from Seller. Seller will participate, to the extent deemed appropriate by Seller, in its sole discretion, in discussions with ADEQ regarding the terms and conditions of the APP permit.

(vi) Seller shall initiate and perform any required work to secure, amend or transfer any permit and/or applications, as reasonably necessary to accommodate the WWTP Improvements and to complete the proposed sale of the Property to Buyer pursuant to the terms of the Purchase Agreement.

(vii) Governmental Applications. Any other application or other materials to be submitted to the county or other governmental authority in connection with any zoning or other development approval (other than building permit applications) sought by Buyer in connection with the Property or any other work in connection therewith, which application or other material shall be delivered by Buyer to Seller at least ten days prior to submittal thereof to the county or such governmental authority.

(viii) Public Statements. Any materials or correspondence to be submitted to sewage services customers relating to the transfer of responsibility or obligations for the continued operation of the Wastewater Treatment Plant and the future provision of sewer services shall be subject to the prior review and approval of Seller in its sole and absolute discretion.

(ix) Review and Approval Procedure. Seller shall give Buyer any comment, complete any review and, if indicated, give any approval or notice of disapproval within fifteen (15) business days of the date Buyer submits such item. Any failure to give any comments or approval shall be deemed to mean that Seller has no comments, and the item has been approved. All replies or responses of Seller shall be in writing. In all instances, any such required approval shall not be unreasonably withheld.

(b) Injunctive Relief. Buyer acknowledges that Buyer's breach of any covenant or agreement contained in this Paragraph 15 would cause irreparable harm to Seller and

that monetary damages for such breach would be inadequate. Accordingly, Buyer agrees that Seller shall be entitled to obtain injunctive relief from a court of competent jurisdiction in the event of Buyer's breach or threatened breach of any covenant or agreement contained in this Paragraph 15 and that Seller shall be awarded a judgment for reasonable attorneys fees, expert witness fees, pre-trial discovery costs and all other court costs and fees as part of any injunctive relief granted by the court.

(c) Nonrecourse/Indemnity. Buyer acknowledges and agrees that, notwithstanding Seller's review and approval as described above and except for any information furnished by Seller, Buyer shall be exclusively responsible for the truth, accuracy and completeness of the CC&N application, the APP Permit application and any other governmental applications, and compliance with all ADEQ, ACC and other governmental or quasi-governmental requirements, without recourse to Seller. Buyer shall indemnify, defend and hold harmless Seller for, from and against any and all costs, claims, expenses (including, without limitation, all court costs, expenditures, fees and reasonable attorneys' fees) or other liabilities as suffered or incurred by Seller as a result or with respect to any development approvals and submittals.

(d) Survival. The provisions of Paragraphs 15(a)(ii), 15(c) and 15(d) shall survive Closing.

**16. Construction of Improvements; Water Supply; Electricity.**

(a) Wastewater Treatment Plant Improvements. On or before August 1, 2006, Buyer shall cause to be completed in a good and workmanlike manner, at Buyer's sole cost and expense, the Wastewater Treatment Plant Improvements and other improvements if and to the extent required under the CC&N or APP Permit, in accordance with the final engineering plans approved by Seller pursuant to Paragraph 15 and by applicable governmental or quasi-governmental authority.

(b) Golf Course Improvements. Buyer shall cause to be completed, at Buyer's sole cost and expense, on or before August 1, 2006, the Golf Course Improvements in accordance with the final engineering plans approved by Seller pursuant to Paragraph 15 and any applicable governmental or quasi-governmental authority, including, without limitation, the following:

(i) Buyer agrees to design, construct and fund the construction of a new reclaim water line from the Property to the transfer pond at the Golf Course, provided direct costs for the reclaimed water line do not exceed \$250,000. Should the direct cost of the reclaimed water line exceed \$250,000, Buyer shall submit written notice of the additional cost to Seller and Seller shall review and approve any additional cost which approval shall not be unreasonably withheld. Seller agrees to pay for the approved additional costs on a direct cost basis.

(ii) Buyer agrees to design, construct and obtain the permit for any modifications of the transfer ponds at the Golf Course, if necessary to obtain the required permits; provided that Seller shall have the right to review and approve the final design and the

costs related thereto. Seller agrees to pay for all the approved direct costs associated with the construction of upgrading the transfer ponds. The primary purpose of the transfer ponds is to receive reclaimed water for distribution and not storage.

(c) Water Supply: Seller will supply water to the existing WWTP Facilities until January 1, 2006, when new drinking water standards become effective. On or prior to this date, Buyer shall establish independent access to water supply from the appropriate local utility provider.

(d) Electric Power: Seller will supply electric power to the existing WWTP Facilities until the ownership of the Property is transferred to Buyer pursuant to the terms of this Agreement. Prior to the transfer, Buyer shall establish independent access to electrical power for the Property from the appropriate local utility provider. If electrical power to the existing WWTP site is not available prior to transfer, due to reasons beyond either party's control, Seller shall continue to supply electric power to the existing WWTP site until independent access becomes available, and Buyer shall pay to Seller, on a monthly basis, the actual costs of the electric power supplied by Seller; provided that Seller shall have no obligation to supply electric power to the existing WWTP site on or after the date that is twenty-four (24) months from the date of this Agreement.

(e) Oxidation & Evaporation Pond Clean Up: Buyer shall be responsible for cleaning the oxidation and evaporation water ponds on the Property (if so necessary to obtain the necessary permits) and discarding the waste materials taken out of the ponds as part of the cleaning. Seller agrees to assist Buyer in Buyer's first cleaning of these ponds by transporting to an appropriate landfill at Seller's cost, all of the waste materials removed from these ponds during the first initial cleaning performed by Buyer.

(f) Delay Fee. Buyer acknowledges that Seller is relying on Buyer's covenants in this Paragraph 16 together with Buyer's other covenants set forth in this Agreement and accordingly agrees to pay to Seller a "Delay Fee" in the event of any breach or delay other than a Buyer Excusable Delay (as defined in Paragraph 16(g) below), which Delay Fee shall be in the amounts set forth in the schedule attached hereto as Exhibit "J" (the "Delay Fee Schedule").

(g) Excusable Delay. Buyer shall be excused for delay and failure to perform its obligations under this Agreement (and all time periods set forth in Exhibit "J" shall be extended as reasonably necessary) and shall not be liable for any payments to Seller as provided in the Delay Fee Schedule to the extent that Buyer's performance is prevented by (i) delay in issuance of the CC&N by the ACC or the APP permit by the ADEQ due to no fault of Buyer or (ii) circumstances outside of the reasonable control of Buyer that could not have been anticipated by Buyer and which are beyond Buyer's reasonable control, such as abnormal weather conditions, acts of God, or the intervention of a governmental authority. For any delay or failure to perform under item (i) above, Buyer shall use its best efforts to remove the cause of such delay and/or remedy the situation causing such delay or failure to perform. For any delay or failure to perform under item (ii) above, Buyer shall use its best efforts to minimize the adverse effects of such event(s). Buyer shall promptly give written notice to Seller of the nature and

cause of delay, the extent of the delay, the reasons for the delay, and what actions are being taken to remedy the situation.

**17. Seller's Remedies.**

(a) Prior to Closing. If Buyer shall breach any of the terms or provisions of this Agreement or otherwise default prior to the Closing, and shall fail to cure such breach or default within thirty (30) business days following written notice thereof given by Seller to Buyer, Seller's sole remedy shall be to terminate this Agreement and to draw upon the full amount of the LOC as liquidated damages; provided, however, that the notice and cure right shall be only five (5) business day for Buyer's failure to timely close escrow. Seller and Buyer acknowledge that it would be extremely difficult if not impossible to ascertain Seller's actual damages and that the LOC is a reasonable forecast of just compensation to Seller resulting from Buyer's breach and is not a penalty. Upon default of Buyer and expiration of the applicable grace period, and upon receipt of a written notice from Seller that Buyer is in breach of one or more of its obligations under this Agreement and, as a consequence thereof, Seller has elected to terminate this Agreement, Seller may immediately draw upon the full amount of the LOC. Notwithstanding the foregoing, in the event of a failure of Buyer to pay Seller any Delay Fee due Seller pursuant to Paragraph 16(f), Seller shall have the right, in Seller's sole discretion, to elect not to terminate this Agreement and claim the LOC as liquidated damages for such breach and pursue a separate damage claim against Buyer for its failure to pay any Delay Fee due Seller. Upon termination of this Agreement by Seller and payment to Seller of the sum of liquidated damages, neither party shall have any further obligation or liability hereunder, except indemnity obligations contained herein. Notwithstanding anything to the contrary in this paragraph, the obligations of Buyer pursuant to Paragraphs 5, 14 and 24 hereof shall be independent of and shall not be modified, abrogated, or otherwise affected by the limitation of Buyer's liability as set forth in this paragraph.

(b) Following Closing. If, after Closing, Buyer shall breach any of the terms or provisions of this Agreement, or if it shall be determined by a court of competent jurisdiction that Buyer breached any of the representations, warranties or covenants made by Buyer at, or as of, the Closing, or if Buyer otherwise defaults in its post-closing obligations, Seller shall have, in addition to the rights and remedies set forth elsewhere in this Agreement and/or in any documents or instruments delivered to Seller at the Closing, any right or remedy available at law or in equity, including but not limited to, the right to demand and have specific performance; provided, however, that (i) Seller shall be entitled to draw upon the full amount of the LOC as liquidated damages as Seller's sole remedy in the event that Seller breaches Paragraphs 16(a) or 16(b) hereof, and (ii) in the case of all other breaches, Seller shall only be entitled to seek recovery of Seller's actual damages which directly result from Buyer's breach, Seller hereby waiving and covenanting not to assert any right to seek or obtain any other damages (including, but not limited to, incidental or consequential damages) resulting from Buyer's breach; and provided, further, that except in the case of Buyer's fraud, Seller waives any right to rescind the sale and purchase transaction.

**18. Buyer's Remedies.**

(a) Prior to Closing. If, on or before Closing, Seller breaches any of the terms or provisions of this Agreement or otherwise defaults hereunder, and fails to cure such breach or default within thirty (30) business days following written notice thereof given by Buyer to Seller, Buyer may (i) terminate this Agreement by written notice to Seller and to Escrow Agent, in which event the LOC shall be returned to Buyer; (ii) waive such default and consummate the transaction contemplated hereby in accordance with the terms hereof; or (iii) institute all proceedings necessary to specifically enforce the terms of this Agreement and cause title to Property to be conveyed to Buyer, it being understood and agreed that the Property is unique and that the right of specific performance is a just and equitable remedy under the circumstances. Buyer hereby waives and covenants not to assert any right to seek or obtain monetary damages resulting from Seller's pre-closing breach; provided that if specific performance is not available as a remedy to Buyer as the result of an affirmative, bad faith act or omission of Seller, Buyer may pursue an action against Seller to recover the actual out-of-pocket damages which directly result from Seller's pre-closing breach. Buyer waives and covenants not to assert any right to seek or obtain other damages (including, but not limited to, incidental or consequential damages) resulting from Seller's pre-closing breach, except as specifically provided in this paragraph. Furthermore, as an express condition precedent to Buyer's right to seek a decree of specific performance in a court of competent jurisdiction with respect to Seller's obligation to close Escrow, Buyer shall be required to first tender to Seller full performance of its obligations required under this Agreement in connection with the Closing. Notwithstanding anything to the contrary in this paragraph, the obligations of Seller pursuant to Paragraphs 14 and 24 hereof shall be independent of and shall not be modified, abrogated, or otherwise affected by the limitation of Seller's liability as set forth in this paragraph.

(b) Following Closing. If, after Closing, Seller shall breach any of the terms or provisions of this Agreement, or if it shall be determined by a court of competent jurisdiction that Seller breached any of the representations, warranties or covenants made by Seller at, or as of, the Closing, or if Seller otherwise defaults in its post-closing obligations, Buyer shall have, in addition to the rights and remedies set forth elsewhere in this Agreement and/or in any documents or instruments delivered to Buyer at the Closing, any right or remedy available at law or in equity, including the right to demand and have specific performance; provided, however, that Buyer shall only be entitled to seek recovery of actual out-of-pocket damages which directly result from Seller's breach, Buyer hereby waiving and covenanting not to assert any right to seek or obtain any other damages (including, but not limited to, incidental or consequential damages) resulting from Seller's breach; and provided, further, that except in the case of Seller's fraud, Buyer waives any right to rescind the sale and purchase transaction.

**19. Condemnation.** Should all or any part of the Property be taken by eminent domain proceedings prior to Closing, or, prior to Closing, should any governmental authority issue notice of any taking or proposed taking of all or any part of the Property, Buyer may terminate this Agreement in its entirety (but not in part) by sending written notice thereof to Seller and Escrow Agent on or before the earlier of ten (10) days after Buyer receives actual notice of the taking (or proposed taking) and the Closing Date. If Buyer does not elect to so terminate this Agreement, then this Agreement shall remain in full force and effect and Seller

shall remit, or credit to Buyer at Closing, all monies received by Seller by reason of such taking and/or shall assign to Buyer all of Seller's claim to such compensation or award.

**20. Apportionment and Incidental Costs.** Escrow fees will be divided evenly between Seller and Buyer. Seller shall pay an amount equal to the premium for standard owner's coverage and Buyer shall pay the additional premium for any extended or other coverage obtained by Buyer for the Title Policy to be delivered pursuant to Paragraph 6. All costs incident to Buyer's financing of the Property, if any, shall be paid by Buyer. Any other costs incurred in the transfer of the Property from Seller to Buyer shall be paid in accordance with the customs of real estate transactions presently in effect in Pinal County, Arizona, as determined by Escrow Agent. Property taxes based upon the latest available tax bill from the Pinal County Assessor, shall be prorated as of the Closing, and shall be assumed and paid thereafter by Buyer. Unless the Property has been separately assessed as of the Closing, Escrow Agent shall use as a basis for the tax proration a pro rata portion of the amount shown for real property taxes in the most recent tax bill issued for the assessor's parcel of which Property is a part. The allocation of taxes between the Property and the balance of the property covered by such tax bill shall be determined by multiplying the amount shown in such tax bill by a fraction, the numerator of which shall be the square footage contained in the Property and the denominator of which shall be the square footage contained in such assessor's parcel; provided, however, in no event shall Buyer be assessed for any portion of such tax which relates to improvements upon the balance of the property covered by the tax bill. At Closing, Seller shall be charged for the Seller's portion of the taxes for the year in which the Closing occurs, if unpaid, and prior years' taxes, if unpaid, and Buyer shall be responsible for paying taxes for the year pertaining to the Closing, if unpaid. At Closing, all general and special assessments pertaining to the Property and all improvement district assessments will be prorated to the date of Closing.

**21. No Partnership; Third Person.** It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between Seller and Buyer. No term or provision of this Agreement is intended to benefit any person, partnership, corporation or other entity not a party hereto (including, without limitation, any broker), and no such other person, partnership, corporation or entity shall have any right or cause of action hereunder.

**22. Assignment.**

(a) Assignment. Buyer shall not voluntarily or by operation of law assign or otherwise transfer or encumber all or any part of Buyer's interest in this Agreement or in the Property, without first obtaining the prior written consent of Seller. Any attempt to assign, transfer or encumber in violation of this Paragraph shall be void and shall be a breach of this Agreement. Notwithstanding the foregoing, Buyer may assign its interest hereunder to a Permitted Transferee (as hereinafter defined); provided, however, that any assignment pursuant to this Paragraph 22 shall be conditioned upon delivery to Seller of written notice of such assignment together with an executed copy of documents pursuant to which such assignee assumes all of Buyer's covenants under this Agreement and agrees to be bound by all of the terms, conditions and provisions hereof. Notwithstanding such assignment and assumption, the Buyer hereunder shall not be released from any obligation under this Agreement. Seller shall

have the right to review and approve, in Seller's sole discretion, such assignment and assumption agreement.

(b) Permitted Transferee. As used herein, "Permitted Transferee" shall mean any entity controlling, controlled by, or under common control with, Buyer including any limited partnership or limited liability company whose general partner or majority member is Buyer, or is controlled by, or under common control with, Buyer.

(c) Reliance. Buyer agrees that Seller shall be entitled to obtain injunctive relief from a court of competent jurisdiction in the event of Buyer's default or threatened default in the performance of this covenant and that Seller shall be awarded a judgment for reasonable attorneys' fees, expert witness fees, pre-trial discovery costs and all other costs and fees as part of any injunctive relief granted by the Court.

23. Notices. All notices and other communications required or permitted hereunder shall be in writing and shall be given by personal delivery, facsimile transmission, overnight courier or by deposit in the United States mail, first class, registered or certified, return receipt requested, postage prepaid, correctly addressed to the intended recipient at the address shown below:

Buyer:

CORONADO UTILITIES, INC  
c/o Pivotal Utility Mgmt.  
6825 E. Tennessee Ave.  
Suite 401  
Denver, CO 80224  
Attention: Jason Williamson  
Manager  
Phone: (303) 333-1250

Seller:

BHP COPPER INC.  
San Manuel Operations  
200 S. Veterans Memorial Blvd.  
San Manuel, Arizona 85631  
Attention: Mr. Gerald Brunskill  
Manager, Closure Operations  
Phone: (520) 385-3241

and to:

BHP COPPER INC.  
San Manuel Operations  
200 S. Veterans Memorial Blvd.  
San Manuel, Arizona 85631  
Attention: Mr. Joe Volkmann  
Contract Administrator  
Phone: (520) 385-3145

With a copy to:

BRYAN CAVE LLP  
Two North Central Avenue, Suite 2200  
Phoenix, Arizona 85004-4406  
Attention: Lucas J. Narducci, Esq.  
Fax: (602) 364-7070

If to Escrow Agent:

FIRST AMERICAN TITLE  
INSURANCE COMPANY  
4801 East Washington, Suite 110  
Phoenix, AZ 85034  
Attention: Carol Peterson  
Fax: (602) 685-7580

Such notices and other communications shall be deemed to be given and received as follows: (i) upon actual receipt, if delivered personally; (ii) upon actual delivery, if delivered by overnight courier; or (iii) three (3) days following deposit in the mail, if delivered by mail. The parties and Escrow Agent may, from time to time, designate a different address by written notice given in the manner provided for above, not less than three (3) days prior to the effective date of the change.

**24. 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.

**25. Entire Agreement.** This Agreement, together with any exhibits and other matters attached hereto and/or incorporated herein by this reference, constitutes the entire contract and agreement between the parties. All terms, conditions, representations, warranties, understandings and interpretations contained in any other written or oral communications between the parties are superseded. In executing this Agreement, the parties acknowledge that they are relying solely on the matters set forth herein and not on any other inducements, written or oral, by the other party or any agent, employee or representative thereof.

**26. Further Instruments.** Each party, promptly upon the written request of the other or Escrow Agent, shall execute (and have acknowledged, if appropriate) and deliver to the other or to Escrow Agent, or as may be otherwise reasonably designated, all additional instruments reasonably requested to evidence or give effect to this Agreement, whether the request is made before or after the Closing.

**27. Modification of Agreement.** No modification of this Agreement shall be effective unless it is in writing and is signed by all parties hereto.

**28. Waiver.** No waiver of any term or condition of this Agreement shall be effective unless it is in writing and is signed by the party against whom enforcement of the waiver is

sought, and then only in the particular circumstances specified. No failure by a party to exercise any right or privilege provided for herein, or to require timely performance of any obligation herein in strict accordance with the provisions hereof, shall preclude the exercise of such rights or privileges or the enforcement of such obligations in different circumstances or upon the reoccurrence of the same or similar circumstances. Moreover, the exercise of any remedy provided for at law, in equity, or herein shall not by implication preclude the exercise of any other remedy except when, and then only to the extent that, the other remedy is expressly forbidden or limited by the provisions hereof.

29. **Time Periods.** As used in this Agreement, the term "business day" shall mean a day that is not a Saturday, Sunday or federal or State of Arizona legal holiday. If the time fixed for performance of any obligation hereunder expires on a day that is not a business day, the deadline shall be extended automatically to the next day that is a business day. Except as may be otherwise expressly provided herein, the time for performance of any obligation hereunder shall expire at 5:00 p.m. (Phoenix time) on the last day of the period allowed hereunder.

30. **Time of the Essence.** Time is of the essence for performance or satisfaction of all requirements, conditions, or other provisions hereof.

31. **Applicable Laws.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona without giving effect to the principle of conflicts of law.

32. **Construction.** As used in this Agreement, the masculine, feminine and neuter gender and the singular or plural shall each be construed to include the other whenever the context so requires. This Agreement shall be construed as a whole and in accordance with its fair meaning, without regard to any presumption or rule of construction causing this Agreement or any part of it to be construed against the party causing the Agreement to be written. The parties acknowledge that each has had a full and fair opportunity to review the Agreement and to have it reviewed by counsel. If any words or phrases in this Agreement have been stricken, whether or not replaced by other words or phrases, this Agreement shall be construed (if otherwise clear and unambiguous) as if the stricken matter never appeared and no inference shall be drawn from the former presence of the stricken matters in this Agreement or from the fact that such matters were stricken.

33. **Inurement.** Subject to the terms of Paragraph 22, this Agreement shall be binding upon and shall inure to the benefit of the heirs, personal representatives, successors and permitted assigns of the respective parties.

34. **IRS Real Estate Sales Reporting.** Buyer and Seller hereby appoint Escrow Agent as, and Escrow Agent agrees to act as, "the person responsible for closing" the transactions which are the subject of this Agreement pursuant to Internal Revenue Code of 1986 § 6045(e). Escrow Agent shall prepare and file the informational return (IRS Form 1099-B) required by and otherwise comply with the terms of Internal Revenue Code § 6045(e). Escrow Agent further agrees to indemnify and hold Buyer, Seller and their respective attorneys harmless for, from and against all claims, costs, liabilities, penalties or expenses resulting from Escrow

Agent's failure to file the appropriate reports and otherwise comply with the terms of the Internal Revenue Code pursuant to this paragraph.

