W-03512A-07-0362

0000091843

OPEN MEETING AGENDA ITEM

ORIGINAL

RECEIVED
2008 DEC 12 P 2:27
AZ CORP COMMISSION
DOCKET CONTROL

JOINT WELL DEVELOPMENT AGREEMENT

between

PINE WATER COMPANY

and

PINE-STRAWBERRY WATER IMPROVEMENT DISTRICT

dated

May 1, 2007

Arizona Corporation Commission
DOCKETED
DEC 12 2008
DOCKETED BY MN

TABLE OF CONTENTS

Page

1. Incorporation of Recitals 2

2. The K2 Well Project 2
   - 2.1 Test Well 2
   - 2.2 Determination of Sustainable Yield. 3
   - 2.3 Permanent Well/Interconnection 3

3. Project Construction 4
   - 3.1 Planning, Design, Engineering and Hydrology; Governmental Approvals 4
   - 3.2 Construction of K2 Well 4
   - 3.3 Commencement and Project Timeline 4
   - 3.4 Ownership 5
   - 3.5 Liability 5

4. Project Funding 5
   - 4.1 Budget 5
   - 4.2 Funding of Construction 5
   - 4.3 PWCo 7
   - 4.4 Accounting 8

5. Project Completion; Project Termination; use of Water 8
   - 5.1 Completion of Project 8
   - 5.2 Termination of Project 9

6. Use of Water. 9

7. Authority, Representations and Warranties 10
   - 7.1 PSWID represents and warrants that: 10
   - 7.2 PWCO represents and warrants that 11
   - 7.3 Accuracy of Representations and Warranties 11

8. Designated Representative 11
   - 8.1 Authority of Designated Representatives. Each party hereby assents to and confirms that its designated representatives are expressly authorized to: 13

9. Consent of Parties 13

10. Cooperation. 13
    - 10.1 Need to Cooperate 13
    - 10.2 PSWID Regulatory Participation 13

TABLE OF CONTENTS
(continued)

Page

10.3 PWCo Participation 13

11. Notices 14

12. Indemnification 15

13. Alternative Dispute Resolution 16

14. Miscellaneous 17

14.1 No Partnership or Joint Venture 17
14.2 No Third Party Rights 17

15. Entire Agreement 17

16. Modification of Agreement 17

17. Waiver 17

18. Severability 18

19. Time of the Essence 18

20. Further Instruments 18

21. Binding Effect; Successors and Assigns 18

22. Bankruptcy 18

23. Time Periods 18

24. Applicable Laws 18

25. Construction 18

26. Descriptive Headings 18

27. Counterparts 18

1910508.1/75206.015

JOINT WELL DEVELOPMENT AGREEMENT

THIS JOINT WELL DEVELOPMENT AGREEMENT ("Agreement") is made as of the 1st day of May, 2007 by and among **Pine Water Company** ("PWCo") and the **Pine-Strawberry Water Improvement District** ("PSWID"). PWCo and PSWID, from time to time, are each sometimes individually referred to herein as a "Party" and collectively as the "Parties".

RECITALS

A. PWCo is a public service corporation as defined in Article 15, Section 2, of the Arizona Constitution and, as such, is regulated by the Arizona Corporation Commission ("ACC"). PWCo has been granted a Certificate of Convenience and Necessity ("CC&N") by the ACC, authorizing PWCo to provide water utility service within its certificated service area in Pine, Arizona.

B. PSWID is a political subdivision of the State of Arizona created pursuant to A.R.S. §48-909A.6. The Petition for the Establishment of PSWID and PSWID's Bylaws expressly provide for expenditure of funds to locate and develop sources of water in quantities sufficient to provide for current needs and for future population growth in PSWID, and for the maintenance of a reliable water supply. PSWID's By-Laws further provide that PSWID's Board, in the exercise of its powers and duties under applicable State Statutes, and in particular A.R.S. §48-1014, shall, as it determines to be appropriate: (a) investigate current and potential sources of water for the Communities as well as the costs associated with maintaining or expanding present and potential sources; (b) formulate a plan or plans for improving present water sources of the Communities (including formulation of a plan or plans for funding such improvements; (c) consult with Federal, State, County and other Local government officials or agencies concerning development of long-term reliable water sources for the Communities; and (d) implement and formulate plans as necessary to provide long-term available water to Communities.

C. The Pine-Strawberry, Arizona region has long suffered from water supply shortages. Such shortages have led to community-wide concern and to the imposition by the ACC of mandatory curtailment measures and moratoria on new connections and service extensions. The ACC has also directed PWCo to continue efforts, including cooperating with other interested stakeholders, to search for long-term permanent solutions to the chronic water supply issues. PSWID and PWCo have worked independently and collectively within the community to promote water conservation and address the water supply shortage. Now, both Parties desire to work cooperatively to develop a new water source to supplement the water supplies currently available in PSWID and PWCo 's CC&N. As a certificated water provider in the Pine-Strawberry area, the new water source will be owned and operated by PWCo.

D. In or around 2005, PSWID undertook to analyze various supplemental long-term water supply alternatives in either Pine or Strawberry. PWCo considered the results of PSWID's analysis and proposed a variation of one of the alternatives for PSWID to consider. PSWID agrees with PWCo that the K2 site, defined herein, should be further investigated and developed as a possible source of water for customers of PWCo. and benefiting landowners in PSWID

within the certificated area of PWCo and, to a lesser extent, within the certificated area of Strawberry Water Company ("SWCo").

E. The K2 site is an existing site in eastern Strawberry, Arizona, just south of Strawberry Creek. The legal description for the K2 site is attached hereto as **Attachment 1** (the "K2 site") and the site plan for the K2 site is attached hereto as **Attachment 2,** and both documents are incorporated herein by this reference. The K2 site is currently owned by SWCo, an affiliate of PWCo, and already has electric power, some existing water storage and public water utility easements. The site is also located at the northern terminus of Project Magnolia, a high capacity water supply line owned by PWCo and connecting the communities of Pine and Strawberry, Arizona.

F. The Parties have conducted a careful and thorough scientific peer review of the possibility of finding water at the K2 site. The Parties believe that further development of a portion of this site as a well site would be in the public interest. The Parties' goal is to drill and equip a deep well on a portion of the K2 site approximating 30 foot by 30 foot with a Sustainable Yield of no less than 150 gallons per minute (gpm) and to interconnect the well to PWCo's system ("K2 Well Project" or "Project"). PWCo is informed by SWCo that a portion of the K2 site approximating 30 foot by 30 foot is not necessary or useful in the performance of the SWCo's duties to the public pursuant to A.R.S. §40-285(C).

G. The parties estimate that the Project will cost between one million dollars ($1,000,000) and one million three hundred thousand dollars ($1,300,000). PSWID is willing to provide $300,000 in capital toward the costs of the K2 Well Project in accordance with the terms of this Agreement. PWCo is willing to fund the remaining costs of the Project subject to the terms and conditions set forth herein. PSWID and PWCo acknowledge that despite the hydrologic analyses, the costs, and their best efforts, the Project may not result in a well with a sustainable yield of no less than 150 gpm.

