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BEFORE THE ARIZONA CORPORATION COMM.

COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
SANDRA D. KENNEDY
PAUL NEWMAN
BOB STUMP

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AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

MAR 22 2010

DOCKETED BY

IN THE MATTER OF THE APPLICATION OF
ADAMAN MUTUAL WATER COMPANY FOR
APPROVAL TO ISSUE STOCK

DOCKET NO. W-01997A-09-0297

MOTION TO AMEND APPLICATION

For the following reasons, Adaman Mutual Water Company ("Adaman") hereby moves to amend its First Amended Application for Approval to Issue Stock Pursuant to the Agreement and Plan for Reorganization, dated January 12, 2009.

I. Issue: Delaying Sales to Goodyear Would Not Be in the Public Interest

Adaman has developed a creative, low-cost solution that would allow it to satisfy the new federal arsenic standards. It would sell untreated water to the City of Goodyear, which has been struggling to find water supplies, particularly to satisfy summer's peak demands. In return, the City would construct at its cost a treatment facility to treat water for Adaman's customers to reduce arsenic levels below the new federal arsenic standard and to also remove nitrates. To implement this solution, the parties executed the August 27, 2007, Bulk Water Sales and Treatment Agreement ("Adaman/Goodyear Agreement"). A copy is attached to this Motion.

Adaman's creative low-cost solution is clearly in the public interest. First, Adaman's customers will receive water that satisfies the new federal arsenic standard. Second, Adaman's customers will be spared the burden of setting rates to recover the large investment that would otherwise be needed to construct an arsenic-treatment facility. Third, Adaman's customers will benefit from the additional cash flow generated from the Goodyear water sales. Fourth, the City

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1 of Goodyear will obtain an additional source of water which will be especially needed during
2 peak summer water demands.

3 On February 5, 2010, Commission Staff issued its Staff Report ("Staff Report") in the
4 above-captioned docket. In the Staff Report, Staff appears to require Adaman to prepare, file,
5 and complete a rate case before it could obtain approval of a wholesale tariff to sell wholesale
6 water to Goodyear.

7 Staff further concludes that the Company does not currently have on file an
8 authorized wholesale water tariff, which it must obtain through an appropriate
9 proceeding (i.e., a rate application) prior to selling water to wholesale buyers.¹

10 Adaman does not agree with Staff's implicit conclusion that wholesale water sales
11 require prior Commission approval, but, for purposes of this case, Adaman will not challenge
12 this conclusion. However, sales to Goodyear are expected to begin this month. To require
13 Adaman to prepare, file, and complete a rate case before it could sell wholesale water to
14 Goodyear could delay these beneficial sales for 18-24 months. Adaman's retail customers would
15 lose the benefit of the additional cash flow provided by the wholesale water sales. Further,
16 Goodyear's customers would not be receiving the benefit of the additional water supplies
17 contemplated in the Adaman/Goodyear Agreement.

18 **II. Solution: Approve Adaman/Goodyear Agreement and Defer Associated Revenues**
19 **and Expenses**

20 Adaman's impression is that Staff agrees that delaying water sales to Goodyear would
21 not be in the public interest. Adaman believes that there is a solution that satisfies Staff's
22 concerns, but that will also avoid unduly delaying water sales to Goodyear:

- 23 1. Adaman will request that the previously filed Adaman/Goodyear Agreement be
24 approved in this docket as a special contract;

¹ Staff Report: Executive Summary, page 2; Report, page 3.

- 1 2. Adaman will request deferral of revenues and expenses associated with the
2 Adaman/Goodyear Agreement until their status is determined in Adaman's next rate
3 case; and
4 3. Adaman will agree to file a rate case using a 2010 test year no later than April 30,
5 2011.

6 This will allow Staff and the Commission to timely evaluate how the revenues and expenses
7 associated with the Adaman/Goodyear Agreement should be treated for ratemaking purposes.

8 **III. Requested Relief**

9 Adaman asks leave to amend its First Amended Application for Approval to Issue Stock
10 Pursuant to the Agreement and Plan for Reorganization, dated January 12, 2009, as follows:

- 11 • Delete Existing Paragraph 8 and Insert New Paragraph 8:

12 8. **Approval of the Adaman/Goodyear Agreement Is in the Public Interest**

13 As discussed above, approval of the Plan of Reorganization will allow Adaman to
14 sell water at wholesale to outside entities. This will also allow Adaman to implement a
15 low-cost solution that would allow it to satisfy the new federal arsenic standards.
16 Adaman will sell untreated water to the City of Goodyear, which has been struggling to
17 find water supplies, particularly to satisfy summer's peak demands. In return, the City
18 will construct at its cost a treatment facility to treat water for Adaman's customers to
19 reduce arsenic levels below the new federal arsenic standard and to also remove nitrates.
20 To implement this solution, the parties executed the August 27, 2007, Bulk Water Sales
21 and Treatment Agreement ("Adaman/Goodyear Agreement"). A copy is attached to this
22 Application as Exhibit B.