35. **Descriptive Headings.** The descriptive headings of the paragraphs, subparagraphs and other portions of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any provisions herein.

36. **Counterparts.** This Agreement may be executed in counterparts, each of which may contain fewer than all signatures but all of which, together, shall constitute a single instrument. Fax signatures shall be acceptable as original signatures.

37. **Recordation.** Neither this Agreement nor any memorandum of this Agreement shall be recorded.

38. **Survival.** In addition to those provisions of this Agreement that are specifically stated to survive Closing, all obligations (including, without limitation, indemnities) of the parties under this Agreement shall (unless otherwise specifically stated herein to the contrary) survive Closing and shall not merge into the Deed or any other document or instrument delivered or executed at Closing.

39. **Severability.** Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be valid under applicable law, but if any provision shall be invalid or prohibited hereunder, such provision shall be ineffective to the extent of such prohibition or invalidation but shall not invalidate the remainder of such provision or the remaining provisions.

40. **Dispute Resolution.**

(a) Prior to the initiation of any litigation, the parties shall attempt to settle and resolve any disputes, controversies or claims (a "Dispute") through good faith non-binding meetings, mediation or other mutually acceptable means of resolving such dispute.

(b) The party seeking to resolve such Dispute shall give the other party written notice describing in reasonable detail such dispute and the proposed remedy (the "Dispute Notice").

(c) Within thirty (30) days of receipt of the Dispute Notice the other party and their attorneys, and a mediator if such parties mutually agree, shall meet in a good faith attempt using reasonable efforts to resolve such dispute and reach a compromise and settlement.

(d) All written correspondence, verbal statements and all other communications of any kind or nature that are exchanged, occur or are otherwise disseminated during such resolution efforts shall be confidential and not subject to disclosure to any other person, nor subject to discovery in any ensuing litigation.

(e) The parties agree that during the time such resolution efforts are underway, any limitation period prescribed by statute for such Dispute shall be tolled.

(f) The parties may elect in a separate written instrument to pursue binding arbitration or other binding means of resolving the Dispute, and in such event the provisions contained in such instrument shall supersede this Paragraph and shall govern the resolution of such Dispute.

(g) If, despite such resolution efforts, the parties are unable to reach settlement or compromise and have not elected to enter into an agreement contemplating binding arbitration or other such binding means of resolving the Dispute, then, at any time after the expiration of the ninety (90) day period following the date of the Dispute Notice, either party may serve the appropriate demand letter and initiate litigation.

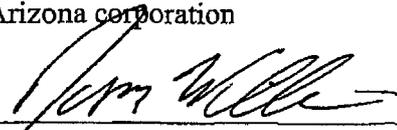
(h) Notwithstanding the foregoing provisions, either party may seek preliminary injunctive relief if, in its judgment, such action is necessary to avoid irreparable damage during the pendency of the resolution of the Dispute including seeking legal action to protect the public interest of the community of San Manuel. Accordingly, each of the parties agrees that, without posting bond or other undertaking, the other party shall be entitled to seek an injunction or injunctions to prevent breaches or violations of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof.

*[SIGNATURES ON FOLLOWING PAGE]*

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

**BUYER:**

**CORONADO UTILITIES, INC.,**  
an Arizona corporation

By: 

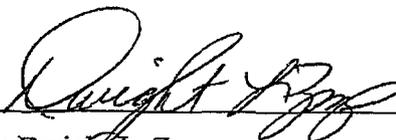
Name: Jason Williamson

Title: President

By: 

Name: John Clingman

Title: Secretary

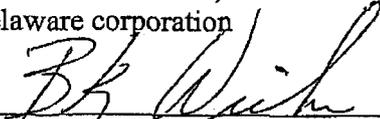
By: 

Name: Dwight L. Zemp

Title: Director

**SELLER:**

**BHP COPPER INC.,**  
a Delaware corporation

By: 

Ben K. Wichers, President

**ESCROW AGENT:**

Escrow Agent hereby: (i) agrees to be bound by the provisions hereof applicable to Escrow Agent, and (ii) agrees to the terms of Paragraphs 3(a), 6 and 34.

**FIRST AMERICAN TITLE INSURANCE  
COMPANY**

By: Carol Peterson

Name: Carol Peterson

Title: Escrow Officer

Date: November 8, 2004

LIST OF EXHIBITS

- A Printed Instructions
- B Legal Description of Land
- C Personal Property
- D Property Information
- E Guaranty of Performance of Obligations under Purchase Agreement
- F Special Warranty Deed
- G Bill of Sale
- H Affidavit of Non-Foreign Person
- I Non-Exclusive Assignment of Contracts
- J Delay Fee Schedule
- K Legal Description for 2.231-Acre Parcel Surrounding Existing WWTP

EXHIBIT A

## PRINTED INSTRUCTIONS

(1) Escrow Agent is authorized to take all appropriate action necessary to comply with this Agreement.

(2) All money payable shall be paid to Escrow Agent, unless otherwise specified. Disbursement of any funds may be made by check of Escrow Agent. Unless otherwise specified, all funds received by Escrow Agent shall be deposited by Escrow Agent in any State or National Bank (FDIC insured), or as otherwise directed in writing by Seller and Buyer. Escrow Agent shall be under no obligation to disburse any funds represented by check or draft and no check or draft shall be payment to Escrow Agent in compliance with any of the requirements hereof until it is advised by the bank in which it is deposited that such check or draft has been honored.

(3) Buyer and Seller shall deposit with Escrow Agent all documents necessary to complete the sale as established by the terms of this Agreement.

(4) When this Agreement and all title requirements have been complied with (including without limitation all conditions set forth in any closing instructions agreed to by Escrow Agent), Escrow Agent shall deliver, file or record in the appropriate public office all necessary documents, disburse all funds and instruct the title company to issue the appropriate title insurance policy(ies).

(5) Escrow Agent may resign upon ten (10) days written notice to the parties; provided that Escrow Agent shall transfer the Escrow together with all documents and funds to an escrow agent acceptable to both Seller and Buyer, or if Seller and Buyer cannot agree upon an acceptable escrow agent, then Escrow Agent shall have the right to resign and interplead all funds and documents to a court of competent jurisdiction.

(6) Escrow Agent may at its election, in the event of any conflicting demands made upon it concerning the Agreement, hold any money and documents deposited hereunder until it receives mutual instructions by all parties or until a civil action shall have been concluded in a court of competent jurisdiction, determining the rights of the parties. In the alternative, Escrow Agent may at anytime, at its discretion, commence a civil action to interplead any conflicting demands to a court of competent jurisdiction.

**EXHIBIT B****LEGAL DESCRIPTION OF LAND**

San Manuel Sewer

**Parcel One**

Legal Description

A parcel of land located in Section 28, Township 9 South, Range 17 East, of the Gila and Salt River Base and Meridian, Pinal County, Arizona described as follows;

Commencing at the southwest corner of said Section 28; thence North 52 degrees 59 minutes 37 seconds East for a distance of 1280.96 feet to a point; thence North 57 degrees 29 minutes 40 seconds East for a distance of 272.14 feet to a point; thence North 34 degrees 56 minutes 36 seconds West for a distance of 71.30 feet to the point of beginning of the land to be described;

THENCE North 34 degrees 56 minutes 36 seconds West for a distance of 721.58 feet to a fence corner.

THENCE South 56 degrees 40 minutes 25 seconds West for a distance of 162.85 feet to a fence corner.

THENCE North 43 degrees 17 minutes 57 seconds West for a distance of 492.68 feet to a set one-half inch rebar.

THENCE North 54 degrees 59 minutes 48 seconds East for a distance of 930.19 feet to a fence corner.

THENCE North 70 degrees 19 minutes 33 seconds East for a distance of 359.58 feet to a set one-half inch rebar.

THENCE South 31 degrees 08 minutes 24 seconds East for a distance of 817.73 feet to a set one-half inch rebar.

THENCE South 00 degrees 27 minutes 52 seconds East for a distance of 491.92 feet to a set one-half inch rebar.

THENCE South 57 degrees 29 minutes 40 seconds West for a distance of 682.12 feet to a set one-half inch rebar.

THENCE North 56 degrees 22 minutes 51 seconds West for a distance of 77.91 feet to the point of beginning.

Together with and subject to covenants, easements, and restrictions of record.

**Said property contains 30.774 acres more or less.**

San Manuel Sewer  
Parcel Two  
Legal Description

A parcel of land located in Section 28, Township 9 South, Range 17 East, of the Gila and Salt River Base and Meridian, Pinal County, Arizona described as follows;

Commencing at the Southwest corner of said Section 28, Thence North 55 degrees 18 minutes 39 seconds East for a distance of 2638.18 feet to the point of beginning of the land to be described;

THENCE North 28 degrees 29 minutes 25 seconds West for a distance of 1112.39 feet to the PC of a curve being a set one-half inch rebar.

THENCE along a curve to the left having a radius of 502.16 feet and an arc length of 102.53 feet, being subtended by a chord of North 34 degrees 20 minutes 28 seconds West for a distance of 102.35 feet to the PT of a curve being a set one-half inch rebar.

THENCE North 43 degrees 47 minutes 47 seconds East for a distance of 643.53 feet to a set one-half inch rebar.

THENCE North 54 degrees 59 minutes 48 seconds East for a distance of 16.88 feet to a set one-half inch rebar.

THENCE North 11 degrees 22 minutes 05 seconds West for a distance of 162.93 feet to the corner of a chain link fence.

THENCE North 55 degrees 50 minutes 36 seconds East for a distance of 870.90 feet to the corner of a chain link fence.

THENCE South 33 degrees 57 minutes 38 seconds East for a distance of 1542.63 feet along an existing chain link fence to a fence corner.

THENCE South 57 degrees 29 minutes 40 seconds West for a distance of 1517.54 feet to a point hereafter referred to as Point "A".

THENCE South 57 degrees 29 minutes 40 seconds West for a distance of 167.62 feet to the point of beginning.

Subject to a 30 foot wide roadway easement the centerline of which is described as follows; Commencing at the above mentioned Point "A." Thence North 11 degrees 11 minutes 42 seconds West for a distance of 1464.48 feet to the end of the easement.

Together with and subject to covenants, easements and restrictions of record.

**Said property contains 53.123 acres more or less.**

**EXHIBIT C**

**PERSONAL PROPERTY**

1. Backhoe 91 BHO-012, 1987 CASE, 580 K Model
2. Pick up Truck 90 PTK – 085
3. High Pressure Pipe Cleaner

**EXHIBIT D**  
**PROPERTY INFORMATION**

1. Environmental Phase I Report by Brown & Caldwell
2. Environmental Assessment – Phase II Report by Brown & Caldwell
3. Average Rain Data for 2002, 2003 and 2004
4. Wastewater Inflow to The Sewer Plant For 2002, 2003 and 2004
5. Contour maps of the Sewer Plant Area
6. San Manuel Town – Aerial View
7. Golf Course – Water Usage Data for Fiscal Year 2003 & 2004
8. Reclaim water line – General Layout
9. All available drawings of the San Manuel Town, Wastewater collection system, Wastewater Treatment Plant, Lift Stations. The detailed list is shown below.

**SAN MANUEL -- WASTEWATER TREATMENT SYSTEM**

**DRAWING LIST**

Note: OTSM ---- Original Townsite Of San Manuel

Item #	Drawing No.	Description	Original Dwg.
1	F-696	San Manuel Townsite	w/ BHP
2	226-1-19	San Manuel Townsite - Plan	w/ BHP
3	-----	Addition Of Blocks 44 & 45 To The OTSM	
4	-----	Replat – Addition Of Blocks 44 & 45 To The OTSM	w/ BHP
5	-----	Replat Of The OTSM Amended Plat Sheet 1 of 5	w/ BHP
6	-----	Replat Of The OTSM – Sheet 2 of 5	w/ BHP
7	-----	Replat Of The OTSM – Sheet 3 of 5	w/ BHP
8	-----	Replat Of The OTSM – Sheet 4 of 5	w/ BHP
9	-----	Replat Of The OTSM – Sheet 4 of 5	w/ BHP
10	-----	San Manuel Townsite Expansion # 2 – Sheet 1 of 2	w/ BHP
11	-----	San Manuel Townsite Expansion # 2 – Sheet 1 of 2	w/ BHP
12	-----	Replat – San Manuel Townsite Expansion # 2 – Sheet 1 of 2	w/ BHP
13	-----	Replat - San Manuel Townsite Expansion # 2 – Sheet 2 of 2	w/ BHP
14	-----	Replat of Blocks 9 & 11 of The OTSM 5	w/ BHP

15	-----	Replat Of Amended Plat of The OTSM - Blocks 30 Thru 34 and Block 38	w/ BHP
16	FF 735	San Manuel (SM) -- Trailer Court	w/ BHP
17	F 757 - 1	SM - Trailer Park Lift Station - Location Map & Gen. Notes	w/ BHP
18	F 757 - 2	SM - Trailer Park Lift Station - Plan, Section & Details	w/ BHP
19	F 757 - 3	SM - Trailer Park Lift Station - Electrical - Sections & Details	w/ BHP
20	226-3-01	SM Trailer Park Sewage - Pump Sump & Manhole - Plan, Sections & Details	w/ BHP
21	SK-472-A	Relocation Of 4" Trailer Court Effluent Line	w/ BHP
22	SK-614	4 " Sewer Line Reroute - Concentrate Storage Bunker	w/ BHP
23	F 371 - 1	SM Golf Club - Sewage Disposal System Sheet 1 of 2	w/ BHP
24	F 371 - 2	SM Golf Club - Sewage Disposal System Sheet 2 of 2	w/ BHP
25	D 74-1	SM - Mobile Home Park - Sewer Plans - Sheet 1 of 16	w/ BHP
26	D 74-1	Mobile Home Park - Sewer Plans Line A - Sheet 2 of 16	w/ BHP
27	D 74-1	Mobile Home Park - Sewer Plans Line A - Sheet 3 of 16	w/ BHP
28	D 74-1	Mobile Home Park - Sewer Plans Line B & F" - Sheet 4 of 16	w/ BHP
29	D 74-1	Mobile Home Park - Sewer Plans Line C - Sheet 5 of 16	w/ BHP
30	D 74-1	Mobile Home Park - Sewer Plans Line E - Sheet 6 of 16	w/ BHP
31	D 74-1	Mobile Home Park - Sewer Plans Line D & G - Sheet 7 of 16	w/ BHP
32	D 74-1	Mobile Home Park - Sewer Plans Line H, I & J - Sheet 8 of 16	w/ BHP
33	D 74-1	Mobile Home Park - Sewer Plans Line K - Sheet 9 of 16	w/ BHP
34	D 74-1	Mobile Home Park - Sewer Plans Line L - Sheet 10 of 16	w/ BHP
35	D 74-1	Mobile Home Park-Sewer Plans Line M, N, O & L-Sh. 11 of 16	w/ BHP
36	D 74-1	Mobile Home Park-Detail Sheet Gas, Water, Sewer-Sh. 12 of 16	w/ BHP
37	D 74-1	Mobile Home Park - Sewer Plans Line A - Sheet 13 of 16	w/ BHP
38	D 74-1	Mobile Home Park - Sewer Plans Line A - Sheet 14 of 16	w/ BHP
39	D 74-1	Mobile Home Park - Sewer Plans Line A - Sheet 15 of 16	w/ BHP
40	D 74-1	Mobile Home Park - Sewer Plans Line A - Sheet 16 of 16	w/ BHP
41	121-02	SM- Sewage Disposal Plant - (Title Sheet)	w/ BHP
42	121-03	SM - Sewage Disposal Plant - Site Plan - Sheet 2 of 14	w/ BHP
43	121-04	SM - Sewage Disposal Plant - Gen. Layout - Sheet 3 of 14	w/ BHP
44	121-05	SM - Sewage Disposal Plant - Grading Plan-Sheet 4 of 14	w/ BHP
45	121-06	SM - Sewage Disposal Plant - Parshall Flume, By-pass Plans & Sections-Sheet 5 of 14	w/ BHP
46	121-07	SM - Sewage Disposal Plant - Primary Sedimentation Unit [Plan & Sections] - Sheet 6 of 14	w/ BHP
47	121-08	SM - Sewage Disposal Plant - Primary Sedimentation Unit [Details & Sections] - Sheet 7 of 14	w/ BHP
48	121-09	SM - Sewage Disposal Plant - Digester Structural Details-Sheet 8 of 14	w/ BHP
49	121-10	SM - Sewage Disposal Plant - Digester Sludge & Gas Piping & Misc. Details - Sheet 9 of 14	w/ BHP
50	121-11	SM - Sewage Disposal Plant - Pump House [Plan & Sections] - Sheet 10 of 14	w/ BHP
51	121-12	SM - Sewage Disposal Plant - Pump House & Misc. Details -	w/ BHP

Sheet 11 of 14			
52	121-13	SM – Sewage Disposal Plant – Sludge Beds, Road Sections & Control Box Details - Sheet 12 of 14	w/ BHP
53	121-14	SM – Sewage Disposal Plant – Oxidation Pond - Sheet 13 of 14	w/ BHP
54		<b>MISSING -- SHEET 14 of 14</b>	
55	121-15	SM – Sewage Disposal Plant – Wiring Diagrams, Electrical layout & Details	w/ BHP
56	121-7-01	SM – Sewage Disposal Plant – Electrical Installation, Power & Lighting Details	w/ BHP
57	3-09	SM Expansion # 2 – Paving & Sewer Plans	w/ BHP
58	3-10	SM Expansion # 2 – Paving & Sewer Plans	w/ BHP
59	3-11	SM Expansion # 2 – Paving & Sewer Plans	w/ BHP
60	3-12	SM Expansion # 2 – Paving & Sewer Plans	w/ BHP
61	3-13	SM Expansion # 2 – Paving & Sewer Plans	w/ BHP
62	3-14	SM Expansion # 2 – Paving & Sewer Plans	w/ BHP
63	3-15	SM Expansion # 2 – Paving & Sewer Plans	w/ BHP
64	3-16	SM Expansion # 2 – Paving & Sewer Plans	w/ BHP
65	3-17	SM Expansion # 2 – Paving & Sewer Plans	w/ BHP
66	3-18	SM Expansion # 2 – Paving & Sewer Plans	w/ BHP
67	3-19	SM Expansion # 2 – Paving & Sewer Plans	w/ BHP
68	3-20	SM Expansion # 2 – Paving & Sewer Plans	w/ BHP
69	3-21	SM Expansion # 2 – Paving & Sewer Plans	w/ BHP
70	3-22	SM Expansion # 2 – Paving & Sewer Plans	w/ BHP
71	3-23	SM Expansion # 2 – Paving & Sewer Plans	w/ BHP
72	3-24	SM Expansion # 2 – Paving & Sewer Plans	w/ BHP
73	3-25	SM Expansion # 2 – Paving & Sewer Plans	w/ BHP
74	3-26	SM Expansion # 2 – Paving & Sewer Plans	w/ BHP
75	3-27	SM Expansion # 2 – Paving & Sewer Plans	w/ BHP
76	3-28	SM Expansion # 2 – Paving & Sewer Plans	w/ BHP
77	3-29	SM Expansion # 2 – Paving & Sewer Plans	w/ BHP
78	3-30	SM Expansion # 2 – Paving & Sewer Plans	w/ BHP
79	3-31	SM Expansion # 2 – Paving & Sewer Plans	w/ BHP
80	3-32	SM Expansion # 2 – Paving & Sewer Plans	w/ BHP
81	3-33	SM Expansion # 2 – Paving & Sewer Plans	w/ BHP
82	3-34	SM Expansion # 2 – Paving & Sewer Plans	w/ BHP
83	3-35	SM Expansion # 2 – Paving & Sewer Plans	w/ BHP
84	-----	SM-Junior High School – Sanitary Sewer Plans	w/ BHP
85		<b>MISSING -- SHEET 1 of 4</b>	
86	-----	SM-Junior High School – Sanitary Sewer Plan – Sheet 2 of 4	w/ BHP
87		<b>MISSING -- SHEET 3 of 4</b>	
88	-----	SM-Junior High School – Sanitary Sewer Plans – Sheet 4 of 4	w/ BHP
89	U-1	Sanitary Sewer - Details	w/ BHP
90	U-2	Sanitary Sewer – Plan Area “A”	w/ BHP
91	U-3	Sanitary Sewer – Plan Area – “B”	w/ BHP
92	U-4	Sanitary Sewer – Plan Area – “C”	w/ BHP

93	U-5	Sanitary Sewer - Plan Area - "D"	w/ BHP
94	U-6	Sanitary Sewer - Plan Area - "E"	w/ BHP
95	U-7	Outfall Sewer	w/ BHP
96	U-8	Outfall Sewer	w/ BHP
97	U-9	Sanitary Sewer	w/ BHP
98	-----	Map Showing Pipeline Easement for Outfall Sewer	w/ BHP
99	-----	Land Requirements For SM Trailer Court	w/ BHP

**EXHIBIT E****GUARANTY OF PERFORMANCE OF  
OBLIGATIONS UNDER PURCHASE AGREEMENT****1. The Guaranty.**

**1.1 Guarantor's Agreement.** In consideration of BHP Copper Inc., a Delaware corporation ("Seller"), whose address is c/o San Manuel Operations, 200 S. Veterans Memorial Blvd., San Manuel, Arizona 85631, entering into that certain Purchase Agreement dated November 1, 2004 (the "Purchase Agreement"), by and between Seller and Coronado Utilities, Inc., an Arizona Corporation ("Purchaser") as the same relates to certain real property (the "Property") located in Pinal County, Arizona and more particular described on Exhibit "A", Pivotal Utility Management, LLC, a Colorado limited liability company ("Guarantor"), whose address is 6825 East Tennessee Avenue, Suite 401, Denver, Colorado 80224, hereby unconditionally and irrevocably, guarantees (the "Guaranty") to Seller to pay and perform when due the Liabilities (defined below) and to pay on demand the Expenses (defined below). This Guaranty is absolute, independent and continuing under all circumstances, and is a guaranty of payment and performance, not of collection. The Guarantor acknowledges that the Seller has given sufficient consideration for this Guaranty by entering into the Purchase Agreement, and acknowledges that the Seller is doing so in reliance on each of the terms of this Guaranty and that Guarantor will derive substantial benefits from Seller entering into the Purchase Agreement.