NOW, THEREFORE, in consideration of the mutual conditions and covenants set forth herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT:

1. Incorporation of Recitals. By this reference, the Parties hereby agree to incorporate the recitals above as part of their agreement as if fully set forth herein.

2. The K2 Well Project. The purpose of the K2 Well Project is to drill, equip and interconnect a production well capable of producing a Sustainable Yield of water as defined in **Section 2.2.2.**

2.1 Test Well. PSWID and PWCo agree that the Project shall commence with the drilling of a test well, estimated at 1,700 feet, at the K2 site. The purpose of this test well shall be to determine, to the greatest extent possible, whether a permanent well at the K2 site is capable of producing a Sustainable Yield as defined in **Section 2.2.2**. PSWID and PWCo shall work cooperatively to mutually agree upon a well driller to drill the test well in accordance with **Section 3**.

2.1.1. Commensurate with the drilling of a test well, all necessary and appropriate well testing, as recommended by the hydrologist and mutually agreed to by the Parties, will be conducted for the purposes of determining the Estimated Sustainable Yield as defined in **Section 2.2.3**.

2.2 Determination of Sustainable Yield.

2.2.1. Hydrologist. Unless otherwise mutually agreed, Steve Noel of Southwest Groundwater Consultants, Inc. shall be hired by PWCo in accordance with **Section 3** as the "Hydrologist" for the K2 Project. The role of Hydrologist shall be to (1) make recommendations regarding the test well and regarding testing; (2) review and analyze test data for the purpose of determining the Estimated Sustainable Yield as defined in **Section 2.2.3.** and (3) review and analyze test data to make a determination of whether a permanent well will result in a Sustainable Yield as defined in **Section 2.2.2.**

2.2.2. For purposes of this Agreement, "Sustainable Yield" means the determination by the Hydrologist based on pump test of the permanent well and all testing data, including, without limitation, groundwater flux measurements, and other available hydrologic data that a continuous production rate of no less than 150 gpm for twenty-four (24) hours per day, seven (7) days a week, which determination shall, unless otherwise mutually agree otherwise, set forth the major assumptions, limitations and qualifications associated therewith.

2.2.3. For purposes of this Agreement, "Estimated Sustainable Yield" means the determination by the Hydrologist whether the Project has a high probability of resulting in Sustainable Yield. The determination shall be made based on the test well and all testing data, including, without limitation, groundwater flux measurements, and other available hydrologic data, and, unless mutually agreed otherwise, set forth the major assumptions, limitations and qualifications associated therewith.

2.2.3.1. The Estimated Sustainable Yield shall be provided to the Parties for review within 60 days after the test well is drilled. The Parties shall confer and discuss the Estimated Sustainable Yield and whether the Project has a high probability of resulting in the Sustainable Yield. In the event either Party disagrees with or questions the Estimated Sustainable Yield, they may request that a hydrologist, acceptable to the other Party, review the Estimated Sustainable Yield and underlying data and advise whether the Estimated Sustainable Yield constitutes a reasonable estimate of the Project and, if not, the deficiencies with the Estimated Sustainable Yield. Unless otherwise mutually agreed, the Party requesting a second opinion shall pay the cost thereof. No attempt shall be made to direct the outcome of the recommendations of any hydrologist hired pursuant to this Agreement. In the event the two determinations are materially different, the Parties shall determine which determination shall control. In the event the Parties cannot mutually agree, then the lower Estimated Sustainable Yield shall be utilized by the Parties for the purposes of this Agreement.

2.3 Permanent Well/Interconnection. After securing an Estimated Sustainable Yield pursuant to **Section 2.2.3**, indicating the Project has a high probability of resulting in a Sustainable Yield, confirmed by any second opinion or joint determination that may have been secured pursuant to **Section 2.2.3.1,** a permanent well shall be drilled, cased and equipped and all

facilities necessary to interconnect such well to the PWCo transmission and delivery system shall be constructed, subject to the terms and conditions herein. Nothing herein, shall prohibit PWCo from proceeding with construction of a permanent well if the Estimated Sustainable Yield is less than 150 gallons per minute if PWCo, in the reasonable exercise of its business judgment, determines such construction is reasonable and prudent.

3. Project Construction.

3.1 Planning, Design, Engineering and Hydrology; Governmental Approvals. PWCo will prepare or have prepared any and all preliminary and final documents, including site plans, engineering drawings and surveys, and hydrologic analyses necessary to construct the Project. PWCo shall also be responsible for obtaining all necessary governmental approvals. PSWID shall have the right to participate in all planning, decisions and proceedings relating to the K2 Well Project and shall be provided copies of planning documents as necessary to participate in a commercially reasonable manner, including, reasonably cooperating in obtaining necessary governmental approvals. The Parties shall cooperate in good faith to resolve differences, but agree and acknowledge that PWCo has the right of final approval of all planning documents related to the construction of the K2 Well Project. PWCo shall use commercially reasonable efforts to procure all necessary licenses, approvals and permits for the construction and operation of the Project (collectively "Approvals"). All such Approvals shall be maintained (including renewal if necessary) until the completion or termination of the Project. Nothing herein shall preclude PWCo, in its discretion, from maintaining the Approvals after the termination of the Project.

3.2 Construction of K2 Well. PWCo agrees, subject to the terms and conditions of this Agreement, to exercise commercially reasonable efforts to retain third parties to undertake design and construction of the Project, such third-parties to include, without limitation, well drillers, hydrologists, engineers, electricians and other contractors as necessary for PWCo to drill, equip and interconnect such wells to the PWCo water distribution system. PWCo shall exercise commercially reasonable efforts to cause the K2 Well Project to be substantially constructed in accordance with the requirements of the plans discussed in **Section 3.1** above, and all governmental requirements. PWCo represents and warrants that any contractors hired for the Project will be licensed, when required, and qualified to perform the services contracted for and, as commercially appropriate, will have provided evidence of satisfactory insurance. PWCo shall furnish to PSWID copies of all third-party contracts or any other contracts proposed to be entered into by PWCo for construction of the Project and/or the supplying of materials in connection therewith at least 5 business days before executing them.

3.3 Commencement and Project Timeline. PWCo shall commence construction of the K2 Well Project as soon as logistically possible following receipt of all necessary approvals and obtaining the necessary permits to commence well drilling. A preliminary project timeline for completion of the K2 Well Project is attached to this Agreement as **Attachment 3** and incorporated herein by this reference. Subject to **Section 3.2**, PWCo shall exercise commercially reasonable efforts to construct and complete or cause to be completed, the Project in accordance with the timeline set forth in **Attachment 3**. The deadlines set forth in **Attachment 3** shall be extended for any period of time that progress of design, processing or construction of the Project is reasonably delayed, despite PWCo's reasonable efforts, due to

unexpected delays in scheduling well drilling, unexpected delays in obtaining equipment and supplies necessary for the Project or unnecessary delays caused by material obstacles encountered during the actual drilling of the K2 Well Project. The timeline shall also be extended for any period of time the Project is reasonably delayed due to inclement weather or other natural disaster, unavailability or shortage of labor or materials, national emergency, fire or other casualty, natural disaster, war, unforeseen delays or actions of governmental authorities or utilities, riots, acts of violence, labor strike, injunctions in connection with litigation, or the failure of PSWID to timely pay or deposit any amount required hereunder, or any other matter outside of the reasonable control of PWCo that renders performance within the timeline commercially impracticable.

