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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

MIKE GLEASON, Chairman
WILLIAM A. MUNDELL
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GARY PIERCE

2008 FEB 14 P 4: 57

AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE APPLICATION OF ARIZONA-AMERICAN WATER COMPANY, INC., AN ARIZONA CORPORATION, FOR APPROVALS ASSOCIATED WITH A PROPOSED TRANSACTION WITH MARICOPA COUNTY MUNICIPAL WATER CONSERVATION DISTRICT NUMBER ONE TO ALLOW THE CONSTRUCTION OF A SURFACE WATER TREATMENT FACILITY KNOWN AS THE WHITE TANKS PROJECT

DOCKET NO. W-01303A-05-0718

Arizona Corporation Commission
DOCKETED

FEB 14 2008

DOCKETED BY 

1 Arizona-American Water Company ("Arizona-American") hereby files the attached
2 executed **Joint Development Agreement Between Maricopa County Municipal Water**
3 **Conservation District Number One and Arizona-American Water Company**
4 **("Agreement")** and letter explaining of the Agreement from Paul G. Townsley, President of
5 Arizona-American.

7 **RESPECTFULLY SUBMITTED** on February 14, 2008.

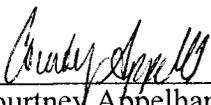


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1 Original and 13 copies **filed**
2 on February 14, 2008, with:
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10 on February 14, 2008, to:
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13 Administrative Law Judge
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18 Copies of the foregoing **mailed and emailed**
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February, 14 2008

Commissioner Mike Gleason
Commissioner William Mundell
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Commissioner Kristin Mayes
Commissioner Gary Pierce

Arizona Corporation Commission
1200 W. Washington
Phoenix, AZ 85007

Subject: Joint Development Agreement between Maricopa County Water
Conservation District Number One and Arizona-American Water
Company; White Tanks Regional Water Treatment Plant

Dear Chairman and Commissioners,

Arizona-American Water Company (“Arizona-American”) is pleased to docket a copy of the “Joint Development Agreement between Maricopa County Water Conservation District Number One and Arizona-American Water Company”, dated as of November 15, 2007 (“Agreement”). This landmark public-private partnership agreement to sustain Arizona’s water supply in the West Valley of Maricopa County could not have happened without the support of the Arizona Corporation Commission.

The Agreement involves a \$60 million investment by Arizona-American and Maricopa County Water Conservation District Number One (“MWD”) in building the White Tanks Regional Water Treatment Plant (“WTRWTP” or “Plant”). The WTRWTP, once completed, will reduce the reliance on groundwater by treating renewable Central Arizona Project water into high quality drinking water for the residents and businesses in the West Valley. The construction of the Plant is underway and will be in operation by early 2010.

Under the Agreement, Arizona-American will construct and own phase 1A of the WTRWTP until MWD elects to construct Phase 1B of the Plant. Upon election by the MWD, Arizona-American and the MWD will enter into various ownership, cost sharing and operating agreements for both Phase 1A and 1B of the Plant.

In conclusion, I would like to express my appreciation of the Commission's unwavering support of the WTRWTP.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Townsley", written in a cursive style.

Paul Townsley, President
Arizona-American Water Company

Cc: Docket Control Office, ACC (hard copy)
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JOINT DEVELOPMENT AGREEMENT

between

MARICOPA COUNTY MUNICIPAL WATER CONSERVATION DISTRICT NUMBER ONE

and

ARIZONA-AMERICAN WATER COMPANY

Dated as of November 15, 2007

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EXHIBITS

- Exhibit A - Definitions
- Exhibit B - White Tank Regional Water Treatment Plant-Concept Plan
- Exhibit C - Site
- Exhibit D - Land Exchange Area
- Exhibit E - Construction Easement
- Exhibit F - Plant Construction Coordination Agreement
- Exhibit G - Tenancy-in-Common Agreement
- Exhibit H - Plant Management and Operations Agreement
- Exhibit I - Property Exchange Agreement
- Exhibit J - Ground Lease
- Exhibit K - Insurance
- Exhibit L - Form of MWD Bulk Water Treatment Services Agreement

JOINT DEVELOPMENT AGREEMENT

JOINT DEVELOPMENT AGREEMENT (the "Agreement") dated as of November 15, 2007, between the MARICOPA COUNTY MUNICIPAL WATER CONSERVATION DISTRICT NUMBER ONE, an Arizona municipal corporation and a political subdivision of the State of Arizona ("MWD"), and ARIZONA-AMERICAN WATER COMPANY, an Arizona corporation ("AAW") (collectively, the "Parties").

RECITALS:

A. The Parties desire to provide for various transactions relating to the development, ownership and operation of a regional water treatment plant in Maricopa County, Arizona (the "Plant"), in the event MWD elects to participate in such development, ownership and operation, including the following transactions:

1. An exchange of certain real property so that MWD will become the owner of all right, title and interest in and to that certain real property more particularly described on Exhibit C (the "Site").
2. A ground lease by MWD to AAW of an undivided interest in the Site.
3. Coordination of construction of the Plant on the Site.
4. Related agreements between the Parties as to (i) their respective interests in the Site and the Plant, (ii) development and operation of the Plant, and (iii) related matters regarding water.

AGREEMENT:

NOW, THEREFORE, the Parties agree as follows:

ARTICLE I

DEFINITIONS

1.1 Definitions. Capitalized terms and other terms used in this Agreement have the meanings set forth in Exhibit A, unless the term is defined elsewhere in this Agreement (other than in the caption or the Recitals) and unless the context otherwise requires. Those terms include the singular and the plural forms and all genders of the defined terms.

ARTICLE II

SITE

2.1 Acknowledgments. The Parties acknowledge that AAW currently owns the Site and will continue to own the Site unless and until the property exchange described in Section 2.3 occurs. The Parties further acknowledge that, if the MWD Election is made, they desire MWD to be the owner of the Site, with MWD making a contribution (as described in Section 118 of the Internal Revenue Code) to AAW in the form of a lease to AAW of an interest in the Site. The Parties further acknowledge that, accordingly, the Parties desire that, if the MWD Election is made, (a) MWD transfer certain real property within the Land Exchange Area to AAW in exchange for the Site, and (b) MWD lease to AAW an undivided interest in the Site.

2.2 Construction Easement. If the MWD Election is made, then, concurrently with the execution of the other Election Documents, AAW and MWD will enter into the Construction Easement, substantially in the form attached as Exhibit E, with respect to MWD's access to the Site for purposes of constructing the Phase IB Plant Facilities.

2.3 Property Exchange. If the MWD Election has been made, then, on Substantial Completion:

2.3.1. Appraisals. The Parties will complete the appraisals of the Site and the Land Exchange Area. Each Party will select an appraiser to conduct an appraisal of the Site and an appraisal of the Land Exchange Area. Each appraisal will be based on the value of the land on a date "as of" Substantial Completion, on the then existing zoning for the land, on the assumption that the land is then vacant, and with reference to the highest and best use of the land. As to the appraisals for the Site, (a) if the higher appraisal is not more than one hundred twenty percent (120%) of the other appraisal, the land will be valued by the Parties as being equal to the

average of the two appraisals, and (b) otherwise, the Parties will promptly meet with and re-instruct the appraisers. Similarly, as to the appraisals for the Land Exchange Area, (a) if the higher appraisal is not more than 120% of the other appraisal, the land will be valued by the Parties as being equal to the average of the two appraisals, and (b) otherwise, the Parties will promptly meet with and re-instruct the appraisers.

2.3.2. Exchange and Lease. Within sixty (60) days after the later to occur of (a) agreement of the Parties on the appraised values as described in Section 2.3.1, and (b) Operational Acceptance (or such later date as to which the Parties may agree in writing):

2.3.2.1 Designation of Exchanged Land. The Parties will mutually agree on the portion of the Land Exchange Area with access to either Cactus Road or Perryville Road that (a) has a value equivalent to the value of the Site and (b) is to be exchanged for the Site as described in Section 2.3.2.3 (such portion being the “Exchanged Land”).

2.3.2.2 Opening of Escrow, Title Report and Related Matters. The Parties will complete all actions preparatory to the property exchange described in Section 2.3.2.3, including opening an escrow account for purposes of facilitating the exchange and obtaining title reports as to the Site and the Exchanged Land.

2.3.2.3 Property Exchange Agreement. The Parties will simultaneously (a) enter into the Property Exchange Agreement, substantially in the form attached as Exhibit I, with respect to the transfer of the Site by AAW to MWD in exchange for the Exchanged Land, and (b) consummate the exchange.

2.3.2.4 Ground Lease. Concurrently with consummation of the property exchange contemplated by the Property Exchange Agreement, the Parties will enter into the Ground Lease, substantially in the form attached as Exhibit J, with respect to the ground lease by

MWD to AAW of an undivided interest in and to the Site. The Parties intend that the Ground Lease be characterized as a contribution by MWD to AAW described in Section 118 of the Internal Revenue Code.

ARTICLE III

PLANT

3.1 Acknowledgments. The Parties acknowledge their intent that, under the circumstances described in more detail in this Article and assuming the MWD Election is made:

a. The Plant will be constructed on the Site, such that the Phase I Plant Capacity will be 20.0 MGD, with 6.5 MGD being allocated to MWD and 13.5 MGD being allocated to AAW.

b. The Parties will jointly own the Phase I Plant Facilities as tenants in common.

c. AAW will construct the Phase IA Plant Facilities, and MWD will construct the Phase IB Plant Facilities.

d. MWD will be the provider of electrical power to the Plant.

e. AAW will serve as the initial manager and operator of the Plant.

f. It is anticipated that the Plant will need to be expanded in the future, and thus it is desirable to address certain general aspects of future expansions.