**1.2 Liabilities.** For all purposes of this Guaranty, the term "Liabilities" shall mean the full performance of each and all of the terms, covenants and conditions of the Purchase Agreement to be kept and performed by Purchaser, including, without limitation, (i) payment of the Purchase Price as set forth in Section 4 of the Purchase Agreement, (ii) satisfying the Approvals Requirements set forth in Section 7 of the Purchase Agreement, (iii) complying with the development approvals and other submittals set forth in Section 15 of the Purchase Agreement, and (iv) completing construction of the improvements and other requirements set forth in Section 16 of the Purchase Agreement.

**1.3 Expenses.** For all purposes of this Guaranty, the term "Expenses" shall mean all attorneys' fees, court costs, and other legal expenses and all other costs and expenses of any kind which the Seller may at any time pay or incur in attempting (a) to cause Purchaser and/or Guarantor to perform the Liabilities under the Purchase Agreement, (b) to represent Seller in any bankruptcy, reorganization, receivership or other proceedings affecting creditors' rights and involving a claim under this Guaranty or the Purchase Agreement, or (c) to foreclose on any security given in connection with the performance of the Liabilities. If the Seller pays any such cost or expense and Guarantor fails to pay such amount within ten (10) days following written demand, then "Expenses" shall also include interest at the rate of twelve percent (12%) per annum on any such payment from the date thereof until repayment to Seller in full; provided, however, that in the event of any litigation between Guarantor and Seller involving this Guaranty, the prevailing party in such action shall be entitled to recover from the other party in such action, such sum as the court shall fix as reasonable attorneys' fees and expenses incurred by the prevailing party.

2. **Agreements.** The Guarantor hereby agrees as follows:

**2.1 Certain Permitted Actions of the Seller.** The Seller may from time to time, in its sole discretion and without notice to Guarantor, take any of the following actions without in any way affecting the obligations of Guarantor: (a) enforce this Guaranty against Guarantor for the payment and/or performance of any of the Liabilities, whether or not the Seller shall have (A) proceeded against the Purchaser or any other party primarily or secondarily obligated with respect to any of the Liabilities or (B) resorted to or exhausted any other remedy or any other security or collateral; (b) foreclose on, take possession of or sell any of the security for the Purchase Agreement or enforce any other rights under any other documents or instruments securing or otherwise relating to the Purchase Agreement; and (c) take action against Purchaser or other obligors to enforce the Purchase Agreement.

**2.2 Subordination.** Guarantor hereby subordinates, and shall cause any entity which directly or indirectly controls Guarantor (an "Affiliate") to subordinate, any claims or liens of such Affiliate against the Purchaser of any kind to all of the Liabilities and the Expenses and to any other claims or liens of the Seller against the Purchaser or its property. Upon any notice by the Seller to the Purchaser or Guarantor of any default with respect of the Liabilities, Guarantor's Affiliates shall enforce any of their claims or liens as trustee for the Seller, and shall cause any receipts to be paid over to the Seller on account of the Liabilities without affecting in any manner the liability of Guarantor under this Guaranty except to the extent of such payment. Prior to receipt of such notice, Affiliate and Guarantor may conduct business activities in the ordinary course and any receipt of payments or other amounts on account of such activities shall not be subject to the provisions of this Section.

**2.3 Certain Events Not Affecting Obligations of Guarantor.** The obligations of the Guarantor hereunder shall not be affected by any of the following: (a) the release or discharge of the Purchaser in any creditors', receivership, bankruptcy, reorganization, insolvency, or other proceeding; (b) the rejection or disaffirmance in any such proceeding of the Purchase Agreement; (c) the impairment or modification of the Purchase Agreement, or of any remedy for the enforcement thereof, or of the estate of the Purchaser in bankruptcy, resulting from any present or future federal or state bankruptcy law or any other law of any kind or from the decision or order of any court or other governmental authority; (d) any disability or defense of the Purchaser, except the defense of payment in full with respect to a solely monetary obligation and not any performance obligation; (e) the cessation of the liability of the Purchaser for any cause whatsoever; (f) any sale, assignment, transfer or other conveyance (including any conveyance in lieu of foreclosure or any collateral sale pursuant to the Uniform Commercial Code) of any of the security for the Purchase Agreement, regardless of the amount received by the Seller in connection therewith; (g) the assumption of any obligations of Purchaser or Guarantor by any person or (h) any disability or defense of any kind now existing of Guarantor with respect to any provision of this Guaranty.

**2.4 No Obligation of Seller Regarding Security Interest.** The Seller shall have no obligation to obtain, perfect or retain a security interest in any property to secure the Purchase Agreement or this Guaranty, or to protect or insure any such property or interests.

3. **Waivers.** Guarantor hereby expressly waives:

3.1 **Notices.** Notice of the acceptance by the Seller of this Guaranty, notice of the existence, creation, non performance or non payment of the Purchase Agreement (including any of the Liabilities), presentment, demand, notice of dishonor, protest, notice of protest, and all other notices except any specifically required by this Guaranty;

3.2 **Disclosures about Purchaser.** Any obligation the Seller may have to disclose to Guarantor any facts the Seller now or hereafter may know or have reasonably available to it regarding the Purchaser or its financial condition, whether or not the Seller has a reasonable opportunity to communicate such facts or has reason to believe that any such facts are unknown to Guarantor or materially increase the risk to Guarantor beyond the risk Guarantor intends to assume hereunder. Guarantor shall be fully responsible for keeping informed of the financial condition of the Purchaser and of all other circumstances bearing on the risk of non payment or non performance of the Liabilities;

3.3 **Diligence in Collection.** All diligence in collection of the Liabilities, any obligation hereunder, or any guaranty or other security for any of the foregoing;

3.4 **Benefit of Certain Laws.** The benefit of all appraisalment, valuation, marshalling, forbearance, stay, extension, redemption, homestead, exemption and moratorium laws now or hereafter in effect. Guarantor hereby waives the provisions of A.R.S. § 12 1641, et seq., A.R.S. § 44-142, and Rule 17(f) of the Arizona Rules of Civil Procedure, and any similar existing or future laws requiring Seller to proceed against Purchaser before proceeding against Guarantor;

3.5 **Certain Defenses.** Any defense based on the incapacity, lack of authority, death or disability of any other person or entity or the failure of the Seller to file or enforce a claim against the estate of any other person or entity in any administrative, bankruptcy or other proceeding;

3.6 **Election of Remedies Defense.** Any defense based on an election of remedies by the Seller, whether or not such election may affect in any way the recourse, subrogation or other rights of Guarantor against the Purchaser or any other person in connection with the Liabilities;

3.7 **Defenses Relating to Collateral Sale.** Any defense based on the failure of the Seller to (a) provide notice to the Guarantor of a sale or other disposition (including any collateral sale pursuant to the Uniform Commercial Code) of any of the security for the Liabilities, or (b) conduct such a sale or disposition in a commercially reasonable manner;

3.8 **Defenses Relating to Purchase Agreement Administration.** Any defense based on the negligence of the Seller in administering the Purchase Agreement, or taking or failing to take any action in connection therewith; and

3.9 **Right to Enforce Seller's Remedies.** Any right to enforce any remedies or to participate in any security the Seller now has, or later may have, against the Purchaser, whether by subrogation or otherwise, until the Purchase Agreement, the Liabilities, Purchaser's other obligations to the Seller and this Guaranty have been satisfied in full.

4. **Miscellaneous.**

4.1 **Continuing Guaranty.** This Guaranty shall in all respects be a continuing guaranty, remaining in full force and effect until the termination of the Purchase Agreement and satisfaction of all obligations accrued pursuant to the terms of this Guaranty prior to the termination of the Purchase Agreement.

4.2 **Successors and Assigns.** All obligations under this Guaranty shall be binding upon the Guarantor, and upon its legal representatives, successors and assigns and shall inure to the benefit of Seller and its legal representatives, successors and assigns.

4.3 **Legal Tender of United States.** All payments hereunder shall be made in coin or currency which at the time of payment is legal tender in the United States of America for public and private debts.

4.4 **Time of Essence.** Time is of the essence of this Guaranty.

4.5 **Captions; Gender.** Any capitalized term not defined herein but defined in the Purchase Agreement shall have the same meaning herein as it has in the Purchase Agreement. With respect to any reference in this Guaranty to any defined term: (a) if such defined term refers to a person, or a trust, corporation, partnership or other entity, then it shall also mean all heirs, personal representatives, successors and assigns of such person or entity; and (b) if such defined term refers to a document, instrument or agreement, then it shall also include any replacement, extension or other modification thereof. Captions contained in this Guaranty in no way define, limit or extend the scope or intent of their respective provisions. Use of the masculine, feminine or neuter gender and of singular and plural shall not be given the effect of any exclusion or limitation herein.

4.5 **Notices.** Any notices that the Seller or Guarantor may give hereunder shall be in writing and shall be deemed given upon the earlier of receipt, or the third business day after being deposited by registered or certified United States mail, postage prepaid, addressed to the recipient at its address set forth above. Any party may specify another address for receipt of notices hereunder by a notice given as provided herein. Nothing in this notice provision shall be construed as a requirement that Seller give any notice under this Guaranty.

4.6 **Entire Agreement.** This Guaranty constitutes the entire agreement of the Guarantor for the benefit of the Seller and supersedes any prior agreements with respect to the subject matter hereof.

4.7 **No Modification without Writing.** This Guaranty may not be terminated or modified in any way nor can any right of the Seller or any obligation of Guarantor be waived or modified, except by a writing signed by the Seller and Guarantor.

4.8 **Independent Obligations.** The obligations of Guarantor hereunder are independent of the obligations of Purchaser. In the event of any default hereunder, the Seller may institute a separate action against Guarantor with or without joining or instituting a separate action against Purchaser or any other obligor.

4.9 **Severability.** Each provision of this Guaranty shall be interpreted so as to be effective and valid under applicable law, but if any provision of this Guaranty shall in any respect be ineffective or invalid under such law, such ineffectiveness or invalidity shall not affect the remainder of such provision or the remaining provisions of this Guaranty.

4.10 **Cumulative.** The obligations of Guarantor hereunder are in addition to any other obligations it may now or hereafter have to the Seller, and shall not be affected in any way by the delivery to the Seller by the Guarantor or any other guarantor of any other guaranty. All rights and remedies of the Seller and all obligations of the Guarantor under this Guaranty are cumulative; without limitation, the Seller's exercise of its rights to any security shall in no way limit any right or remedy of the Seller against Guarantor. In addition, the Seller shall have all rights and remedies available to it in law or equity for the enforcement of this Guaranty.

4.11 **Effect of Seller's Delay or Action.** No delay by the Seller in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by the Seller of any right or remedy shall preclude any other exercise thereof or the exercise of any other right or remedy. No action of the Seller permitted hereunder shall in any way impair or otherwise affect any right of the Seller or obligation of Guarantor under this Guaranty. The Seller shall not be liable in any way for any decrease in the value or marketability of any property securing any of the Liabilities which may result from any action or omission of the Seller in enforcing any part of this Guaranty.

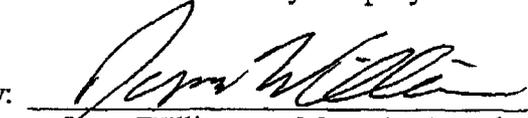
4.12 **Venue.** Guarantor agrees that all actions or proceedings arising directly, indirectly or otherwise in connection with, out of, related to or from this guaranty shall be litigated, at Seller's sole discretion and election, only in courts having a situs within the county of Maricopa, State of Arizona. Guarantor hereby consents and submits to the jurisdiction of any local, state or federal court located within said county and state. Guarantor hereby waives any right it may have to transfer or change the venue of any litigation brought against it by Seller on this Guaranty in accordance with this paragraph.

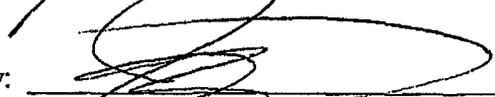
4.13 **Governing Law.** This Guaranty has been delivered at Phoenix, Arizona, and shall be construed under and governed by the internal laws of the State of Arizona.

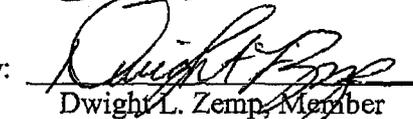
[Remainder of page intentionally left blank. Signature page follows]

IN WITNESS WHEREOF, this Guaranty is executed as of November 1, 2004.

PIVOTAL UTILITY MANAGEMENT, LLC  
a Colorado limited liability company

By:   
Jason Williamson, Managing Member

By:   
John Clingman, Member

By:   
Dwight L. Zemp, Member

**EXHIBIT F**

WHEN RECORDED RETURN TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

**SPECIAL WARRANTY DEED**

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, **BHP COPPER INC.**, a Delaware corporation ("Grantor") hereby grants, sells and conveys to **CORONADO UTILITIES, INC.**, an Arizona corporation ("Grantee"), the following real property situated in Pinal County, Arizona, together with all rights and privileges appurtenant thereto, (the "Property") but excluding all mineral rights appurtenant to the Property:

See Exhibit "A" attached hereto,

SUBJECT TO all current taxes; assessments; patent reservations; all covenants, conditions, restrictions, reservations, easements, encumbrances, liens, and declarations or other matters of record or to which reference is made in the public record; any and all conditions, easements, encroachments, rights-of-way, or restrictions which a physical inspection, or accurate survey, of the Property would reveal; and the applicable zoning and use regulations of any municipality, county, state, or the United States affecting the Property.

FURTHER SUBJECT TO the restriction that any water rights appurtenant to the Property shall only be available for use on the Property in connection with the operation thereof and for no other use. Grantee acknowledges that Grantor and/or its affiliates is (are) the owner(s) of that certain real property described in Exhibit "B" attached to this Special Warranty Deed (the "Benefited Property") and that the restriction contained in this Special Warranty Deed has substantial impact on the value and operation of the Benefited Property. As such, the restriction contained in this Special Warranty Deed shall be for the benefit of Grantor and, in addition, shall be appurtenant to and for the benefit of the Benefited Property. The restriction contained in this Special Warranty Deed shall be a burden upon the Property for the Benefit of Grantor and for the benefit of the Benefited Property, and shall be deemed a covenant running with the land. In the event of any violation or threatened violation of the restriction contained in this Special Warranty Deed, Grantor and/or the owner of the Benefited Property shall have all rights and remedies available at law or in equity, including the right to enjoin such violation or threatened violation in a court of competent jurisdiction.

AND THE GRANTOR hereby binds itself and its successors to warrant and defend the title against the acts of the Grantor and no other, subject to the matters set forth above.

DATED as of the \_\_\_\_ day of \_\_\_\_\_, 2004.

**BHP COPPER INC.**, a Delaware corporation

By: \_\_\_\_\_  
Ben K. Wichers, President

STATE OF ARIZONA        )  
                                  ) ss.  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_, who acknowledged before me that he is the President of **BHP COPPER INC.**, a Delaware corporation, and that he, in such capacity, being authorized so to do, signed the foregoing instrument, on behalf of the company.

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

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

Exhibit "A"  
to  
Special Warranty Deed  
Legal Description

(To be filled in at time of closing in accordance with Exhibit B)

**EXHIBIT G**

**BILL OF SALE**

For good and valuable consideration, the receipt whereof is hereby acknowledged, **BHP COPPER INC.**, a Delaware corporation, ("**Seller**"), does hereby sell, transfer, and convey to **CORONADO UTILITIES, INC.**, an Arizona corporation ("**Buyer**"), in accordance with that certain Purchase Agreement between Seller and Buyer, dated as of \_\_\_\_\_, 2004 (the "**Agreement**"), the Property Information, as defined in the Agreement, and, except as excluded below, all other tangible and intangible personal property pertaining to the Property, as defined in the Agreement (collectively, the "**Assigned Property**").

Buyer accepts such Assigned Property in "**AS IS CONDITION AND WITH ALL FAULTS.**" Seller specifically disclaims all express or implied warranties (other than that Seller has not previously transferred such Assigned Property and, where applicable, has paid for such Assigned Property) regarding the existence or condition of, or title to, such Assigned Property, including, without limitation, any implied warranties and suitability for a particular purpose. Furthermore, to the extent any person or entity asserts a claim against Seller regarding any warranties or covenants or otherwise, or to the extent Seller is required to defend against a claim regarding any warranties or covenants or otherwise for which Seller would require rights in and to the Assigned Property, Seller shall be entitled to pursue a claim against the preparer of such Assigned Property or any contractors or subcontractors notwithstanding this Assignment to Buyer. This Bill of Sale is subject to the additional terms, covenants, conditions and provisions contained in the Agreement, which terms are incorporated herein and made a part hereof and which shall survive Closing and shall not lapse or merge into this Bill of Sale. Notwithstanding any contrary provision of this Assignment, the Assigned Property shall exclude any property assigned to Buyer by separate assignment pursuant to the Agreement, including, without limitation, the Assignment of Plans, the terms of which assignments shall govern the transfer of such property interests.

DATED: \_\_\_\_\_

SELLER: **BHP COPPER INC.**, a Delaware corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

BUYER: **CORONADO UTILITIES, INC.**, an Arizona corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF ARIZONA )  
 ) ss.  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of **BHP COPPER INC.**, a Delaware corporation, on behalf of said corporation.

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

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

STATE OF ARIZONA )  
 ) ss.  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of **CORONADO UTILITIES, INC.**, an Arizona corporation on behalf of said corporation.

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

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



STATE OF ARIZONA        )  
                                  ) ss.  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_, who acknowledged before me that he is the \_\_\_\_\_ of **BHP COPPER INC.**, a Delaware corporation, and that he, in such capacity, being authorized so to do, signed the foregoing instrument, on behalf of the company.

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

My Commission Expires:

\_\_\_\_\_

Exhibit "A"  
to  
Non-Foreign Affidavit  
Legal Description

(To be filled in at time of closing – in accordance with Exhibit B)

**EXHIBIT I**

**NON-EXCLUSIVE ASSIGNMENT OF CONTRACTS**

THIS NON-EXCLUSIVE ASSIGNMENT OF CONTRACTS ("Assignment") is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2004, by BHP COPPER INC., a Delaware corporation ("Assignor"), for the benefit of CORONADO UTILITIES, INC., an Arizona corporation ("Assignee").

**RECITALS**

A. Assignor and Assignee entered into that certain Purchase Agreement dated \_\_\_\_\_, 2004 (the "Agreement"), pursuant to which Assignor has agreed to sell and Assignee has agreed to buy that certain "Property" as defined in the Agreement.

B. In connection with the sale of the Property to Assignee, Assignor desires to transfer and assign to Assignee, on a non-exclusive basis, Assignor's right, title, and interest in and to the contracts and plans identified on Exhibit A attached hereto to the extent they relate to the Property and any warranties applicable thereto (collectively, the "Contracts").

**AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby transfers and assigns, on a non-exclusive basis, to Assignee, without any representation or warranty whatsoever, Assignor's right, title, and interest in and to the Contracts.

**BHP COPPER INC.,**  
a Delaware corporation

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

**Exhibit A**  
**Description of Contracts**

1. Service Contract with Bob Hanus – Expiring November, 2004
2. \_\_\_\_\_
3. \_\_\_\_\_

**EXHIBIT J****DELAY FEE SCHEDULE**

Buyer and Seller agree that the following tasks shall be completed by the target dates set forth below. If the task is not completed by such target date, then the payment set forth below shall apply for each week that the task is not completed; provided that no payment shall apply in the event that the target date is not met due to Buyer Excusable Delay, and the target date shall be extended for a reasonable period of time. In the event a payment is applicable due to Buyer's failure to comply with the schedule set forth below, Seller shall give notice of the failure to Buyer, and Buyer shall have ten (10) days to pay the applicable amount to Seller. Delay fees are not cumulative, other than as noted for issuance of the applicable permits. In no case, therefore, will the weekly penalty for delays exceed \$4,000 per week.

<u>Task</u>	<u>Target Date</u>	<u>Penalty Per Week</u>
• Issuance of CC&N	December 1, 2005	\$ 2,000
• Issuance of APP	December 1, 2005	\$ 2,000
• Purchase of Property	December 15, 2005	\$ 2,000

**EXHIBIT K**

**LEGAL DESCRIPTION FOR 2.231-ACRE PARCEL  
SURROUNDING EXISTING WWTP**

A parcel of land located in Section 28, Township 9 South, Range 17 East, of the Gila and Salt River Base and Meridian, Pinal County, Arizona, described as follows:

Commencing at the southwest corner of said Section 28; thence North 24 degrees 08 minutes 21 seconds East for a distance of 1619.33 feet to the point of beginning of the land to be described;

Thence North 43 degrees 17 minutes 57 seconds West for a distance of 492.68 feet to a point on a fence line;

Thence North 54 degrees 59 minutes 48 seconds East for a distance of 234.38 feet along a fence line to a point;

Thence South 34 degrees 56 minutes 36 seconds East for a distance of 492.29 feet to a fence corner;

Thence South 56 degrees 40 minutes 25 seconds West for a distance of 162.85 feet to the point of beginning.

Together with and subject to covenants, easements, and restrictions of record.

Said parcel to contain 2.231 acres more or less.