3.4 Ownership. At all times relevant hereto, the Project, and all facilities and components thereof, however financed, shall be owned by PWCo unless conveyed to PSWID in accordance with **Section 6** PWCo's ownership shall be subject to the security interest and liens in favor of PSWID as specified in **Section 4.2.1.2** below.

3.5 Liability. The Parties acknowledge and agree that the hydrology of the Pine-Strawberry area makes the likelihood of success or failure of the Project uncertain, and agree that PWCo, as the party responsible under this Agreement for construction of the Project, makes no representation or warranty with respect to the success or failure of the K2 Well Project to result in a Sustainable Yield as defined in **Section 2.2.2**, and PSWID agrees that PWCo shall have no liability for the failure of the Project to result in a Sustainable Yield other than for the payment of costs as set forth in this Agreement.

4. Project Funding. The Project shall be funded by PWCO and PSWID as follows:

4.1 Budget. PWCo shall prepare a preliminary estimated budget for the total costs of the K2 Well Project within sixty (60) days of the date of this Agreement (the "Budget"). PSWID shall be entitled to approve the Budget, which approval shall not be unreasonably withheld. PWCo shall update and revise the Budget 30 days prior to commencing work on the Project and every ninety (90) days thereafter through completion or termination of the Project and shall deliver a copy of the revised Budget to PSWID.

4.2 Funding of Construction.

4.2.1. PSWID. PSWID shall provide the initial funding for the Project in the amount of $300,000, which amount shall be used to pay the cost to commence design and construction of the Project, including without limitation, drilling a test well and conducting well tests in accordance with **Section 2.1** and, to the extent funds remain therefore, for the construction of the permanent well and interconnection in accordance with **Section 2.2**. As used herein, the "Cost" of a particular component of the Project shall mean the actual direct cost incurred by PWCo in connection with the construction of the Project, including any costs incurred to obtain the necessary governmental approvals. The funds provided by PSWID shall be paid as follows:

4.2.1.1. Escrow. PSWID shall deposit its $300,000 funding for the Project in an interest bearing escrow account to be established at First American Title,

Payson, Arizona, or as otherwise mutually agreed (the "Escrow"), provided all the following are satisfied:

a. The ACC has approved this Agreement, upon terms and conditions acceptable to the Parties. The Parties agree to work cooperatively to address terms and conditions deemed unacceptable to them.

b. PWCo notifies PSWID in writing that funding for the Project is available upon terms and conditions acceptable to PWCo within sixty (60) days of receipt of ACC approval of this Agreement;

c. Title to the well site for the Project has been conveyed to PWCo, including easements for ingress, egress, maintenance, repair and replacement (the "K2 Wellsite"), which transfer shall occur within sixty (60) days of receipt of ACC approval of this Agreement; and

d. PWCo provides ten (10) days written notice that it desires the Escrow be funded.

4.2.1.2. Escrow Instructions. The Parties' designated representatives shall mutually agree to the form of the Escrow Instructions prior to opening of the Escrow and such Escrow Instructions shall be attached to this Agreement as **Attachment 4**, and deemed incorporated herein by this reference.

4.2.1.3. Escrow costs shall be paid out of the Escrow.

4.2.1.4. PWCo may make draws from the Escrow to fund contracts entered into in accordance with this Agreement by presenting a written statement representing and warranting that the amount is due and owing under such contract or contracts, specifying the work covered by the draw and the contract associated therewith. Upon termination of Project or this Agreement for any reason, PWCo shall make no further draws from the Escrow and any funds remaining in the Escrow shall be immediately returned to PSWID.

4.2.1.5. Prior to making the first draw, PWCo shall provide PSWID at least ten days notice and shall first record, or cause to be recorded with the Gila County Recorder, the form of Notice of Continuing Security Interest and Lien in favor of PSWID attached hereto as **Attachment 5.** As security for the funds and other consideration being provided by PSWID in accordance with this Agreement to secure PWCo's performance under this Agreement, PWCo herby agrees and grants to PSWID, effective with the first draw from the Escrow, a security interest in the K2 Wellsite and the Project. PWCo agrees that, in addition to the rights provided for herein, PSWID shall have all of the rights and remedies of a secured party under the Arizona Uniform Commercial Code in respect to the K2 Wellsite and the Project if PWCo fails to perform, in whole or in part, its obligations under this Agreement. The parties hereby agree that the Security Interest and Lien granted by PWCo is expressly limited to the K2 Wellsite and the Project and shall not encumber any other asset of PWCo. PSWID may, at its option, file a UCC Form 1 notice of the security interest. PWCo shall cooperate in the perfecting of a security interest and lien as reasonably requested by PSWID. PSWID shall file a release of the Continuing Security Agreement, UCC Form 1 and any other evidence of the

security interest granted by this Section upon repayment of PSWID pursuant to **Sections 4.2.2 or 4.2.4** or if there is no repayment obligation in accordance with **Section 4.2.3**.

4.2.2. Return of PSWID's Capital Investment: PSWID is providing the initial capital for the Project in furtherance of its purpose of investigating current and potential sources of water and implementing plans to provide long-term available water to the Pine and Strawberry communities. However, in the event the Project is successful PSWID will retain no ownership interest in the Project and, therefore, except as provided in **Sections 4.2.3 and 4.2.4** below, PWCo shall return the capital provided by PSWID pursuant to this Agreement, together with a return thereon of six percent (6%) per annum from the date the funds are deposited in the Escrow. Payments shall be made by PWCo to PSWID in 36 equal monthly payments with the first payment due the first day of the month immediately following entry of an ACC Decision recognizing the Project as used and useful and included in rate base for rate making purposes. PWCo may prepay PSWID, in whole or in part, at any time without penalty. All payments shall first be applied to accrued interest. PWCo agrees to make application with the ACC to include the Project in rate base no later than June 1, 2008 as required by ACC Decision No. 67166 (August 10, 2004), unless (1) the Project is still underway as of that date but not yet Final in accordance with **Section 5.1**; (2) the Project is terminated pursuant to **Section 5.2** before that date; and/or (3) the ACC has modified the deadline for filing a permanent rate case established in Decision No. 67166.

4.2.3. PWCo shall have no obligation to repay PSWID if any of the following apply:

4.2.3.1. The Project is terminated pursuant to **Section 5.2** below.

4.2.3.2. The permanent well is drilled but its water production fails result in a Sustainable Yield as defined in **Section 2.2.2** and the well is formally abandoned by PWCo or is transferred to PWSID or PSWID's designee by PWCo.

4.2.4. In the event the permanent well is completed and placed in service by PWCo but its water production is less than the Sustainable Yield, then PWCo's repayment obligation shall be reduced by multiplying the monthly payment obligation set forth in **Section 4.2.2** above by the fraction where the numerator is the continuous production rate for twenty-four (24) hours per day, seven (7) days a week expressed as gallons per minute and the denominator is 150 gallons per minute.

