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JOHNSON UTILITIES COMPANY

5230 East Shea Boulevard * Scottsdale, Arizona 85251

PH: (480) 998-3300; FAX: (480) 483-7908

Ms. Colleen Ryan
Docket Control
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

June 29, 2005

Arizona Corporation Commission
DOCKETED

JUN 29 2005

DOCKETED BY 

RE: Johnson Utilities Company:
Docket No. WS-02987A-04-0889

Dear Ms. Ryan:

In reference to the above mentioned docket, Johnson Utilities Company submits the utility agreements between Milagro Investors, LLC and Johnson Utilities for the Milagro subdivision. The Master Utility Agreement is attached hereto as Attachment No. 1 and the Wastewater Line Extension Agreement is attached hereto as Attachment No. 2.

Once the CC&N has been granted, copies of the agreements will be submitted to the Utilities Division in accordance with the rules.

Should you have any questions or concerns, please do not hesitate to contact me. Thank you for your time and consideration in this matter.

Sincerely,

Daniel Hodges
Johnson Utilities, LLC

Enclosure

Cc: Brian Tompsett, Johnson Utilities (w/out enc.)
Earnest Johnson, Director Utilities Division (w/enc.)
Steve Olea, Assistant Director (w/enc.)
Brian Bozzo, Compliance Manager (w/enc.)
Christopher Kempley, Chief Counsel (w/enc.)
Judge Nodes, Hearing Division (W/ENC)
Richard Sallquist, Sallquist & Drummond
Docket Control (w/enc.)

AZ CORP COMMISSION
DOCUMENT CONTROL

2005 JUN 29 P 12:50

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ATTACHMENT 1

MASTER UTILITY AGREEMENT

FOR

WASTEWATER FACILITIES

BETWEEN

**JOHNSON UTILITIES, L.L.C.
dba JOHNSON UTILITIES COMPANY**

AND

MILAGRO INVESTORS, LLC

FOR

**MILAGRO
PINAL COUNTY, ARIZONA**

January 24, 2005

MASTER UTILITY AGREEMENT

THIS MASTER UTILITY AGREEMENT, entered into this 26th day of January, 2005, by and between JOHNSON UTILITIES, L.L.C., an Arizona limited liability company and a public service corporation duly approved as such by the Arizona Corporation Commission dba JOHNSON UTILITIES COMPANY, or its successors and assigns (hereinafter referred to as the "Company") and MILAGRO INVESTORS, LLC., an Arizona limited liability company, or its successors or assigns, (hereinafter referred to as "Developer"), regarding the provision of wastewater utility services to MILAGRO, a master planned community in Pinal County, Arizona (hereinafter referred to as the "Development").

RECITALS:

WHEREAS, the Company owns and operates a public service corporation and holds a Certificate of Convenience and Necessity ("CC&N") authorizing it to provide the public with wastewater utility services; and

WHEREAS, Developer is the owner of the Development and is building residential improvements within the Development, and desires the Company to provide wastewater service to the Development, which is more fully described on Attachment A hereto, and

WHEREAS, the Development is not currently located within the wastewater CC&N of the Company; and

WHEREAS, Company is willing to file an application with the Arizona Corporation Commission ("Commission") requesting authorization to extend its wastewater CC&N to include the Development, and is willing to extend service upon approval of such application; and

WHEREAS, Developer will construct a total of approximately 140 residential units within the Development; and

WHEREAS, the Developer has obtained certain zoning authorizations and approvals for the master plan on a community wide basis; and

WHEREAS, for the Developer to obtain: (1) the required approvals for the Development, and (2) necessary financing for development of and improvements within the Development, it is necessary for the Developer to have certain assurances regarding the provision of wastewater services and facilities within the entire Development at this time; and

WHEREAS, in connection with it providing utility services, the Company is authorized and required to assess Off-Site Facilities Hook-Up Fees ("HUFs") for wastewater service pursuant to Tariffs authorized by the Commission for the Company; and

WHEREAS, in areas such as the Development, in which the Company does not presently own and operate wastewater collection systems, the Commission's Rules and Regulations contemplate the Company and the Developer entering into a Line Extension Agreement(s), attached hereto as Attachment B, as more particularly described below; and

WHEREAS, the Company requires certain onsite facilities which will enable the Company to provide wastewater service to the Development; and

WHEREAS, in consideration of the Company's extending wastewater service to the Development as contemplated herein and in Line Extension Agreement concerning the Development, Developer is willing to convey fee simple title to the onsite facilities.

NOW, THEREFORE, it is mutually covenanted and agreed by and between the parties hereto as follows:

1. **Advance Payment of HUF's.** To permit the Company to provide wastewater treatment plant capacity, lift-stations, transmission mains, an effluent delivery and disposal systems; sludge disposal facilities necessary to meet the Company's and applicable regulatory agencies requirements to serve the Development, Developer agrees to pay HUFs due under this Agreement for 140 residential lots in the amount set forth on Attachment C, attached hereto and incorporated by reference. For this Development, a payment of \$140,000.00 for wastewater facilities, based on \$1,000.00 per 4" sewer lateral for each residential lot as set forth in the Company's Tariff, is due no later than the date of final plat approval of the Development by Pinal County. Failure to pay the HUFs will relieve the Company of its obligation to provide wastewater service, or any assurances of such services, until the entire HUF payment has been paid. Any applicable Gross-Up Tax associated with the HUFs shall be assessed and refunded under the Line Extension Agreement(s) described below. All funds collected by the Company as HUFs shall be deposited into a separate interest bearing trust account and used for the purpose of paying for the costs of off-site facilities for the benefit of the Development, including repayment of loans obtained for the installation of off-site facilities. The HUFs shall be utilized in accordance with the Company's tariff, which will directly benefit the Company's system, of which the Development will be a part. Notwithstanding any provision of this Agreement, nor by the payment of any HUF hereunder, shall the Developer obtain any right, title or interest in, or claim to service from, any specific plant of the Company.