# **EXHIBIT**

**2**

Coronado Utilities, Incorporated  
6825 E. Tennessee Ave., Suite 527  
Denver, Colorado 80244

Arizona Operations:

Coronado Utilities, Incorporated  
c/o CT Corporation System  
3225 North Central Avenue  
Phoenix, Arizona 85012

#### OFFICERS

##### **PRESIDENT**

Jason Williamson  
6825 E. Tennessee Ave., Suite 527  
Denver, Colorado 80244

##### **SECRETARY**

John Clingman  
220 Malibu Street  
Castle Rock, Colorado 80107

# **EXHIBIT**

**3**

DO NOT PUBLISH  
THIS SECTION  
ARTICLE I.

The corporate name must contain a corporate ending which may be "corporation," "association," "company," "limited," "incorporated" or an abbreviation of these words. If you are the holder or assignee of a tradename or trademark, attach Declaration of Tradename Holder form.

AZ. CORP. COMMISSION  
FILED

AUG 18 2004

ARTICLES OF INCORPORATION

APPR  
TERM  
DATE

an

OF

08-18-04

(An Arizona Business Corporation)

- 1148889-4

ARTICLE 2  
The name cannot imply that the corporation is organized for any purpose other than the initial business indicated in this article.

1. Name. The name of the Corporation is Coronado Utilities, Inc.

ARTICLE 3  
The total number of authorized shares cannot be "Zero" or "Not Applicable."

2. Initial Business.

The Corporation initially intends to conduct the business of ownership and operation of a wastewater utility and all related and incidental matters connected with such business.

ARTICLE 4  
May be in care of the statutory agent.

3. Authorized Capital.

The Corporation shall have authority to issue 1,000 shares of Common Stock.

ARTICLE 5  
The agent must provide both a physical and mailing address. If statutory agent has a P.O. Box, then they must also provide a physical description of their street address/location. The agent must sign the Articles or provide a consent to acceptance of the appointment.

4. Known Place of Business. (In Arizona)

The street address of the known place of business of the Corporation is:

In Arizona: Coronado Utilities, Inc., c/o C T Corporation System, 3225 North Central Avenue, Phoenix, Arizona 85012; Executive/Principal Offices: Coronado Utilities, Inc., 6825 E. Tennessee Ave., Suite 401, Denver, Colorado 80224.

5. Statutory Agent. (In Arizona)

The name and address of the statutory agent of the Corporation is:

C T Corporation System

3225 North Central Avenue

Phoenix, Arizona 85012

DO NOT PUBLISH  
THIS SECTION

6. Board of Directors

A minimum of 1  
director is required.

The initial board of directors shall consist of 3 director(s). The name(s) and address(es) of the person(s) who is(are) to serve as the director(s) until the first annual meeting of shareholders or until his(her)(their) successor(s) is(are) elected and qualifies is(are):

Name:	<u>John W. Clingman</u>	<u>Jason Williamson</u>
Address:	<u>220 Malibu Street</u>	<u>6825 E. Tennessee Ave., Suite 401</u>
City, State, Zip:	<u>Castle Rock, CO 80109</u>	<u>Denver, CO 80224</u>
Name:	<u>Dwight L. Zemp</u>	
Address:	<u>220 Malibu Street</u>	
City, State, Zip:	<u>Castle Rock, CO 80109</u>	

The number of persons to serve on the board of directors thereafter shall be fixed by the Bylaws.

7. Incorporators

The name(s) and address(es) of the incorporator(s) is (are):

Name:	<u>Jason Williamson</u>	
Address:	<u>6825 E. Tennessee Ave., Suite 401</u>	
City, State, Zip:	<u>Denver, CO 80224</u>	

ARTICLE 7  
A minimum of 1  
incorporator is  
required. All  
incorporators must  
sign both the Articles  
of Incorporation and  
the Certificate of  
Disclosure.

All powers, duties and responsibilities of the incorporators shall cease at the time of delivery of these Articles of Incorporation to the Arizona Corporation Commission.

8. Indemnification of Officers, Directors, Employees and Agents

The Corporation shall indemnify any person who incurs expenses or liabilities by reason of the fact he or she is or was an officer, director, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another Corporation, partnership, joint venture, trust or other enterprise. This indemnification shall be mandatory in all circumstances in which indemnification is permitted by law.

9. Limitation of Liability

To the fullest extent permitted by the Arizona Revised Statutes, as the same exists or may hereafter be amended, a director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for any action taken or any failure to take any action as a director. No repeal, amendment or modification of this article, whether direct or indirect, shall eliminate or reduce its effect with respect to any act or omission of a director of the Corporation occurring prior to such repeal, amendment or modification.

DO NOT PUBLISH  
THIS SECTION

Phone and fax  
numbers are optional

EXECUTED this 17 day of August, 2004 by all of the  
incorporators.

Signed: [Signature]

Jason Williamson  
[Print Name Here] [Print Name Here]

PHONE 303-333-1250 FAX 303-333-1257

The agent must  
consent to the  
appointment by  
executing the consent.

**Acceptance of Appointment By Statutory Agent**

The undersigned hereby acknowledges and accepts the appointment as statutory agent of the  
above-named corporation effective this 17th day of August, 2004.

Signed Hiedi M. Liesch

Hiedi M. Liesch, Asst. Secretary  
[Print Name Here]

The Articles must be  
accompanied by a  
Certificate of  
Disclosure, executed  
within 30 days of  
delivery to the  
Commission, by all  
incorporators.

CT Corporation System  
[If signing on behalf of a company serving as  
statutory agent, print company name here]

CF: 0042  
Rev. 07/04

ARIZONA CORPORATION COMMISSION  
CORPORATIONS DIVISION

Phoenix Address: 1300 West Washington  
Phoenix, Arizona 85007-2929

Tucson Address: 400 West Congress  
Tucson, Arizona 85701-1347

PROFIT  
CERTIFICATE OF DISCLOSURE  
A.R.S. §10-202.D

Coronado Utilities, Inc.

EXACT CORPORATE NAME

A. Has any person serving either by election or appointment as officer, director, trustee, incorporator and persons controlling or holding over 10% of the issued and outstanding common shares or 10% of any other proprietary, beneficial or membership interest in the corporation:

1. Been convicted of a felony involving a transaction in securities, consumer fraud or antitrust in any state or federal jurisdiction within the seven-year period immediately preceding the execution of this Certificate?
2. Been convicted of a felony, the essential elements of which consisted of fraud, misrepresentation, theft by false pretenses, or restraint of trade or monopoly in any state or federal jurisdiction within the seven-year period immediately preceding the execution of this Certificate?
3. Been or are subject to an injunction, judgment, decree or permanent order of any state or federal court entered within the seven-year period immediately preceding the execution of this Certificate wherein such injunction, judgment, decree or permanent order:
  - (a) Involved the violation of fraud or registration provisions of the securities laws of that jurisdiction?; or
  - (b) Involved the violation of the consumer fraud laws of that jurisdiction?; or
  - (c) Involved the violation of the antitrust or restraint of trade laws of that jurisdiction?

Yes \_\_\_\_\_ No X

B. IF YES, the following information MUST be attached:

- |   |   |
|---|---|
| <ol style="list-style-type: none"> <li>1. Full name, prior name(s) and aliases, if used.</li> <li>2. Full birth name.</li> <li>3. Present home address.</li> <li>4. Prior addresses (for immediate preceding 7-year period).</li> <li>5. Date and location of birth.</li> </ol> | <ol style="list-style-type: none"> <li>6. Social Security number.</li> <li>7. The nature and description of each conviction or judicial action, date and location, the court and public agency involved and file or case number of case.</li> </ol> |
|---|---|

C. Has any person serving as an officer, director, trustee or incorporator of the corporation served in any such capacity or held or controlled over 20% of the issued and outstanding common shares, or 20% of any other proprietary, beneficial or membership interest in any other corporation which has been placed in bankruptcy, receivership or had its charter revoked, or administratively or judicially dissolved by any state or jurisdiction?

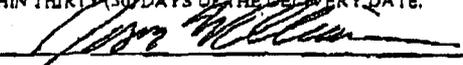
Yes \_\_\_\_\_ No X

IF YOUR ANSWER TO THE ABOVE QUESTION IS "YES", YOU MUST ATTACH THE FOLLOWING INFORMATION FOR EACH CORPORATION:

- |  |  |
|--|--|
| <ol style="list-style-type: none"> <li>1. Name and address of the corporation.</li> <li>2. Full name (including aliases) and address of each person involved.</li> </ol> | <ol style="list-style-type: none"> <li>3. State(s) in which the corporation:           <ol style="list-style-type: none"> <li>(a) Was incorporated. (b) Has transacted business.</li> </ol> </li> <li>4. Dates of corporate operation.</li> <li>5. Date and case number of Bankruptcy or date of revocation/administrative dissolution.</li> </ol> |
|--|--|

D. The fiscal year end adopted by the corporation is calendar year

Under penalties of law, the undersigned incorporator(s)/officer(s) declare(s) that I(we) have examined this Certificate, including any attachments, and to the best of my(our) knowledge and belief it is true, correct and complete, and hereby declare as indicated above. THE SIGNATURE(S) MUST BE DATED WITHIN THIRTY (30) DAYS OF THE DELIVERY DATE.

BY 

BY \_\_\_\_\_

PRINT NAME Jason Williamson

PRINT NAME \_\_\_\_\_

TITLE Incorporator DATE Aug. 17, 2004

TITLE \_\_\_\_\_ DATE \_\_\_\_\_

DOMESTIC CORPORATIONS: ALL INCORPORATORS MUST SIGN THE INITIAL CERTIFICATE OF DISCLOSURE. If within sixty days, any person becomes an officer, director, trustee or person controlling or holding over 10% of the issued and outstanding shares or 10% of any other proprietary, beneficial, or membership interest in the corporation and the person was not included in this disclosure, the corporation must file an AMENDED certificate signed by at least one duly authorized officer of the corporation.

FOREIGN CORPORATIONS: MUST BE SIGNED BY AT LEAST ONE DULY AUTHORIZED OFFICER OF THE CORPORATION.

CF: 0022 - Business Corporations  
Rev: 04/04

BY-LAWS  
OF  
CORONADO UTILITIES, INC.

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ARTICLE I

Offices

SECTION 1.1. Registered Office. The registered office of the corporation in the State of Arizona shall be located at C T Corporation System; 3225 N. Central Ave.; Phoenix, AZ 85012.

SECTION 1.2. Other Offices. The corporation may also have offices at such other places both within and without the State of Arizona as the Board of Directors may from time to time determine or the business of the corporation may require.

ARTICLE II

Meetings of Stockholders

SECTION 2.1. Annual Meeting. The annual meeting of the stockholders shall be held on the second Friday in December in each year, if not a legal holiday, or, if a legal holiday, then on the next succeeding business day, for the purpose of electing directors and for the transaction of such other business as may come before the meeting. If the election of directors shall not be held on the day hereinbefore designated for the annual meeting, or at any adjournment thereof, the Board of Directors shall cause such election to be held at a special meeting of stockholders as soon thereafter as convenient.

SECTION 2.2. Special Meetings. Except as otherwise prescribed by statute, special meetings of the stockholders for any purpose or purposes, may be called and the location thereof designated by the President and shall be called and the location thereof designated by the Secretary at the request in writing of a majority of the Board of Directors or of stockholders owning capital stock of the corporation having not less than a majority of the total voting power. Such request shall state the purposes of the proposed meeting.

SECTION 2.3. Place of Meetings. Each meeting of the stockholders for the election of directors shall be held at the registered offices of the corporation in Phoenix, Arizona, or at its executive offices in Denver, Colorado, unless the Board of Directors shall by resolution designate any other place, within or without the State of Arizona, as the place of such meeting. Meetings of stockholders for any other purpose may be held at such place, within or without the State of Arizona, and at such time as shall be determined pursuant to Section 2.2 and stated in the notice of the meeting or in a duly executed waiver of notice thereof.

SECTION 2.4. Notice of Meetings. Written or printed notice stating the place and time of each annual or special meeting of the stockholders and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given not less than ten (10) days nor more than sixty (60) days before the date of the meeting. (See also Articles IV and XI.)

When a meeting is adjourned to another time or place, no notice of the adjourned meeting other than an announcement at the meeting need be given unless the adjournment is for more than thirty (30) days or a new record date is fixed for the adjourned meeting after such adjournment.

SECTION 2.5. Stockholder List. At least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at such meeting, arranged in alphabetical order, and showing the address of each such stockholder and the number of shares registered in the name of each such stockholder, shall be prepared by the Secretary. Such list shall be open to examination of any stockholder of the corporation during ordinary business hours, for any purpose germane to the meeting, for a period of at least ten (10) days prior to the meeting, at the office of the corporation in Denver, Colorado, and the list shall be produced and kept at the time and place of meeting during the whole time thereof, and subject to the inspection for any purpose germane to the meeting of any stockholder who may be present.

SECTION 2.6. Quorum. The holders of capital stock of the corporation having a majority of the voting power thereof, present in person or represented by proxy, shall be requisite for, and shall constitute, a quorum at all meetings of the stockholders of the corporation for the transaction of business, except as otherwise provided by statute, the articles of incorporation or these by-laws. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote thereat present in person or represented by proxy shall have power to adjourn the meeting from time to time until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified.

SECTION 2.7. Proxies. At every meeting of the stockholders, each stockholder having the right to vote thereat shall be entitled to vote in person or by proxy. Such proxy shall be appointed by an instrument in writing subscribed by such stockholder and bearing a date not more than three (3) years prior to such meeting, unless such proxy provides for a longer period; and it shall be filed with the Secretary of the corporation before, or at the time of, the meeting.

SECTION 2.8. Voting. Unless the articles of incorporation provides otherwise, at every meeting of stockholders, each stockholder shall be entitled to one (1) vote for each share of stock of the corporation entitled to vote thereat and registered in the name of such stockholder on the books of the corporation on the pertinent record date. When a quorum is present at any meeting of the stockholders, the vote of the holders of a majority of the stock

having voting power which is present in person or represented by proxy shall decide any question brought before such meeting, unless the question is one (1) upon which, by provision of the statutes, the articles of incorporation or these by-laws, a different vote is required, in which case such provision shall govern and control the decision of such question. If the articles of incorporation provides for more or less than one vote for any share on any matter, every reference in these by-laws to a majority or other proportion of stock shall refer to such majority or other proportion of the votes of such stock.

SECTION 2.9. Voting of Certain Shares. Shares standing in the name of another corporation, domestic or foreign, and entitled to vote may be voted by such officer, agent, or proxy as the by-laws of such corporation may prescribe or, in the absence of such provision, as the Board of Directors of such corporation may determine. Shares standing in the name of a deceased person, a minor or an incompetent and entitled to vote may be voted by his or her administrator, executor, guardian or conservator, as the case may be, either in person or by proxy. Shares standing in the name of a trustee, receiver or pledgee and entitled to vote may be voted by such trustee, receiver or pledgee either in person or by proxy as provided by Arizona law.

SECTION 2.10. Action without Meeting. Unless otherwise restricted by the articles of incorporation or these by-laws, whenever the vote of stockholders at a meeting thereof is required or permitted to be taken for or in connection with any corporate action, the meeting and vote of stockholders may be dispensed with if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented thereto in writing. Such consent shall be filed with the minutes of proceedings of the stockholders and shall have the same force and effect as a unanimous vote of stockholders.

SECTION 2.11. Treasury Stock. Shares of its own stock belonging to the corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held by this corporation, shall not be voted at any meeting and shall not be counted in determining the total number of outstanding shares for the purpose of determining whether a quorum is present. Nothing in this section shall be construed to limit the right of this corporation to vote shares of its own stock held by it in a fiduciary capacity.

### ARTICLE III

#### Directors

SECTION 3.1. Number and Election. The number of directors which shall constitute the whole board shall be no fewer than ~~two~~<sup>three</sup> and no more than ~~six~~<sup>seven</sup>. Election of directors need not be by ballot. The directors shall be elected annually by the stockholders as provided in

Section 2.1 or in accordance with Section 3.2 of these by-laws and each director elected shall hold office until such officer's successor is duly elected and qualified or until his or her death or resignation or until such officer shall have been removed in the manner hereinafter provided. Directors need not be residents of the State of Arizona or stockholders of this corporation.

SECTION 3.2. Resignation and Vacancies. Any director may resign at any time by giving written notice to the Board of Directors or to the President. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. If, at any other time than the annual meeting of the stockholders, any vacancy occurs in the Board of Directors caused by resignation, death, retirement, disqualification or removal from office of any director or otherwise, or any new directorship is created by an increase in the authorized number of directors by amendment of Section 3.1 of these by-laws, a majority of the directors then in office, although less than a quorum, may choose a successor, or fill the newly created directorship, and the director so chosen shall hold office until the next annual election of directors by the stockholders and until such director's successor shall be duly elected and qualified, unless sooner displaced.

SECTION 3.3. Removal. Any director may be removed, with or without cause, at any meeting of the stockholders, by the affirmative vote of the holders of a majority of the stock of the corporation having voting power, and the vacancy in the Board of Directors caused by such removal may be filled by the stockholders at such meeting.

SECTION 3.4. Management of Affairs of Corporation. The property and business of the corporation shall be managed by its Board of Directors, which may exercise all such powers of the corporation and do all such lawful acts and things as are not by statute or by the articles of incorporation or by these by-laws directed or required to be exercised or done by stockholders. In case the corporation shall transact any business or enter into any contract with a director, or with any firm of which one or more of its directors are members, or with any trust, firm, corporation or association in which any director is a stockholder, director or officer or otherwise interested, the officers of the corporation and directors in question shall be severally under the duty of disclosing all material facts as to their interest to the remaining directors promptly if and when such interested officers or such interested directors in question shall become advised of the circumstances. In the case of continuing relationships in the normal course of business such disclosure shall be deemed effective, when once given, as to all transactions and contracts subsequently entered into.

SECTION 3.5. Dividends and Reserves. Dividends upon stock of the corporation may be declared by the Board of Directors at any regular or special meeting, pursuant to law. Dividends may be paid in cash, in property, in shares of stock or otherwise in the form, and to the extent, permitted by law. The Board of Directors may set apart, out of any funds of the corporation available for dividends, a reserve or reserves for working capital or for any other lawful purpose, and also may abolish any such reserve in the manner in which it was created.

SECTION 3.6. Regular Meetings. An annual meeting of the Board of Directors shall be held, without other notice than this by-law, immediately after, and at the same place as, the annual meeting of the stockholders. The Board of Directors may provide, by resolution, the time and place, either within or without the State of Arizona, for the holding of additional regular meetings without other notice than such resolution.

SECTION 3.7. Special Meetings. Special meetings of the Board of Directors may be called by the President and shall be called by the Secretary at the request of any two directors, to be held at such time and place, either within or without the State of Arizona, as shall be designated by the call and specified in the notice of such meeting; and notice thereof shall be given as provided in Section 3.8 of these by-laws.

SECTION 3.8. Notice of Special Meetings. Except as otherwise prescribed by statute, written or actual oral notice of the time and place of each special meeting of the Board of Directors shall be given at least two (2) days prior to the time of holding the meeting. Any director may waive notice of any meeting. (See also Articles IV and XI.)

SECTION 3.9. Quorum. At each meeting of the Board of Directors, the presence of not less than a majority of the whole board shall be necessary and sufficient to constitute a quorum for the transaction of business, and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by statute or these by-laws. If a quorum shall not be present at any meeting of directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Unless otherwise restricted by the articles of incorporation, any member of the Board of Directors or of any committee designated by the Board may participate in a meeting of the directors or committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by means of such equipment shall constitute presence in person at such meeting.

SECTION 3.10. Presumption of Assent. Unless otherwise provided by statute, a director of the corporation who is present at a meeting of the Board of Directors at which action is taken on any corporate matter shall be presumed to have assented to the action taken unless such director's dissent shall be entered in the minutes of the meeting or unless such director shall file a written dissent to such action with the person acting as Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

SECTION 3.11. Action without Meeting. Unless otherwise restricted by the articles of incorporation or these by-laws, any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a

meeting, if a written consent hereto is signed by all members of the board or of such committee, as the case may be, and such written consent is filed with the minutes of proceedings of the board or committee.

SECTION 3.12. Presiding Officer. The presiding officer at any meeting of the Board of Directors shall be the President, or, in the absence of the President, any other director elected chairman by vote of a majority of the directors present at the meeting.

SECTION 3.13. Executive Committee. The Board of Directors may, by resolution passed by a majority of the number of directors fixed by these by-laws, designate two or more directors of the corporation to constitute an executive committee, which, to the extent provided in the resolution and by Arizona law, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation and may authorize the seal of the corporation to be affixed to all papers which may require it.

SECTION 3.14. Other Committees. The Board of Directors may, by resolution passed by a majority of the number of directors fixed by these by-laws, designate such other committees as it may from time to time determine. Each such committee shall consist of such number of directors, shall serve for such term and shall have and may exercise, during intervals between meetings of the Board of Directors, such duties, functions and powers as the Board of Directors may from time to time prescribe.

SECTION 3.15. Alternates. The Board of Directors may from time to time designate from among the directors alternates to serve on one or more committees as occasion may require. Whenever a quorum cannot be secured for any meeting of any committee from among the regular members thereof and designated alternates, the member or members of such committee present at such meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of such absent or disqualified member.

SECTION 3.16. Quorum and Manner of Acting - Committees. The present of a majority of members of any committee shall constitute a quorum for the transaction of business at any meeting of such committee, and the act of a majority of those present shall be necessary for the taking of any action thereat, provided that no action may be taken by any such committee without the favorable vote of members of the committee who are not officers or full-time employees of the corporation at least equal to the favorable vote of members of such committee who are officers or full-time employees of the corporation.

SECTION 3.17. Committee Chairman, Books and Records, Etc. The chairman of each committee shall be selected from among the members of the committee by the Board of Directors.

Each committee shall keep a record of its acts and proceedings, and all actions of each committee shall be reported to the Board of Directors at its next meeting.

Each committee shall fix its own rules of procedure not inconsistent with these by-laws or the resolution of the Board of Directors designating such committee and shall meet at such times and places and upon such call or notice as shall be provided by such rules.