4.3 PWCo. All other costs of the Project shall be paid by funds provided by PWCo, including, without limitation, insurance in accordance with **Section 4.3.2.**

4.3.1. Funding for the Project provided by PWCo shall be financed through equity, debt, and/or advances or contributions in aid of construction as determined by PWCo in its sole and absolute discretion, after consultation with PSWID and subject to its regulation as a public service corporation.

4.3.2. Insurance. PWCo shall procure Insurance, in the name of PWCo, naming PSWID as an additional insured with respect to claims which may arise out of or result from PWCo's acts, operations or negligence or those of its subcontractors, or anyone directly or

indirectly employed by any of them including officers, employees, agents or representatives for matters related to this Agreement. The coverage shall be provided on an "occurrence" basis rather than a "claims made" basis, shall be provided without offset against PSWID's existing insurance and provide for a minimum of thirty (30) days notice to PSWID prior to cancellation, reduction in coverage or other substantial modification. PWCo shall provide a Certificate of Insurance which sets forth the following minimum amounts and types of coverage:

TYPE OF COVERAGE	AMOUNT NO LESS THAN
Workers' Compensation	Statutory
Employers Workers' Compensation Liability	$100,000 each accident $100,000 disease each employee $500,000 disease aggregate
Commercial General Liability (including contractual liability for this Contract; broad form property damage; completed operations; and explosion, collapse and underground coverage)	$1,000,000 per occurrence $2,000,000 aggregate combined single limit
Vehicle Liability (including owned, hired and non-owned coverages)	$1,000,000 combined single limit

4.4 Accounting. PWCo shall keep good and accurate books and records in sufficient detail to allow the Cost of the Project to be calculated, and which evidence that all monies provided under the Financing Agreement are actually used to further the Project. PWCo shall keep separate books and records for the Project, which books and records shall be made available for review (upon prior reasonable notice) by PSWID. Within sixty (60) days after the project is deemed Final or Terminated in accordance with **Section 5**, PWCo shall deliver to PSWID a reasonably detailed final accounting of the Cost of the Project.

5. Project Completion; Project Termination; use of Water

5.1 Completion of Project. The Project shall be completed and deemed Final when PWCo has completed drilling, construction and interconnection of the permanent well to its system. In the event the permanent well achieves at least a Sustainable Yield, the K2 well will be interconnected to the PWCo system. In the event the permanent well does not achieve at least a Sustainable Yield, PWCo shall meet with PSWID and discuss whether the well should be placed in service, abandoned or transferred to PSWID. In the event PWCo, after consultation with PWSID, in its sole discretion decides not to interconnect the K2 well to the PWCo

distribution system and place it in service, PWCo will offer to convey title to the Project to PSWID or its designated representative at no cost to PSWID or to its designee and will retain the right of first refusal to the purchase of any water produced as a result of the Project at a price to be negotiated consistent with other similar water purchase agreements in the Pine, Arizona region. If PWSID declines to accept the K2 well, then PWCo shall cap and abandon well at its sole cost, unless the Parties agree otherwise.

5.2 Termination of Project.

5.2.1. PSWID may terminate the Project at any time prior to the expenditure of the PSWID funding provided in accordance with **Section 4.2.1** if it reasonably determines the time for completion of the Project in accordance with **Section 5.1** will exceed two (2) years beyond the execution of this Agreement.

5.2.2. PWCo, in the exercise of its reasonable discretion, after consultation with PSWID, may terminate the Project prior to it being deemed Final in accordance with **Section 5.1** if any of the following apply:

5.2.2.1. The ACC fails to approve this Agreement within 180 days after submission for approval or conditions the approval on terms and conditions unacceptable to PWCo.

5.2.2.2. PSWID does not provide funding in accordance with **Section 4.2**.

5.2.2.3. PWCo, using reasonable discretion of a public service corporation in similar circumstances, determines any of the following apply:

a. PWCo will not be able to secure funds for construction upon reasonable terms and conditions, provided this condition shall no longer be grounds to terminate this Agreement once the Escrow is funded by PSWID in accordance with **Section 4.2.1.1**.

b. The cost of the Project is not warranted based upon the determination made in accordance with **Section 2.2.2** concerning an Estimated Sustainable Yield of less than 150 gpm.

c. The cost of completing the Project has increased to exceed more than one million three hundred thousand dollars ($1,300,000.00) unless otherwise approved by PWCo.

d. PWCo has a reasonable basis to conclude that the ACC is not likely to include the costs of the Project in PWCo's rate base.

6. Use of Water. PWCo shall not be required to use any water from the K2 Well Project unless (1) the Project has resulted in a Sustainable Yield from the permanent well; and (2) such water can be delivered to PWCo's ratepayers at rates determined by the ACC to be just and reasonable. For purposes of this Agreement, rates are not "just and reasonable" if they do

not include recovery of PWCo's prudently incurred costs of providing water from the K2 Well Project to PWCo's customers and a return on and of PWCo's investment in the Project. In the event PWCo chooses not to use the water developed at the Project, PWCo will offer to convey title to the Project to PSWID or its designee and will retain the right of first refusal to the purchase of any water produced as a result of the Project at a price to be negotiated consistent with other similar water purchase agreements in the Pine, Arizona region.

6.1 Water from the Project in excess of the needs of PWCo will be made available to SWCo. To the extent water is available from the Project in excess of the needs of metered customers of PWCo and SWCo, PWCo shall make water available for fire fighting purposes. All water made available by PWCo for fire fighting purposes shall be metered and subject to law and regulation including all ACC orders, rules, regulations and tariffs. In addition, unless a specific tariff for water provided for fire fighting purposes is approved by the ACC, such water shall be provided by PWCo at cost, which means recovery of associated operating expenses but not operating income as such terms are applicable in ACC ratemaking proceedings.

6.2 PWCo shall, in accordance with its duly approved ACC tariffs, continue to undertake reasonable effort to maximize the quantity of water obtained from its wells, including the Project if it results in a Sustainable Yield as defined in **Section 2.2.2** before resorting to hauling water.

7. Authority, Representations and Warranties.

7.1 PSWID represents and warrants that:

7.1.1. PSWID is a political subdivision, duly organized and existing under the laws of the State of Arizona, and has, and as of the date of the Effective Date will have, full legal right, power and authority to: (i) enter into this Agreement; and (ii) carry out and consummate the transactions contemplated by this Agreement.

7.1.2. Any and all hearings, ordinances and approvals prerequisite to the execution and delivery of this Agreement, have been held, enacted or granted and in the processing thereof all notice and hearing requirements under applicable law have been fully complied with, including, but not limited to, open meeting laws of the State of Arizona.

7.1.3. The PSWID Board: (i) has duly authorized and approved the execution and delivery of, and the performance of its obligations under this Agreement; and (ii) have duly authorized and approved the consummation of all other transactions contemplated by this Agreement.

7.1.4. The consummation of the transactions contemplated in this Agreement will not conflict with or constitute a breach of or default under any provision of applicable law or administrative regulation of the State of Arizona or the United States of America or any department, division, agency or instrumentality thereof or any applicable judgment or decree or any loan agreement, bond, note, resolution, ordinance, indenture, agreement or other instrument to which PSWID is a party or may be otherwise subject, to the extent that such conflict, breach or default adversely affects or impacts the terms or performance of this Agreement, the Project or any of the transactions contemplated by this Agreement.