23 Adaman's creative low-cost solution is clearly in the public interest. First,
24 Adaman's customers will receive water that satisfies the new federal arsenic standard.
25 Second, Adaman's customers will be spared the burden of setting rates to recover the
26 large investment that would otherwise be needed to construct an arsenic-treatment
27 facility. Third, Adaman's customers will benefit from the additional cash flow generated

1 from the Goodyear water sales. Fourth, the City of Goodyear will obtain an additional
2 source of water which will be especially needed during peak summer water demands.

3 To ensure that customers are fully protected, Adaman agrees to (1) file a rate case
4 no later than April 30, 2011, and (2) defer all revenues and expenses associated with the
5 Adaman/Goodyear Agreement until the Commission determines their appropriate rate-
6 making treatment.

7 For these reasons, approval of the Adaman/Goodyear Agreement is in the public
8 interest.

9 • Insert New Paragraph 9:

10 9. **Order of Approval Requested**

11 For all the reasons stated above, Adaman hereby requests the Commission's
12 approval of Adaman's Plan of Reorganization and the Adaman/Goodyear Agreement,
13 and requests an order effective as of January 1, 2010:

- 14 i. approving the Plan of Reorganization;
- 15 ii. approving the issuance of 2,486.68 shares of Adaman common stock in exchange
16 of non-profit membership interests pursuant to Adaman's Plan of Reorganization;
- 17 iii. finding that the issuance of Adaman common stock is reasonably necessary or
18 appropriate for such purposes;
- 19 iv. finding that such purposes are not, wholly or in part, reasonably chargeable to
20 operative expenses or to income;
- 21 v. approving the Adaman/Goodyear Agreement as a special contract;
- 22 vi. authorizing Adaman to defer all revenues and expenses associated with the
23 Adaman/Goodyear Agreement commencing with initial sales through and until
24 the date of issuance of a rate order that determines the appropriate rate-making
25 treatment of such revenues and expenses; and
- 26 vii. requiring Adaman to file, no later than April 30, 2011, a rate application using a
27 calendar-year 2010 test year.

- 1 • Attach as Exhibit B. the Adaman/Goodyear Agreement (copy attached).

2 Respectfully submitted on March 22, 2010, by:

3
4 RYLEY, CARLOCK & APPLEWHITE

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7 
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14 Attorneys for Adaman Mutual Water Company

Original and 13 copies filed
on March 22, 2010, with:

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By: 
Craig A. Marks

BULK WATER SALES AND TREATMENT AGREEMENT

THIS BULK WATER SALES AND TREATMENT AGREEMENT (this "Agreement") is entered into as of August 27, 2007, by and between the Adaman Mutual Water Company ("Adaman"), an Arizona corporation, and the City of Goodyear (the "City"), a municipal corporation and a political subdivision of the State of Arizona. Collectively, Adaman and the City are sometimes referred to as the "Parties" and each is referred to as a "Party."

RECITALS

- A. WHEREAS, Adaman and the City serve potable water to their residents and/or customers, as the case may be, within their respective service areas pursuant to their respective service area rights under A.R.S. Title 45;
- B. WHEREAS, the City is faced with increasing water demands as it expands and wishes to develop additional sources of water within the boundaries of Adaman's certificate of convenience and necessity (the "Certificated Area") to meet a portion of this demand. The Certificated Area is illustrated on the map attached hereto at Exhibit "A";
- C. WHEREAS, Adaman has existing well capacity to withdraw approximately 2.2 million gallons of water per day ("mgd") but is currently using about 600,000 gallons per day and, therefore, may have the capacity to make bulk water sales to the City on a short-term basis;
- D. WHEREAS, to the extent the City develops additional well capacity for Adaman within Adaman's Certificated Area, Adaman may have the capacity to make bulk water sales to the City on a longer-term basis.
- E. WHEREAS, the United States Environmental Protection Agency has promulgated new arsenic rules pursuant to the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*), which became effective January 23, 2006 (the "New Arsenic Standards");
- F. WHEREAS, Adaman is currently withdrawing water from two potable wells (Wells "1B" and "6A") (the "Existing Wells") to serve its customers, both of which are withdrawing water with arsenic levels that fail to meet the New Arsenic Standards. The approximate locations of the Existing Wells are depicted on the map attached hereto at Exhibit "B"; In the future, Adaman may withdraw water from additional wells (the "Additional Wells") to serve its customers.
- G. WHEREAS, Adaman likely will need to treat water from the Existing Wells in order to comply with the New Arsenic Standards as soon as practicable from a planning and construction standpoint; and
- H. WHEREAS, on July 10, 2006, the Parties executed a Memorandum of Understanding (the "MOU") committing the Parties to negotiate an agreement for the development of additional water supplies for the benefit of the City and the construction of a treatment system to remove arsenic and other contaminants from water withdrawn from the Existing Wells for Adaman's benefit.