SECTION 3.18. Fees and Compensation of Directors. Directors shall not receive any stated salary for their services as such; but, by resolution of the Board of Directors, a fixed fee, with or without expenses of attendance, may be allowed for attendance at each regular or special meeting of the board. Members of the board shall be allowed their reasonable traveling expenses when actually engaged in the business of the corporation. Members of any committee may be allowed like fees and expenses for attending committee meetings. Nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity and receiving compensation therefor.

SECTION 3.19. Reliance Upon Records. Every director of the corporation, or member of any committee designated by the Board of Directors pursuant to authority conferred by Section 3.14 of these by-laws, shall, in the performance of such director's duties, be fully protected in relying in good faith upon the books of account or reports made to the corporation by any of its officials, or by an independent certified public accountant, or by an appraiser selected with reasonable care by the Board of Directors or by such committee, or in relying in good faith upon other records of the corporation, including, without limiting the generality of the foregoing, records setting forth or relating to the value and amount of assets, liabilities and profits of the corporation or any other facts pertinent to the existence and amount of surplus or other funds from which dividends might properly be declared or paid or with which stock of the corporation might lawfully be purchased or redeemed.

#### ARTICLE IV

##### Notices

SECTION 4.1. Manner of Notice. Whenever under the provisions of the statutes, the articles of incorporation or these by-laws notice is required to be given to any stockholder, director or member of any committee designated by the Board of Directors, it shall not be construed to require personal delivery and such notice may be given in writing by depositing it, in a sealed envelope, in the United States mail, first class, postage prepaid, addressed to such stockholder, director or member either at the address of such stockholder, director or member as it appears on the books of the corporation or, in the case of such a director or member, at such director's business address; and such notice shall be deemed to be given at the time when it is thus deposited in the United States mail. Such requirement for notice shall be deemed satisfied, except in the case of stockholder meetings with respect to which written notice is mandatorily required by law, if actual notice is received orally or in writing by the person entitled thereto as far in advance of the event with respect to which notice is given as the minimum notice period required by law or these by-laws.

SECTION 4.2. Waiver of Notice. Whenever any notice is required to be given under the provisions of the statutes, the articles of incorporation, or these by-laws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before, at or after the time stated therein, shall be deemed equivalent thereto. Attendance by a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors or committee of directors need be specified in any written waiver of notice unless so required by statute, the articles of incorporation or these by-laws.

## ARTICLE V

### Officers

SECTION 5.1. Offices and Official Positions. The officers of the corporation shall be a President, one or more Vice Presidents, a Secretary, a Treasurer, and such Assistant Secretaries, Assistant Treasurers, and other officers as the Board of Directors shall determine. Any two or more offices may be held by the same person. None of the officers need be a director, a stockholder of the corporation or a resident of the State of Arizona. The Board of Directors may from time to time establish, and abolish, official positions within the divisions into which the business and operations of the corporation are divided, pursuant to Section 6.1 of these by-laws, and assign titles and duties to such positions. Those appointed to official positions within divisions may, but need not, be officers of the corporation. The Board of Directors shall appoint officers to official positions within a division and may with or without cause remove from such a position any person appointed to it. In any event, the authority incident to an official position within a division shall be limited to acts and transactions within the scope of the business and operations of such division.

SECTION 5.2. Election and Term of Office. The officers of the corporation shall be elected annually by the Board of Directors at their first meeting held after each regular annual meeting of the stockholders. If the election of officers shall not be held at such meeting of the board, such election shall be held at a regular or special meeting of the Board of Directors as soon thereafter as may be convenient. Each officer shall hold office until such officer's successor is elected and qualified or until his or her death or resignation or until such officer shall have been removed in the manner hereafter provided.

SECTION 5.3. Removal and Resignation. Any officer may be removed, either with or without cause, by a majority of the directors then in office at any regular or special meeting of the board; but such removal shall be without prejudice to the contract rights, if any, of such person so removed. Any officer may resign at any time by giving written notice to the Board of Directors, to the President or to the Secretary of the corporation. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 5.4. Vacancies. A vacancy in any office because of death, resignation, removal, or any other cause may be filled for the unexpired portion of the term by the Board of Directors.

SECTION 5.5. President. The President shall be the chief executive officer of the corporation and shall preside at all meetings of the stockholders, the Board of Directors or any committee of the Board if the President is a member. The President shall have the overall supervision of the business of the corporation and shall direct the affairs and policies of the corporation, subject to such policies and directions as may be provided by the Board of Directors. The President shall have authority to designate the duties and powers of other officers and delegate special powers and duties to specified officers, so long as such designation shall not be inconsistent with the statutes, these by-laws or action of the Board of Directors. The President shall also have power to execute, and shall execute, deeds, mortgages, bonds, contracts or other instruments of the corporation except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board of Directors or by the President to some other officer or agent of the corporation. The President may sign with the Secretary or an Assistant Secretary or the Treasurer or an Assistant Treasurer, certificates for shares of stock of the corporation the issuance of which shall have been duly authorized by the Board of Directors, and shall vote, or give a proxy to any other person to vote, all shares of the stock of any other corporation standing in the name of the corporation. The President in general shall have all other powers and shall perform all other duties which are incident to the chief executive office of a corporation or as may be prescribed by the Board of Directors from time to time.

SECTION 5.6. Vice Presidents. In the absence of the President, or in the event of the inability or refusal of the President to act, the Vice Presidents in order of their rank as fixed by the Board of Directors or, if not ranked, the Vice President designated by the Board of Directors or the President, shall perform all duties of the President and, when so acting, shall have all the powers of, and be subject to all the restrictions upon, the President. The Vice Presidents shall have such other powers and perform such other duties, not inconsistent with the statutes, these by-laws, or action of the Board of Directors, as from time to time may be prescribed for them, respectively, by the Board of Directors or the President. Any Vice President may sign, with the Secretary or an Assistant Secretary, or the Treasurer or an Assistant Treasurer, certificates for shares of stock of the corporation the issuance of which shall have been duly authorized by the Board of Directors.

SECTION 5.7. Secretary. The Secretary shall: (a) keep the minutes of the meetings of the stockholders, the Board of Directors and committees of directors, in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these by-laws or as required by law; (c) have charge of the corporate records and of the seal of the corporation; (d) affix the seal of the corporation or a facsimile thereof, or cause it to be affixed, to all certificates for shares prior to the issue thereof and to all documents the execution of which on behalf of the corporation under its seal is duly authorized by the Board of Directors or otherwise in accordance with the provisions of these by-laws; (e) keep a

register of the post office address of each stockholder, director and committee member which shall from time to time be furnished to the Secretary by such stockholder, director or member; (f) sign with the President, or a Vice President, certificates for shares of stock of the corporation, the issuance of which shall have been duly authorized by resolution of the Board of Directors; (g) have general charge of the stock transfer books of the corporation; and (h) in general, perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to the Secretary by the President or by the Board of Directors. The Secretary may delegate such details of the performance of duties of the office of secretary as may be appropriate in the exercise of reasonable care to one or more persons instead of the secretary, but shall not thereby be relieved of responsibility for the performance of such duties.

SECTION 5.8. Treasurer. The Treasurer shall: (a) be responsible to the Board of Directors for the receipt, custody and disbursement of all funds and securities of the corporation; (b) receive and give receipts for moneys due and payable to the corporation from any source whatsoever and deposit all such moneys in the name of the corporation in such banks, trust companies or other depositories as shall from time to time be selected in accordance with the provision of Section 7.4 of these by-laws; (c) disburse the funds of the corporation as ordered by the Board of Directors or the President or as otherwise required in the conduct of the business of the corporation; (d) render to the President or the Board of Directors, upon request, an account of all transactions as Treasurer and on the financial condition of the corporation; and (e) in general, perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to the Treasurer by the President, by the Board of Directors or these by-laws. The Treasurer may sign, with the President, or a Vice President, certificates for shares of stock of the corporation, the issuance of which shall have been duly authorized by resolution of the Board of Directors. The Treasurer may delegate such details of the performance of duties of the office of Treasurer as may be appropriate in the exercise of reasonable care to one or more persons instead of the Treasurer, but shall not thereby be relieved of responsibility for the performance of such duties.

SECTION 5.9. Assistant Treasurers and Assistant Secretaries. The Assistant Treasurers and Assistant Secretaries shall perform all functions and duties which the Secretary or Treasurer, as the case may be, may assign or delegate; but such assignment or delegation shall not relieve the principal officer from the responsibilities and liabilities of such office. In addition, an assistant secretary or an assistant treasurer, as thereto authorized by the Board of Directors, may sign with the President, or a Vice President, certificates for shares of the corporation, the issuance of which shall have been duly authorized by resolution of the Board of Directors; and the Assistant Secretaries and Assistant Treasurers shall, in general, perform such duties as shall be assigned to them by the Secretary or the Treasurer, respectively, or by the President or by the Board of Directors.

SECTION 5.10. Salaries. The salaries of the officers shall be fixed from time to time by the Board of Directors or by such officer as it shall designate for such purpose or as it shall otherwise direct. No officer shall be prevented from receiving a salary or other compensation by reason of the fact that such officer is also a director of the corporation.

## ARTICLE VI

### Divisions

SECTION 6.1. Divisions of the Corporation. The Board of Directors shall have the power to create and establish such operating divisions of the corporation as they may from time to time deem advisable.

SECTION 6.2. Official Positions within a Division. The President may appoint individuals, whether or not they are officers of the corporation, to, and may, with or without cause, remove them from, official positions established with a division, but not filled by the Board of Directors. (See also Section 5.1.)

## ARTICLE VII

### Contracts, Loans, Checks and Deposits

SECTION 7.1. Contracts and Other Instruments. The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation, or of any division thereof, and such authority may be general or confident to specific instances.

SECTION 7.2. Loans. No loans shall be contracted on behalf of the corporation, or any division thereof, and no evidence of indebtedness shall be issued in the name of the corporation, or any division thereof, unless authorized by a resolution of the Board of Directors. Such authority may be general or confirmed to specific instances.

SECTION 7.3. Checks, Drafts, Etc. All checks, demands, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the corporation, or any division thereof, shall be signed by such officer or officers, agent or agents of the corporation, and in such manner, as shall from time to time be authorized by the Board of Directors.

SECTION 7.4. Deposits. All funds of the corporation, or any division, thereof, not otherwise employed shall be deposited from time to time to the credit of the corporation in such banks, trust companies or other depositories as the Board of Directors may select.

## ARTICLE VIII

### Certificates of Stock and Their Transfer

SECTION 8.1. Certificates of Stock. The certificates of stock of the corporation shall be in such form as may be determined by the Board of Directors, shall be numbered and shall be entered in the books of the corporation as they are issued. They shall

exhibit the holder's name and number of shares and shall be signed by the President or a Vice President and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary. If any stock certificate is signed (a) by a transfer agent or an assistant transfer agent or (b) by a transfer clerk acting on behalf of the corporation and a registrar, the signature of any officer of the corporation may be a facsimile. In case any such officer whose facsimile signature has thus been used on any such certificate shall cease to be such officer, whether because of death, resignation or otherwise, before such certificate has been delivered by the corporation, such certificate may nevertheless be delivered by the corporation, as though the person whose facsimile signature has been used thereon had not ceased to be such officer. All certificates property surrendered to the corporation for transfer shall be cancelled and no new certificate shall be issued to evidence transferred shares until the former certificate for at least a like number of shares shall have been surrendered and cancelled and the corporation reimbursed for any applicable taxes on the transfer, except that in the case of a lost, destroyed or mutilated certificate a new one may be issued therefor upon such terms, and with such indemnity (if any) to the corporation, as the Board of Directors may prescribe specifically or in general terms or by delegation to a transfer agent for the corporation. (See Section 8.2.)

SECTION 8.2. Lost, Stolen or Destroyed Certificates. The Board of Directors in individual cases, or by general resolution or by delegation to the transfer agent, may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificates, or such owner's legal representative, to advertise the same in such manner as it shall require and/or to give the corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen or destroyed.

SECTION 8.3. Transfers of Stock. Upon surrender to the corporation or the transfer agent of the corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, and upon payment of applicable taxes with respect to such transfer, and in compliance with any restrictions on transfer applicable to the certificate or shares represented thereby of which the corporation shall have notice and subject to such rules and regulations as the Board of Directors may from time to time deem advisable concerning the transfer and registration of certificates for shares of capital stock of the corporation, the corporation shall issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books. Transfers of shares shall be made only on the books of the corporation by the registered holder thereof or by such holder's attorney or successor duly authorized as evidenced by documents filed with the Secretary or transfer agent of the corporation.

SECTION 8.4. Restrictions on Transfer. Any stockholder may enter into an agreement with other stockholders or with the corporation providing for reasonable limitation or restriction on the right of such stockholder to transfer shares of capital stock of the

corporation held by such stockholder including, without limiting the generality of the foregoing, agreements granting to such other stockholders or to the corporation the right to purchase for a given period of time any of such shares on terms equal to terms offered such stockholders by any third party. Any such limitation or restriction on the transfer of shares of this corporation may be set forth on certificates representing shares of capital stock or notice thereof may be otherwise given to the corporation or the transfer agent, in which case the corporation or the transfer agent shall not be required to transfer such shares upon the books of the corporation without receipt of satisfactory evidence of compliance with the terms of such limitation or restriction.

SECTION 8.5. No Fractional Share Certificates. Certificates shall not be issued representing fractional share of stock.

SECTION 8.6. Fixing Record Date. The Board of Directors may fix in advance a date, not exceeding sixty (60) days, nor less than ten (10) days, preceding the date of any meeting of stockholders, or the date for the payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange of capital stock shall go into effect, or a date in connection with obtaining any consent, as a record date for the determination of the stockholders entitled to notice of, and to vote at, any such meeting, or adjournment thereof, or entitled to receive payment of any such dividend, or to any such allotment of rights, or to exercise the rights in respect of any such change, conversion or exchange of capital stock, or to give such consent, and in such case such stockholders and only such stockholders as shall be stockholders of record on the date so fixed shall be entitled to notice of, and to vote at, such meeting and any adjournment thereof, or to receive payment of such dividend, or to receive such allotment of rights, or to exercise such rights, or to give such consent, as the case may be, notwithstanding any transfer of any stock on the books of the corporation after any such record date fixed as aforesaid.

SECTION 8.7. Stockholders of Record. The corporation shall be entitled to treat the holder of record of any share or shares of stock as the holder in fact thereof and accordingly, shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Arizona.

## ARTICLE IX

### Indemnification

SECTION 9.1. In General. Each person who at any time is or shall have been a director, officer, employee or agent of this corporation, or is or shall have been serving at the request of the corporation as a director, officer, employee or agent of another corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, and such person's heirs, executors and administrators, shall be indemnified by this corporation in accordance with and to the full extent permitted by the Arizona Corporation Law as in effect at the time of adoption of this by-law or as amended from time to time. The foregoing right of indemnification shall not be deemed exclusive of any other rights to which a

person seeking indemnification may be entitled under any by-law, agreement, vote of stockholders or disinterested directors or otherwise. If authorized by the Board of Directors, the corporation may purchase and maintain insurance on behalf of any person to the full extent permitted by the Arizona Corporation Law as in effect at the time of the adoption of this by-law or as amended from time to time.

## ARTICLE X

### General Provisions

SECTION 10.1. Fiscal Year. The fiscal year of the corporation shall begin on the January 1 of each year and end on December 31 of each year.

SECTION 10.2. Seal. The corporate seal shall have inscribed thereon the name of the corporation, and the words "CORPORATE SEAL"; and it shall otherwise be in the form approved by the Board of Directors. Such seal may be used by causing it, or a facsimile thereof, to be impressed or affixed otherwise reproduced.

## ARTICLE XI

### Amendments

SECTION 11.1. In General. Any provision of these by-laws may be altered, amended or repealed from time to time by the affirmative vote of a majority of the stock having voting power present in person or by proxy at any annual meeting of stockholders at which a quorum is present, or at any special meeting of stockholders at which a quorum is present, if notice of the proposed alteration, amendment or repeal be contained in the notice of such special meeting, or by the affirmative vote of a majority of the directors then qualified and acting at any regular or special meeting of the board; provided, however, that the stockholders may provide specifically for limitations on the power of directors to amend particular by-laws and, in such event, the directors' power of amendment shall be so limited; and further provided that no reduction in the number of directors shall have the effect of removing any director prior to the expiration of such directors term of office.

UNANIMOUS WRITTEN CONSENT OF THE DIRECTORS OF

CORONADO UTILITIES, INC.

The undersigned, being all of the directors of Coronado Utilities, Inc. (the "Company"), an Arizona corporation, do hereby take the following action by unanimous written consent in lieu of a meeting of the directors, which consent may be executed in one or more counterparts, such resolutions having the same force and effect as if unanimously adopted at a duly called meeting of the Board of Directors of the Company, all pursuant to the authority of the statutes, regulations and case law governing Arizona for profit corporations and the By-laws of this Company, to wit:

RESOLVED, that the By-laws attached hereto are adopted and approved and the Secretary shall file such By-laws with the corporate records of the Company;

RESOLVED FURTHER, that CT Corporation System is appointed registered agent of the Corporation in the state of Arizona;

RESOLVED FURTHER, that the following individuals are elected to serve in the respective office opposite such person's name for the term prescribed in the By-laws and until a successor shall be duly elected and qualified:

Jason Williamson President

~~Dwight Zemp~~ Vice President 

John Clingman Secretary

John Clingman Treasurer

RESOLVED FURTHER, that Well Fargo Bank, N.A., is hereby designated as depository for the funds of the Company, and such bank is hereby authorized and directed to pay checks and other orders for the payment of money drawn in the name of the Company when signed by any of the officers identified above, and such bank shall not be required, in any case, to make inquiry respecting the application of any instrument executed by virtue of this resolution, or of the proceeds therefrom, nor be under any obligation to see to the application of such instrument or proceeds;

RESOLVED FURTHER, that any of the officers is authorized to execute such form resolutions provided by such financial institution as are necessary to establish any such accounts required by the Company in his or her discretion;

RESOLVED FURTHER, that any of the officers is hereby authorized to pay all fees and expenses incident to and necessary to the organization of the Company;

RESOLVED FURTHER, that the seal of the Company in the form impressed upon and affixed to the margin of these Resolutions is approved;

RESOLVED, that the initial stated capital of the Company shall be \$1,200.00.

RESOLVED FURTHER, that the Company may enter into shareholder agreement and other arranged with its shareholders;

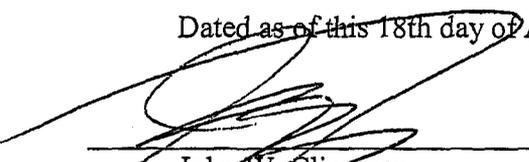
RESOLVED FURTHER, that the officers or any agents engaged by the Company are directed to proceed with all necessary filings with the Internal Revenue Service to cause the Company to make an S election under the Internal Revenue Code and Treasury Regulations and to make any corresponding state elections;

RESOLVED FURTHER that this unanimous consent shall be in lieu of an organizational meeting and vote of the Director and/or of the incorporators and by such Director's execution of this unanimous consent shall be deemed a waiver of any and all notice requirements under the By-laws and applicable law; such Resolutions shall be filed with the corporate records of the Company to be kept at the principal office (sometimes referred to as the executive offices) of the Company;

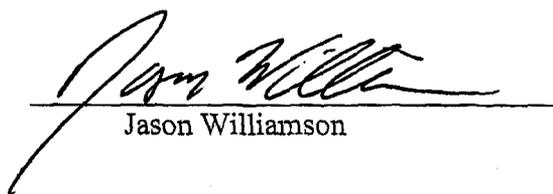
RESOLVED FURTHER, that the Secretary of the Company and all other officers are authorized to execute, attest, deliver any all Stock Certificates contemplated by or otherwise necessary, convenient or required to be issued in connection with carrying out and performing the provisions of these Resolutions or otherwise required to properly evidence the ownership of shares of each Stockholder in the Company;

RESOLVED FURTHER, that this Company does hereby ratify, confirm and approve all of the conduct and actions of such officers as any of such officer shall deem necessary, desirable, proper or appropriate, to effect the intent and purpose of the foregoing resolutions.

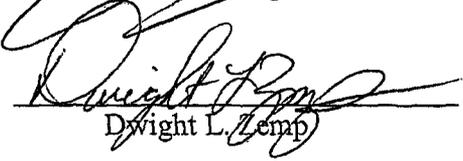
Dated as of this 18th day of August, 2004.