7.1.5. There is no action, suit, proceeding, inquiry or investigation by or before any court, governmental agency, public board or body pending or, to the knowledge of the PSWID, threatened (i) in any way affecting PSWID's powers or the existence of PSWID (ii) in any way contesting or affecting the validity or enforceability of this Agreement or any agreements entered into in connection therewith, or (iii) that may adversely affect PSWID or the Project.

7.2 PWCO represents and warrants that:

7.2.1. PWCo is a public service corporation, duly organized and existing under the laws of the State of Arizona, and has, and as of the date of the Effective Date will have, full legal right, power and authority to: (i) enter into this Agreement; and (ii) carry out and consummate the transactions contemplated by this Agreement.

7.2.2. Any and all approvals prerequisite to the execution and delivery of this Agreement have been obtained.

7.2.3. The consummation of the transactions contemplated in this Agreement will not conflict with or constitute a breach of or default of a contract or any obligation under any provision of applicable law or administrative regulation of the State of Arizona or the United States of America or any department, division, agency or instrumentality thereof or any applicable judgment or decree or any loan agreement, bond, note, resolution, ordinance, indenture, agreement or other instrument to which PSWID is a party or may be otherwise subject, to the extent that such conflict, breach or default adversely affects or impacts the terms or performance of this Agreement, the Project or any of the transactions contemplated by this Agreement.

7.2.4. Construction of the Project will be in accordance with the Plans and the operation of the Project will comply with the Agreement and all applicable laws, zoning ordinances, municipal ordinances, regulations and orders of Federal, State, County, City, local and regulatory authorities of every kind and with all covenants, conditions and restrictions affecting the Project.

7.2.5. All permits, authorizations and approvals required for construction of the Project in accordance with the Plans have been or will be obtained prior to the start of construction.

7.3 Accuracy of Representations and Warranties. The Parties acknowledge that each and every representation, warranty, term and condition in this Agreement shall be true and accurate as of the date of execution of this Agreement, shall constitute a material part of the consideration hereunder, and shall survive the execution of this Agreement.

8. Designated Representative. For purposes of coordination and planning, and to the extent approval from PSWID is required under this Agreement, each Party designates the respective individual named below as its representatives to act on its behalf in all such matters. All inquiries, requests, instructions, authorizations, and other communications with respect to the matters covered by this Agreement shall be made to such representatives. Any Party may, without further or independent inquiry, assume and rely at all times that each representative of

the other Parties (as designated hereunder) has the power and authority to make decisions on behalf of such Parties, to communicate such decisions to the other Parties and to bind such Parties by his or her acts and deeds, unless otherwise notified in writing by the Party designating the representative. Any Party may change its representative under this Agreement at any time by written notice to the other Parties. The initial Designated Representatives of each Party for the purpose of this Section shall be as follows:

PWCo:

Robert T. Hardcastle

President
Brooke Utilities, Inc.
3101 State Road
Bakersfield, CA 93308

PSWID:

1st Designated Representative

James M Richey
4502 Meadow Way
P.O. Box 2379
Pine, Arizona 85544-2379
C- 602-920-7826
jmrpine@msn.com

2nd Designated Representative

Wesley E. Suhr
4119 Whispering Pine Rd
P.O. Box 687
Pine, Arizona 85544-0687
H- 928-476-6418
C- 928-951-3641
wcsuhr@peoplepc.com

The 2nd Designated Representative for PSWID may act when reasonable attempts to reach the 1st Designated Representative have been unsuccessful or when delegated authority to act by the 1st Designated Representative. From and after the Effective Date of this Agreement and until the project is Final, the Designated Representatives of the Parties shall communicate on an as needed basis regarding the status of the Project. PWCo shall be responsible for scheduling the time and manner of such communications and shall give PSWID at least five (5) days' advance notice thereof, unless there is a regularly scheduled location and time, in which event no advance notice is required.

8.1 Authority of Designated Representatives. Each party hereby assents to and confirms that its designated representatives are expressly authorized to:

8.1.1. In accordance with **Section 2.1**, agree on the well driller, agree on design of the test well and permanent well, agree on hydrologic testing criteria and accept or contest the determination of the Hydrologist of the Estimated Sustainable Yield and the Sustainable Yield as defined in **Section 2.2**.

8.1.2. In accordance with **Section 3**, agree to any contract proposed by PWCo.

8.1.3. Agree upon Escrow Instructions in accordance with **Section 4.2.1.2**.

8.1.4. Extend any time frame set forth in this Agreement.

9. Consent of Parties. Except as otherwise expressly provided herein, wherever in this Agreement PSWID is required to give its consent or approval to any action on the part of PWCo, such consent or approval will not be unreasonably withheld, delayed or conditioned, and will be deemed given if not expressly withheld by written notice given within seven (7) business days following the giving of the notice requesting such consent.

10. Cooperation.

10.1 Need to Cooperate. The Parties acknowledge and agree that the detailed planning, improvement and ultimate success of the K2 Well Project requires a significant commitment of resources on the part of the Parties and that without the Parties good-faith cooperation on all aspects of the Agreement, both express and implied, the Project may not succeed. The Parties agree to cooperate at all times in good faith to achieve their goal of developing a permanent well at the K2 site that has a Sustainable Yield that can be delivered to PWCo's customers at rates that are just and reasonable and include recovery on and of any investment made by PWCo in the Project.

10.2 PSWID Regulatory Participation. PSWID covenants and agrees to support any effort by PWCo to obtain approval of this Agreement by the ACC, which application shall be filed with the ACC within thirty (30) days of the date of this Agreement, as well as in obtaining any State, County or other regulatory approval required for the Project. If the Project is deemed Final in accordance with **Section 5.1**, PSWID also covenants and agrees to support PWCo's efforts to recover through rates its actual and necessary investment in the Project, including amounts repaid to PSWID by PWCo or its shareholder in accordance with this Agreement. Such support shall, upon reasonable request by PWCo, include PSWID providing public comment supporting this Project and the inclusion of the fair and reasonable cost thereof in rate base in proceedings before the ACC.

10.3 PWCo Participation. PWCo covenants and agrees to support any effort by PSWID to approve this Agreement and shall, upon reasonable request by PSWID, appear before the Board of PSWID and the ACC to provide information regarding the Project.