AGREEMENT

NOW, THEREFORE, in consideration of the terms, conditions, and covenants contained herein and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. Incorporation of Recitals. The Recitals set forth in Paragraphs A through H above are incorporated here by this reference as if fully set forth and are acknowledged and agreed to by the Parties.
2. Effective Date; Term. This Agreement shall be effective as of the date all of the following have occurred (the "Effective Date"): (i) this Agreement is fully executed by Adaman and the City and (ii) this Agreement is approved by the governing bodies of each Party. The term of this Agreement shall be for a period of eighty (80) years, commencing on the Effective Date unless otherwise terminated pursuant to Sections 6 or 21 hereof, with the option of three (3) ten- (10) year extensions upon such terms and conditions as are agreed to by the Parties.
3. Hydrology Study. The City will commission and pay for a hydrogeologic modeling study to determine the conditions of the aquifer underlying the Certificated Area (the "Study"). The Study shall, at a minimum, (i) establish the physical availability of groundwater and evaluate the sustainability of such availability based upon existing conditions and likely future demands in the area, including the City's projected demands, together with an assumed 8.1 mgd of pumping by Adaman; (ii) examine the potential risk of current or future ground subsidence in the impacted area due to such increased groundwater pumping; (iii) include a resource management plan; (iv) evaluate the potential presence of contaminants and/or total dissolved solids ("TDS") in the water identified to be developed; (v) determine the potential effect increased groundwater pumping might have on the migration of contaminants and/or TDS in the water identified to be developed; (vi) evaluate recharge as a method of supplementing developed water; and (vii) be periodically updated by the City at reasonable intervals during the term of this Agreement. The Study shall consider Adaman's existing and future potential water needs. For purposes of this Agreement, "sustainable" means, considering inputs (recharge) and outputs (pumpage and natural discharge), the amount of groundwater that may be withdrawn from the aquifer on a daily basis that, for a 100-year period, is within limits of impact that are mutually acceptable to the Parties; but in no event shall "sustainable" be interpreted to mean a rate of withdrawal by the City that would adversely impact Adaman's ability to serve its customers.
4. Water Sales:
 - 4.1. Bulk Sale of Water. Adaman will sell water from the New Wells to the City, as provided for in this Agreement. Until such time as water from the New Wells is available, Adaman will sell water from the Existing Wells, but only to the extent that Adaman does not need such water to serve Adaman's existing and future retail customers and subject to a separate agreement between the Parties to

address scheduling, operation, maintenance and the responsibility for the costs thereof.

- 4.2. New Wells. The City shall, at its sole cost and expense, have the right to develop new wells within the Certificated Area ("New Wells") or to rehabilitate Existing Wells to increase pumping capacity, for a total additional pumping capacity of up to a total of ten (10) mgd if the Study determines that such amount is sustainable, as defined below, for delivery to the City for use in the City's water service area; *provided, however*, (a) prior to drilling or developing any New Wells, the City shall provide Adaman with a well spacing analysis and a hydrology study addressing the effect of proposed pumping from the New Well on sustainability, as described below, and shall consult with Adaman regarding the location and impact of the New Well, (b) any rehabilitation of an Existing Well shall be coordinated with Adaman so as to not interfere with Adaman's ability to serve its customers, (c) that the New Wells and rehabilitated Existing Wells comply with all ADWR requirements, and (d) the withdrawal of water from the New Wells for delivery to the City is not more than an amount sustainable for 100 years after taking into account an assumed 8.1 mgd of pumping by Adaman, as evidenced by the hydrology data produced pursuant to the Study, as the Study is updated from time to time, and as mutually agreed to by the Parties. In the event the Study, as the Study is updated from time to time, determines that, after taking into account an assumed 8.1 mgd or greater amount of pumping by Adaman for Adaman's use, deliveries of groundwater to the City of ten (10) mgd are not sustainable, the maximum amount of water delivered to the City pursuant to this Agreement shall be curtailed so as not to exceed the rate and amount of withdrawal that is determined to be sustainable per the Study. The foregoing is the maximum amount of water that may be withdrawn within the Certificated Area and used by the City, regardless of the legal characterization of the water withdrawn, such as groundwater withdrawn pursuant to a service area withdrawal right or recovered storage credits or the well or wells from which such water is withdrawn.
- 4.3. Conveyance of New Wells and Well Sites and Granting of Easements. Promptly upon completion of a New Well, City, at no cost to Adaman, shall convey to Adaman, by special warranty deed, the real property reasonably necessary to own, operate, and maintain the New Well (the "Well Site"), with the exception of any equipment subject to Section 4.4 below. In addition, the City shall grant to Adaman, at no cost to Adaman, all easements, access rights, and other interests in real property reasonably necessary to own, operate, and maintain the Well Site, the New Well, and the New Well infrastructure within the Certificated Area including easements for ingress, egress, utilities and, if necessary, noise (collectively, the "Easements"). Each Well Site shall consist of that area reasonably required by Adaman. The City shall provide to Adaman, at the City's cost, standard owner title insurance policies for each Well Site and Easement, which policies shall be approved by Adaman and which policies shall be subject only to those conditions and exceptions as Adaman shall approve. Prior to transfer of the New Well and the conveyance of the Well Site, the City shall provide Adaman with information for the New Well and Well Site including,