2. **Other HUFs.** The HUFs for any additional residential units or other parcels in the Development, if applicable, shall be computed as stated above and paid to the Company as set forth above.

3. **Development Schedule.** Commencing September 1 of the year first following the Company's service to the first customer within the Development, Developer shall provide the Company with a schedule indicating, to the best of Developer's knowledge, the projected development schedule for the Development, including the numbers and types of residential units expected to be constructed, any commercial and industrial development, the phasing of the projects within the Development, and the estimated number of units constructed annually until build-out is reached. Developer shall thereafter provide the Company updated projections on or before September 1 of each succeeding calendar year through build-out.

4. **Notice to the Company.** The Company will supply wastewater service to the Development that meets all applicable Arizona Department of Environmental Quality ("ADEQ") and Pinal County requirements concerning domestic wastewater service, as provided for in this Agreement as and when requested, provided that Developer has paid the HUFs for the Advance

Units in accordance with this Agreement, and further provided Developer has given no less than six (6) months written notice of that required service to the Company for all phases subsequent to the first initial installment (it being understood by Developer and Company that the Developer executing a Line Extension Agreement for such phase shall constitute notice). Said services shall be provided to the Development at service standards no less than the standards provided to other utility customers within Pinal County. Upon payment of the HUFs by Developer for each phase or subdivision, the Company shall undertake such advance planning, process and obtain all government approvals and permits, and undertake construction so as to timely serve potential customers as and when service to such customers is requested and needed. Developer may, upon reasonable request, review the Company's Master Plan for serving the Development.

5. Developer Provided Information and Data. Upon execution of this Agreement, Developer shall provide to the Company in a digital format (i.e., AutoCad, MicroStation or .dxf format if requested by Company), all available data for the Development, including ALTA surveys, topographical, aerials, tentative plats, engineering plans, and final plats. Updated data will be provided to the Company on a timely basis, but excluding any confidential or proprietary data as reasonably determined by Developer. Developer does not warrant or represent the accuracy or completeness of any data or other information provided by Developer, and Developer shall have no liability to Company in connection therewith.

6. Additional Assurances. All facilities constructed under this Agreement will be operated and maintained in accordance with good utility practice, including but not limited to the use of qualified operators and engineers. All services shall be subject to the Provisions of Service regulations set forth in Commission rules and the applicable ADEQ Regulations. The election to build a new plant or expand any existing wastewater facilities to meet the demands of the Development or the Company's system, and the decision as to which wastewater facilities shall be used to serve the Development, shall be at the sole discretion of the Company. The Company represents and warrants to Developer that sufficient capacity does and shall exist in the Company's existing and future mains, wastewater treatment facilities, and any and all appurtenant pipes, lift stations, or other facilities, whether or not owned by the Company, such that all sewage and wastewater of the Development shall be fully treated and the effluent therefrom shall be fully and properly disposed of in accordance with all pertinent County, State and Federal regulations and requirements without further obligation of Developer. The Company shall be responsible for obtaining and maintaining all required permits for the WWTP including the Aquifer Protection Permit (the "APP") and shall use its best efforts to obtain the APP within nine (9) months of the execution of this Agreement. The Company represents that it has and will maintain sufficient capacity to satisfy the requirements of ADEQ and other governmental entities for approval of the residential subdivisions in the Development.

7. Line Extension Agreement. For each phase or subdivision within the Development, Developer shall enter into a separate Line Extension Agreement for wastewater service in accordance with the Commission's Rules and Regulations, and the Company's Tariff. Under the terms of those agreements, the Developer shall construct, or cause to be constructed, all on-site facilities consistent with the Company's engineering requirements and specifications, and thereafter, convey all right, title and interest in and under those facilities, and any easements if necessary, to the Company. The Company shall annually refund to Developer five percent (5%) of the total gross annual revenue from wastewater sales to each bona fide customer whose

service is connected to main lines covered by the line extension agreements, less all applicable sales, transaction and privilege taxes and regulatory assessments and surcharges, until such time as the entire advance has been fully refunded.

8. **Indemnification by Company.** The Company shall indemnify and hold the Developer harmless for, from and against any and all claims, demands, causes of action, or liability of any kind by and third party, including but not limited to judgments, determinations, fines, assessments, damages (whether compensatory, punitive, exemplary, or of any other nature), and attorneys' fees and expert witness fees, arising directly or indirectly out of the Company's performance or non-performance of its obligations hereunder.

9. **Assignment.** Developer may assign its rights under this Agreement to any third party, or partially assign its rights under this Agreement with respect to any part of the Development sold by Developer to a third party. A copy of the written Assignment and Assumption shall be delivered to the Company as provided in Paragraph 10. Upon full or partial assignment of this Agreement to a third party and the Company's approval of that assignment which approval shall not be unreasonably withheld, the Developer shall be relieved of all liabilities under this Agreement.

10. **Notice.** Except as otherwise required by law, any notice required or permitted under this Agreement must be in writing and must be given by either: (i) personal delivery; (ii) United States certified mail, return receipt requested, with all postage prepaid and properly addressed; (iii) any reputable, private overnight delivery service with delivery charges prepaid and proof of receipt; or (iv) by facsimile machine or telecopier. Notice sent by any of the foregoing methods must be addressed or sent to the party to whom notice is to be given, as the case may be, at the addresses or telecopy numbers set forth below:

Owner: MILAGRO INVESTORS, LLC
3760 Highland Dr. #505
Salt Lake City, UT 84106
Attn: Linda Wong Luther
Tel: (801) 792-7776

Company: JOHNSON UTILITIES, LLC
5230 East Shea Boulevard
Scottsdale, Arizona 85254
Attn: George H. Johnson
Tel: (480) 998-3300
Facsimile: (480) 483-7908

Any party may change its address or telecopy number for purposes of delivery and receipt of notices by advising the other parties in writing of the change. Notice provided by the methods described above will be deemed to be received: (i) on the day of delivery, if personally delivered; (ii) on the date which is three (3) days after deposit in the United States mail, if given by certified mail; (iii) on the next regular business day after deposit with an express delivery service for overnight, "same day", or "next day" delivery service; or (iv) on the date of transmittal, if given on a regular business day and during regular business hours by facsimile

machine or telecopy. No notice will be effective unless provided by one of the methods described above.