3.2 Development of Phase I Plant Facilities.

3.2.1. Acknowledgment as to Planning and Design. The Parties acknowledge that, prior to negotiation and execution of this Agreement:

a. Over the course of several years AAW developed and designed the Plant, including specifically identifying and procuring a detailed design of the required Phase I Plant Facilities. AAW undertook such development and design as part of its long-term business planning, with the intention of being the sole owner and operator of the Plant. In connection with such development and design, AAW also acquired the Site, entered into the Canal Wheeling

Agreement, caused the requisite permits for the Plant to be obtained, retained a contractor to construct the Phase IA Plant Facilities, and instructed the contractor to proceed with such construction.

b. Subsequent to the foregoing, the Parties have entered into the Joint Development Agreement to provide for various transactions relating to the Plant. An inducement to AAW to enter into the Joint Development Agreement (and to allow a third party such as MWD to participate in the ownership and operation of the Plant) was MWD's willingness, under certain circumstances, to construct (in accordance with Arizona Revised Statutes, Title 34) an addition to the Plant known as the Phase IB Plant Facilities.

3.2.2. Phase I Development Costs. The Parties acknowledge and agree that:

a. The Phase I Development Costs (excluding capitalized interest on such costs) previously paid or incurred by AAW as of the date of this Agreement equal \$3,869,333.00.

b. As of October 31, 2007, the accrued capitalized interest on the Phase I Development Costs (calculated in the manner set forth in clause (e) of the definition of such costs) equaled \$446,729.00.

c. Capitalized interest (calculated in the manner set forth in clause (e) of the definition of Phase I Development Costs) will continue to accrue on the Phase I Development Costs until such costs are paid in full.

3.3 Construction of Phase IA Plant Facilities.

3.3.1. Construction by AAW. The Parties acknowledge that AAW will be entitled to proceed with construction of the Phase IA Plant Facilities.

3.3.2. Role of MWD. For purposes of facilitating coordination of construction of the Phase IA Plant Facilities with construction of the Phase IB Plant Facilities if the MWD Election is made, AAW will permit MWD to do the following:

a. MWD will be able to enter the Site, inspect construction, attend meetings, and review change orders.

b. MWD will provide a part-time construction representative (either an employee or a third party) to serve as its representative during construction of the Phase IA Plant Facilities.

3.3.3. Arizona Water Company. As provided in Article V and in the Tenancy-in-Common Agreement, AAW will be entitled to enter into a bulk water treatment services agreement with AWC with respect to treatment of non-potable water on behalf of AWC. Such agreement will be consistent with Article V.

3.3.4. Ownership of Plant IA Plant Facilities. The Parties acknowledge that AAW will be the owner of the Phase IA Plant Facilities until the Joint Conveyance occurs.

3.4 Construction of Phase IB Plant Facilities.

3.4.1. Election of MWD to Construct.

3.4.1.1 MWD Election. On or before the expiration of twelve (12) months from the date of this Agreement (or such later date as to which the Parties may agree in writing), MWD may notify AAW that MWD elects to construct the Phase IB Plant Facilities (the "MWD Election").

3.4.1.2 Acknowledgments. The Parties acknowledge that MWD is not obligated to make the MWD Election and that MWD's decision to make the MWD Election might depend on various factors, including MWD's entering into a bulk water treatment services

agreement with Goodyear as described in Section 3.4.2.4. The Parties further acknowledge and agree that, in light of the possibility of the MWD Election, they have mutually reviewed and discussed the design and the plans and specifications pertaining to the Phase IA Plant Facilities.

3.4.1.3 AAW Deferral; MWD Deferral. In light of the basic purpose of this Agreement and to facilitate the opportunity for joint development of the Plant by both Parties, prior to the date specified in Section 3.4.1.1 (a) AAW will not itself undertake construction of the Phase IB Plant Facilities, and (b) MWD will not undertake design and development of a water treatment plant that would compete with the Plant.

3.4.1.4 Effect of Non-Election. If (i) MWD does not make the MWD Election on or before the date set forth in Section 3.4.1.1, (ii) MWD notifies AAW that MWD will not make the MWD Election, or (iii) MWD does not award a construction contract for construction of the Phase IB Plant Facilities within one hundred eighty (180) days after making the MWD Election (or such later date as to which the Parties may agree in writing), (a) this Agreement will terminate, with the Parties' having no further rights or obligations under this Agreement or in connection with the transactions contemplated hereby, (b) AAW will be entitled to proceed with construction of the Phase IB Plant Facilities, and (c) if it so desires, MWD can proceed with undertaking design and development of a water treatment plant that would compete with the Plant.

3.4.2. Effect of MWD Election. If the MWD Election is made:

3.4.2.1 Election Documents. The Parties will promptly enter into the Election Documents.

3.4.2.2 Construction of Phase IB Plant Facilities. MWD will be entitled to proceed with construction of the Phase IB Plant Facilities in a manner consistent with the Plant

Construction Coordination Agreement, including publicly bidding the construction work as and to the extent required by applicable law.

3.4.2.3 Role of AAW. AAW will have input and involvement in MWD's decisionmaking as to the design and construction of the Phase IB Plant Facilities as provided in Section 2.2.2 of the Plant Construction Coordination Agreement:

3.4.2.4 Goodyear. As provided in Article V and in the Tenancy-in-Common Agreement, MWD will be entitled to enter into a bulk water treatment services agreement with Goodyear with respect to treatment of non-potable water on behalf of Goodyear.

3.4.2.5 Ownership of Phase IB Plant Facilities. MWD will be the owner of the Phase IB Plant Facilities until the Joint Conveyance occurs.

3.5 Completion of Phase I Plant Facilities. Within sixty (60) days after the later to occur of (a) agreement of the Parties on the appraised values as described in Section 2.3.1 and (b) Operational Acceptance (or such later date as to which the Parties agree otherwise in writing), the Parties will cause the following transactions to occur (all of which will be deemed to have occurred simultaneously unless otherwise specified).

3.5.1. Property Exchange and Ground Lease. The Parties will consummate the property exchange and enter into the Ground Lease as described in Section 2.3.

3.5.2. Joint Conveyance.

a. AAW and MWD will convey by deed and/or bill of sale the Phase IA Plant Facilities and the Phase IB Plant Facilities, respectively, to the Joint-Conveyance Facilitator.

b. Immediately after the conveyances described in clause (a), the Joint-Conveyance Facilitator will convey by deed and/or bill of sale the Phase I Plant Facilities to

AAW and MWD as tenants-in-common, each having an undivided interest in such facilities of 67.5% and 32.5%, respectively.

3.6 Power Supply. The Parties acknowledge that MWD will be the provider of electrical power to the Plant as provided in Section 3.4 of the Tenancy-in-Common Agreement.

3.7 Future Plant Expansions.

3.7.1. Coordination of Future Expansions. The Parties agree to coordinate planning for future Plant expansions and to evaluate joint ownership and other cooperative arrangements for future Plant expansions.

3.7.2. Reservation of Rights. Each Party retains the right to unilaterally construct future Plant expansions if a cooperative arrangement cannot be consummated.

3.7.3. Reallocation of Phase I Common Facilities Costs. The Parties acknowledge that it is contemplated that a mutually-agreeable future Plant expansion would also entail (a) agreement between the Parties on reallocation of construction and other capitalized costs of Phase I Common Facilities and (b) payment by one Party to the other Party of an amount associated with that reallocation. In the event of a unilateral future Plant expansion as described in Section 3.7.2 (and in the absence of agreement on reallocation in the case of an otherwise mutually-agreeable future expansion), construction and other capitalized costs for Phase I Common Facilities will be reallocated as follows:

a. The undepreciated costs for Phase I Common Facilities will be reallocated at completion of the future Plant expansion, based on capacity commitments of the expanded Plant.

b. Reallocation of undepreciated costs for Phase I Common Facilities in connection with future Plant expansions will be made only with respect to the first 40.0 MGD of Plant capacity.

In connection with the reallocation attributable to such a unilateral expansion, there will be a payment by one Party to the other Party of an amount associated with that reallocation, such payment to be made within sixty (60) days after Operational Acceptance of the expansion. To the extent that a future Plant expansion increases Plant capacity beyond 40.0 MGD, there will be no reallocation of the costs of Phase I Common Facilities with respect to such excess capacity.

3.7.4. Public Bidding. The Parties acknowledge that, depending on then applicable law, the design and construction of a future Plant expansion may require compliance with laws governing procurement by governmental bodies.

ARTICLE IV

CANAL WHEELING AGREEMENT

4.1 Canal Wheeling Agreement. MWD will provide CAP water wheeling services to AAW in accordance with the Canal Wheeling Agreement.

ARTICLE V

BULK WHOLESALE TREATMENT SERVICES

5.1 Bulk Wholesale Treatment Services for Third Parties. The Parties acknowledge that, if the MWD Election is made, the provision of bulk wholesale treatment services to Goodyear, AWC and other third parties by means of the Plant will be governed by Section 3.5 the Tenancy-in-Common Agreement.