without limitation: (i) water quality; (ii) a title report for the Well Site and Easements in a form satisfactory to Adaman that shall be updated prior to conveyance of the Well Site to Adaman; and (iii) an environmental site assessment upon which Adaman may rely, that has been performed and reported in compliance with 40 CFR Part 312, as amended, that concludes no conditions were identified at the Well Site or within the Easements (the Well Site and the Easements collectively referred to as the "Subject Property") indicative of releases and threatened releases of hazardous substances (as defined by state and federal law) on, at, in, or to the Subject Property.

- 4.4. New Well Equipment. Any removable equipment installed by the City at a Well Site, such as pumping equipment, motors and electrical facilities, but not including the casing, shall be and remain the property of the City, which property may be removed upon termination of this Agreement.
- 4.5. Additional Water Supplies. Adaman will cooperate with the City in evaluating what Additional Water Supplies may be available. "Additional Water Supplies" may include water withdrawn from New Wells, surface water pursuant to rights appurtenant to entitled lands, Central Arizona Project ("CAP") water, and water recovered from recharge projects pursuant to A.R.S. Title 45, Chapter 3.1, as mutually agreed to by the Parties. The City shall pay all planning, design, and construction costs related to the development of Additional Water Supplies and the treatment and delivery of such Additional Water Supplies to the City. The development and delivery of any such Additional Water Supplies shall be addressed in future agreements between the Parties.
- 4.6. Reduction or Elimination of Water Purchases. If the City wishes to Significantly Decrease or eliminate its purchases of water from Adaman pursuant to this Agreement, it shall give Adaman no less than two years prior written notice in accordance with Section 24.12 hereof. For purposes of this Agreement, "Significantly Decrease" shall mean reducing the quantity of water purchased under this Agreement by more than twenty five percent (25%) of the arithmetic average annualized amount of water purchased by the City in each of the preceding three [3] years. If the City Significantly Decreases or eliminates its purchases of water from Adaman, without giving such notice, for a period of two years the City shall pay Adaman as if such Significant Decrease or elimination had not occurred. If the City Significantly Decreases or eliminates its purchases of water after giving such notice, but before the two-year notice period has passed, the City shall pay Adaman as if such Significant Decrease or elimination did not occur until the expiration of the two-year notice period.

5. Water Cost:

- 5.1. Base Commodity Fee ("BCF"). On a monthly basis, the City shall pay Adaman \$67 (the "Base Commodity Fee") per acre-foot of water withdrawn from the New Wells and delivered to the City pursuant to this Agreement. The Base Commodity Fee shall be annually adjusted, as of January 1 of each year, in an

amount equal to the percentage change in the Consumer Price Index ("CPI"). The term "Consumer Price Index" as used in this Agreement shall mean "United States City Average All Item for All Urban Consumers (CPI-U, 1982-84=100)" published by the Bureau of Labor Statistics of the U. S. Department of Labor. If the publication of the Consumer Price Index of the U. S. Bureau of Labor Statistics is discontinued, comparable statistics on the purchasing power of the consumer dollar published by a responsible financial periodical shall be used for making such computations. The BCF also shall be offset annually by any capital investment project costs made during the year to the Adaman system, by the City, with Adaman's consent and for Adaman's sole benefit, including, upon operational acceptance by Adaman, the cost of the Initial Treatment Plant. These capital investments (including the cost of the Initial Treatment Plant) shall be amortized based upon an offset to the BCF for each year an amount equal to three percent (3%) of the BCF, until such capital investment is fully amortized.

- 5.2. Electricity. Adaman shall pay all energy costs related to the pumping, treatment, and transmission of water delivered for Adaman customers, and the City shall pay all energy costs related to the pumping, treatment, and transmission of water delivered for City purposes.
 - 5.3. Other Costs. On a monthly basis, the City shall pay Adaman an additional twelve percent (12%) for administrative costs incurred by Adaman in connection with delivering water to the City pursuant to this Agreement.
6. Rate Reopener Clause. Beginning in calendar year 2017 and thereafter, and in addition to any changes resulting from the annual CPI adjustment, Adaman may change the rate or rate structure hereunder at intervals occurring no more frequently than 10 years, based on changed circumstances, which include, but are not limited to, well improvements, destruction or impairment, changes in law, changes in environmental regulations, and changes in technology, any of which have increased the costs of providing the service hereunder that is not otherwise captured in the amounts paid hereunder. In addition, Adaman may change the rate or rate structure hereunder based upon an increase over the term of this Agreement in the market value of the water that is not otherwise captured in the amounts paid hereunder, provided that any such market value increase shall not exceed three times the then existing BCF.
- 6.1. Adaman must provide the City with written notice of the new rate and rate structure and documentation to substantiate the changed circumstances and the increased costs and/or the increase in market value at least one hundred eighty (180) days, but no later than January 15, before the new rate and rate structure become effective.
 - 6.2. If the City declines to accept the new rate or rate structure, the City may terminate this Agreement by giving written notice to Adaman at least sixty (60) days before the new rate and rate structure become effective.