11. **Severability.** In the event that any provision of this Agreement or portion thereof is held by the Commission, or an arbitrator(s) or court of competent jurisdiction to be unenforceable or invalid, the validity and enforceability of the enforceable portion of any such provision and of the remaining provisions shall not be adversely affected.

12. **Alternative Dispute Resolution.** The parties hereto agree that each will use good faith efforts to resolve, through negotiation, disputes arising hereunder without resorting to mediation, arbitration or litigation. However, to the extent that a dispute arises which cannot be resolve through negotiation, and the dispute does not fall within the jurisdiction of the Commission, the parties agree to the following dispute resolution mechanisms:

a. **Mediation.** The parties shall first attempt, in good faith, to resolve the dispute through mediation administered by the American Arbitration Association under its Commercial Mediation Rules.

b. **Arbitration.** If a dispute cannot be resolved as set forth above, the matter shall be submitted to binding arbitration in accordance with the rules of commercial arbitration ("Rules") then followed by the American Arbitration Association ("AAA"), Phoenix, Arizona. If the claim in dispute does not exceed \$20,000, then there shall be a single arbitrator selected by mutual agreement of the parties, and in the absence of agreement, appointed according to the Rules. If the claim in dispute exceeds \$20,000, the arbitration panel shall consist of three (3) members, one of who shall be selected by Developer, one of who shall be selected by Company, and the third, who shall serve as chairman, whom shall be selected by the AAA. The arbitrator or arbitrators must be knowledgeable in the subject matter of the dispute. The costs and fees of the arbitrator(s) shall be divided equally between the parties. Any decision of the arbitrator(s) shall be supported by written findings of fact and conclusions of law, and shall be based upon sound engineering practice. The decision of the arbitrator(s) shall be final, subject to the exceptions outlined in the Arizona Uniform Arbitration Act, A.R.S. Section 12-1502, et seq., and judgment may be entered upon the same; provided, however, that any decision of the arbitrator(s) may be appealed to the Superior Court of Maricopa County if it is based on an erroneous interpretation, application or disregard of the law applicable to the dispute. The arbitrator(s) shall control discovery in the proceedings and shall award the prevailing party its reasonable attorneys' fees and costs.

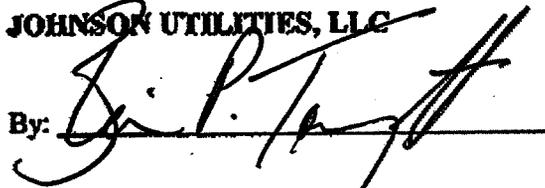
13. **Parties Cooperation.** The Company shall take all reasonable actions requested by Developer to assist Developer with Final Plat, ADEQ and Arizona Department of Real Estate approvals, and Developer shall take all reasonable actions requested by the Company to assist the Company in obtaining all regulatory approvals necessary to serve the Development. Each party shall reimburse the other for all reasonable costs it incurs in providing such assistance.

14. **Time.** Time is of the essence of this Agreement.

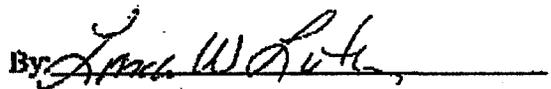
15. **Headings.** Headings in this Agreement are included for the convenience of the parties and shall not be construed as substantive provisions of the Agreement or as an indication of the intent of the parties with respect to any part hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

JOHNSON UTILITIES, LLC

By: 
Its: EXECUTIVE VICE/PRESIDENT
"Company"

MILAGRO INVESTORS, LLC

By: 
Its: Managing Member
"Developer"

ATTACHMENTS

- A. Legal Description of Development
- B. Wastewater Line Extension Agreement
- C. Hook-up Fee Schedule

1630264.1/51239.009

ATTACHMENT A

Legal Description
Parcel 6

Parcel 6, Sun Valley Farms Unit II, Section 17, Township 2 South, Range 8 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona, according to Book 1 of Surveys, Page 33, Records of Pinal County, Arizona, further described as follows:

Commencing at a Brass Cap in Handhole at the Southeast corner of Section 17, Township 2 South, Range 8 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona from which a 1½" Iron Pipe at the Northeast Corner of said Section 17 bears North 00 degrees 01 minutes 11 seconds West, a distance of 5283.14 feet;

Thence North 00 degrees 01 minutes 11 seconds West, a distance of 2227.25 feet to the South line of the aforementioned Parcel 6;

Thence South 89 degrees 44 minutes 01 seconds West, along the South line a distance of 1309.97 feet;

Thence North 00 degrees 01 minutes 17 seconds West, along the West line Parcel 6 a distance of 1241.85 feet;

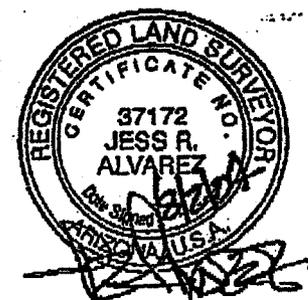
Thence North 89 degrees 54 minutes 23 seconds East, along the North line Parcel 6 a distance of 1310.00 feet; to the East line of the Northeast Quarter of said Section 17;

Thence South 00 degrees 01 minutes 11 seconds East, along the East line of the Northeast Quarter of said Section 17, a distance of 823.87 feet to the East Quarter Corner;

Thence continuing South 00 degrees 01 minutes 11 seconds East, along the East line of the Southeast Quarter of said Section 17, a distance of 414.03 feet; to the POINT OF BEGINNING;

Encompassing 1,624,209 square feet or 37.287 acres, more or less.