5.2 Wheeling through the Beardsley Canal. The Parties acknowledge that, to the extent Goodyear, AWC or any other third-party entity desires to obtain bulk wholesale water treatment services by means of the Plant, such third party will be responsible for entering into a separate wheeling agreement with MWD for the wheeling of water through the Canal so as to be available at the Plant. The Parties acknowledge that such a wheeling agreement might be (but is not obligated to be) similar to the Canal Wheeling Agreement. MWD will negotiate in good faith with any such a third party with respect to such a wheeling agreement.

ARTICLE VI

INTERIM TREATED-WATER WHEELING SERVICES

6.1 Acknowledgments. The Parties desire that (a) AAW provide interim treated-water wheeling services to Goodyear, so as to facilitate MWD's delivery of water from the Plant to Goodyear, as capacity in AAW's distribution system permits, if MWD and Goodyear enter into a bulk water treatment services agreement as described in Section 3.4.2.4, and (b) it is anticipated that such wheeling services will be on an interim basis.

6.2 Interim Treated-Water Wheeling Services Agreement. If the MWD Election is made and if MWD and Goodyear enter into a bulk water treatment services agreement as described in Section 3.4.2.4, AAW will enter into a interim treated-water wheeling agreement with respect to the provision of interim treated-water wheeling services by AAW to Goodyear. AAW will negotiate in good faith with Goodyear with respect to such a wheeling agreement.

ARTICLE VII

CORPORATION COMMISSION; DISTRICT LANDOWNER CREDIT

7.1 Cooperation Before the Commission. If and to the extent that this Agreement or the other Transaction Documents are pertinent to rate or other proceedings involving AAW at the Commission, MWD will cooperate with AAW to support this Agreement and the other Transaction Documents before the Commission.

7.2 District Landowner Credit. If MWD desires to establish a District Landowner Credit, AAW will cooperate with MWD to develop a District Landowner Credit procedure and, if necessary or appropriate, seek Commission approval of such District Landowner Credit or procedure.

ARTICLE VIII

AGUA FRIA RIVER WATER

8.1 Equitable Allocation of Agua Fria River Water. The Parties acknowledge that the equitable allocation and delivery of treated Agua Fria River water to lands within the boundaries of MWD that do not receive direct service from MWD and that receive potable water service from AAW is desired in the future.

8.2 Delivery of Treated Agua Fria River Water. The Parties agree to negotiate in good faith to establish the terms, conditions and agreements under which MWD will deliver treated Agua Fria River water to AAW.

ARTICLE IX

GROUNDWATER DELIVERY SERVICES

9.1 Use of MWD Wells. The Parties acknowledge that the use of MWD groundwater wells to supply potable water will become increasingly beneficial to MWD lands and AAW customers as lands within the boundaries of MWD urbanize and as agricultural use of groundwater declines.

9.2 Regional Solutions. The Parties agree to cooperate to develop the agreements, policies and procedures required to develop cost-effective regional solutions to meet potable groundwater demands in the future.

9.3 Reduction of Well-Drilling. The Parties agree to cooperate in an effort to eliminate or reduce duplication of requirements with respect to the drilling of wells for new development.

ARTICLE X

DEFAULTS; INDEMNIFICATION

10.1 Acknowledgments.

a. The Parties acknowledge that the Transaction Documents establish varied relationships between the Parties (such as lessor and lessee, tenants-in-common, and service provider and customer) and that the transactions contemplated by the Transaction Documents are interdependent.

b. The Parties further acknowledge that an instance might arise in which a Party is alleged not to have properly performed its obligations under a Transaction Document in some material respect.

c. The Parties desire to (i) designate certain events that, if adjudged to have occurred and if uncured or otherwise unresolved, should be deemed material and to (ii) specify certain consequences associated with such events.

10.2 Events of Default. An “Event of Default” will exist if any of the following occurs and is continuing:

10.2.1. Nonpayment. A Party fails to pay within fifteen (15) days after receipt of notice that the amount payable under any Transaction Document has become due and payable and has not been paid.

10.2.2. Nonperformance of Covenant. A Party fails to perform or observe in all material respects any term contained in any Transaction Document on its part to be performed or observed and the failure continues unremedied for a period of thirty (30) days after the Party receives from the other Party written notice of the failure (provided, however, the cure period will be extended if the failure cannot reasonably be remedied by the Party within that period and

the Party at all times diligently and continuously pursues a remedy, such extension not to exceed thirty (30) days).

10.2.3. Invalidity. Any of the Transaction Documents is determined to be invalid or unenforceable or is otherwise terminated or becomes or is declared ineffective or inoperative (other than by expiration of its initial term), so as to substantially deny a Party the benefits contemplated by the Transaction Document.

10.3 Remedies on Event of Default. If an Event of Default occurs and is continuing, the nondefaulting Party may (but is not obligated to) exercise the remedy or remedies, if any, specified in the pertinent Transaction Document. In addition, unless excluded by such Transaction Document, the nondefaulting Party will (as and to the extent provided in Section 11.2(d)) have all rights and remedies available at law or in equity. The Parties acknowledge and agree that it is their intention that, in the enforcement of the Transaction Documents, their primary objectives are to assure continued operation of the Plant and the payment by each Party of its allocable portions of Maintenance and Operations Costs and Replacement and Improvement Capital Costs.

10.4 Waiver; Indemnification.

10.4.1. Waiver. Each Party waives any claim it may have against the other Party with respect to any loss or liability covered by insurance proceeds.

10.4.2. Indemnification.

10.4.2.1 General. Each Party ("Indemnitor") will indemnify, defend, protect, save and hold harmless the other Party and its officers, directors, employees and agents (collectively, "Indemnitee") for, from and against any and all losses and liabilities that may arise from or be based upon any injury, alleged injury or death to any person or damage to

property that may occur, or that may be alleged to have occurred, in the course of the performance of any Transaction Document by Indemnitor or by any of its contractors or affiliates, whether such loss or liability arises in connection with a claim made by any employee of Indemnitor or by a third person. Notwithstanding the foregoing sentences, this indemnity does not apply to the extent the loss and liability is (a) attributable to negligent, reckless or intentional acts of Indemnitee, or (b) covered by insurance.

10.4.2.2 Procedures for Indemnification.

a. Notice of Claim. Indemnitee will promptly notify Indemnitor in writing of any claim, proceeding or other loss or liability that might give rise to any indemnity obligation hereunder, specifying in reasonable detail the nature thereof and indicating the amount (estimated, if necessary) of the damages that have been or may be sustained by Indemnitee. Together with or following such notice, Indemnitee will deliver to Indemnitor copies of all notices and documents received by Indemnitee relating to the claim, proceeding or other loss or liability.

b. Right to Defend. Indemnitor will have the right (without prejudice to the right of Indemnitee to participate at its own expense through counsel of its own choosing) to defend against any claim, proceeding or other loss or liability at its expense and through counsel of its own choosing and to control such defense, if it gives written notice of its intention to do so within ten (10) Business Days of its receipt of the notice from Indemnitee. Indemnitee will cooperate fully in the defense of any claim, proceeding or other loss or liability and will make available to Indemnitor or its counsel all pertinent information under Indemnitee's control relating thereto. As long as Indemnitor is diligently and competently defending the

claim, proceeding or other loss or liability, Indemnitee will not settle the claim, proceeding or other loss or liability without the prior written consent of Indemnitor.

c. No Advances. Indemnitor will not be required to advance to Indemnitee any costs, expenses or other amounts prior to the final resolution of the claim, proceeding or other loss or liability.

ARTICLE XI

GENERAL PROVISIONS

11.1 Representatives.

11.1.1. Authorized Representatives. Each Party will designate at least one individual officer or employee who will be its representative and will be authorized to act on behalf of the Party for all purposes in performing the provisions of this Agreement ("Representative"). Each Party will also designate an alternate Representative who will serve in the place of (and with the same authority as) the Representative if the latter is unavailable. A Party may also designate more than one Representative. The designation may be changed from time to time. The designation must be made in a writing delivered to the other Party.

11.1.2. No Release. Each Party is responsible for the acts or omissions of its Representative(s). The designation of a Representative by a Party does not release the Party from responsibility for performance of its obligations under this Agreement.