\_\_\_\_\_  
John W. Clingman



\_\_\_\_\_  
Jason Williamson



\_\_\_\_\_  
Dwight L. Zemp

# **EXHIBIT**

**4**

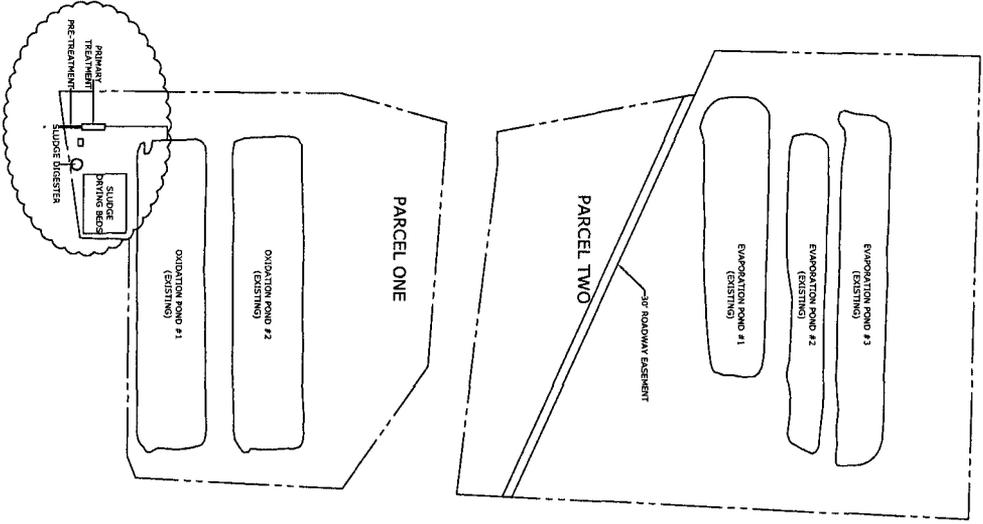
# San Manuel WWTP Process Description

## Facility Description

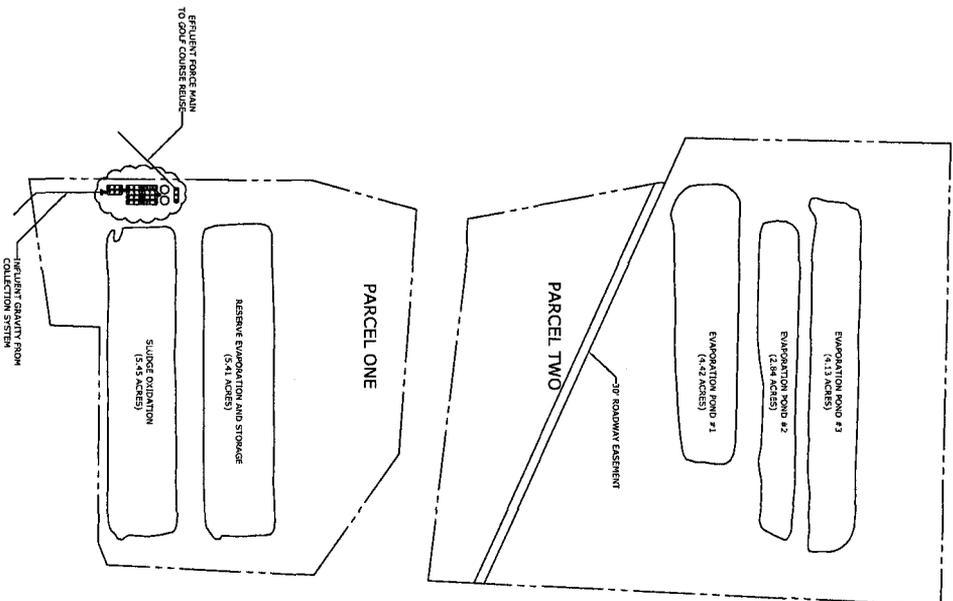
The WWTP will be designed and permitted to provide treatment for up to .350 MGD (Maximum Day) of flow volume. The WWTP process will consist of headworks with grit removal, comminution, bar screen and flow metering, an equalization basin, anoxic and aeration tanks for nitrification-denitrification, secondary clarifiers, a chlorine disinfection contact tank, dechlorination, a sludge holding tank, sludge oxidation pond, an effluent pump station, and effluent evaporation ponds. The effluent generated will be discharged either into golf course holding ponds for reuse consist with class B<sup>+</sup> standards, or discharged to the evaporation ponds for disposal.

The Santec treatment plant design for the San Manuel WWTP is an extended aeration process which employs a single-stage system for combined carbon oxidation-nitrification and a modified denitrification sewage treatment processes.

# EXISTING PLANT SITE



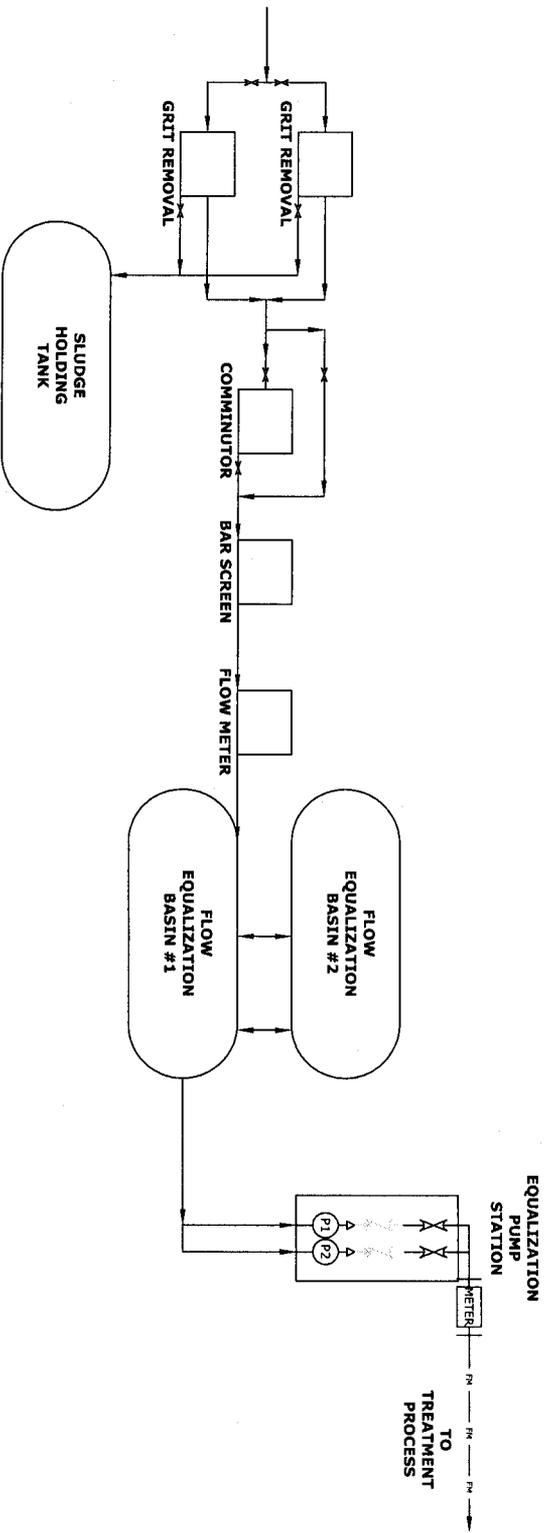
# NEW PLANT SITE



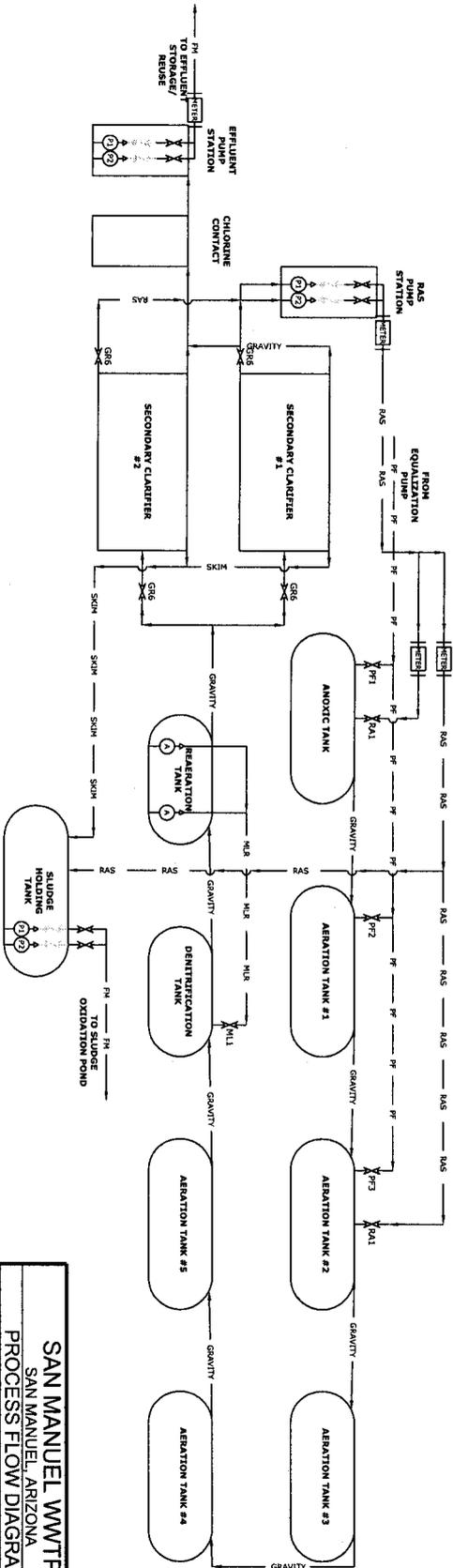
**SAN MANUEL WWTP**  
 SAN MANUEL, ARIZONA  
**WWTP LAYOUT**

DATE	02-26-05
DESIGNED BY	DED
CHECKED BY	REV 1.0
PROJECT	1

**Santec**  
 SANTEC CORPORATION  
 CASTLE ROCK, COLORADO  
 PHONE: 303.680.9211 FAX: 303.680.2180

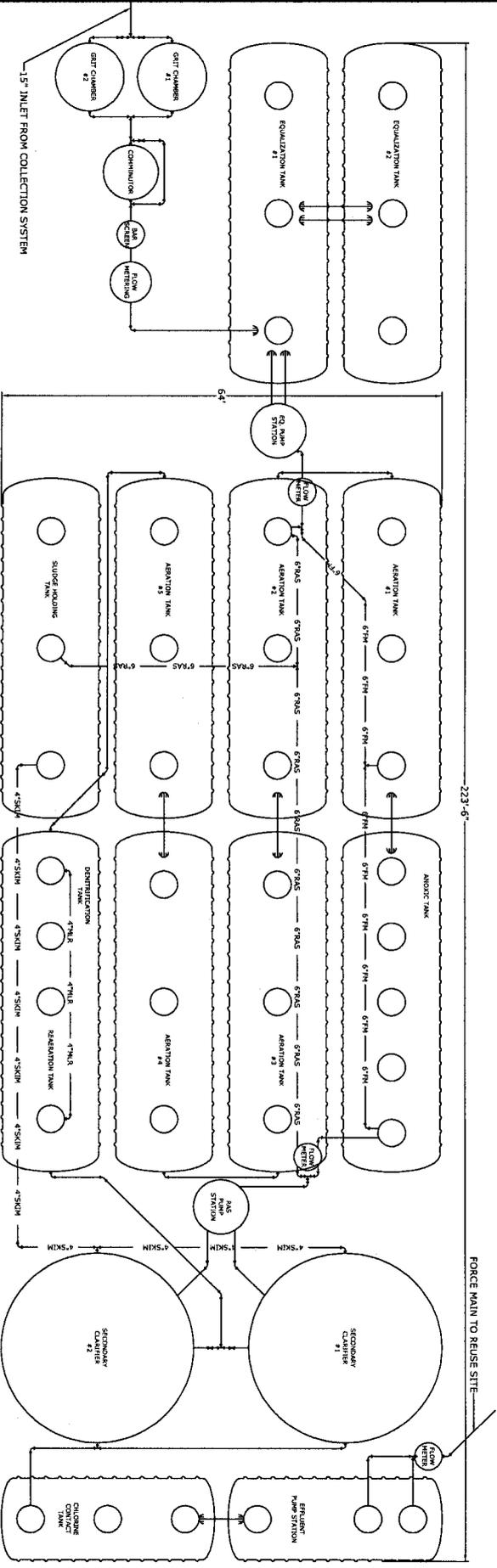


HEADWORKS PROCESS FLOW DIAGRAM, N.T.S.



DESIGN FLOW - DENITRIFICATION-IN-LINE, N.T.S.

<b>SAN MANUEL WWTP</b>	
SAN MANUEL, ARIZONA	
<b>PROCESS FLOW DIAGRAM</b>	
	DATE: 07-08-05
SANTEC CORPORATION	DRAWN BY: DEB
CASTLE ROCK, COLORADO	CHECKED BY:
PHONE: 303.680.9211 FAX: 303.680.2180	PROJECT:
	3



0 15 30 45

SCALE: 1 in = 15 feet

**SAN MANUEL WWTP**  
**SAN MANUEL, ARIZONA**  
**WWTP LAYOUT**

DATE	02-09-05
DRAWN BY	DEO
REV. / REV. TO	
SHEET	2


**SANTEC CORPORATION**  
 CASTLE ROCK, COLORADO  
 PHONE: 303.860.9211 FAX: 303.860.2180



**Coronado Utilities, Inc.**  
Summary Listing of Plant Additions by Year

Exhibit  
Schedule 1a  
Summary Page  
Witness: Williamson

Acct. No	Year 1	Year 2	Year 3	Year 4	Year 5	Totals
351 Organization	150,000	-	-	-	-	150,000
352 Franchises	-	-	-	-	-	-
353 Land and Land Rights	75,000	-	-	-	-	75,000
354 Structures and Improvements	-	85,000	-	-	-	85,000
355 Power Generation Equipment	-	-	-	-	-	-
360 Collection sewers -Force	-	250,000	-	-	-	250,000
361 Collection Sewers - Gravity (AIAC)	-	66,000	66,000	66,000	66,000	264,000
362 Special Collecting Structures	-	-	-	-	-	-
363 Services to customers / Residential	-	-	-	-	-	-
363 Services to customers - None Residential	-	-	-	-	-	-
364 Flow measuring Devices	-	25,000	-	-	-	25,000
365 Flow measuring Installations	-	-	-	-	-	-
366 Reuse Services	-	-	-	-	-	-
367 Reuse Meters and Meter Install	-	-	-	-	-	-
370 Receiving Wells	-	-	-	-	-	-
371 Pumping Equipment	-	75,000	-	-	-	75,000
374 Reuse Distribution Reservoirs	-	-	-	-	-	-
375 Reuse Transmission and Distrib	-	-	-	-	-	-
380 Treatment and Disposal Equipment	-	2,525,000	-	-	-	2,525,000
381 Plant Sewers	-	-	-	-	-	-
382 Outfall Sewer Lines	-	-	-	-	-	-
389 Other Plant and Miscellaneous	-	-	-	-	-	-
390 Office Furniture and Equipment	-	-	-	-	-	-
391 Transportation Equipment	-	-	-	-	-	-
392 Stores Equipment	-	-	-	-	-	-
393 Tools, Shop and Garage Equipme	-	-	-	-	-	-
394 Laboratory Equipment	-	10,000	-	-	-	10,000
395 Power Operated Equipment	-	-	-	-	-	-
396 Communication Equipment	-	-	-	-	-	-
397 Miscellaneous Equipment	-	30,000	-	-	-	30,000
398 Other Tangible Plant	-	-	-	-	-	-
<b>Totals</b>	<b>225,000</b>	<b>3,066,000</b>	<b>66,000</b>	<b>66,000</b>	<b>66,000</b>	<b>3,489,000</b>

CS-4  
PROFORMA UTILITY PLANT IN SERVICE (SEWER)  
 FIRST YEAR  
 Coronado Utilities, Inc.

PLANT	ORIGINAL COST	ACCUM DEPRC	ORIG. COST LESS DEPREC.
Organization	\$ 150,000	\$ -	\$ 150,000
Franchises	-	-	-
Land and Land Rights	75,000	-	75,000
Structures and Improvements	-	-	-
Power Generation Equipment	-	-	-
Collection sewers -Force	-	-	-
Collection Sewers - Gravity (AIAC)	-	-	-
Special Collecting Structures	-	-	-
Services to customers / Residential	-	-	-
Services to customers - None Residential	-	-	-
Flow measuring Devices	-	-	-
Flow measuring Installations	-	-	-
Reuse Services	-	-	-
Reuse Meters and Meter Install	-	-	-
Receiving Wells	-	-	-
Pumping Equipment	-	-	-
Reuse Distribution Reservoirs	-	-	-
Reuse Transmission and Distrib	-	-	-
Treatment and Disposal Equipment	-	-	-
Plant Sewers	-	-	-
Outfall Sewer Lines	-	-	-
Other Plant and Miscellaneous	-	-	-
Office Furniture and Equipment	-	-	-
Transportation Equipment	-	-	-
Stores Equipment	-	-	-
Tools, Shop and Garage Equipme	-	-	-
Laboratory Equipment	-	-	-
Power Operated Equipment	-	-	-
Communication Equipment	-	-	-
Miscellaneous Equipment	-	-	-
Other Tangible Plant	-	-	-
<b>TOTAL PLANT IN SERVICE</b>	<b>\$ 225,000</b>	<b>\$ -</b>	<b>\$ 225,000</b>

CS-4  
PROFORMA UTILITY PLANT IN SERVICE (SEWER)  
 SECOND YEAR  
 Coronado Utilities, Inc.

PLANT	ORIGINAL COST	ACCUM DEPRC	ORIG. COST LESS DEPREC.
Organization	\$ 150,000	\$ -	\$ 150,000
Franchises	-	-	-
Land and Land Rights	75,000	-	75,000
Structures and Improvements	85,000	1,415	83,585
Power Generation Equipment	-	-	-
Collection sewers -Force	250,000	2,500	247,500
Collection Sewers - Gravity (AIAC)	66,000	660	65,340
Special Collecting Structures	-	-	-
Services to customers / Residential	-	-	-
Services to customers - None Residential	-	-	-
Flow measuring Devices	25,000	1,250	23,750
Flow measuring Installations	-	-	-
Reuse Services	-	-	-
Reuse Meters and Meter Install	-	-	-
Receiving Wells	-	-	-
Pumping Equipment	75,000	4,688	70,313
Reuse Distribution Reservoirs	-	-	-
Reuse Transmission and Distrib	-	-	-
Treatment and Disposal Equipment	2,525,000	63,125	2,461,875
Plant Sewers	-	-	-
Outfall Sewer Lines	-	-	-
Other Plant and Miscellaneous	-	-	-
Office Furniture and Equipment	-	-	-
Transportation Equipment	-	-	-
Stores Equipment	-	-	-
Tools, Shop and Garage Equipme	-	-	-
Laboratory Equipment	10,000	500	9,500
Power Operated Equipment	-	-	-
Communication Equipment	-	-	-
Miscellaneous Equipment	30,000	1,500	28,500
Other Tangible Plant	-	-	-
<b>Totals</b>	<b>\$ 3,291,000</b>	<b>\$ 75,638</b>	<b>\$ 3,215,362</b>

CS-4  
PROFORMA UTILITY PLANT IN SERVICE (SEWER)  
 THIRD YEAR  
 Coronado Utilities, Inc.

PLANT	ORIGINAL COST	ACCUM DEPRC	ORIG. COST LESS DEPREC.
Organization	\$ 150,000	\$ -	\$ 150,000
Franchises	0	-	-
Land and Land Rights	75,000	-	75,000
Structures and Improvements	85,000	4,246	80,754
Power Generation Equipment	-	-	-
Collection sewers -Force	250,000	7,500	242,500
Collection Sewers - Gravity (AIAC)	132,000	2,640	129,360
Special Collecting Structures	-	-	-
Services to customers / Residential	-	-	-
Services to customers - None Residential	-	-	-
Flow measuring Devices	25,000	3,750	21,250
Flow measuring Installations	-	-	-
Reuse Services	-	-	-
Reuse Meters and Meter Install	-	-	-
Receiving Wells	-	-	-
Pumping Equipment	75,000	14,063	60,938
Reuse Distribution Reservoirs	-	-	-
Reuse Transmission and Distrib	-	-	-
Treatment and Disposal Equipment	2,525,000	189,375	2,335,625
Plant Sewers	-	-	-
Outfall Sewer Lines	-	-	-
Other Plant and Miscellaneous	-	-	-
Office Furniture and Equipment	-	-	-
Transportation Equipment	-	-	-
Stores Equipment	-	-	-
Tools, Shop and Garage Equipme	-	-	-
Laboratory Equipment	10,000	1,500	8,500
Power Operated Equipment	-	-	-
Communication Equipment	-	-	-
Miscellaneous Equipment	30,000	4,500	25,500
Other Tangible Plant	-	-	-
<b>TOTAL PLANT IN SERVICE</b>	<b>\$ 3,357,000</b>	<b>\$ 227,573</b>	<b>\$ 3,129,427</b>

CS-4  
PROFORMA UTILITY PLANT IN SERVICE (SEWER)  
 FOURTH YEAR  
 Coronado Utilities, Inc.

PLANT	ORIGINAL COST	ACCUM DEPRC	ORIG. COST LESS DEPREC.
Organization	\$ 150,000	\$ -	\$ 150,000
Franchises	0	-	-
Land and Land Rights	75,000	-	75,000
Structures and Improvements	85,000	7,076	77,924
Power Generation Equipment	-	-	-
Collection sewers -Force	250,000	12,500	237,500
Collection Sewers - Gravity (AIAC)	198,000	5,940	192,060
Special Collecting Structures	-	-	-
Services to customers / Residential	-	-	-
Services to customers - None Residential	-	-	-
Flow measuring Devices	25,000	6,250	18,750
Flow measuring Installations	-	-	-
Reuse Services	-	-	-
Reuse Meters and Meter Install	-	-	-
Receiving Wells	-	-	-
Pumping Equipment	75,000	23,438	51,563
Reuse Distribution Reservoirs	-	-	-
Reuse Transmission and Distrib	-	-	-
Treatment and Disposal Equipment	2,525,000	315,625	2,209,375
Plant Sewers	-	-	-
Outfall Sewer Lines	-	-	-
Other Plant and Miscellaneous	-	-	-
Office Furniture and Equipment	-	-	-
Transportation Equipment	-	-	-
Stores Equipment	-	-	-
Tools, Shop and Garage Equipme	-	-	-
Laboratory Equipment	10,000	2,500	7,500
Power Operated Equipment	-	-	-
Communication Equipment	-	-	-
Miscellaneous Equipment	30,000	7,500	22,500
Other Tangible Plant	-	-	-
<b>TOTAL PLANT IN SERVICE</b>	<b>\$ 3,423,000</b>	<b>\$ 380,829</b>	<b>\$ 3,042,171</b>

CS-4  
PROFORMA UTILITY PLANT IN SERVICE (SEWER)  
 FIFTH YEAR  
**Coronado Utilities, Inc.**

PLANT	ORIGINAL COST	ACCUM DEPRC	ORIG. COST LESS DEPREC.
Organization	\$ 150,000	\$ -	\$ 150,000
Franchises	0	-	-
Land and Land Rights	75,000	-	75,000
Structures and Improvements	85,000	9,907	75,093
Power Generation Equipment	-	-	-
Collection sewers -Force	250,000	17,500	232,500
Collection Sewers - Gravity (AIAC)	264,000	10,560	253,440
Special Collecting Structures	-	-	-
Services to customers / Residential	-	-	-
Services to customers - None Residential	-	-	-
Flow measuring Devices	25,000	8,750	16,250
Flow measuring Installations	-	-	-
Reuse Services	-	-	-
Reuse Meters and Meter Install	-	-	-
Receiving Wells	-	-	-
Pumping Equipment	75,000	32,813	42,188
Reuse Distribution Reservoirs	-	-	-
Reuse Transmission and Distrib	-	-	-
Treatment and Disposal Equipment	2,525,000	441,875	2,083,125
Plant Sewers	-	-	-
Outfall Sewer Lines	-	-	-
Other Plant and Miscellaneous	-	-	-
Office Furniture and Equipment	-	-	-
Transportation Equipment	-	-	-
Stores Equipment	-	-	-
Tools, Shop and Garage Equipme	-	-	-
Laboratory Equipment	10,000	3,500	6,500
Power Operated Equipment	-	-	-
Communication Equipment	-	-	-
Miscellaneous Equipment	30,000	10,500	19,500
Other Tangible Plant	-	-	-
<b>TOTAL PLANT IN SERVICE</b>	<b>\$ 3,489,000</b>	<b>\$ 535,404</b>	<b>\$ 2,953,596</b>

# **EXHIBIT**

**5**

CW-4  
ATTACHMENT "D"  
SEWER TARIFF SCHEDULE

UTILITY: Coronado Utilities, Inc.