Any modification to or omission from this description completely absolves the surveyor from any liability for this description.



ATTACHMENT C

OFF-SITE WASTEWATER FACILITIES HOOK-UP FEES

<u>Service Lateral Size</u>	<u>Fee</u>	<u>Number</u>	<u>Extended</u>
4"	\$1,000.00	140	
6"	\$2,000.00		
8 or greater	\$4,000.00		
Total Hook-up Fees		\$140,000.00	

**** Payment of Hook-up Fees due on or before final plat approval of Milagro Development by Pinal County.**

ATTACHMENT 2

ON-SITE LINE EXTENSION AGREEMENT
FOR
DEVELOPER INSTALLED WASTEWATER FACILITIES

BETWEEN

JOHNSON UTILITIES L.L.C.
dba JOHNSON UTILITIES COMPANY

AND

MILAGRO INVESTORS, LLC

FOR

MILAGRO
PINAL COUNTY, ARIZONA

February 23, 2005

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**ON-SITE LINE EXTENSION AGREEMENT
FOR DEVELOPER INSTALLED WASTEWATER FACILITIES**

THIS LINE EXTENSION AGREEMENT, entered into this ___ day of February, 2005, by and between JOHNSON UTILITIES, L.L.C., an Arizona limited liability company and a public service corporation duly approved as such by the Arizona Corporation Commission dba JOHNSON UTILITIES COMPANY or its successors and assigns (hereinafter referred to as the "Company"), and MILAGRO INVESTORS, LLC, an Arizona limited liability company (hereinafter referred to as "Developer"), for the construction of utility infrastructure necessary to provide wastewater utility service to MILAGRO in Pinal County, Arizona as shown in Attachment 1 (hereinafter called the "Development").

WITNESSETH:

WHEREAS, Company represents and warrants to Developer that it owns and operates a public service corporation and holds a Certificate of Convenience and Necessity ("CC&N") and other permits and governmental approvals required authorizing it to serve the public with wastewater service; and

WHEREAS, Developer is developing the Development outside the certificated area of the Company, which Development is more fully described in Attachment 1 hereto and incorporated herein by reference for all purposes; and

WHEREAS, Company is willing to file an application with the Arizona Corporation Commission ("Commission") requesting authorization to extend its wastewater CC&N to include the Development, and is willing to extend service upon approval of such application; and

WHEREAS, if Company's wastewater CC&N extension request is not approved by the Commission prior to Development needing wastewater service, Company is willing to enter into an Interim Bulk Wastewater Treatment Agreement with a homeowners association authorized to provide wastewater service to its members; and

WHEREAS, the Company and Developer have entered into a Master Utility Agreement dated January 26, 2005 (hereinafter the "Master Utility Agreement") pertaining to the advance of certain Off-Site Facilities Hook-Up Fees; and

WHEREAS, the Company currently owns and operates a permitted wastewater treatment facility with a developed treatment capacity of 1.6 million gallons of treatment capacity per day which is capable of serving the Development, with additional phased capacity and ultimate build-out treatment capacity of 3 million gallons per day; and

WHEREAS, the Company does not presently have wastewater collection lines on the Development sufficient to serve the Development; and

WHEREAS, under such circumstances the Commission's Rules and Regulations permit the Company to require an Advance In Aid Of Construction to provide such facilities, and

WHEREAS, unless otherwise provided in this Agreement, the defined terms herein shall have the same meaning as set forth in the Commission Rules and Regulations.

NOW, THEREFORE, it is mutually covenanted and agreed by and between the parties hereto as follows:

I. UTILITY PLANT ADDITIONS; COST; PAYMENT; HOOK-UP FEES; AND OTHER CHARGES

A. Utility Plant Additions. Developer will construct, or cause to be constructed, the wastewater utility facilities described on **Attachment 2**, the cost of which is estimated in **Attachment 3**. For any subsequent phase or parcel within the Development, the Company and the Developer shall enter into a separate agreement in substantially the same form of this agreement.

B. Cost. The cost of construction of the subject facilities as more fully detailed in **Attachment 3**, attached hereto and incorporated herein by reference for all purposes, is estimated to be **\$156,821.11**, and represents an Advance in Aid of Construction. The construction cost Advance shall be adjusted to the amount of the invoices provided to the Company as required in Article VI. The Total Advance shall include applicable Off-Site Facilities Hook-Up Fees as hereinafter defined, and applicable income taxes as discussed in Article VII.C., herein.

C. Payment. Developer shall convey the facilities constructed under this Agreement pursuant to Articles III and VI. The payment of funds for the on-site facilities under this Agreement shall be deemed paid upon presentation of the documents pursuant to Article VI. Developer further agrees that upon execution of this Agreement, Developer will advance the applicable Off-Site Facilities Hook-Up Fees, Administrative, Engineering and Legal Costs, the Groundwater Replenishment District charges and income taxes, if any, as set forth in **Attachment 3** hereto.

D. Hook-Up Fees. In addition to all other costs and Gross-Up Taxes, if any, associated with the Development, Developer will be required to advance all Off-Site Facilities Hook-Up Fees (the "HUF's") as authorized by the Company's Tariffs and as set forth on **Attachment 3** if those HUF's have not been previously collected pursuant to the Master Utility Agreement with the Owner. All HUF's under this Agreement are non-refundable advances pursuant to the Company's approved Tariff. Any Gross-Up Tax associated with the Hook-Up Fee shall be refundable only as ordered by the Commission. Payment of the Off-Site Facilities Hook-Up Fee shall be made at the time of execution of the line extension agreement, unless previously advanced under the Master Utility Agreement.