11.2 Dispute Resolution.

a. Scope of Section. This Section governs the resolution of all disputes that arise under this Agreement.

b. Good Faith Negotiations. A Party that believes a dispute exists under this Agreement will first refer the dispute to the Representatives for resolution. The Representatives of each Party will personally meet and attempt in good faith to resolve the dispute. If the Representatives cannot resolve the dispute within fifteen (15) days, the matter will be referred to senior management of the Parties for resolution. If these persons are unable to resolve the dispute within fifteen (15) days thereafter, a Party that still believes a dispute requires resolution may avail itself of the provisions of paragraph (c).

c. Mediation, Arbitration and Litigation.

i. If a Party still believes a dispute requires resolution after following the procedures of paragraph (b), that Party will first give a detailed written notice of dispute to the other Party setting forth the nature of the dispute. The Parties will then, before resorting to arbitration or litigation, first try in good faith to settle the dispute by mediation administered by the Parties or, absent agreement, a mediator appointed by the presiding judge or the Arizona Superior Court for Maricopa County at the request of a Party. The mediation will occur in Phoenix, Arizona. The mediator must have substantial experience with the water utility industry.

ii. Any dispute not resolved by mediation within the earlier of thirty (30) days after appointment of the mediator or sixty (60) days after the initial meeting of the Representatives may, on mutual written consent of the Parties, be submitted for and settled by binding arbitration administered pursuant to the Arizona Uniform Arbitration Act before a single arbitrator agreed to by the Parties or, absent agreement, a mediator appointed by the presiding judge of the Arizona Superior Court for Maricopa County at the request of a Party. The arbitration will occur in Phoenix, Arizona. If the controversy or claim relates to construction, the arbitration will (to the extent not inconsistent with the terms of this Section) be conducted in accordance with the AAA's Construction Industry Arbitration Rules; otherwise, the AAA's Commercial Arbitration Rules will apply. In any case the arbitrator must have substantial experience with the water utility industry. The arbitrator has no power to amend or modify this Agreement. Judgment on the award rendered by the arbitrator may be entered in any court with jurisdiction. Within thirty (30) days after the date of the arbitration award, a Party may seek to confirm the award or may seek to vacate and remand, modify or correct the award (but only on one or more grounds specified in the Federal Arbitration Act or the Arizona Uniform Arbitration

Act) in the U.S. District Court for the District of Arizona if such court has jurisdiction, and otherwise to any state court of record in Maricopa County, Arizona, having jurisdiction.

iii. If the Parties do not mutually consent to arbitrate the dispute as provided in subparagraph (ii), a Party that still believes a dispute requires resolution may institute an action or proceeding in the Arizona state or federal court sitting in Phoenix, Arizona. In furtherance of the foregoing sentence:

A. Each Party irrevocably and unconditionally submits, for itself and its property, to the jurisdiction of the Arizona state and federal courts sitting in Phoenix, Arizona, and any appellate court from any thereof, in any action or proceeding arising out of or relating to the Transaction Documents, or for recognition or enforcement of any judgment. All claims in respect of any such action or proceeding may be heard and determined in such state or, to the extent permitted by law, in such federal court. A final judgment in any such action or proceeding will be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

B. Each Party irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection it may now or hereafter have regarding venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Transaction Documents in any state or federal court sitting in Phoenix, Arizona. Each Party irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action nor proceeding in any such court.

d. Remedies.

i. The preceding paragraphs of this Section are intended to set forth the primary procedure to resolve all disputes under this Agreement. It is expected that all

disputes that would traditionally be resolvable by a court of law would be resolvable under this procedure. However, the Parties recognize that certain business relationships could give rise to the need for one or more of the Parties to seek (and, if the dispute cannot be resolved after exhaustion of the process set forth in paragraph (b), a Party will have the right to seek) equitable remedies from a court that were traditionally available from an equity court, such as emergency, provisional or summary relief, and injunctive relief. Immediately following the issuance of any such equitable relief, the Parties will stay any further judicial proceeding pending mediation or (if the Parties have mutually consented to submit the dispute to arbitration as provided in paragraph (c)(ii)) arbitration of all underlying claims between the Parties.

ii. Certain rights and remedies otherwise available at law or in equity may be limited or prohibited as specifically provided in this Agreement or the other Transaction Documents (including as provided in Section 11.3). To the extent of any such limitation or prohibition, each Party hereby specifically waives any such limited or prohibited right or remedy. Except for any limitations or prohibitions referred to in the two preceding sentences, nothing contained in this paragraph is intended to, nor will it, limit or affect any rights or remedies (at law, in equity, by statute, or otherwise) of any Party aggrieved as against the other for a breach or threatened breach of any provision of this Agreement.

iii. Except as otherwise expressly provided in this Agreement, (A) each right and remedy of a Party available under this Agreement will be cumulative and concurrent, will not be exclusive, and will be in addition to every other right and remedy, and (B) the exercise, the commencement of the exercise, or the forbearance of the exercise by any Party of any one or more of such rights or remedies will not preclude the simultaneous or later exercise by such Party of any or all of such other rights or remedies.

iv. If either Party fails to perform any of its obligations under this Agreement (or if any dispute arises between the Parties concerning the meaning or interpretation of any provision of this Agreement) and the matter results in arbitration or in a judicial proceeding, then the defaulting Party or the Party not prevailing in such dispute, as the case may be, will pay any and all costs and expenses incurred by the other Party on account of such default and/or in enforcing or establishing its rights under this Agreement, including court costs and reasonable attorneys' fees and disbursements. Any such attorneys' fees and other expenses incurred by either Party in enforcing an award or judgment in its favor under this Agreement will be recoverable separately from and in addition to any other amount included in such award or judgment. Such attorneys' fees obligation is intended to be severable from the other provisions of this Agreement and to survive and not be merged into any such award or judgment.

11.3 Force Majeure. No Party will be liable to another Party for failure, default or delay in performing any of its obligations under this Agreement, if such failure, default or delay is the result of any cause or event not within the control of the Party having the obligation and which, by the exercise of reasonable diligence, such Party is unable to prevent or mitigate (such a cause or event being "Force Majeure"). Force Majeure does not include changes in local, state, national or international general economic conditions. A Party's failure, default or delay in performance will be excused only for as long as such cause or event is present. If a Force Majeure occurs, the Parties will proceed with diligence to do what is reasonable and necessary so that each Party may perform its obligations under this Agreement. The Parties will not in any event incur any liability to one another or to any other person for consequential or any other damages that may result from delays in initiating service, or from interruptions in or other malfunctions of service, based on the foregoing circumstances.

11.4 Assignment. This Agreement may not be assigned by a Party without the consent of the other Party, which consent will not be unreasonably withheld. Any attempted assignment, transfer, conveyance, encumbrance, mortgage, lien, pledge or other disposition in contravention of this Section will be null and void and of no further force or effect. Notwithstanding the foregoing, (a) a Party may make a collateral assignment of its rights under this Agreement to any lender of such Party, and such rights may be subsequently assigned in connection with the enforcement of any rights in and to such collateral, and (b) a Party may assign and delegate its rights and obligations under this Agreement to a person who acquires substantially all of the assets of a Party.

11.5 Notices. Except as otherwise specified in this Agreement, any notice, demand, request or other communication required or authorized by this Agreement to be given in writing to a Party must be either (a) personally delivered, (b) mailed by registered or certified mail (return receipt requested), postage prepaid, (c) sent by overnight express carrier, or (d) sent by telecopy or electronic mail, in each case at the following address:

To MWD addressed as follows:

For personal delivery:

Maricopa County Municipal Water Conservation District Number One
14825 West Grand Avenue
Surprise, Arizona 85374

For mail delivery:

Maricopa County Municipal Water Conservation District Number One
Attn: James Sweeney, General Manager
P.O. Box 900
Waddell, Arizona 85355-0900
email: jims@mwdaz.com

With a copy to:

Ryley, Carlock & Applewhite, P.A.
Attention: Sheryl A. Sweeney, Esq.
One North Central Avenue, Suite 1200
Phoenix, Arizona 85004-4417
email: ssweeney@rcalaw.com

or to such other address as MWD may advise AAW in writing, and to AAW at:

Arizona-American Water Company
Attn: Paul Townsley, President
19820 North 7th Street, Suite 201
Phoenix, Arizona 85024
email: Paul.Townsley@amwater.com

With a copy to:

Arizona-American Water Company
Attn: Carrie Gleeson, Esq., General Counsel
303 H Street, Suite 250
Chula Vista, California 91910
email: Carrie.Gleeson@amwater.com

With a copy to:

Gallagher & Kennedy, P.A.
Attn: Terence W. Thompson, Esq.
2575 East Camelback Road
Phoenix, Arizona 85016
email: tw@gknet.com

or to such other address as AAW may advise MWD in writing. The designation of such person and/or address may be changed at any time by either Party upon written notice given under this Section. All notices, demands, requests or other communications sent pursuant to this Section will be deemed received (i) if personally delivered, on the Business Day of delivery, (ii) if sent by telecopy or electronic mail before noon (12:00 p.m.) Phoenix time, on the day sent if a Business Day or, if such day is not a Business Day or if sent after noon (12:00 p.m.) Phoenix time, on the next Business Day, (iii) if sent by overnight express carrier, on the next Business Day

immediately following the day sent, or (iv) if sent by registered or certified mail, on the earlier of the third Business Day after the day sent or when actually received. Any notice by telecopy or electronic mail will be followed by delivery on the next Business Day by overnight express carrier or by hand.

11.6 Entire Agreement; Exhibits.

11.6.1. Entire Agreement. Subject to the following sentence, this Agreement (including all exhibits and any other attachments) constitutes the entire understanding between the Parties regarding the subject matter of this Agreement, supersedes any and all previous discussions, communications and understandings between the Parties (including any letter of intent or memorandum of understanding) regarding the subject matter of this Agreement. The Parties acknowledge, however, that this Agreement is one of the Transaction Documents, and will, to the extent necessary, be construed in such a manner as may be necessary to give meaning to the larger transaction collectively contemplated by all of the Transaction Documents. None of the Parties has entered into this Agreement in reliance upon any oral or written representation or information provided by any other Party. This Agreement is binding on and inures to the benefit of the Parties and (subject to Section 11.4 regarding assignment) their respective successors and assigns.