11. Notices.

11.1 Any notice, approval, consent or other communication required or permitted to be given to a Party must be in writing and delivered in person, or by reputable nationwide overnight courier (e.g., Federal Express), or given by facsimile transmission, or forwarded by certified or registered mail, postage pre-paid, return receipt requested, at the address indicated below, unless the Party giving such notice has been notified, in writing, of a change of address:

PWCo

Brooke Utilities, Inc.
Attention: Robert T. Hardcastle, President
3101 State Road
Bakersfield, CA 93308
Telephone: (661) 633-7526
Facsimile: (800) 748-6981
email: rth@brookeutilities.com

With a copy to:

Jay L. Shapiro
Fennemore Craig, P.C.
3003 N. Central Avenue, Suite 2600
Phoenix, Arizona 85012
Telephone: (602) 916-5366
Facsimile: (602) 916-5566
Email: jshapiro@fclaw.com

PSWID

Pine Strawberry Water Improvement District
Attention: Gary Sherlock,Chairman
P.O. Box 134 Pine, Arizona
H- 928-476-3560
C- 602-989-1942
rgse@earthlink.net

With a copy to:

William P. Sullivan Esq.
Curtis, Goodwin, Sullivan, Udall & Schwab
501 East Thomas Road
Phoenix, AZ 85012-3205
Telephone: (602) 393-1700
Facsimile: (602) 393-1703
Email: wsullivan@cgsuslaw.com

11.2 Notices are effective:

11.2.1. on the earliest of date of delivery (or refusal to accept delivery) if notice is given by personal delivery or facsimile transmission with evidence of error-free transmission prior to 5:00 p.m., Phoenix Time,

11.2.2. on a business day (or the next succeeding business day if given after 5:00 p.m., Phoenix Time or on a Saturday, Sunday or federal or Arizona state holiday),

11.2.3. on the next succeeding business day after deposit with an overnight courier for next day delivery, or

11.2.4. if notice is sent through the United States mail, on the earlier of the date of actual delivery as shown by the addressee's receipt or the expiration of three (3) days following the date of mailing.

12. Indemnification.

12.1 PSWID shall (to the extent permitted by law) indemnify and hold harmless, jointly and severally, PWCo and each director, official, independent contractor or employee thereof (any such person being herein sometimes called an "Indemnified Party"), for, from and against any and all losses, claims, damages or liabilities, joint or several to which any such Indemnified Party may become subject, whether under any statute or regulation at law or in equity or otherwise, whether arising under statute, contract or tort, insofar as and to the extent such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or caused by PSWID having failed to take any and all acts necessary to enter into this Agreement as a political subdivision of the State of Arizona and shall reimburse any legal or other expenses reasonably incurred by any Indemnified Party in connection with investigating or defending any such loss, claim, damage, liability or action, including the fees of expert witnesses.

12.2 PWCo shall (to the extent permitted by law) indemnify and hold harmless, jointly and severally, PSWID and each director, official, independent contractor or employee thereof (any such person being herein sometimes called an "Indemnified Party"), for, from and against any and all losses, claims, damages or liabilities, joint or several to which any such Indemnified Party may become subject, whether under any statute or regulation at law or in equity or otherwise, whether arising under statute, contract or tort, insofar as and to the extent such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or caused by

(a) PWCo having failed to take any and all acts necessary to enter into this Agreement and/or (b) by the active or passive negligence, or the willful action or inaction of Applicant, its officers, directors, employees, agents, servants, contractors or subcontractors in the execution of Applicant's obligations under this Agreement or in connection therewith, including without limitation completing the Project. In case any suit or other proceeding shall be brought on account thereof, Applicant will, if requested by Company, assume the defense at Applicant's own expense and will pay all judgments rendered therein. The provisions of this Paragraph shall survive termination of this Agreement.

12.3 An Indemnified Party shall, promptly after the receipt of written notice of a threat of, or the commencement of, any action against such Indemnified Party in respect of which indemnification may be sought against PSWID or PWCo pursuant to **Section 11**, notify them in writing of the commencement thereof. The failure of the Indemnified Party to give such notice shall not reduce the liability of PSWID or PWCo unless PSWID or PWCo is actually prejudiced by such failure to receive notice or such failure constitutes a bar pursuant to statute. In case any such action shall be brought against an Indemnified Party and such Indemnified Party shall notify PSWID or PWCo pursuant to this **Section**, the notified Party shall defend the Indemnified Party therein. The provisions of this **Section** shall survive the term of the Agreement and any termination hereof

13. Alternative Dispute Resolution. Unless such claim or dispute would fall within the jurisdiction of the ACC, all claims and disputes concerning the Project and this Agreement that may arise between the Partiers shall be resolved by Alternative Dispute Resolution as set forth below and in accordance with A.R.S. §12-1501, et seq. Any claim or dispute falling within the jurisdiction of the ACC may be removed to the ACC after then initiation of arbitration and prior to the merits of the matter being heard.

13.1 Any Party by written notice to the other involved Parties within ten (10) business days after a controversy has arisen shall select a person to act as an arbitrator.

13.2 The other involved Party may, by written notice within ten (10) business days after receipt of such written notice by the first Party, appoint a second arbitrator.

13.3 If two arbitrators have been appointed as provided above, they shall agree on a third arbitrator within five (5) business days after their appointment and shall appoint him or her by written notice signed by both of them and a copy mailed to each Party involved. In the event that the Parties fail to appoint a third arbitrator, the Parties authorize the appointment of a third arbitrator by the American Arbitration Association.

13.4 On appointment of three arbitrators (hereinafter, "the Panel") as provided for above, the Panel shall hold a hearing within ten 10 business days after the appointment of the third member of the Panel, or upon the expiration of the time period in **Section 13.2** if no other arbitrator is appointed. The hearing shall be held in the City of Phoenix, or at any other place agreed to by the Parties involved. The Parties shall be entitled to reasonable discovery prior to the arbitration.

13.5 At least five (5) business days prior to the hearing, the Parties shall meet, exchange exhibits, stipulate and agree on undisputed facts. No exhibit shall be admitted unless exchanged between the Parties. Prior to or at the hearing, the Parties shall submit memorandums not to exceed five (5) pages outlining the relevant issues for the arbitrators. At the hearing, the laws of evidence of the State of Arizona shall apply, and the arbitrator, or the Panel, as the case may be, shall allow each Party to present that Party's case, evidence and witnesses and render the decision as to the disputed matter. Each Party shall bear their respective expenses of the arbitrators appointed to hear the matter. The prevailing party shall be awarded its reasonable attorneys fees and other reasonable costs incurred.

13.6 The award of the arbitrator or the majority of the Panel shall be final and binding on the Parties to this Agreement.

14. Miscellaneous.

14.1 No Partnership or Joint Venture. Nothing contained in this Agreement is intended to or shall be construed as creating the legal relationship of a partnership or joint venture between the Parties. No Party shall have any liability for the debts or obligations of another Party, either in connection with the construction of the Project or otherwise.

14.2 No Third Party Rights. Nothing in this Agreement shall be construed to permit anyone other than the Parties and their permitted successors and assigns to rely upon the covenants and agreements herein contained or to give any such third Party, including any contractors, subcontractors or suppliers, a cause of action (as a third party beneficiary or otherwise) on account of any nonperformance hereunder.

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

16. Modification of Agreement. No modification of this Agreement shall be effective unless it is in writing and is signed by both Parties.

17. Waiver. No waiver of any term or condition of this Agreement shall be effective unless it is in writing and is signed by the Party against whom enforcement of the waiver is sought, and then only in the particular circumstances specified. No failure by a Party to exercise any right or privilege provided for herein, or to require timely performance of any obligation herein in strict accordance with the provisions hereof, shall preclude the exercise of such rights or privileges or the enforcement of such obligations in different circumstances or upon the reoccurrence of the same or similar circumstances. Moreover, the exercise of any remedy provided at law, in equity, or herein shall not impliedly preclude the exercise of any other remedy except when, and then only to the extent that, the other remedy is expressly forbidden or limited by the provisions hereof.