E. Other Wastewater Utility Charges. At the time Developer requests that a water meter be set at a specific lot line, the party requesting that service will also be required to initiate wastewater service and shall be responsible for paying to the Company Service Line Connection Charges as authorized by the Company's Tariff.

II. SERVICE; COMPANY LIABILITY; APPLICABLE RATES

A. **Service.** The subject plant additions are being installed for the purpose of providing domestic wastewater service to the Development consistent with the Company's Rules and Regulations. Service will be provided in accordance with good utility practice.

B. **Company Liability.** Company's obligation for service shall be as set by the stricter of AAC R14-2-607(C) and (D), the controlling Master Utility Agreement, and this Agreement. Company shall comply with such regulations and any other applicable law.

C. **Applicable Rates.** It is mutually understood and agreed that the charges for wastewater services to said Development shall be at the applicable rates of the Company which are currently on file with the Commission. Those rates are subject to change from time to time upon application of the Company and as approved by the Commission.

III. PERMITS AND LICENSES; EASEMENTS; TITLE

A. **Permits and Licenses.** Developer agrees to obtain at its own expense all licenses, permits, certificates and approvals from public authorities which may be required for the construction of facilities under this Agreement and to comply with all municipal and other public laws, ordinances and requirements in regard to the same. The cost of obtaining such licenses, permits, certificates and approvals shall be added to the amount of the refundable Advance In Aid Of Construction. The Company shall be responsible for obtaining at its own expense all licenses, permits, certificates and approvals from public authorities which may be required for the installation and operation of the off-site wastewater treatment and collection facilities that will serve the Development and into which Developer constructed facilities shall intertie and connect. The Company shall be responsible for the construction and operation at its cost of all other wastewater treatment and collection facilities necessary to serve the Development.

B. **Easements.** In the event the facilities to be constructed pursuant to this Agreement are not located within a dedicated right-of-way or public utility easement, Developer shall record in the Pinal County Recorders Office, a perpetual easement for the construction, operation and maintenance of wastewater lines, mains and appurtenant facilities, in the name of the Company. Such recording shall be completed prior to the commencement of any construction.

C. **Title.** All materials installed, facilities constructed and equipment provided by Developer in connection with construction of facilities under this Agreement and the completed facilities as installed for which an Approval of Construction has been issued by ADEQ, and which facilities the Company has provided written acceptance, shall become the sole property of the Company, and full legal and equitable title thereto shall be then vested in the Company, free and clear of any liens, without the requirement of any written document of transfer to the Company or acceptance by the Company. Developer agrees to execute or cause to be executed promptly such documents as counsel for the Company may request to evidence good and merchantable title to said facilities free and clear of all liens. The Company shall confirm in writing the acceptance of title to the facilities.

IV. COMMENCEMENT OF PERFORMANCE AND TIME OF COMPLETION; PLANS AND SPECIFICATIONS; WORKMANSHIP, MATERIALS, EQUIPMENT AND MACHINERY; CONNECTING NEW FACILITIES; EXISTING UNDERGROUND FACILITIES RESPONSIBILITIES

A. Commencement of Performance and Time of Completion. It is estimated that the construction work to be performed under this Agreement will be completed in accordance with the schedule set forth in **Attachment 4**. Failure to meet those estimated dates shall in no way relieve Developer or Company of any of their obligations under this Agreement.

B. Plans and Specifications. All plans, specifications and construction shall be in accordance with good utility practices and in accordance with all rules, regulations and requirements of regulatory agencies having jurisdiction over wastewater service and facilities. All of said plans and specifications shall have all requisite approvals in writing of all necessary agencies and the approval in writing of Company before construction is commenced. The Company's review and comments shall be provided to Developer within 20 calendar days after submittal of the plans and specifications to the Company. The Company's approval of the plans and specifications shall be provided within 20 calendar days after final resubmittal of the plans and specifications incorporating the Company's comments. Plans and specifications as approved by the Company for wastewater facilities to be constructed hereunder will be incorporated herein by reference and made part of this Agreement when so approved.

C. Materials, Workmanship, Equipment and Machinery. All materials shall be new and both workmanship and materials shall be of good quality which meet the specifications and standards of the Company's "Design Guide and Standard Details" and the Company's "Backflow Protection Program", the Commission, ADEQ, the Arizona Department of Health Services and all local regulatory agencies. Any change to the Company's design manual shall be provided to Developer in writing. Developer shall assign to the Company the warranties of its contractor(s) for the facilities to be built pursuant to this Agreement or, if Developer constructs the facilities itself, Developer agrees to pay all costs for removing and replacing any defective part or parts upon the Company providing written notice to Developer within one year after such facilities being placed in regular operation.

D. Connecting New Facilities. The facilities constructed pursuant to the Agreement shall not be connected to the Company's existing facilities without the prior written approval of Company, which approval shall not be unreasonably withheld. Nor shall said facilities be operated prior to connection to the Company's facilities. Any such operation may result in either rejection of the facilities by the Company, or extraordinary charges to Developer to purge the subject facilities prior to acceptance.

E. Existing Underground Facilities Responsibility. As to all facilities constructed by Developer, or Developer's contractors and sub-contractors under this Agreement, Developer shall be responsible for complying with A.R.S. 40-360.21. et seq., and related local regulations, and will assume all costs and liabilities associated with (1) coordination with the owners or agents of all underground facilities within and adjacent to the Development regarding the location of such facilities, and (2) construction near, or damage to, such underground facilities.

Developer will conduct, or cause to be conducted, all excavation in a careful and prudent manner in its construction of all facilities subject to this Agreement.