11.6.2. Exhibits. All exhibits and other attachments referred to and attached to this Agreement are incorporated into this Agreement by reference and are made a part hereof. Attachments (if any) not complete at the effective date of this Agreement will be added as they are completed by written amendment, signed by each Party. Each attachment that is completed or modified by a subsequent amendment will note on its face the date and number of that amendment.

11.6.3. Further Assurances. If a Party determines in its reasonable discretion that any further instruments, assurances or other things are necessary or desirable to carry out the terms of this Agreement, the other Party will execute and deliver all instruments and assurances and do all things reasonably necessary or desirable to carry out the terms of this Agreement, including using its best efforts to negotiate and enter into any agreements that may become necessary and appropriate.

11.7 No Waiver. The failure of a Party to enforce at any time any of the provisions of this Agreement (or to require at any time performance by the other Party of any of its provisions) is not to be construed as a waiver of such provisions and does not in any way affect the validity of this Agreement or the right of such Party to enforce any provision.

11.8 Amendment, Modification or Waiver. An amendment, modification or waiver of all or any part of this Agreement is not valid unless it is reduced to a written agreement executed by both Parties.

11.9 Governing Law and Interpretation.

11.9.1. Governing Law. The laws of the State of Arizona govern the interpretation and performance of this Agreement.

11.9.2. Descriptive Headings. The descriptive captions and headings of the paragraphs of this Agreement are for convenience only and will not control or affect the meaning or construction of any provisions of this Agreement.

11.10 Counterparts. This Agreement may be signed in counterparts, each of which will be deemed to be an original, and all such counterparts will be deemed one and the same instrument. The page on which any Party has executed any counterpart hereof may be removed

and attached to any other counterpart hereof. Any counterpart hereof to which is attached the signatures of all the Parties will constitute an original of this Agreement.

11.11 No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third person to any Party. This Agreement does not create any duty, liability or standard of care to any person who is not a Party.

11.12 Relationship of Parties. Each Party is an independent entity. This Agreement will not constitute either Party as the agent of the other Party, except as otherwise expressly provided in this Agreement. This Agreement will not constitute the Parties as partners or joint venturers (or as co-owners of a business entity) for common law purposes, federal, state or local income tax purposes, or otherwise. The Parties will not conduct business under a common name, execute an agreement identifying any or all of them as partners, shareholders or members of a business entity, or otherwise hold out their co-ownership of the Plant as a partnership or other form of business entity (nor will the Parties hold themselves out as partners, shareholders, or members of a business entity).

11.13 Computation of Time. If the time for performance of any obligation under this Agreement expires on a day that is not a Business Day, the time for performance will be extended to the next succeeding Business Day. In computing any period of time prescribed or allowed under this Agreement, the day of the act, event or default from which the designated period of time begins to run is included. Weekend and holidays are also included.

11.14 No Party the Drafter. This Agreement is the product of negotiation between the Parties. No Party is deemed the drafter of this Agreement.

11.15 Interest on Late Payments. Except as otherwise provided herein, all payments under this Agreement that are not paid within thirty (30) days of the due date of the payment will accrue interest thereon at the Prime Rate plus two percent (2%) per annum, compounded monthly from the due date of the payment until the amount is paid.

11.16 Time Is of the Essence. Time is of the essence of this Agreement.

11.17 No Business Opportunities. Each Party understands that the other Party and its affiliates may be interested, directly or indirectly, in various other businesses and undertakings. Except as provided in this Agreement and the other Transaction Documents, any Party and its affiliates may conduct any business or activity whatsoever without any accountability to any other Party, even if such business or activity competes with the Plant. This Agreement does not prejudice the respective rights of any Party (or any affiliate thereof) to enter to and maintain any such other interests and activities and to receive and enjoy profits or compensation therefor. Each Party hereby acknowledges and agrees that it does not and will not have any right of any nature whatsoever to share or participate in such other interests or activities of any other Party (or affiliate thereof). If at any time due to bankruptcy or for any reason whatsoever, any interest in the Plant that is a superior or subordinate interest to that of the Parties (including any leasehold interest) is available by auction, public or private sale or otherwise, any Party, without the other Party, may pursue the acquisition of, or any such other matter as to, any such superior or subordinate interest without any duty or obligation of any nature whatsoever to the other Party.

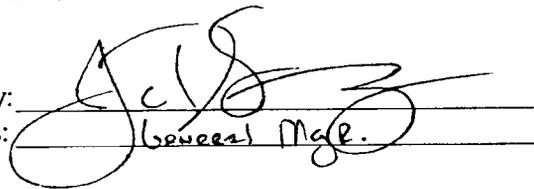
11.18 Separability. If any provision of this Agreement or the application thereof will be invalid or unenforceable to any extent for any reason whatsoever, the remainder of this Agreement and the application thereof will not be affected thereby and will be reformed and enforced to the greatest extent permitted by law or equity.

11.19 Signatory Warranty. Each individual executing this Agreement on behalf of a Party warrants that such individual is duly authorized to execute this Agreement on behalf of such Party in accordance with authority granted under the governing documents of such Party, that all conditions to the exercise of that authority have been satisfied, and that this Agreement is binding on such Party in accordance with its terms.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

MARICOPA COUNTY MUNICIPAL WATER
CONSERVATION DISTRICT NUMBER
ONE, an Arizona municipal corporation and
political subdivision of the State of Arizona

By: _____
Its: _____



(General Mgr.)

ARIZONA-AMERICAN WATER COMPANY,
an Arizona corporation

By: _____
Its: _____

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

MARICOPA COUNTY MUNICIPAL WATER
CONSERVATION DISTRICT NUMBER
ONE, an Arizona municipal corporation and
political subdivision of the State of Arizona

By: _____
Its: _____

ARIZONA-AMERICAN WATER COMPANY,
an Arizona corporation

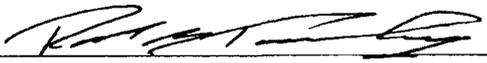
By:  _____
Its: PRESIDENT

EXHIBIT A
DEFINITIONS

“AAA” means the American Arbitration Association.

“AAW” means Arizona-American Water Company, an Arizona corporation.

“AAW Capitalized Interest Cost” means the sum of the AAW Monthly Capitalized Interest Charge amounts.

“AAW Construction Management Fee” means three percent (3%) of the Phase IA Construction Costs.

“AAW Monthly Capitalized Interest Charge” means the Monthly Capitalized Interest Rate multiplied by the sum of:

a. The Phase IA Construction Costs incurred through the end of the calendar month preceding the calendar month for which the AAW Monthly Capitalized Interest Charge is being calculated.

b. The AAW Construction Management Fee applicable to the Phase IA Construction Costs incurred through the end of the calendar month preceding the calendar month for which the AAW Monthly Capitalized Interest Charge is being calculated.

c. The sum of all AAW Monthly Capitalized Interest Charge amounts calculated for all calendar months preceding the calendar month for which the AAW Monthly Capitalized Interest Charge is being calculated.

“ADEQ” means the Arizona Department of Environmental Quality.

“AFUDC Rate” means the annual rate for allowance for funds used during construction as approved for use by AAW by order of the Commission, or, in the absence of an approved

annual allowance for funds used during construction rate, the AAW weighted annual cost of capital approved for rate-making purposes by order of the Commission.

“AWC” means the Arizona Water Company, an Arizona corporation.

“Administrative and Overhead Charges” means an amount intended to serve as a reimbursement for costs and expenses associated with management, operation, replacement and improvement of the Plant that are not readily susceptible to quantification or allocation. The Administrative and Overhead Charges will be calculated as follows: Fifteen percent (15%) of all of the following:

- a. Fixed Maintenance and Operations Costs.
- b. Variable Maintenance and Operations Costs.

“affiliate” means any person (other than an individual) that directly or indirectly controls, is controlled by, or is under common control with, another person. For purposes of this definition, “control” means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether by contract or otherwise.

“Agreement,” as used in the phrase “this Agreement,” refers to the Transaction Document in which the phrase appears. For example, when used in the Joint Development Agreement, “this Agreement” means the Joint Development Agreement.

“assigned” includes any collateral assignment or other encumbrance of an interest in this Agreement, but excludes any change in control of a Party and also excludes any assignment by operation of law in connection with the merger or consolidation of a Party.

“Business Day” means a day other than a Saturday, Sunday or legal holiday in the State of Arizona.

“CAP” means Central Arizona Project.

“Canal” means the Beardsley Canal operated by MWD.

“Canal Wheeling Agreement” means the Second Priority and Third Priority Nondistrict Water Wheeling and Exchange Agreement dated as of June 27, 2005, between MWD and AAW, including all exhibits and other attachments, as amended from time to time.

“claim” includes claim, demand, action, lawsuit, arbitration, regulatory matter, investigation, subpoena, hearing, proceeding, action, cause of action, cross-action, remedy or allegation (including a request for provisional or equitable remedies or other interim relief, a request for declaration of rights or obligations, assertion of issues as to the arbitrability of any matter, and any appeal, review or writ), whether pending or threatened, whether based on contract, quasi-contract, promissory estoppel, tort, common law, equitable or other principles or law, whether at law, in equity or otherwise, whether civil, criminal, administrative, investigative or otherwise, whether or arising from active or passive negligence, strict liability or otherwise, and whether or not currently recognized by law. The term “claim” includes all elements of any of the foregoing matters.

“Commission” means the Arizona Corporation Commission.