- 6.3. If the City gives notice pursuant to this Section, this Agreement shall remain in effect for a period of eighteen (18) months from the date of the City's notice, unless otherwise agreed to by the Parties. During this period, the City shall pay the rate in effect at the time of such notice, subject to the annual CPI adjustment, and shall continue to have the same rights that the City would otherwise be entitled to under this Agreement. The contract reopener provisions contained in Section 20 of this Agreement are in addition to the rate reopener provision addressed in this Section 6.
7. System Enhancements and Improvements. The City shall pay for developing New Wells as may be necessary to satisfy the terms and conditions of this Agreement. The City shall also design and pay for storage and booster infrastructure and any pipelines necessary to deliver developed water from the New Wells to the point of delivery identified within the City's incorporated boundaries, such identification to be solely within the City's discretion.
8. Water Quality:
- 8.1. No Warranties as to Quality of Raw Water. The City acknowledges and understands that it is accepting the water delivered by Adaman for use in the City's water distribution system on an "as-is" basis. Any necessary treatment and the cost of such treatment shall be the sole responsibility of the City. The City shall be responsible, at its sole cost and expense, for causing such water to meet water-quality standards required under the Safe Drinking Water Act and any other Applicable Law. Adaman makes no covenants, guarantees, representations or warranties as to the quality of water delivered under this Agreement or the suitability of that water for potable or other use. "Applicable Law" means any statute, regulation, ordinance, rule, mandate, order, decree, permit, code, license requirement, or other governmental requirement or restriction or any interpretation or administration of any of the foregoing by any Governmental Entity that applies to the subject matter of this Agreement.
- 8.2. Sampling. Notwithstanding Section 8.1, Adaman and the City agree to evaluate and determine whether the quality of the water withdrawn from the Existing Wells and the New Wells in light of the water quality standards of the Safe Drinking Water Act, including the New Arsenic Standards. The Parties shall share equally the costs of sampling the Existing Wells. The City shall pay the costs of sampling the New Wells. All sampling shall be scheduled so as not to interfere with operation of the wells. After the sampling has been completed, Adaman's property shall be returned to substantially the same condition as it existed prior to the sampling.
9. Suspension of Water Withdrawals. Adaman shall not be obligated to provide water to the City under this Agreement if such sale violates any law or regulation related to the withdrawal and use of groundwater. If either Party receives notice from a Governmental Entity that the water withdrawals or deliveries contemplated by this Agreement violate any law or regulation related to the withdrawal and use of groundwater, the Parties shall

meet and confer to evaluate amending this Agreement to the extent necessary to remedy the situation. At Adaman's sole discretion, Adaman shall have the right to suspend delivery of water from the New Wells to the City, in whole or part, until the matter has been resolved so as to comply with such Governmental Entity's laws or regulations. "Governmental Entity" means any governmental or quasi-governmental entity, agency, authority, board, commission, or governing body authorized by federal, state, or local laws or regulations as having jurisdiction over the subject matter of this Agreement.

10. Water Treatment:

10.1. Engineering and Construction. The City, in consultation with Adaman, shall plan, design, and pay for the construction of a treatment system (the "Initial Treatment Plant") with a treatment capacity sufficient to treat a minimum of 600,000 gallons of water per day for Adaman's existing Certificated Area. The initial Treatment Plant shall be planned, designed and constructed to Adaman's reasonable satisfaction. The Initial Treatment Plant shall treat water to a standard which complies with provisions of the Safe Drinking Water Act, State of Arizona water quality standards, and ADEQ and Maricopa County health standards. Construction of the Initial Treatment Plant, which shall be capable of treating a minimum of 600,000 gallons of water per day for Adaman, and shall be completed as soon as practicable from a planning and construction standpoint. Upon completion of construction of the Initial Treatment Plant, the City shall operate the Initial Treatment Plant for a start-up period to allow the Parties to determine whether the Initial Treatment Plant meets the conditions of this Agreement. When such conditions are met, Adaman will provide the City with notice of operational acceptance and take over operation of the Initial Treatment Plant. The City shall commission and pay for engineering sensitivity analyses to analyze treatment infrastructure options with the ability to blend water supplies so as to meet all regulatory drinking water requirements, and to provide operational flexibility and the flexibility to employ new technology in the future to treat a maximum of 8.1 mgd of potable water for Adaman. In the event additional treatment capacity becomes necessary, the parties agree to amend this Agreement to coordinate the additional treatment in a manner that is consistent with the intent of this Agreement. The cost for treatment capacity in excess of 600,000 gallons per day for Adaman will be borne by Adaman.