F. **Additional Terms and Conditions.** Any additional terms and conditions applicable to this Agreement are contained in Attachment 5 attached hereto and incorporated herein.

V. INSPECTION, TESTING AND CORRECTION OF DEFECTS

Developer shall comply with the inspection and testing requirements of the Company for the facilities to be constructed hereunder; said requirements shall be reasonable and shall not cause Developer unwarranted delays in the ordinary course of construction. Developer shall promptly notify the Company when facilities under construction are ready for inspection and testing, and the Company shall inspect promptly after being so notified. The Company agrees to conduct any "open trench" inspection within 24 hours after being notified by Developer, that the trench is ready for inspection provided Developer gives the Company at least 3 working days advance written notice of the first inspection date, and the condition will be deemed automatically approved by Company if it fails to inspect the condition within such 24 hour period, provided the Company received such 3 working days advance written notice. If not inspected and approved by the Company, Developer shall provide within 10 working days its Engineer's Certificate of Approval that said facilities were installed in accordance with the approved plans and specifications.

For the purpose of inspection and testing of everything covered by this Agreement, or the work thereon, Developer shall give the Company and any inspectors appointed by it, free access to the working places and furnish every facility for properly inspecting such materials and work and shall furnish them with full information whenever requested as to the progress of the work on its various parts. The approval of work by any such inspector shall not relieve Developer from its obligation to comply in all respects with the instructions and specifications to make the work a finished job of its kind, completed in accordance with the plans and specifications approved by the Company and are satisfactory to the Company upon inspection and testing. Developer agrees that no inspection by or on behalf of the Company shall relieve Developer from its obligation to do and complete the work in accordance with this Agreement. If at any time before the final completion and acceptance of the work any part of the work is found to be defective or deficient in any way, or in any way fails to conform to this Agreement, the Company is hereby expressly authorized to reject or revoke acceptance of such defective or deficient work and require Developer to do over and makes good on such defective work. No costs incurred by Developer to do over or make good on defective or deficient work shall be included in the Amount of Advance pursuant to Article VIIA. The Company specifically reserves the right to withhold approval and to forbid connection of the facilities constructed pursuant to this Agreement to the Company's system unless such facilities have been constructed in accordance with the plans and specifications as approved by the Company and are satisfactory to the Company upon inspection and testing. Developer agrees that it will promptly correct all defects and deficiencies in construction, materials and workmanship upon request by the Company made subsequent to inspection by the Company.

VI. INVOICES; LIENS; "AS-BUILT" PLANS

A. **Invoices.** Developer agrees to furnish Company, within thirty (30) days after completion of construction, copies of Developer's, subcontractors', vendors' and all others' invoices for all engineering, surveying, and other services, materials installed, construction performed, equipment provided, materials purchased and all else done for construction pursuant to this Agreement at the actual cost thereof.

B. **Liens.** Developer acknowledges its duty to obtain lien waivers from all providing labor, materials or services hereunder. Developer hereby irrevocably waives any rights it may now have or which it may acquire during the course of this Agreement to record liens against the Company or its property. Developer shall also pay, satisfy and discharge, or bond over, all mechanics', materialmen's and other liens, and all claims, obligations and liabilities which may be asserted against the Company or its property by reason of Developer's construction of the Improvements to be constructed pursuant to this agreement.

C. **"As-Built" Plans.** Developer agrees to furnish the Company, within forty-five (45) days after completion of construction, "as-built" drawings showing the locations of all wastewater man holes, lift stations, mains, valves, and service connections to all structures served from facilities which are constructed pursuant to this Agreement. The drawings shall be certified by Developer's engineer of record and shall be provided on reproducible milar prints and in a digital format (i.e. AutoCad, MicroStation or .dxf format or as otherwise specified by the Company), all available data for the Development, including ALTA surveys, topographical, aerials, tentative plats, engineering plans, and final plats.

VII. AMOUNT OF ADVANCE; INCOME TAX; REFUND; TRANSFER

A. **Amount of Advance.** Based on the estimated cost contained in Article I.B, and subject to receiving invoices pursuant to Article VI.A, totaling at least the estimated cost, the Advance in Aid of Construction by Developer shall be **\$156,821.11**. Of the advance, **\$156,821.11** shall be refundable pursuant to this Article VII. If the actual construction cost is less than the estimated Advance, the Advance shall be the lesser amount, to the extent supported by invoices provided pursuant to Article VI.A. If the actual construction cost is more than the estimated Advance, the Advance shall be the greater amount, to the extent supported by invoices provided pursuant to Article VI.A.

B. **Time of Payment.** The payment of the funds under this Agreement shall be as follows:

1. Upon recorded final plat approval of Development, Developer shall advance any non-refundable HUF's payable under the Master Utility Agreement, which totals **\$140,000.00**.
2. All Administrative, Engineering and Legal Costs and Gross-Up Amount estimates, as set forth in **Attachment 3** as an Advance in Aid of Construction, totals **\$14,256.46**, and is due upon execution of this Agreement.

3. Upon completion of the construction to be performed by Developer, Developer shall provide the documentation required by Articles III, IV, V, and VI of this Agreement.

C. **Income Taxes.** In the event it is determined by Congress, the Internal Revenue Service, the Arizona Legislature or the Arizona Department of Revenue that all or a portion of the cost estimates in Attachment 3 is taxable income to the Company as of the date of this Agreement, or upon receipt of said costs or facilities by the Company, Developer will advance funds equal to the applicable income taxes for the Company's state and federal tax liability on all funds advanced pursuant to this Agreement. These funds shall be payable by Developer to the Company within 30 days of notification to Developer of the determination by the appropriate agency having jurisdiction. At the time the refunds are made pursuant to Article VII.D, the Company shall also refund that portion of the income taxes associated with that refund that were advanced under this Article VII.C. The income tax advance refunds shall be based on the annual refund amount under Article VII.D, and computed at the same rate the advance was originally assessed.