RATES AND CHARGES

FLAT RATE

RESIDENTIAL AND COMMERCIAL/ MONTHLY CHARGES

\$	42.00	PER MONTH
\$	120.00	PER MONTH
\$	10,184.00	PER MONTH
\$	800.00	PER MONTH

BASED ON WATER USAGE

RESIDENTIAL MINIMUM	<u>N/A</u>	FOR	<u>N/A</u>	GALLONS
EXCESS OF MINIMUM	<u>N/A</u>	FOR	<u>N/A</u>	GALLONS
COMMERCIAL MINIMUM	<u>N/A</u>	FOR	<u>N/A</u>	GALLONS
EXCESS OF MINIMUM	<u>N/A</u>	FOR	<u>N/A</u>	GALLONS

EFFLUENT SALES: (if applicable)

\$	48.88	PER ACRE FOOT (FOR GENERAL IRRIGATION)
\$	0.15	PER 1,000 GALLONS (FOR GENERAL IRRIGATION)

SERVICE LINE CONNECTION CHARGE N/A

SERVICE CHARGES:

1.	ESTABLISHMENT (R14-2-603.D.1)	\$ 25.00	
2.	RECONNECTION / DELINQUENT (R14-2-603.D.1)	\$ 50.00	
3.	DEPOSIT (R14-2-603.B.3)	_____	per rule
4.	DEPOSIT INTEREST (R14-2-608.E.1)	_____	% per rule
5.	RE-ESTABLISHMENT WITHIN 12 MONTHS (R14-2-608.F.1)	(a)	
6.	NSF CHECK (R14-2-608.E.1)	\$ 25.00	
7.	LATE PAYMENT PENALTY (R14-2-608.F.1)	1.50%	Per Month
	DEFERRED PAYMENT PLAN	1.50%	Per Month

All Revenue related taxes will be charged customers.

Main Extension and additional facilities agreements, @ COST (b)  
RULES AND REGULATIONS

\* The Company has adopted the Rules and Regulation established by the Commission as the basis for its operating procedures. Arizona Corporation Commission Rules will be controlling of Company procedures, unless specific Commission Orders provide otherwise.

(a) Monthly minimum times months off the system

(b) Cost to include parts, labor, overhead, and all applicable taxes, including income tax.

Coronado Utilities, Inc.  
REPRESENTATIVE RATE SCHEDULE

Exhibit  
Schedule 4  
Page 1  
Witness: Williamson

PROPOSED RATES

LINE  
NO.

MONTHLY  
CHARGE

1 METER SIZE

2

3 MONTHLY MINIMUMS:

4 Residential

\$ 42.00

5 Commercial

\$ 120.00

6 Mobile Home Park \$ 19.00 Per Space

\$ 10,184.00

7 School

\$ 800.00

8

9

10

11

12

13 Treated Effluent per Acre Foot (For General Irrigation)

\$ 48.88

14 Treated Effluent per 1,000 Gallons (For General Irrigation)

\$ 0.15

15

16

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Coronado Utilities, Inc.  
REPRESENTATIVE RATE SCHEDULE

Exhibit  
Schedule 4  
Page 1  
Witness: Williamson

PROPOSED RATES

LINE  
NO.

MONTHLY  
CHARGE

1	<u>METER SIZE</u>	
2		
3	MONTHLY MINIMUMS:	
4	Residential	\$ 42.00
5	Commerical	\$ 120.00
6	Mobile Home Park \$ 19.00 Per Space	\$ 10,184.00
7	School	\$ 800.00
8		
9		
10		
11		
12		
13	Treated Effluent per Acre Foot (For General Irrigation)	\$ 195.51
14	Treated Effluent per 1,000 Gallons (For General Irrigation)	\$ 0.60
15		
16		
17		
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19		
20		
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**Coronado Utilities, Inc.**  
**REPRESENTATIVE RATE SCHEDULES**  
**STATEMENT OF CHARGES**

Exhibit  
Schedule 5  
Page 1  
Witness: Williamson

LINE  
NO.

		Proposed
1	A. Establishment of Service	\$ 25.00
2	Establishment of Service, after hours	\$ 50.00
3	(Collected only if customer is sewer customer only)	
4	B. Re-establishment of Service	see (a)
5		
6	C. Reconnection of service	\$ 30.00
7		
8	D. After hours service charge, per hour	\$ 50.00
9		
10	E. Minimum Deposit	Two Times Monthly Bill
11		
12	F. Charge for NSF Check	\$ 25.00
13		
14	G. Late payment charge for delinquent bills	1.50% Per Month
15		
16	H. Deferred Payment Finance Charge	1.50% Per Month
17		
18	I. Main Extension and additional facilities agreements,	@ COST (b)
19		
20		
21	J. All Revenue related taxes will be charged customers.	
22		
23		
24		
25		
26		

**RULES AND REGULATIONS**

\* The Company has adopted the Rules and Regulation established by the Commission as the basis for its operating procedures. Arizona Corporation Commission Rules will be controlling of Company procedures, unless specific Commission Orders provide otherwise.

(a) Monthly minimum times months off the system

(b) Cost to include parts, labor, overhead, and all applicable taxes, including income tax.

35  
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37  
38

# **EXHIBIT**

**6**

<b>ENGINEERS OPINION OF COST FOR SAN MANUEL WWTP</b>
--

**PROJECT NAME:** SAN MANUEL WWTP  
**PROJECT NUMBER:** 1203-2004  
**LOCATION:** SAN MANUEL, ARIZONA  
**DATE:** 5-Feb-05  
**PREPARED BY:** DED  
**REVIEWED BY:** JWC

**TREATMENT FACILITY EQUIPMENT**

	COST	COST (PPG)
HEADWORKS:	\$71,276	\$0.20
PUMPING SYSTEMS:	\$158,236	\$0.45
PROCESS TANKS:	\$1,046,290	\$2.99
AERATION SYSTEM:	\$80,024	\$0.23
DISINFECTION:	\$83,000	\$0.24
FACILITY INSTALLATION & CONSTRUCTION:	\$500,000	\$1.43
<b>TREATMENT FACILITY EQUIPMENT SUB-TOTAL</b>	<b>\$1,938,826</b>	<b>\$5.54</b>

**SITE & ANCILLIARY EQUIPMENT**

	COST	COST (PPG)
SITE BUILDING:	\$240,000	\$0.69
STAND-BY POWER SYSTEM:	\$98,000	\$0.28
OPERATIONS & LAB EQUIPMENT:	\$35,000	\$0.10
STORAGE POND REHABILITATION:	\$100,000	
EFFLUENT PUMPING & FORCE MAIN:	\$250,000	\$0.71
<b>SITE &amp; ANCILLIARY EQUIPMENT SUB-TOTAL</b>	<b>\$723,000</b>	<b>\$2.07</b>
<b>FACILITY SUB-TOTAL</b>	<b>\$2,661,826</b>	<b>\$7.61</b>
CONTINGENCY:	\$338,174	\$0.97
<b>FACILITY TOTAL</b>	<b>\$3,000,000</b>	<b>\$8.57</b>

Coronado Utilities, Inc.  
Plant  
Projected Years

Exhibit  
Schedule 1a  
Page 1  
Witness: Williamson

Line No.	Account	Description	Depreciation Rate	Estimate	Engineering Permits, Etc.	Gross Amt	Additions	Depreciation*	Balance	AD Balance
1		With Treatment Plant Depreciation computed on Percent of Capacity								
2										
3										
4	351	Organization	0.00%	150,000		150,000	150,000		150,000	
5	352	Franchises	0.00%							
6	353	Land and Land Rights	0.00%	75,000		75,000	75,000		75,000	
7	354	Structures and Improvements	3.33%							
8	355	Power Generation Equipment	5.00%							
9	360	Collection sewers - Force	2.00%							
10	361	Collection Sewers - Gravity	2.00%							
11	362	Special Collecting Structures	2.00%							
12	363	Services to customers - Residential	2.00%							
13	363	Services to customers - None Residential	2.00%							
14	364	Flow measuring Devices	10.00%							
15	365	Flow measuring Installations	10.00%							
16	366	Reuse Services	2.00%							
17	367	Reuse Meters and Meter Install	8.33%							
18	370	Receiving Wells	3.33%							
19	371	Pumping Equipment	12.50%							
20	374	Reuse Distribution Reservoirs	2.50%							
21	375	Reuse Transmission and Distrib	2.50%							
22	380	Treatment and Disposal Equipment*	5.00%							
23	381	Plant Sewers	5.00%							
24	382	Outfall Sewer Lines	3.33%							
25	389	Other Plant and Miscellaneous	6.67%							
26	390	Office Furniture and Equipment	6.67%							
27	391	Transportation Equipment	20.00%							
28	392	Stores Equipment	4.00%							
29	393	Tools, Shop and Garage Equipme	5.00%							
30	394	Laboratory Equipment	10.00%							
31	395	Power Operated Equipment	5.00%							
32	396	Communication Equipment	10.00%							
33	397	Miscellaneous Equipment	10.00%							
34	398	Other Tangible Plant	5.00%							
35										
36										
37										
38										
39										
40		Totals		\$ 225,000	\$ -	\$ 225,000	\$ 225,000	\$ -	\$ 225,000	\$ -
41										
42		Composite Rate with 1/2 yr convention								
43										
44										
45		Licenses, Taxes, Permits			\$ -					
46		Engineering and Contingency			\$ -					
47		Total			\$ -					
48										
49		*Capacity Adjustment to Depreciation Expense -								
50		380 Treatment Plant (Requires an Accounting Order)			1,294					
51		Customer connections			1,564					
52		Capacity (in customer connections)			0.8274		0.0000			
53		Capacity Factor								

#DIV/0!





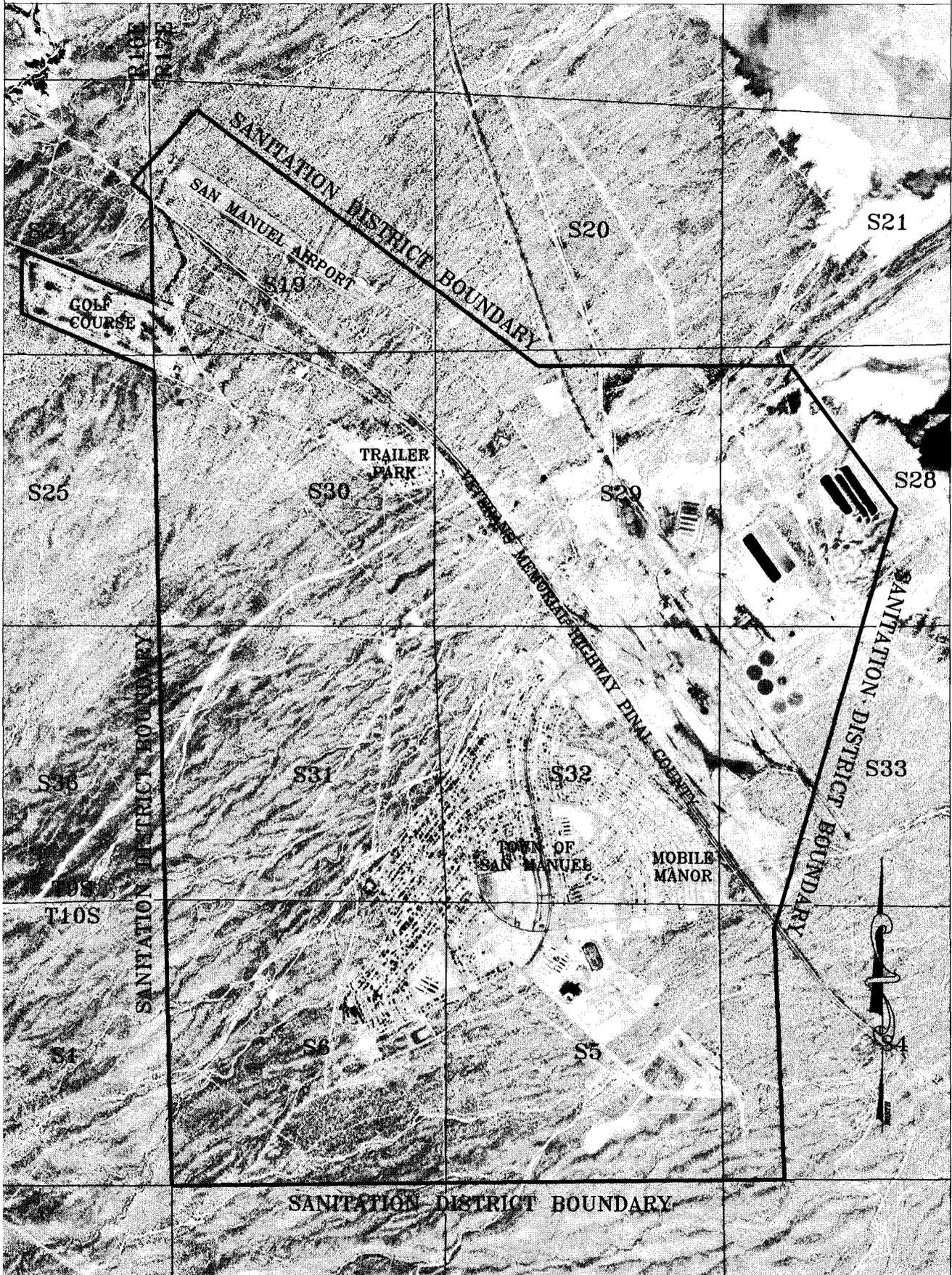




# **EXHIBIT**

**7**

# Sanitation District Boundaries San Manuel, Arizona



**LEGEND**  
 — SANITATION DISTRICT BOUNDARY  
 5104.38 ACRES

PREPARED FOR:  
 PIVOTAL UTILITY MANAGEMENT  
 6426 E. TENNESSEE AVE  
 SUITE 547  
 DENVER, CO 80224

WIENER AND ASSOCIATES P.O.  
 BOX 1058 ORACLE, AZ 85623  
 (520) 898-9072  
 DRAWING DATE: 2-04-05  
 SCALE: NTS/FOR PRESENTATION ONLY

SANITATION DISTRICT BOUNDARIES  
 San Manuel, Arizona

SHEET NO.	
1 OF 1	REV 0
DRAWING: 04-83	

## Legal Description of The San Manuel Sewer District

That part of Section 24 and 25, Township 9 South, Range 16 East, and Sections 19,20,29,30,31 and 32, Township 9 South, Range 19 East, and Sections 4,5 and 6, Township 10 South, Range 17 East, of the Gila and Salt River Base and Meridian, Pinal County, Arizona, described as follows;

Commencing at the southeast corner of the above mentioned Section 5, Township 10 South, Range 17 East, said point being the point of beginning of the land to be described, (The basis of bearing is the south line of the southeast quarter of Section 5, Township 10 South, Range 17 East being north 89 degrees 57 minutes 50 seconds West).

THENCE North 89 degrees 57 minutes 50 seconds West for a distance of 2650.23 feet along the south line of said Section 5 to the south quarter corner being a found GLO brass cap dated 1924.

THENCE North 89 degrees 56 minutes 30 seconds West for a distance of 2645.27 feet along the south line of said Section 5 to the southwest corner being a found GLO brass cap dated 1924.

THENCE South 89 degrees 40 minutes 58 seconds West for a distance of 2638.79 feet along the south line of said Section 6 to the south quarter corner being a found GLO brass cap dated 1924

THENCE South 89 degrees 37 minutes 16 seconds West for a distance of 2632.37 feet along the south line of said Section 6 to a found GLO stone.

THENCE North 00 degrees 05 minutes 24 seconds West for a distance of 5538.15 feet along the west line of said Section 6 to a found brass cap, being the intersection of Township 9 and 10 South, and Range 16 and 17 East.

THENCE North 00 degrees 54 minutes 22 seconds West for a distance of 5291.81 feet along the west line of said Section 31 to the northwest corner being a found 5/8 inch rebar.

THENCE North 00 degrees 56 minutes 15 seconds West for a distance of 2662.69 feet along the west line of said Section 30 to the west quarter corner being a found 3/4 inch open pipe.

THENCE North 00 degrees 59 minutes 01 seconds West for a distance of 2322.17 feet along the west line of said Section 30 to a found aluminum cap LS 4154 on the south line of the San Manuel Golf Course.

THENCE North 66 degrees 21 minutes 49 seconds West for a distance of 801.59 feet along the south line of the San Manuel Golf Course to a found aluminum cap LS 4154.

THENCE North 66 degrees 22 minutes 41 seconds West for a distance of 1887.00 feet along the south line of the San Manuel Golf Course to a found Aluminum cap LS 4154.

THENCE North 00 degrees 00 minutes 54 seconds East for a distance of 1201.47 feet along the west line of the San Manuel Golf Course to a found Aluminum cap LS 4154 on the south right-of-way line of highway 76.

THENCE South 67 degrees 01 minutes 57 seconds West for a distance of 1855.09 feet along the south right-of-way line of highway 76 to a ADOT monument  $\frac{3}{4}$  inch steel pin at station 119+00.

THENCE South 67 degrees 02 minutes 16 seconds West for a distance of 797.52 feet along the south right-of-way line of highway 76 to a found aluminum cap LS 4154 at station 111+03.30.

THENCE North 00 degrees 56 minutes 02 seconds West for a distance of 1658.80 feet along the west line of said Section 19 to the west quarter corner being a found  $\frac{3}{4}$  inch rebar.

THENCE North 00 degrees 56 minutes 39 seconds West for a distance of 556.81 feet along the west line of said Section 19 to a point on the south line of San Manuel Airport lease.

THENCE North 56 degrees 09 minutes 30 seconds West for a distance of 47.31 feet along the south line of San Manuel Airport lease to a set  $\frac{1}{2}$  inch rebar.

THENCE along a curve to the left having a radius of 11535.71 feet, and an arc length of 1216.19 feet subtended by a cord of North 52 degrees 00 minutes 23 seconds West for a distance of 1215.61 feet along the south line of the San Manuel airport lease to a set  $\frac{1}{2}$  inch rebar.

THENCE North 33 degrees 50 minutes 30 seconds East for a distance of 1156.98 feet to a point.

THENCE South 56 degrees 09 minutes 30 seconds East for a distance of 9318.47 feet to a point on the north fence line of the Commodity Warehouse.

THENCE North 90 degrees 00 minutes 00 seconds East for a distance of 4960.97 feet to a point.

THENCE South 33 degrees 57 minutes 38 seconds East for a distance of 3504.07 feet to a point on a fence corner.

THENCE South 15 degrees 52 minutes 36 seconds West for a distance of 8527.39 feet to a set  $\frac{1}{2}$  inch rebar on the west right-of-way line of Highway 76.

THENCE South 00 degrees 00 minutes 00 seconds East for a distance of 4680.74 feet to a point on the south line of said Section 4.

THENCE South 89 degrees 54 minutes 01 seconds West for a distance of 1173.24 feet along the south line of said Section 4, to the point of beginning of the land described.

Together with and subject to covenants, easements, and restrictions of record.

Said property contains 5104.38 acres more or less.