10.2. Treatment and Delivery. Adaman may deliver water to the Initial Treatment Plant for treatment. The Initial Treatment Plant shall be designed and constructed to treat the water delivered by Adaman to not exceed the Maximum Contaminant Levels ("MCLs") set forth in Section 10.3 hereof.

10.3. MCL Levels. Throughout the term of this Agreement, the City shall use commercially reasonable efforts to ensure that, after treatment, the water treated for Adaman at the Initial Treatment Plant has an MCL for arsenic of no greater than 10 PPB, and an MCL for nitrates of no greater than 10 MG/L. In the event drinking water standards and requirements established pursuant to Applicable Law become more stringent than those in effect as of the Effective Date, the

maximum MCLs set forth in this Section 10.3 shall, without further action of the Parties, be decreased to a level proportionate to such regulatory decrease.

10.4. Use of Treatment Plant. Adaman will operate and maintain the Initial Treatment Plant. The Initial Treatment Plant shall not be used to treat water for the City, absent a separate agreement by the Parties allowing such use.

11. Billing and Payment.

11.1. Billing. Within fifteen (15) days after completion of each calendar month of this Agreement, Adaman shall provide the City with an itemized invoice for the following charges and expenses incurred during the previous month (the "Billing Month"): (i) in accordance with Section 5.1 hereof, the BCF multiplied by the number of acre feet or fractional acre feet of water delivered to the City; (ii) the cost of electricity pursuant to Section 5.2 hereof; and (iii) a twelve percent (12%) administrative fee, as provided in Section 5.3 hereof. At the City's request, Adaman shall provide cost substantiation for items 11.1(ii).

11.2. Payments. The City shall pay all invoices for each Billing Month upon receipt, but in no event later than twenty (20) days from the date of receipt of the invoice. The City shall pay interest on all invoiced amounts that remain unpaid by the dates established in this Agreement at prime rate (as published in *The Wall Street Journal*, or in the event it is no longer being published, a similar financial publication). Such interest shall be calculated and added to any unpaid amounts on a monthly basis, but shall not be compounded or treated as recomputed principal. The foregoing shall not be construed to limit a Party's right to pursue any and all other remedies available to it under this Agreement or otherwise.

12. Operation and Maintenance:

12.1. Adaman shall be responsible for the operation and maintenance of the Existing Wells and the Initial Treatment Plant.

12.2. The City shall be responsible for the operation and maintenance of all New Wells, any water treatment facilities constructed by the City to treat water from the New Wells and any storage and booster station facilities developed by the City.

13. Reimbursement of Professional Service Fees. The City shall promptly reimburse Adaman from time to time for reasonable engineering, consulting, and legal fees incurred by Adaman as a result of the activities contemplated under this Agreement based upon a scope and fee agreed to by the Parties, which professional fees shall not exceed \$50,000, unless the Parties agree otherwise.

14. Metering. The City shall install, own, operate, and maintain all metering equipment necessary to measure the delivery of water to the City from the New Wells. The City shall maintain the accuracy of such metering equipment per industry standards of error (+/- 3%), and at least once every year, unless otherwise agreed to by the Parties, the City shall recalibrate such metering equipment per industry standards of error. The City shall

notify Adaman in advance of planned meter recalibration so that Adaman may observe the procedure. Adaman may, at reasonable times, at its sole expense and after reasonable notice to the City, test or have tested such metering equipment to determine the accuracy thereof, and recalibrate such metering equipment per industry standards of error.

15. SCADA System. The City shall design and install or caused to be installed a SCADA system to enable remote monitoring and operation of any New Wells. The SCADA system shall allow both Adaman and the City to monitor the wells. The SCADA system shall be approved by the Parties consistent with the City of Goodyear SCADA system standards. The City shall be responsible for the operation and maintenance of the SCADA system.
16. Access; No Interference. Adaman shall allow the City full access to the Existing Wells, as necessary, and any New Wells that might be constructed by the City, and all related infrastructure. The City shall conduct all activities under this Agreement in a manner so as not to disrupt the existing operations of either the Adaman Mutual Water Company or Adaman Irrigation Water Delivery District No. 36.
17. Service Area Withdrawal Right. Groundwater withdrawn from the New Wells shall be withdrawn pursuant to Adaman's service area withdrawal right. The delivery of any such water to the City is subject to the approval of the Arizona Department of Water Resources ("ADWR").
18. Joint Cooperation:
 - 18.1. Permits. The City shall obtain all necessary permits to meet all regulatory requirements necessary to effectuate the Parties' purposes for entering into this Agreement, including, but not limited to, well siting and drilling, well rehabilitation, well abandonment, water withdrawal, conveyance of water from Adaman to the City, water delivery, water quality, water treatment, construction of system improvements and storage and recovery.
 - 18.2. Acquisition of Property Rights. The City and Adaman shall work together to obtain all rights-of-way, easements, and land necessary for successful project development. The cost of acquisition of any such rights-of-way, easements and land shall be the City's responsibility.
 - 18.3. Professional Service Contractors. Each Party shall work cooperatively with the other Party's professional service contractors to effectively fulfill the purposes of this Agreement.
 - 18.4. Sustainability. The Parties shall work together in good faith to develop a strategy on how to maximize the use of surface water supplies and consider other options to contribute to the affected aquifer's sustainability, including, but not limited to, evaluating potential aquifer recharge locations and developing recharge and recovery programs.