D. **Computation of Refund.** Refunds of the Advance In Aid of Construction shall be made to Developer by the Company on or before the 31st day of August of each year commencing with August of 2005, covering any refunds owing from wastewater revenues received during the preceding July 1 to June 30 period. Any additional charge made by the Company based on any sales, privilege tax, excise tax, or regulatory assessment, shall not be included in the computation. The annual refund shall equal five percent (5%) of the total gross annual revenue from wastewater sales to each bona fide customer in the Development until the refundable advance is fully refunded.

E. **Maximum Refund; Interest on Advance; Limitation on Revenues.** The refund to Developer under this Agreement shall in no event exceed the amount of the Advance, as adjusted. No interest shall be paid by the Company on any amounts advanced. The Company shall make no refunds from any revenue received from properties other than those located within the phase of the Development covered by this Agreement and contained within the area identified in Attachment 1 to this Agreement.

F. **Transfer of Facilities.** In the event of the sale, conveyance or transfer by the Company, pursuant to the approval of the Commission, of any portion of its wastewater system, including the facilities serving the Development and installed pursuant to the terms of this Agreement, the Company's obligation under Article VII.D hereto shall cease (except as to any payment which is then due) conditioned upon the transferee assuming, and agreeing to pay Developer, any sums becoming payable to Developer thereafter in accordance with the provisions of Article VII.D of this Agreement.

G. **Developer's Assignment and Company's Right of First Refusal.** Before selling or transferring the obligation of the Company under this Agreement to refund the Advance, Developer shall first give the Company, or its assigns, reasonable opportunity to purchase the same at the same price and upon the same terms as contained in any bona fide offer which Developer has received from any third person or persons which he may desire to accept. Notwithstanding the above, within thirty (30) days of Developer complying with the provisions

of Articles III and VI, Developer may assign this Agreement by providing the Company with name and address of the Assignee. Upon assignment, the Company shall make all refunds under the Agreement to the Assignee. This provision shall not apply to Developer's assigning or pledging the Agreement in connection with any lenders requirements.

VIII. RISK; LIABILITY; INSURANCE

A. **Risk.** Developer shall carry on all work required hereunder at its own risk until the same is fully completed and accepted by the Company and will, in case of accident, destruction or injury to the work or material before such final completion and acceptance, replace or repair forthwith the work of materials so injured, damaged or destroyed, in accordance with the original approved plans and specifications and to the satisfaction of the Company and at Developer's own expense.

B. **Liability.** Developer hereby assumes the entire responsibility and liability for injury or death of any person, or loss for damage to any property contributed to or caused by the active or passive negligence of Developer, its agents, servants, employees, or subcontractors incurred during the course of construction of the facilities provided for in this Agreement. Accordingly, DEVELOPER WILL INDEMNIFY AND HOLD HARMLESS the Company, its officers, directors, engineers, agents and employees from and against such claims or expenses, including penalties and assessments, to which they or any of them may be subjected by reason of such injury, death, loss, claim, penalty, assessment or damage, and in case any suit or other proceeding shall be brought on account thereof. Developer will assume the defense at Developer's own expense and will pay all judgments rendered therein.

C. **Insurance.** Developer agrees to produce and maintain all insurances described below, including insurance covering the obligations assumed by Developer under Paragraph A and Paragraph B hereof. Certificates of insurance shall be provided to the Company before the commencement of actual construction.

1. Workmens' compensation in the benefit amounts, and occupational disease disability insurance, as required by the laws and regulations of the state.
2. Commercial general liability insurance, with minimum combined single limits of \$1,000,000.00, and including operations and protective liability coverages. When the work to be performed requires blasting, Developer's insurance shall specifically cover that risk.
3. Comprehensive automobile liability insurance with minimum combined single limits of \$1,000,000.00, and covering all owned and non-owned automobiles or trucks used by or on behalf of Developer, in connection with the work.

IX. EXTENSION OF COMPANY'S CC&N AND OTHER APPROVALS

A. **Approval of Company's CC&N Extension Request.** Company shall promptly seek authority from the Commission for the extension of its CC&N to include the Development

("Application"). All obligations under this Agreement shall be conditioned upon Company gaining authority, free from any unreasonable condition, from the Commission to include the Development in Company's certificated service area. Company retains the right, at its sole discretion, to determine whether any regulatory conditions recommended by the Commission Staff in processing Company's Application are unreasonable. In such an event, Company shall have the right to withdraw its Application. Further, Developer covenants and agrees to support Company's Application, and shall, upon request by Company, provide testimony and/or public comment supporting Company's application in connection with any proceeding before the Commission.

B. Interim Agreement. In the event that the Development requires wastewater utility service while Company's Application is pending, Company agrees to enter into an Interim Bulk Wastewater Treatment Agreement with the Development's homeowners association, in a form to be determined by Company.

X. NOTICE

1. Except as otherwise required by law, any notice required or permitted under this Agreement must be in writing and must be given by either: (i) personal delivery; (ii) United States certified mail, return receipt requested, with all postage prepaid and properly addressed; (iii) any reputable, private overnight delivery service with delivery charges prepaid and proof of receipt; or (iv) by facsimile machine or telecopier. Notice sent by any of the foregoing methods must be addressed or sent to the party to whom notice is to be given, as the case may be, at the addresses or telecopy numbers set forth below:

Owner: MILAGRO INVESTORS, LLC
3760 Highland Dr. #505
Salt Lake City, UT 84106
Attn: Linda Wong Luther
(801) 792-7776

Company: JOHNSON UTILITIES
5230 East Shea Boulevard
Scottsdale, Arizona 85254
Attn: George H. Johnson
(480) 998-3300

2. Any party may change its address or telecopy number for purposes of delivery and receipt of notices by advising the other parties in writing of the change. Notice provided by the methods described above will be deemed to be received: (i) on the day of delivery, if personally delivered; (ii) on the date which is three (3) days after deposit in the United States mail, if given by certified mail; (iii) on the next regular business day after deposit with an express delivery service for overnight, "same day", or "next day" delivery service; or (iv) on the date of transmittal, if given on a regular business day and during regular business hours by facsimile machine or telecopy. No notice will be effective unless provided by one of the methods described above.