# **EXHIBIT**

**8**

PROFORMA INCOME STATEMENT (SEWER)  
**Coronado Utilities, Inc.**

	<u>Year One</u>	<u>Year Two</u>	<u>Year Three</u>	<u>Year Four</u>	<u>Year Five</u>
Residential Revenues	\$ 630,504	\$ 647,124	\$ 679,026	\$ 713,952	\$ 750,240
Commercial Revenues	57,600	57,600	57,600	57,600	57,600
Mobile Home Park	122,208	122,208	122,208	122,208	122,208
Revenues from School	9,600	9,600	9,600	9,600	9,600
Effluent Revenues	15,822	16,117	16,738	17,418	18,128
Establishment Fees	-	1,500	1,650	1,800	1,800
<b>Total estimated Revenues</b>	<b>\$ 835,734</b>	<b>\$ 854,149</b>	<b>\$ 886,822</b>	<b>\$ 922,578</b>	<b>\$ 959,576</b>
<b>OPERATING EXPENSES:</b>					
Salaries and Wages	\$ 55,166	\$ 91,000	\$ 91,000	\$ 91,000	\$ 91,000
Purchased Sewer Treatment Sludge Removal Expense					
Purchased Power for Pumping Equipment	24,000	80,640	80,640	80,640	80,640
Sewage Treatment and Testing					
Repairs and Maintenance	4,000	4,000	4,000	4,000	4,000
Office Supplies Expense					
Outside Services	116,460	121,860	127,800	134,280	140,760
Rents					
Transportation Expense					
General Insurance	5,000	5,000	5,000	5,000	5,000
Depreciation	-	75,638	151,936	153,256	154,576
Health and Life Insurance					
Income Taxes	103,601	24,158	103	6,227	13,355
Property Tax	50,896	51,270	52,307	54,070	56,210
Taxes Other than Property & Income					
Miscellaneous Expenses	132,361	166,140	169,407	172,983	176,683
<b>Total Operating Expense</b>	<b>\$ 491,485</b>	<b>\$ 619,706</b>	<b>\$ 682,193</b>	<b>\$ 701,455</b>	<b>\$ 722,223</b>
<b>OPERATING INCOME OR LOSS</b>	<b>\$ 344,249</b>	<b>\$ 234,443</b>	<b>\$ 204,629</b>	<b>\$ 221,123</b>	<b>\$ 237,353</b>
<b>OTHER INCOME / EXPENSE</b>					
Interest Income	(51,863)	(50,350)	(5,760)	(6,063)	(6,867)
Other Income					
Other Expense					
Interest Expenses	221,447	215,922	210,000	203,653	196,850
<b>TOTAL OTHER INCOME / EXPENSE</b>	<b>169,584</b>	<b>165,572</b>	<b>204,240</b>	<b>197,590</b>	<b>189,983</b>
<b>NET INCOME (LOSS)</b>	<b>\$ 174,665</b>	<b>\$ 68,871</b>	<b>\$ 389</b>	<b>\$ 23,533</b>	<b>\$ 47,370</b>

CCNEW.DOC 04/00

## Miscellaneous Expenses Consists of:

Bad Debt Expense	\$ 83,573	\$ 85,415	\$ 88,682	\$ 92,258	\$ 95,958
Chemical Expense	6,388	38,325	38,325	38,325	38,325
Outside Services (Legal, Eng. & Acctg.)	5,000	5,000	5,000	5,000	5,000
Communications Expense	2,400	2,400	2,400	2,400	2,400
Director's Fees	30,000	30,000	30,000	30,000	30,000
Miscellaneous Expenses	5,000	5,000	5,000	5,000	5,000
<b>Total Miscellaneous Expenses</b>	<b>\$ 132,361</b>	<b>\$ 166,140</b>	<b>\$ 169,407</b>	<b>\$ 172,983</b>	<b>\$ 176,683</b>

Coronado Utilities, Inc.  
 Projected Statements of Income  
 For the 12 Months Ended

Exhibit  
 Schedule 2  
 Page 1  
 Witness: Williamson

Line No.		Year				
		1	2	3	4	5
1	Residential Revenues	\$ 630,504	\$ 647,124	\$ 679,026	\$ 713,952	\$ 750,240
2	Commercial Revenues	57,600	57,600	57,600	57,600	57,600
3	Mobile Home Park	122,208	122,208	122,208	122,208	122,208
4	Revenues from School	9,600	9,600	9,600	9,600	9,600
5	Effluent Revenues	15,822	16,117	16,738	17,418	18,128
6	Establishment Fees	-	1,500	1,650	1,800	1,800
7	<b>Total estimated Revenues</b>	<b>\$ 835,734</b>	<b>\$ 854,149</b>	<b>\$ 886,822</b>	<b>\$ 922,578</b>	<b>\$ 959,576</b>
8	<b>Expenses</b>					
9	Plant Operators	52,133	72,800	72,800	72,800	72,800
10	Employee Benefits at 25%	3,033	18,200	18,200	18,200	18,200
11	Bad Debt Expense	83,573	85,415	88,682	92,258	95,958
12	Purchased Power	24,000	80,640	80,640	80,640	80,640
13	Chemical Expense	6,388	38,325	38,325	38,325	38,325
14	Outside Services (Legal, Eng. & Acctg.)	5,000	5,000	5,000	5,000	5,000
15	Repairs & Maintenance	4,000	4,000	4,000	4,000	4,000
16	Outside Services (Management & Billings)	116,460	121,860	127,800	134,280	140,760
17	Insurance Expense	5,000	5,000	5,000	5,000	5,000
18	Communications Expense	2,400	2,400	2,400	2,400	2,400
19	Director's Fees	30,000	30,000	30,000	30,000	30,000
20	Depreciation net of Amortization of CIAC from schedules 1a and 1e	-	75,638	151,936	153,256	154,576
21	Miscellaneous Expenses	5,000	5,000	5,000	5,000	5,000
22	Income Taxes	103,601	24,158	103	6,227	13,355
23	Property Taxes (d)	50,896	51,270	52,307	54,070	56,210
24	<b>Total Operating Expenses</b>	<b>\$ 491,485</b>	<b>\$ 619,706</b>	<b>\$ 682,193</b>	<b>\$ 701,455</b>	<b>\$ 722,223</b>
25	<b>Operating Income (loss)</b>	<b>\$ 344,249</b>	<b>\$ 234,443</b>	<b>\$ 204,629</b>	<b>\$ 221,123</b>	<b>\$ 237,353</b>
26	Less:					
27	Interest Expense (Income) on Work. Capital (c)	(51,863)	(50,350)	(5,760)	(6,063)	(6,867)
28	Interest Expense Long-term Debt	221,447	215,922	210,000	203,653	196,850
29	<b>Net Income</b>	<b>\$ 174,665</b>	<b>\$ 68,871</b>	<b>\$ 389</b>	<b>\$ 23,533</b>	<b>\$ 47,370</b>
30						
31						
32						
33	(a) Per customer per month					
34	(b) Assumes an Annual Inflation of:					
35	(c) If Applicable			3.00%		
36	(d) See Property Tax Calculation, Schedule 2b					
37						
38						

**Coronado Utilities, Inc.**  
**Projected Balance Sheets**  
**For the Years Ended**

Exhibit  
Schedule 1  
Page 1  
Witness: **Williamson**

Line No.	Beginning of Year	Label	Year					
			1	2	3	4	5	
1								
2								
3		<b>Assets</b>						
4								
5		Utility Plant	150,000 (a)	225,000	3,291,000	3,357,000	3,423,000	3,489,000
6		Accumulated Depreciation	- (b)	-	(75,638)	(227,573)	(380,829)	(535,404)
7								
8		Cash	142,363	3,165,151	191,498	192,523	211,665	246,136
9								
10		Bond Discount		216,500	216,500	216,500	216,500	216,500
11		<b>Total Assets</b>	<u>\$ 292,363</u>	<u>\$ 3,606,651</u>	<u>\$ 3,623,360</u>	<u>\$ 3,538,450</u>	<u>\$ 3,470,336</u>	<u>\$ 3,416,232</u>
12								
13		<b>Equity and Liabilities</b>						
14								
15		<b>Equity</b>						
16								
17		Common Stock	292,363 (d)	292,363	292,363	292,363	292,363	292,363
18		Paid in Capital						
19		Retained Earnings		174,665	243,536	243,925	267,458	314,828
20		<b>Total Equity</b>	<u>\$ 292,363</u>	<u>\$ 467,028</u>	<u>\$ 535,899</u>	<u>\$ 536,288</u>	<u>\$ 559,821</u>	<u>\$ 607,191</u>
21								
22		<b>Liabilities &amp; Deferred Credits</b>						
23		Long-Term Debt Payable, with Discount	(f)	3,139,623	3,057,221	2,968,898	2,874,227	2,772,753
24								
25		Advances in Aid of Construction			-	-	-	-
26		Contributions in Aid of Construction			-	-	-	-
27		Construction	(g)	-	-	-	-	-
28		Less: Amortization	(h)	-	-	-	-	-
29		Customer Deposits	(i)	30,240	30,240	33,264	36,288	36,288
30		<b>Total Liabilities and Deferred Credits</b>		<u>\$ -</u>	<u>\$ 3,139,623</u>	<u>\$ 3,087,461</u>	<u>\$ 3,002,162</u>	<u>\$ 2,910,515</u>
31								
32								
33		<b>Total Equity &amp; Liab.</b>		<u>\$ 292,363</u>	<u>\$ 3,606,651</u>	<u>\$ 3,623,360</u>	<u>\$ 3,538,450</u>	<u>\$ 3,470,336</u>
34								
35		(a) Plant Additions (See Schedule 1a)						
36		(b) Depreciation Computations (See Schedule 1a)						
37		(c) Change in cash (Please Schedule 3)						
38		(d) Common Stock issuance. (See Schedule 1b)						
39		(e) Profit or loss from operations (See Schedule 2)						
40		(f) Bonds Payable less repayments						
41		(g) Contributions in Aid of Construction (See Schedule 1e)						
42		(h) Amortization of Contributions in Aid of Construction, if applicable (See Schedule 1e)						
43		(i) Customer Deposits or Security deposits (2 times average bill)						

Coronado Utilities, Inc.  
 Projected Cash Flows  
 For the Years Ended

Exhibit  
 Schedule 3  
 Page 1  
 Witness: Williamson

Line No.	1	2	3	4	5
<b>Cash from Operations</b>					
3	292,363	3,165,151	191,498	192,523	211,665
4					
5	174,665	68,871	389	23,533	47,370
6		75,638	151,936	153,256	154,576
7					
8					
9					
10	174,665	144,509	152,325	176,788	201,946
<b>Total Cash From Operations</b>					
<b>Cash from Financing</b>					
11					
12					
13					
14	3,000,000				
15					
16					
17					
18					
19		30,240	33,264	36,288	36,288
20					
21					
22	3,000,000	30,240	33,264	36,288	36,288
23					
24					
25					
26					
27					
28					
29					
30	76,877	82,402	88,323	94,671	101,474
31			30,240	33,264	36,288
32	225,000	3,066,000	66,000	66,000	66,000
33					
34	301,877	3,148,402	184,563	193,935	203,762
35					
36	3,165,151	191,498	192,523	211,665	246,136
37					
38					
39					
40	1,728,757	1,678,324	192,010	202,094	228,900
41	51,863	50,350	5,760	6,063	6,867

Interest Income: Assuming Earning Equal to Inflation Factor on Average Cash Balance

40	\$ 1,728,757	\$ 1,678,324	\$ 192,010	\$ 202,094	\$ 228,900
41	\$ 51,863	\$ 50,350	\$ 5,760	\$ 6,063	\$ 6,867

**Coronado Utilities, Inc.**  
**Schedule for the Computation of Projected**  
**Property Taxes for the Years Ended**

Exhibit  
 Schedule 2b  
 Page 1  
 Witness: Williamson  
 Revised

Line No.		Year				
		1	2	3	4	5
1						
2						
3	Revenue Component 1	\$ 835,734	\$ 835,734	\$ 835,734	\$ 854,149	\$ 886,82
4	Revenue Component 2	835,734	835,734	854,149	886,822	922,57
5	Revenue Component 3	835,734	854,149	886,822	922,578	959,57
6						
7	Average of 3 years of revenue, multiplied by 2	\$ 1,671,467	\$ 1,683,744	\$ 1,717,803	\$ 1,775,700	\$ 1,845,98
8	Add:					
9	Construction Work in Progress at 10%	0	0	0	0	0
10	Deduct:					
11	Book Value of Transportation Equipment	0	0	0	0	0
12						
13	Full Cash Value	\$ 1,671,467	\$ 1,683,744	\$ 1,717,803	\$ 1,775,700	\$ 1,845,98
14						
15						
16	Times Assessment Ratio	25.00%	25.00%	25.00%	25.00%	25.00
17						
18	Assessed Value	\$ 417,867	\$ 420,936	\$ 429,451	\$ 443,925	\$ 461,49
19						
20	Property Tax Rate (State Wide Rate Used)	12.18%	12.18%	12.18%	12.18%	12.18
21						
22	Computed Property Tax	\$ 50,896	\$ 51,270	\$ 52,307	\$ 54,070	\$ 56,21
23						
24						
25						
26						

**Coronado Utilities, Inc.  
Loan from Bond Issuance**

Exhibit  
Schedule 1f  
Page 1  
Witness: Williamson

Principle \$ 3,216,500.00  
No. of Months 240  
Annual Interest Rate 6.960%  
Monthly Interest Rate 0.5800%  
Annuity Factor 129.38  
Monthly Payment \$ 24,860.32

Line No.	Payment No.	Principle	Interest	Monthly Payment	Balance	Annual Interest Expense	Annual Principal Repayment	Annual Total Payment
1					\$ 3,216,500.00			
2	1	\$ 6,204.62	\$ 18,655.70	\$ 24,860.32	3,210,295.38			
3	2	6,240.61	18,619.71	24,860.32	3,204,054.77			
4	3	6,276.80	18,583.52	24,860.32	3,197,777.97			
5	4	6,313.21	18,547.11	24,860.32	3,191,464.76			
6	5	6,349.82	18,510.50	24,860.32	3,185,114.94			
7	6	6,386.65	18,473.67	24,860.32	3,178,728.28			
8	7	6,423.70	18,436.62	24,860.32	3,172,304.59			
9	8	6,460.95	18,399.37	24,860.32	3,165,843.63			
10	9	6,498.43	18,361.89	24,860.32	3,159,345.21			
11	10	6,536.12	18,324.20	24,860.32	3,152,809.09			
12	11	6,574.03	18,286.29	24,860.32	3,146,235.06			
13	12	6,612.16	18,248.16	24,860.32	3,139,622.90	\$ 221,446.75	\$ 76,877.10	\$298,323.84
14	13	6,650.51	18,209.81	24,860.32	3,132,972.40			
15	14	6,689.08	18,171.24	24,860.32	3,126,283.32			
16	15	6,727.88	18,132.44	24,860.32	3,119,555.44			
17	16	6,766.90	18,093.42	24,860.32	3,112,788.54			
18	17	6,806.15	18,054.17	24,860.32	3,105,982.39			
19	18	6,845.62	18,014.70	24,860.32	3,099,136.77			
20	19	6,885.33	17,974.99	24,860.32	3,092,251.44			
21	20	6,925.26	17,935.06	24,860.32	3,085,326.18			
22	21	6,965.43	17,894.89	24,860.32	3,078,360.75			
23	22	7,005.83	17,854.49	24,860.32	3,071,354.92			
24	23	7,046.46	17,813.86	24,860.32	3,064,308.46			
25	24	7,087.33	17,772.99	24,860.32	3,057,221.13	\$ 215,922.07	\$ 82,401.77	\$298,323.84
26	25	7,128.44	17,731.88	24,860.32	3,050,092.69			
27	26	7,169.78	17,690.54	24,860.32	3,042,922.91			
28	27	7,211.37	17,648.95	24,860.32	3,035,711.54			
29	28	7,253.19	17,607.13	24,860.32	3,028,458.35			
30	29	7,295.26	17,565.06	24,860.32	3,021,163.09			
31	30	7,337.57	17,522.75	24,860.32	3,013,825.51			
32	31	7,380.13	17,480.19	24,860.32	3,006,445.38			
33	32	7,422.94	17,437.38	24,860.32	2,999,022.44			
34	33	7,465.99	17,394.33	24,860.32	2,991,556.45			
35	34	7,509.29	17,351.03	24,860.32	2,984,047.16			
36	35	7,552.85	17,307.47	24,860.32	2,976,494.31			
37	36	7,596.65	17,263.67	24,860.32	2,968,897.66	\$ 210,000.37	\$ 88,323.47	\$298,323.84
38	37	7,640.71	17,219.61	24,860.32	2,961,256.95			
39	38	7,685.03	17,175.29	24,860.32	2,953,571.92			
40	39	7,729.60	17,130.72	24,860.32	2,945,842.31			
41	40	7,774.43	17,085.89	24,860.32	2,938,067.88			
42	41	7,819.53	17,040.79	24,860.32	2,930,248.35			
43	42	7,864.88	16,995.44	24,860.32	2,922,383.47			
44	43	7,910.50	16,949.82	24,860.32	2,914,472.98			
45	44	7,956.38	16,903.94	24,860.32	2,906,516.60			
46	45	8,002.52	16,857.80	24,860.32	2,898,514.08			
47	46	8,048.94	16,811.38	24,860.32	2,890,465.14			
48	47	8,095.62	16,764.70	24,860.32	2,882,369.51			
49	48	8,142.58	16,717.74	24,860.32	2,874,226.94	\$ 203,653.12	\$ 94,670.72	\$298,323.84
50	49	8,189.80	16,670.52	24,860.32	2,866,037.13			
51	50	8,237.30	16,623.02	24,860.32	2,857,799.83			
52	51	8,285.08	16,575.24	24,860.32	2,849,514.75			
53	52	8,333.13	16,527.19	24,860.32	2,841,181.61			
54	53	8,381.47	16,478.85	24,860.32	2,832,800.14			
55	54	8,430.08	16,430.24	24,860.32	2,824,370.07			
56	55	8,478.97	16,381.35	24,860.32	2,815,891.09			
57	56	8,528.15	16,332.17	24,860.32	2,807,362.94			
58	57	8,577.62	16,282.71	24,860.32	2,798,785.32			
59	58	8,627.37	16,232.95	24,860.32	2,790,157.96			
60	59	8,677.40	16,182.92	24,860.32	2,781,480.55			
61	60	8,727.73	16,132.59	24,860.32	2,772,752.82	\$ 196,849.73	\$ 101,474.12	\$298,323.84

1st 18 Months  
of Principal  
Payments

\$ 117,363.23

**Coronado Utilities, Inc.**  
Debt Service Coverage

Exhibit  
Schedule XX  
Page 1  
Witness: Williamson

<u>Line No.</u>		<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
1	Operating Income	\$ 344,249	\$ 234,443	\$ 204,629	\$ 221,123	\$ 237,353
2	Depreciation	-	75,638	151,936	153,256	154,576
3	Income Taxes	103,601	24,158	103	6,227	13,355
4						
5	Available for Debt Service	\$ 447,850	\$ 334,239	\$ 356,668	\$ 380,605	\$ 405,283
6						
7	Annual Payments on Debt	298,324	298,324	298,324	298,324	298,324
8						
9	Debt Service (Line 6 divided by					
10	Line 8)	1.501	1.120	1.196	1.276	1.359
11						
12						
13						
14						
15	Required Debt Service equals	1.25 to 1				

# **EXHIBIT**

**9**



Janet Napolitano  
Governor

# ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

1110 West Washington Street • Phoenix, Arizona 85007  
(602) 771-2300 • www.adeq.gov



Stephen A. Owens  
Director

January 3, 2005

Jason Williamson, Managing Member  
Pivotal Utility Management, L.L.C.  
6825 E. Tennessee Ave. – Suite 547  
Denver, CO 80224

Re: Request for 208 Determination of proposed San Manuel infrastructure project

Dear Mr. Williamson:

This correspondence is in response to a request dated December 12, 2004 by Pivotal Utility Management, L.L.C. (Pivotal), to determine whether the construction and operation of a replacement wastewater treatment facility (WWTF) in the town of San Manuel, Arizona requires a 208 amendment. Pivotal has proposed to build a new wastewater facility to replace the existing BHP Copper, Inc. plant.

According to the Central Arizona Association of Governments' (CAAG) 208 Areawide Water Quality Management (WQM) Plan Update 1994, pages 221-222, there are six conditions that may require a plan amendment, several of which are relevant to the Pivotal plan to build a replacement WWTF. The conditions pertinent to the San Manuel infrastructure project and the Department's findings are as follows:

1) If a new or renewed Arizona Pollutant Discharge Elimination System (AZPDES) permit is required.

**Finding:** The proposed facility will not require an AZPDES permit since there will be no surface water discharge from the WWTP.

2) When changes occur in the service area, planning area boundaries and/or population figures used in the WWTF plans or WQM Plan.

**Finding:** As stated in your letter, the new plant will supply the same existing service area as that of the existing BHP Copper, Inc. plant. However, Pivotal, a private utility, will need a Certificate of Convenience and Necessity (CC&N) from the Arizona Corporation Commission. While a complete metes and bounds description is not available at this time, you have agreed to forward the legal description of the service area as soon as it is available.

3) If proposed construction and permitting of a WWTF, regardless of the funding source, is inconsistent with the existing WQM Plan.

Northern Regional Office  
1515 East Cedar Avenue • Suite F • Flagstaff, AZ 86004  
(928) 779-0313

Southern Regional Office  
400 West Congress Street • Suite 433 • Tucson, AZ 85701  
(520) 628-6733

Jason Williamson, Managing Member

Page 2

January 6, 2005

**Finding:** This is a replacement facility for one already in service and there are no proposed changes in service area or method of disposal.

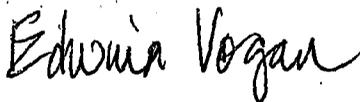
4) If construction activities or expansion of existing WWTFs result in changes in effluent discharge method and/or quality of the effluent discharged.

**Finding:** The capacity of the new plant will be between 0.35 and 0.50 million gallons per day (MGD), and therefore will not increase the flow beyond the current capacity of the existing permitted plant (0.75 MGD).

Based on the information provided by Pivotal, ADEQ, in consultation with CAAG, will not require a 208 amendment for the replacement facility. If in the future the plant should require an AZPDES permit, or increase in the service area, or flow capacity, a 208 amendment will be required. Pivotal will notify ADEQ in the event that there has been a change in any of the above conditions. This information has been provided to CAAG who will note these changes in their 208 WQM Plan.

If you have any questions about ADEQ's determination or the information provided in this letter, please contact me at [emv@azdeq.gov](mailto:emv@azdeq.gov) or at 602-771-4606.

Sincerely,



Edwina Vogan  
Regional Water Quality Planning Coordinator  
Watershed, Assessment and Grants Unit

cc: Susan Craig, Unit Supervisor, Watershed, Assessment and Grants  
Linda Taunt, Section Manager, Hydrologic Support and Assessment  
Robert Wilson, CAAG Director of Environmental Planning