18. Severability. The invalidity of any provision of this Agreement shall in no way affect any other provision hereof.

19. Time of the Essence. Time is of the essence of this Agreement and each term hereof.

20. Further Instruments. The Parties further agree to enter into any and all written documents necessary to carry out the terms of this Agreement, including but not limited to construction and utilities easements as same are reasonably needed.

21. Binding Effect; Successors and Assigns. This Agreement shall be binding on each party hereto and shall be binding on their successors and assigns.

22. Bankruptcy. In the event PWCo files bankruptcy before completion or termination of the Project, PWCo agrees that any plan submitted by PWCo in such proceedings shall, to the extent permitted by law, propose conveyance of all assets associated with the Project, including the K2 Wellsite to PSWID at no cost.

23. Time Periods. If the time fixed for performance of any obligation hereunder expires on a Saturday, Sunday or legal holiday, the deadline shall be extended automatically to the next day that is not a Saturday, Sunday or legal holiday. Except as may be otherwise expressly provided herein, the time for performance of any obligation hereunder shall expire at 5:00 p.m. (Phoenix time) on the last day of the period allowed hereunder.

24. Applicable Laws. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

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

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

27. Counterparts. This Agreement may be executed in counterparts, each of which may contain fewer than all signatures but all of which, together, shall constitute a single instrument. Facsimile signatures are binding as originals provided, however, upon the full execution hereof, each Party agrees to deliver an original instrument to Escrow Agent.

IN WITNESS WHEREOF, this Joint Well Development Agreement has been executed as of the date first written above.

PWCo

By: _____
Name: Robert T. Hardcastle
Title: President

PSWID

By: _____
Name: R. Gary Sherlock
Title: Chairman

By: _____
Name: William F. Hanes
Title: Secretary

Attachments

1. Legal Description
2. Site Plan
3. Preliminary Project Timeline
4. Escrow Instructions
5. Form of Notice of Continuing Security and Lien

ATTACHMENT 1

LEGAL DESCRIPTION
(K2 site)

That portion of the Southeast quarter of the Southwest quarter of Section 22, Township 12 North, Range 5 East of the Gila and Salt River Base and Meridian, Gila County, Arizona, which lies immediately North of and adjacent to the Northerly line of STRAWBERRY KNOLLS UNIT TWO, according to the plat of record in the office of the County Recorder of said county, in-Map File, Map No. 240, described as follows:

COMMENCING at the Northwest corner of Lot 107, STRAWBERRY KNOLLS UNIT TWO; THENCE South 69 degrees 18 minutes 28 seconds East along the Northerly line thereof, a distance of 79.78 feet to an angle point thereon: THENCE South 27 degrees 39 minutes 21 seconds East continuing along said Northerly line of Lot 107, a distance of 69.16 feet to an angle point thereof; THENCE South 48 degrees 27 minutes 40 seconds East continuing along said Northerly line of Lot 107, a distance of 82.94 feet to the Southeast corner of Lot 107, being coincident with a point on the existing Northerly right of way line of Parkinson Drive; THENCE North 68 degrees 56 minutes 15 seconds East along said Northerly right of way line, a distance of 39.81 feet to an angle point thereon; THENCE South 79 degrees 58 minutes 35 seconds East, continuing along said Northerly right of way line, a distance of 85.93 feet to an angle point thereon; THENCE North 81 degrees 27 minute 23 seconds East continuing along said Northerly right of way line, a distance of 56.28 feet to a point; THENCE North 09 degrees 21 minutes 41 seconds East, a distance of 47.43 feet to the TRUE POINT OF BEGINNING; THENCE North 80 degrees 42 minutes 42 seconds East, a distance of 100.61 feet; THENCE North 09 degrees 37 minutes 10 seconds West, a distance of 79.80 feet; THENCE South 79 degrees 22 minutes 32 seconds West, a distance of 100.28 feet; THENCE South 09 degrees 21 minutes 41 seconds East, a distance of 77.46 feet to the TRUE POINT OF BEGINNING.

TOGETHER WITH an easement for ingress and egress over the following described real property:

That portion of the Southeast quarter of the Southwest quarter of Section 22, Township 12 North, Range 8 East of the Gila and Salt River Base and Meridian, Gila County, Arizona, which lies immediately North of and adjacent to the Northerly line of STRAWBERRY KNOLLS UNIT TWO, Gila County Records, Map No. 228, described as follows:

COMMENCING at the Northwest corner of Lot 107, STRAWBERRY KNOLLS UNIT TWO; THENCE South 69 degrees 18 minutes 28 seconds East along the Northerly line thereof, a distance of 79.78 feet to an angle point thereof; THENCE South 27 degrees 39 minutes 21 seconds East continuing along said Northerly line of Lot 107, a distance of 69.16 feet to an angle point thereon; THENCE South 48 degrees 27 minutes 40 seconds East continuing along said Northerly line of Lot 107, a distance of 82.94 feet to the Southeast corner of said Lot 107, being coincident with a point on the existing Northerly right of way line of Parkinson Drive; THENCE North 68 degrees 56 minutes 15 seconds East along said Northerly right of way line, a distance of 34.09 feet to the TRUE POINT OF BEGINNING; THENCE North 10 degrees 37 minutes 01

ATTACHMENT 1 (CONT)

seconds West, a distance of123.56 feet to a point; THENCE North 79 degrees 22 minutes 32 seconds East, a distance of 275.77 feet to a point; THENCE South 09 degrees 37 minutes 01 seconds East, a distance of 235.10 feet to a point; THENCE North 37 degrees 18 minutes 22 seconds West, a distance of 33.27 feet to a point; THENCE

North 73 degrees 24 minutes 09 seconds West a distance of 16.20 feet to a point; THENCE 09 degrees 37 minutes 01 seconds West, a distance of 167.95 feet to a point; THENCE South 79 degrees 22 minutes 32 seconds West, a distance of 215.25 feet to a point; THENCE South 10 degrees 37 minutes 01 seconds East, a distance of 101.70 feet to a point; THENCE North 79 degrees 58 minutes 35 seconds West, a distance of 27.04 feet to a point; THENCE South 68 degrees 56 minutes 15 seconds West, a distance of 5.72 feet to the TRUE POINT OF BEGINNING.