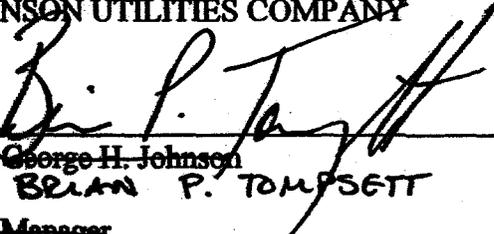
XI. MISCELLANEOUS

This Agreement may not be modified or amended except by a writing signed by both parties. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. This Agreement is consistent with all Rules and Regulations of the Commission and authorized Tariffs of the Company and therefore does not require specific approval of the Commission. This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof and expressly supersedes and revokes all other prior or contemporaneous promises, representations and assurances of any nature whatsoever with respect to the subject matter hereof. The remedies provided in this agreement shall not be deemed exclusive remedies but shall be in addition to all other remedies available at law or in equity. No waiver by either party of any breach of this agreement nor any failure by either party to insist on strict performance by the other party of any provision of this agreement shall in any way be construed to be a waiver of any future or subsequent breach by such defaulting party or bar the non-defaulting party's right to insist on strict performance by the defaulting party of the provisions of this agreement in the future, Developer is an independent contractor and not an agent or employee of the Company. This Agreement shall inure to the benefit of, be binding upon, and be enforceable by the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

JOHNSON UTILITIES COMPANY

By:


George H. Johnson

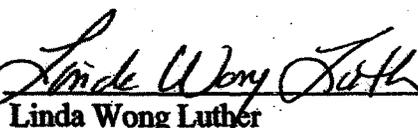
BRIAN P. TOMPSETT

Its: *Manager*

EXECUTIVE VICE PRESIDENT.

MILAGRO INVESTORS, LLC

By:


Linda Wong Luther

Its:

MANAGER

ATTACHMENT 1

LEGAL DESCRIPTION OF DEVELOPMENT

**140 Residential Lots as described below within Milagro, a subdivision in Pinal County,
Arizona.**

Legal Description
Parcel 6

Parcel 6, Sun Valley Farms Unit II, Section 17, Township 2 South, Range 8 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona, according to Book 1 of Surveys, Page 33, Records of Pinal County, Arizona, further described as follows:

Commencing at a Brass Cap in Handhole at the Southeast corner of Section 17, Township 2 South, Range 8 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona from which a 1½" Iron Pipe at the Northeast Corner of said Section 17 bears North 00 degrees 01 minutes 11 seconds West, a distance of 5283.14 feet;

Thence North 00 degrees 01 minutes 11 seconds West, a distance of 2227.25 feet to the South line of the aforementioned Parcel 6;

Thence South 89 degrees 44 minutes 01 seconds West, along the South line a distance of 1309.97 feet;

Thence North 00 degrees 01 minutes 17 seconds West, along the West line Parcel 6 a distance of 1241.85 feet;

Thence North 89 degrees 54 minutes 23 seconds East, along the North line Parcel 6 a distance of 1310.00 feet; to the East line of the Northeast Quarter of said Section 17;

Thence South 00 degrees 01 minutes 11 seconds East, along the East line of the Northeast Quarter of said Section 17, a distance of 823.87 feet to the East Quarter Corner;

Thence continuing South 00 degrees 01 minutes 11 seconds East, along the East line of the Southeast Quarter of said Section 17, a distance of 414.03 feet; to the POINT OF BEGINNING;

Encompassing 1,624,209 square feet or 37.287 acres, more or less.



Any modification to or omission from this description completely absolves the surveyor from any liability for this description.

ATTACHMENT 2

ENGINEERING PLAN OF WASTEWATER UTILITY PLANT

Please see attached.

ATTACHMENT 3

**ESTIMATED ON-SITE AND OFF-SITE FACILITIES
AND ESTIMATED COSTS FOR
WASTEWATER SERVICES**

<u>Description</u>	<u>Quantity</u>	<u>Unit</u>	<u>Refundable</u>	<u>Non-Refundable</u>	<u>TOTAL</u>
6" sewer and backfill	5,465	\$14.01 lf	\$76,564.65		
4" PVC Sewer Laterals	140	\$275.00	\$38,500.00		
4' manholes	9	\$1,500.00	\$13,500.00		
5' manholes	7	\$2,000.00	\$14,000.00		
140 units - Hook Up Fee		\$1,000.00		\$140,000.00	
Totals			\$142,564.65		
Administrative, Engineering & Legal Costs (10%)			\$14,256.46		
TOTALS			\$156,821.11		

ATTACHMENT 3 WORKSHEET

OFF-SITE WASTEWATER FACILITIES HOOK-UP FEES¹

<u>Service Lateral Size</u>	<u>Fee</u>	<u>Number</u>	<u>Extended</u>
4"	\$1,000.00	140	
6"	\$2,000.00		
8 or greater	\$4,000.00		
Total Hook-up Fees		\$140,000.00	

¹ Developer has entered into a separate Master Utility Agreement for payment of these fees.

ATTACHMENT 4

PRELIMINARY CONSTRUCTION SCHEDULE

Parcel #	Approx. Start	Approx. Finish
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ATTACHMENT 5

ADDITIONAL TERMS AND CONDITIONS

Check and initial if none

Company

Developer