- 18.5. No Prohibition. To the extent Adaman determines that groundwater supplies in excess of the current estimated build-out demand of 8.1 mgd will need to be developed to serve Adaman's existing and future retail customers, such development and pumping is not be precluded by this Agreement and shall be taken into account in the Study, as the Study is updated from time to time. To the extent Adaman sells water at wholesale to parties other than the City, such sales are not precluded by this Agreement, provided such sales do not adversely impact the City's delivery of 10 mgd for the term of this Agreement and any subsequent amendments agreed upon thereto, or otherwise adversely impact the City's ability to recover and deliver groundwater pursuant to any credits derived from City-funded direct recharge or in-lieu recharge projects within the boundaries of the Certificated Area.
- 18.6. Mutual Aid. The City and Adaman agree to assist and support one another's water utility operations and maintenance during an emergency, to the extent reasonably possible.
19. Annual Reports and Withdrawal Fees:
- 19.1. Annual Reports. Adaman shall remain responsible for the timely preparation and filing with ADWR of all reports required by ADWR relating to the withdrawal and use of groundwater pursuant to this Agreement, including Annual Groundwater Withdrawal and Use Reports. For each calendar year during the term of this Agreement, the City shall provide to Adaman any and all information reasonably requested by Adaman pertinent to the delivery of water to the City during the preceding calendar year pursuant to this Agreement. The City shall provide said information on or before January 31 of each year of this Agreement for the preceding calendar year. The City's obligation under this Section 19.1 shall survive termination of this Agreement until the City provides said information for the last calendar year of this Agreement.
- 19.2. Groundwater Withdrawal Fees and Water Quality Assurance Fees; Taxes. On or before January 31 of each year of this Agreement, the City shall, with respect to water delivered to the City pursuant to this Agreement, pay (i) all groundwater withdrawal fees imposed by ADWR pursuant to A.R.S. § 45-611; (ii) all water quality assurance fees imposed by the Arizona Department of Environmental Quality and collected by ADWR pursuant to A.R.S. §§ 45-616 and 49-282; and (iii) any taxes, license fees, and/or other applicable governmental charges. The fees, taxes, and other governmental charges payable by the City pursuant to this Section 19.2 shall be based on the amount of groundwater delivered to the City from the New Wells under this Agreement.
20. Contract Reopener:
- 20.1. Either Party may request that this Agreement be modified upon one hundred eighty (180) days' notice to the other Party, because of Extraordinary Circumstances. For purposes of this Section 20, "Extraordinary Circumstances"

are circumstances that were not reasonably foreseeable by the Parties, are beyond the Parties' control, and have resulted in a substantial change in either Party's benefits or obligations under this Agreement.

- 20.2. This Section 20 is intended to apply to events including, but not limited to, changes in legislative authority, enactment of new environmental requirements, changes in water rights, changes in technology, and unanticipated or extraordinary cost of water treatment required to comply with environmental requirements.
 - 20.3. If a Party requests that this Agreement be modified pursuant to this Section 20, the Parties agree to negotiate in good faith to reach a reasonable and equitable modification of this Agreement.
 - 20.4. The Party requesting the modification shall have the burden of showing that the event causing the request for modification meets the requirements of Section 20.1 hereof, and that the modification requested is reasonable and equitable to both Parties.
 - 20.5. This Section 20 does not preclude the Parties from modifying this Agreement by mutual consent for reasons that do not meet the requirements of Section 20.1 hereof.
21. Default and Termination:
- 21.1. Event of Default. The occurrence of any of the events set forth below shall constitute an Event of Default hereunder ("Event of Default"):
 - 21.1.1. Failure or refusal of the Defaulting Party (as defined in Section 21.2 below) to timely perform any term, covenant, or condition pursuant to the terms and conditions of this Agreement;
 - 21.1.2. Failure to make any payment required hereunder within thirty (30) days of written notice from the Non-defaulting Party (as defined in Section 21.2 below) that such payment is overdue, provided such payment is properly owed;
 - 21.1.3. Failure to pay any fines, penalties, or forfeitures imposed after exhaustion of all appeals with respect to the subject matter of this Agreement by a Governmental Entity within the lesser of thirty (30) days of demand therefore by such Governmental Entity or the time period prescribed therein;
 - 21.1.4. Unless caused by an Uncontrollable Circumstance, the failure to otherwise comply with any of the other obligations, covenants, agreements, terms, or provisions of this Agreement. "Uncontrollable Circumstance" means any act, event, or condition that is caused by or due to circumstances beyond the reasonable control of the Party relying thereon as justification for not performing an obligation or complying with any condition required of