“Construction Easement” means the Construction Easement to be entered into between AAW and MWD, including all exhibits and other attachments, substantially in the form attached as Exhibit E, as amended from time to time.

“dispute” includes any claim, controversy, disagreement or other dispute, including any claim, controversy, disagreement or other dispute (including a request for provisional remedies or other interim relief, a request for declaration of rights or obligations, and assertion of issues as to the arbitrability of any matter) relating to any breach, enforcement, interpretation or other aspect

of this Agreement (including alleged misrepresentation regarding this Agreement), whether arising under contract, statute, tort or otherwise.

“District Landowner Credit” means a financial or other benefit (whether in the form of a negative rate surcharge, water-bill credit, or otherwise) provided by MWD directly or indirectly to its landowners, individually or collectively.

“Election Documents” means all of the following documents:

- a. Construction Easement.
- b. Tenancy-in-Common Agreement.
- c. Plant Construction Coordination Agreement.
- d. Plant Management and Operations Agreement.

“Environmental Law” means laws, regulations, standards, requirements, ordinances, policies, guidelines, orders, approvals, notices, permits or directives, or parts thereof, pertaining to environmental or occupational health and safety matters, in effect as of the date of this Agreement, including laws and regulations relating to releases or threatened releases of Hazardous Substances, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances pertaining to the Site and the ownership and operation of the Plant and the conduct of its business.

“Event of Default” has the meaning set forth in Section 10.2.

“Exchanged Land” means the real property transferred by MWD to AAW in exchange for the Site transferred by AAW to MWD, all pursuant to the Property Exchange Agreement, as described in Section 2.3.2.1.

“Final Acceptance” exists with respect to each portion of the Phase IA Plant Facilities and the Phase IB Plant Facilities when (a) the punch-list items that were not completed at the

time of Operational Acceptance have been completed, (b) testing of such portion has been completed, (c) final grading and adjustments have been completed, (d) as-built plans for such portion in full-size Mylar format have been submitted to MWD, AAW and the Manager/Operator (unless MWD, AAW and the Manager/Operator agree to electronic data format, half-size bond copies and/or other media), which plans (i) have been certified as to correctness by an engineer registered in the State of Arizona, (ii) show the location, sizes and construction details of all of such portion, and (iii) provide all other information required by the Commission and all other regulatory authorities, (e) releases of mechanics' and materialman's lien claims with respect to all aspects of construction of such portion (or evidence that AAW or MWD, as applicable, is diligently contesting any such lien and has obtained bonds and taken such other action as may be required pursuant to applicable law to remove such lien as an encumbrance against the affected property) has been provided to MWD, AAW and the Manager/Operator; and (f) all contracts with contractors have been fully performed or otherwise satisfied and discharged, including final payment of any amounts owed or owing under such contracts and resolution of any pending disputes arising under such contracts. Final Acceptance is subsequent to (and thus is not synonymous with) Operational Acceptance.

"Fixed Maintenance and Operations Costs" means Maintenance and Operations Costs that are not Variable Management Operations Costs. Examples of Fixed Maintenance and Operations Costs include Plant labor and overhead costs of the Manager/Operator (including pension and other benefit costs associated with such labor costs), Plant vehicle expenses, Plant office and laboratory expenses, maintenance expenses, leases, insurance and taxes.

"Force Majeure" has the meaning set forth in Section 11.3.

"Goodyear" means the City of Goodyear, an Arizona municipal corporation.

“Ground Lease” means the Lease to be entered into between MWD and AAW, including all exhibits and other attachments, substantially in the form attached as Exhibit J as amended from time to time.

“herein,” “hereinafter,” “hereof” and “hereunder” refer to this Agreement as a whole and not merely to a subdivision in which such words appear, unless the context otherwise requires. The singular will include the plural, and the masculine gender will include the feminine and neuter, and vice versa, unless the context otherwise requires.

“includes” and “including” denote a partial definition, by way of illustration and not by way of limitation.

“Indemnitee” has the meaning set forth in Section 10.4.2.

“Indemnitor” has the meaning set forth in Section 10.4.2.

“Insurance” has the meaning set forth in Exhibit K.

“Joint Conveyance” means the conveyance of the Phase I Plant Facilities to MWD and AAW as described in Section 3.5.2(b).

“Joint-Conveyance Facilitator” means an escrow agent, title company or other person who is mutually acceptable to the Parties and who is to serve as the grantee and grantor in connection with the transactions described in Section 3.5.2.

“Joint Development Agreement” means the Joint Development Agreement dated as of November 15, 2007, between MWD and AAW, including all exhibits and other attachments, as amended from time to time.

“knowledge” means a Party’s actual knowledge without further inquiry.

“Land Exchange Area” means the real property sometimes referred to as “Parcel 8 of Zanjero Trails,” comprising approximately 74.8 acres and located at the northeast corner of

Cactus Road and the Perryville Road alignment in Maricopa County, Arizona as depicted in Exhibit D.

“law” includes statute, rule, regulation, common law, equitable principle, and administrative, arbitral or judicial decree, order, judgment, award or other decision.

“losses and liabilities” includes liabilities, losses, claims, harm, casualties, damages, fines, penalties, fees (including attorneys’ and consultants’ fees and costs), costs (including court costs), expenses (including investigation expenses), judgments, awards, decrees, amounts paid in settlement or compromise (to the extent paid in accordance with Section 10.4.2.2, if applicable), encumbrances, liens, taxes, interest, and other detriments.

“MGD” means million gallons per day.

“MWD” means the Maricopa County Municipal Water Conservation District Number One, a political subdivision of the State of Arizona.

“MWD Bulk Water Treatment Services Agreement” means a Bulk Water Treatment Services Agreement between MWD and any other person (including Goodyear) in the form attached as Exhibit L. It is acknowledged that the completion of blanks and variable placeholders in the form, the attachment of exhibits contemplated by the form, and the modification of recitals to reflect future expansions will not cause an agreement to be other than in the form attached as Exhibit L.

“MWD Capitalized Interest Cost” means the sum of the MWD Monthly Capitalized Interest Charge amounts.

“MWD Construction Management Fee” means three percent (3%) of the Phase IB Project Costs.

“MWD Election” means the election of MWD to construct the Phase IB Plant Facilities as described in Section 3.4.1.1.

“MWD Monthly Capitalized Interest Charge” means the Monthly Capitalized Interest Rate multiplied by the sum of:

a. The Phase IB Project Costs incurred through the end of the calendar month preceding the calendar month for which the MWD Monthly Capitalized Interest Charge is being calculated.

b. The MWD Construction Management Fee applicable to the Phase IB Project Costs incurred through the end of the calendar month preceding the calendar month for which the MWD Monthly Capitalized Interest Charge is being calculated.

c. The sum of all MWD Monthly Capitalized Interest Charge amounts calculated for all calendar months preceding the calendar month for which the MWD Monthly Capitalized Interest Charge is being calculated.

“MWD User” means a person (including Goodyear) who has entered into an MWD Bulk Treatment Services Agreement with MWD.

“Maintenance and Operations Costs” means all of the following:

- a. Fixed Maintenance and Operations Costs.
- b. Variable Maintenance and Operations Costs.
- c. Administrative and Overhead Charges.

“Manager/Operator” means the manager and operator of Plant, whether pursuant to the Plant Management and Operations Agreement or other agreement or arrangement. Pursuant to the Plant Management and Operations Agreement, the initial Manager/Operator is AAW.

“Material Adverse Event” has the meaning set forth in Section 4.2.1 of the Tenancy-in-Common Agreement.

“Monthly Capitalized Interest Rate” means one-twelfth (1/12) of the AFUDC Rate in effect on the last day of the calendar month for which a calculation of the AAW Monthly Capitalized Interest Charge or MWD Capitalized Interest Charge is being made.

“NARUC Uniform System of Accounts” means the uniform system of accounts for Class A water utilities approved by the National Association of Regulatory Utility Commissioners (NARUC) in 1996, as amended from time to time.

“Operational Acceptance” exists with respect to each portion of the Phase IA Plant Facilities and the Phase IB Plant Facilities when (a) all engineering and construction plans and specifications pertaining to that portion have been received by the Manager/Operator, and (b) construction of that portion has been substantially completed in accordance with the construction plans and specifications. For purposes of clause (b) of the preceding sentence, “substantially completed” means construction and successful testing of that portion (except for the existence of minor punch-list items that remain to be completed by contractors and subcontractors), provided that the portion is sufficiently complete in accordance with the construction plans and specifications so that the portion can be utilized for its intended purpose. Operational Acceptance is prior in time to (and thus is not synonymous with) Final Acceptance.

“Ownership Interest” means a Party’s respective tenant-in-common ownership interest in the Plant. The Ownership Interest is expressed as a percentage and, as such, also serves as a basis for allocating various costs and other amounts as provided in the Transaction Documents. The Ownership Interest initially is calculated by reference to Phase I Plant Capacity and the portion thereof deemed allocated between the Parties. On execution of the Tenancy-in-Common

Agreement, based on the Phase I Plant Capacity of 20.0 MGD, the initial Ownership Interests are:

<u>Party</u>	<u>Allocated MGD</u>	<u>Ownership Interest</u>
MWD	6.5	32.5%
AAW	<u>13.5</u>	<u>67.5%</u>
Total	<u>20.0</u>	<u>100.0%</u>

The Parties acknowledge that a future restoration or expansion of the Plant may result in an adjustment of the Ownership Interests and that it is not possible to predict at this time whether (or to what extent) such an adjustment would be necessary.