AND:

That portion of the Southeast Quarter (SW-1/4) of Section 22, Township 12 North, Range 8 East of the Gila and Salt River Base and Meridian, Gila County, Arizona, which lies immediately North of and adjacent to the Northerly line of STRAWBERRY KNOLLS – UNIT TWO, according to the plat of record in the office of the County Recorder of said County, in Map file, Map No. 228, described as follows:

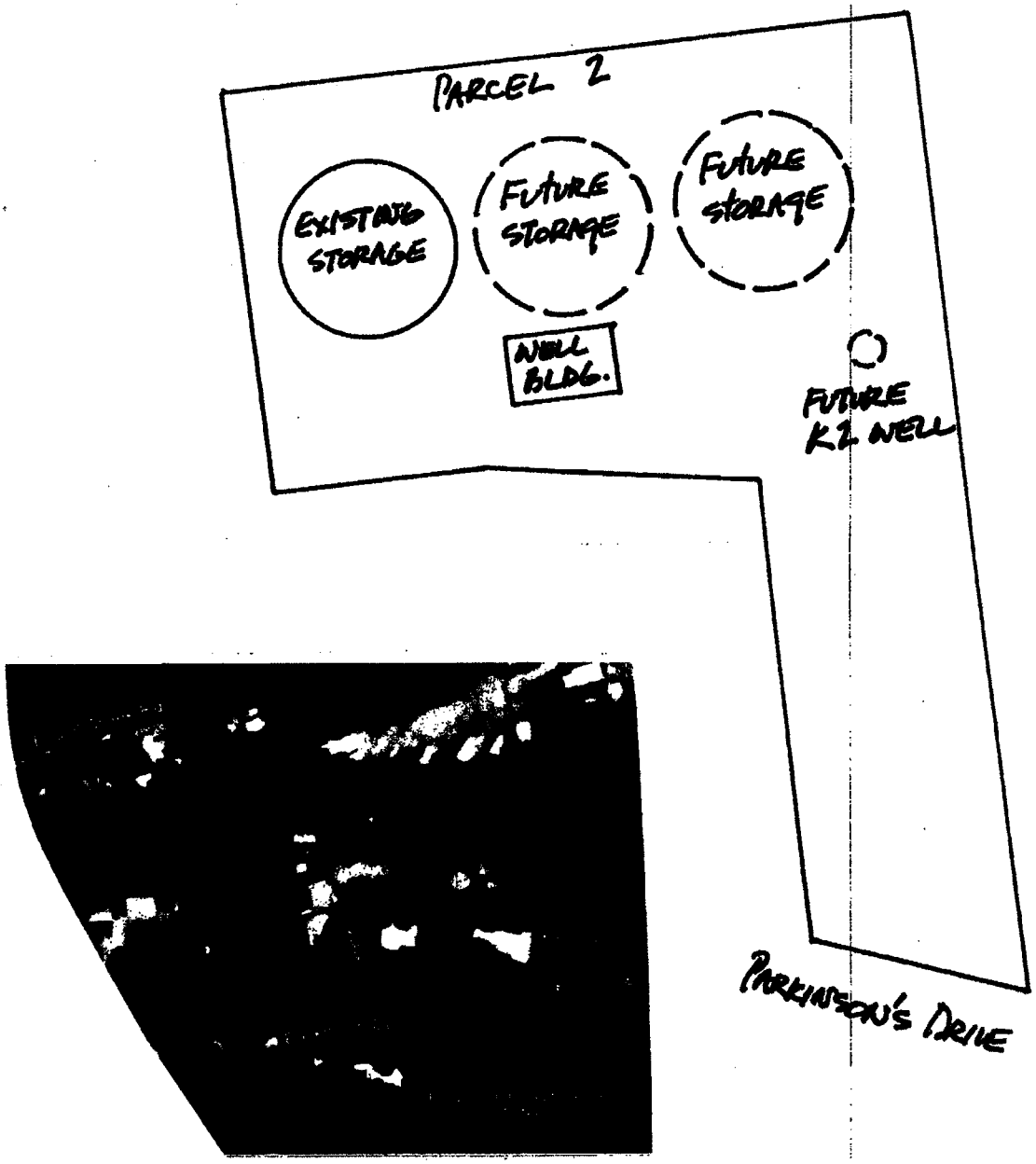
COMMENCING at the Northwest corner of Lot 107, STRAWBERRY KNOLLS-UNIT TWO:
THENCE South 69'18'28" East along the Northerly line thereof a distance of 79.78 feet to an angle point thereon;
THENCE South 27'39'21" East continuing along said Northerly line of Lot 107, a distance of 69.16 feet to an angle point thereon;
THENCE South 48'27'40" East continuing along said Northerly line of Lot 107, a distance of 82.94 feet to the Southeast corner of said Lot 107, being coincident with a point of the existing Northerly right-of-way line of Parkinson Drive;
THENCE North 68'56'15" East along said Northerly right-of-way line, a distance of 34.09 feet to the TRUE POINT OF BEGINNING;
THENCE North 10'37'10" West a distance of 123.56 feet to a point;
THENCE North 79'22'32" East a distance of 245.77 feet to a point;
THENCE South 09'21'41" East a distance of 30.37 feet to a point;
THENCE South 79'22'32" West a distance of 215.35 feet to a point;
THENCE South 10'37'01" East a distance of 101.70 feet to a point;
THENCE North 79'58'35" West a distance of 27.04 feet to a point;
THENCE South 68'56'15" West a distance of 5.72 feet to the TRUE POINT OF BEGINNING.

ATTACHMENT 2

SITE PLAN

ATTACHMENT 2

SITE PLAN



ATTACHMENT 3

PRELIMINARY PROJECT TIMELINE

Total Days from Date of Agreement*	**Description**
30	File App w/ ACC to approve Agreement (Section 10.2)
60	Budget (preliminary) prepared (Section 4.1)
210	ACC Approval of Agreement (Section 5.2.2.1)
270	Transfer K2 Wellsite and provide Notice to PSWID that funding for Project is available
330	Mobilization and drilling of Test Well (Section 2.1)
390	Hydrologist determination of Estimated Sustainable Yield (Section 2.2.3.1)
510	Mobilization and drilling of Production Well (Section 2.3)
610	Completion of Project
770	Outside Deadline for Project Completion (Section 5.2.1)

*Assumes maximum duration for each step

ATTACHMENT 4

ESCROW INSTRUCTIONS
(To be Mutually Agreed Upon Prior to Opening the Escrow)

ATTACHMENT 5

NOTICE OF CONTINUING SECURITY INTEREST AND LIEN

When recorded return to:

William A. Sullivan, Esq.
CURTIS, GOODWIN, SULLIVAN,
UDALL & SCHWAB, P.L.C.
501 East Thomas Road
Phoenix, AZ 85012-3502

NOTICE OF CONTINUING SECURITY INTEREST AND LIEN

NOTICE IS HEREBY GIVEN that through that certain Joint Well Development Agreement between Pine Water Company ("PWCo") and Pine-Strawberry Water Improvement District ("PSWID") dated May 1, 2007 (the "Agreement"), that PWCo has provided to PSWID a continuing security interest and lien to secure PWCo's performance of said Agreement. The continuing security interest and lien is expressly limited to the K2 Wellsite described on Attachment 1 hereto and the Project being constructed thereon as more fully described in the Agreement. The continuing interest and lien does not encumber any other asset of PWCO.

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

Pine Water Company

By: _____
Name: Robert T. Hardcastle
Title: President

STATE OF ARIZONA)
) ss.
COUNTY OF Maricopa)

On this ____ day of _____, _____, before me, the undersigned, a Notary Public, personally appeared Robert T. Hardcastle who acknowledged himself to be the President of Pine Water Company, an Arizona public service corporation, and that he as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

My Commission Expires:

_____ Notary Public