“Parties” means MWD and AAW.

“person” means an individual or an entity. For purposes of this definition, “entity” means a corporation, association, company, business trust, trust, estate, partnership, joint venture, two or more persons having a joint or common economic interest, any person other than an individual, and any governmental body.

“Phase I Common Facilities” means facilities intended to support Plant capacity in excess of the initial Phase I Plant Capacity of 20 MGD, including:

- a. Administration building, which has been sized to facilitate 80.0 MGD of capacity.
- b. Site work, which has been sized to facilitate capacity of 80.0 MGD.
- c. Raw water handling and storage facilities, which have been sized to facilitate capacity of 40.0 MGD.
- d. Wastewater clarifiers, which have been sized to facilitate capacity of 40.0 MGD.

- e. Drying beds, which have been sized to facilitate capacity of 30.0 MGD.
- f. Finished water reservoir and pump station, which have been sized to facilitate capacity of 40.0 MGD.

“Phase I Construction Costs” means the sum of the Phase IA Construction Costs, the AAW Construction Management Fee, the AAW Capitalized Interest Cost, the Phase IB Project Costs, the MWD Construction Management Fee, and the MWD Capitalized Interest Cost.

“Phase I Development Costs” means the following costs paid or incurred by AAW pertaining to design, engineering, permitting and development of the Phase I Plant Facilities:

- a. Engineering costs.
- b. Permitting costs.
- c. Labor and reasonable overhead of AAW for preliminary design, engineering and project management.
- d. Legal costs related to permitting and contracting.
- e. Capitalized interest on the foregoing costs, which will be compounded monthly at one-twelfth (1/12) of the AFUDC Rate.

Phase I Development Costs excludes Phase IA Construction Costs and legal, consulting and other professional advisory costs (as well as labor and overhead of AAW) pertaining to preparation, negotiation and execution of the Transaction Documents.

“Phase I Plant Capacity” means the average daily flow of potable water for which the Phase I Plant Facilities are designed to produce. It is planned that, on completion of the Phase I Plant Facilities, the Phase I Plant Capacity will be 20.0 MGD.

“Phase I Plant Facilities” means the Phase IA Plant Facilities and the Phase IB Plant Facilities.

“Phase IA Construction Costs” means out-of-pocket costs paid by AAW to contractors, engineers, inspectors, laboratories and other third parties for construction of the Phase IA Plant Facilities. Phase IA Construction Costs excludes Phase I Development Costs and excludes all labor, overhead and employee expenses of AAW pertaining to construction of the Phase IA Plant Facilities.

“Phase IA Plant Capacity” means the average daily flow of potable water which the Phase IA Plant Facilities is designed to produce. It is planned that, on completion of the Phase IA Plant Facilities, the Phase IA Plant Capacity (and hence the initial Phase I Plant Capacity) will be 13.5 MGD.

“Phase IA Plant Facilities” means the first sub-phase of construction of the Plant that generally includes all of the backbone infrastructure and equipment required, in the judgment of AAW, to provide the Phase I Plant Capacity of 20.0 MGD and that backbone infrastructure and equipment required, in the judgment of AAW, to facilitate an orderly and cost-effective expansion of the Plant to its ultimate planned capacity of 80.0 MGD, excepting the Phase IB Plant Facilities. The planned Phase IA Plant Facilities are depicted on Exhibit B.

“Phase IB Plant Capacity” means the average daily flow of potable water for which the Phase IB Plant Facilities are designed to produce. It is planned that, on completion of the Phase IB Plant Facilities, the Phase IB Plant Capacity will be a 6.5 MGD addition to the Phase I Plant Capacity, bringing the Phase I Plant Capacity to 20.0 MGD.

“Phase IB Plant Facilities” means the second sub-phase of construction of the Plant that generally consists of treatment equipment and facilities that are necessary to expand the Plant from 13.5 MGD capacity to 20.0 MGD capacity. The planned Phase IB Plant Facilities are depicted on Exhibit B.

“Phase IB Project Costs” means out-of-pocket costs paid by MWD to contractors, engineers, inspectors, laboratories and other third parties for planning, design, engineering, permitting, development and construction of the Phase IB Plant Facilities. Phase IB Project Costs excludes Phase I Development Costs and excludes all labor, overhead and employee expenses of MWD pertaining to construction of the Phase IB Plant Facilities.

“Plant” means the regional water treatment plant, as expanded from time to time, currently known as the White Tanks Regional Water Treatment Plant located at the northwest corner of Perryville Road and Cactus Road in Maricopa County, Arizona, including the turnout at the Canal, raw water storage, buildings, treatment equipment and ancillary facilities, finished water storage, pumping facilities, piping, and administrative facilities. It is contemplated that, on completion of the Phase I Facilities, the initial Plant will be as depicted in the Concept Plan attached as Exhibit B.

“Plant Construction Coordination Agreement” means the Plant Construction Coordination Agreement to be entered into between MWD and AAW, including all exhibits and other attachments, substantially in the form attached as Exhibit F, as amended from time to time.

“Plant Management and Operations Agreement” means the Plant Management and Operations Agreement to be entered into between MWD and AAW, including all exhibits and other attachments, substantially in the form attached as Exhibit H, as amended from time to time.

“Prime Rate” means the interest rate per annum designated by Bank of America, N.A. (the “Bank”), or its successors as its “Prime Rate,” as publicly announced by the Bank or its successors from time to time as a means of pricing credit extensions to some customers. The Parties acknowledge that the Prime Rate is neither tied to any external or internal rate or index nor necessarily the lowest rate of interest charged by the Bank or its successors at any given time for any particular class of customer or credit extension.

“Property Exchange Agreement” means the Property Exchange Agreement to be entered into between MWD and AAW, including all exhibits and other attachments, substantially in the form attached as Exhibit I, as amended from time to time.

“Prudent Industry Practices” means any of the practices, methods and acts that both (i) at the time that such practice, method or action is employed, and in the exercise of reasonable judgment in light of the facts known at such time, would be expected to accomplish the desired result consistent with applicable law, good business practices, safety, reliability, efficiency and expedition, and (ii) when engaged in, are commonly used or approved by prudent water and wastewater treatment industries, regardless of whether subject to public service corporation regulation, operating in the State of Arizona. Prudent Industry Practices are not to be interpreted, construed as or limited to the optimum industry practices, methods or acts, but rather are to be construed as a range of acceptable practices, methods or acts consistent with the duties and obligations of a Party under any water treatment agreements pertaining to the Plant and by which it is bound.

“Replacement and Improvement Capital Costs” means (a) out-of-pocket costs paid by AAW to contractors, engineers, inspectors, laboratories and other third parties for development, acquisition, installation and construction of Replacement and Improvement Capital Projects, (b) labor, overhead and employee expenses of a Party pertaining to development, acquisition, installation and construction of Replacement and Improvement Capital Projects, and (c) capitalized interest on the foregoing costs.

“Replacement and Improvement Capital Projects” means projects which (1) either replace existing assets, improve existing assets, and/or are new assets that do not materially increase the Plant capacity, and (2) meet all of the following conditions:

- a. The project will provide greater future benefits through improved efficiency, increased production, and/or materially extending the useful life of the asset.
- b. The new asset(s) will have a life greater than one (1) year and cost more than \$1,000.
- c. The asset(s) are recognized as capital assets in the NARUC Uniform System of Accounts.

“Representative” has the meaning set forth in Section 11.1.

“Site” means the real property consisting of approximately 46.36 acres located at the northwest corner of Perryville Road and Cactus Road in Maricopa County, Arizona, and more particularly described in Exhibit C.

“Start-Up” means the date on which (1) all authorizations required to provide water treatment and delivery services from, and to operate, the Phase I Plant Facilities as contemplated by the Transaction Documents have been received; and (2) Substantial Completion has occurred.

“Substantial Completion” means the date on which both (a) the construction of the Phase I Plant Facilities has been completed, and (b) the Phase I Plant Facilities have been operated by the Manager/Operator to ensure, to the satisfaction of the Manager/Operator, proper function and operation. Substantial Completion is not necessarily synonymous with Operational Acceptance and may in fact precede Operational Acceptance.

“Tenancy-in-Common Agreement” means the Tenancy-in-Common Agreement to be entered into between MWD and AAW, including all exhibits and other attachments, substantially in the form attached as Exhibit G, as amended from time to time.

“Transaction Documents” means the following agreements between MWD and AAW:

- a. Joint Development Agreement.

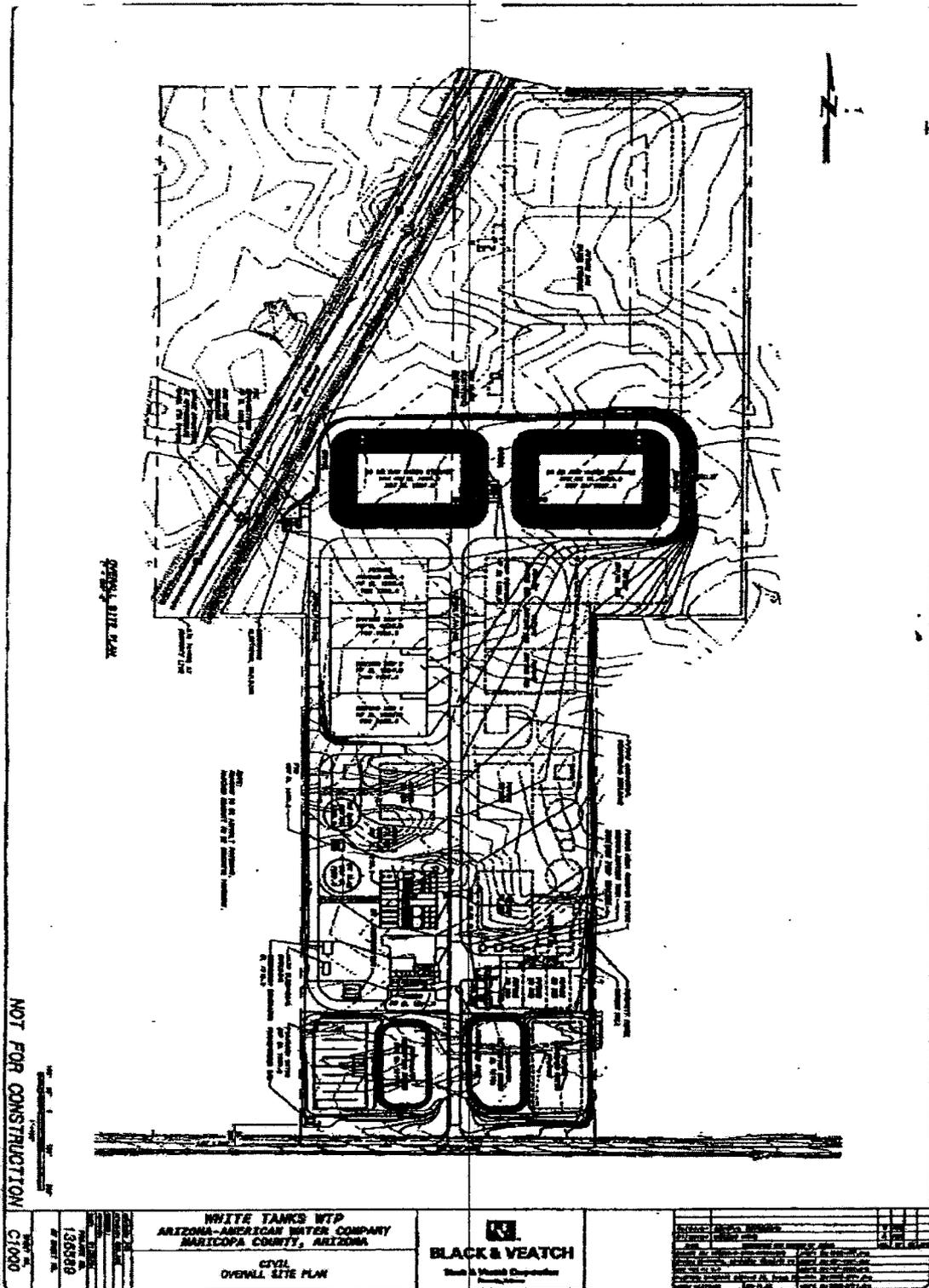
- b. Construction Easement.
- c. Plant Construction Coordination Agreement.
- d. Tenancy-in-Common Agreement.
- e. Plant Management and Operations Agreement.
- f. Property Exchange Agreement.
- g. Ground Lease.

“Variable Maintenance and Operations Costs” means Maintenance and Operations Costs that vary in proportion to the production of the Plant to a significant and considerable degree. Examples of Variable Maintenance and Operations Costs include chemical expenses, utility expenses, sludge disposal expenses, and filter media replacement costs.

“wheel” means to transport or convey water.

EXHIBIT B

WHITE TANK REGIONAL WATER TREATMENT PLANT – CONCEPT PLAN



NOT FOR CONSTRUCTION C1000	138588B 11/15/01	WHITE TANKS WTP ARIZONA-AMERICAN WATER COMPANY MARICOPA COUNTY, ARIZONA	 BLACK & VEATCH Black & Veatch Corporation	<table border="1"> <tr> <td>DESIGNED BY</td> <td>DATE</td> <td>SCALE</td> </tr> <tr> <td>CHECKED BY</td> <td></td> <td></td> </tr> <tr> <td>APPROVED BY</td> <td></td> <td></td> </tr> </table>	DESIGNED BY	DATE	SCALE	CHECKED BY			APPROVED BY		
	DESIGNED BY	DATE	SCALE										
CHECKED BY													
APPROVED BY													
CIVIL OVERALL SITE PLAN													

EXHIBIT C

SITE

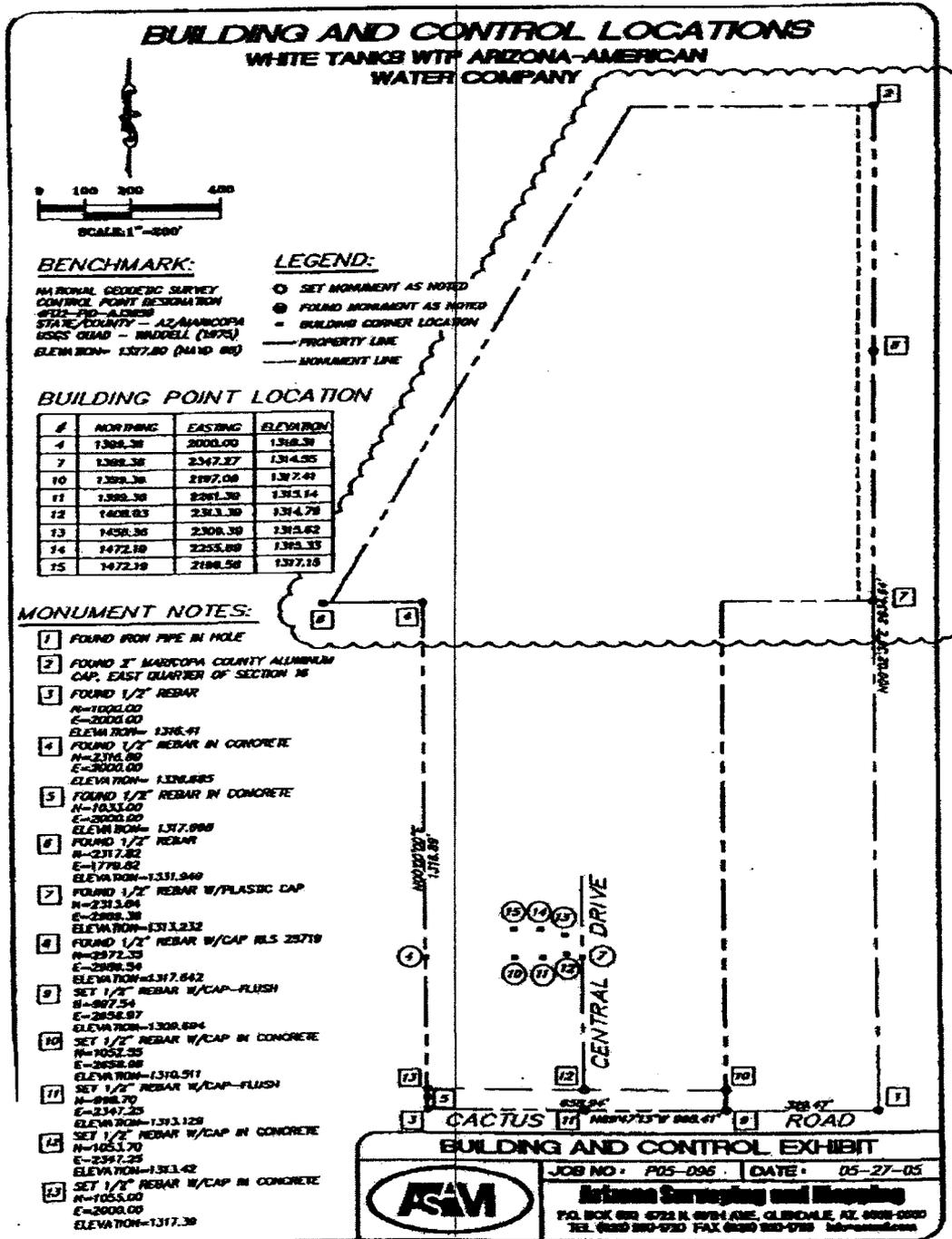


EXHIBIT D
LAND EXCHANGE AREA

PARCEL 7

PROPOSED COLLECTOR ALIGNMENT

1/4 corner?

Are property boundaries bearing/distance known?

PRASADA

ZANJERO TRAILS

PARCEL 8

APPROX. GROSS ACRES = 74.80±

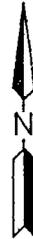
*A portion of Section 15
T3N, R2W*

PERRYVILLE ROAD

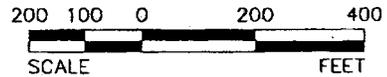
*SW corner
Sec 15*

*1/16 corner
Sec 15*

CACTUS ROAD



PRASADA



DATE: AUG 2007		ZANJERO TRAILS	
SCALE: 1"=200'		SURPRISE, ARIZONA	
DRAWN BY: DJF		PARCEL 8	
CHECKED BY:			

X:\6700\6714\06\EA\SHA\PARCEL8.dwg 08-08-2007 - 7:37am

EXHIBIT E
CONSTRUCTION EASEMENT