such Party under this Agreement, and that materially interferes with performing its obligations hereunder (other than payment obligations) to the extent that such act, event, or condition is not the result of the willful or negligent act, error or omission, failure to exercise reasonable diligence, or breach of this Agreement on the part of such Party.

21.2. Termination for Cause. Upon the occurrence of an Event of Default, in addition to any remedies available under this Agreement, in law, or in equity to the Party not in default (the "Non-defaulting Party"), the Non-defaulting Party shall have the right to terminate this Agreement immediately upon written notice to the Party responsible for the occurrence of the Event of Default (the "Defaulting Party") if the Event of Default is not properly cured pursuant to Section 21.3 hereof. If the Defaulting Party is the City, the City shall not be entitled to cost recovery from Adaman for any unamortized capital investment made by the City for Adaman's benefit or any capital investment or expenditures otherwise made by the City in reliance on or pursuant to this Agreement. If the Defaulting Party is Adaman, in addition to or in lieu of the right to terminate this Agreement and seek any remedies available under this Agreement in law or in equity, the City may (i) cure Adaman's default and Adaman shall reimburse the City for the cost of such cure; or (ii) seek specific performance of this Agreement. If the Defaulting Party is Adaman, the City elects to terminate this Agreement as provided herein, and any unamortized capital investment, as described in Section 5.1 hereof, remains outstanding, Adaman shall pay the City an annual amount equal to three percent (3%) of the BCF in effect on the date of termination multiplied by the average annual number of acre feet purchased by the City pursuant to this Agreement during the three (3) calendar years preceding termination, until such outstanding unamortized capital investment is repaid. This obligation shall survive termination of this Agreement.

21.3. Opportunity to Cure. The Defaulting Party shall have forty-five (45) days following the receipt of written notice of an Event of Default by the Non-defaulting Party to cure the Event of Default, which notice shall clearly identify the specific nature of the Event of Default. As to non-monetary Events of Default, if and to the extent the Event of Default cannot reasonably be cured within such twenty-one day period, and if the Defaulting Party has theretofore diligently attempted to cure the same and thereafter continues to diligently cure the same, then the cure period provided for herein shall extend for the period of time reasonably needed to cure.

22. Indemnification.

22.1. The City shall indemnify and hold Adaman harmless for, from, and against all claims, penalties, costs, liabilities, damages, or losses of any kind, including reasonable attorneys fees and costs, arising from or related to (i) the acts or omissions of the City, its employees, or agents; (ii) the delivery of water by the City to the City's customers; (iii) the quality of water served by the City to the City's customers; (iv) the use of water by the City or the City's customers; or (v)

the introduction of water from the New Wells to a water treatment plant utilized to treat such water. Notwithstanding the foregoing, Adaman shall indemnify and hold harmless the City for, from, and against all claims, penalties, costs, liabilities, damages, or losses of any kind, including reasonable attorneys' fees and costs, arising directly as a result of the negligent acts or omissions of Adaman, its employees, or agents.

- 22.2. Adaman shall indemnify and hold the City harmless for, from, and against all claims, penalties, costs, liabilities, damages, or losses of any kind, including reasonable attorneys fees and costs, arising from or related to (i) the acts or omissions of Adaman, its employees, or agents; (ii) the delivery of water by Adaman to Adaman's customers; (iii) the quality of water served by Adaman to Adaman's customers; or (iv) the use of water by Adaman or Adaman's customers. Notwithstanding the foregoing, the City shall indemnify and hold Adaman harmless for, from, and against all claims, penalties, costs, liabilities, damages, or losses of any kind, including reasonable attorneys' fees and costs, arising directly as a result of the negligent acts or omissions of the City, its employees, or agents.
23. Insurance. Throughout the entire term of this Agreement, the City and Adaman shall, at their sole cost and expense, maintain in effect coverage with an entity authorized to do business in Arizona and reasonably acceptable to the other Party, appropriate insurance, including, but not limited to, commercial general liability insurance, all-risks property insurance, workers' compensation insurance, and employers' liability insurance and naming the other Party as an additional insured.
24. Miscellaneous Provisions:
- 24.1. Cancellation. Notice is hereby given of the provisions of A.R.S. § 38-511, as amended. By this reference, the provisions of that statute are incorporated in this Agreement to the extent of their applicability to contracts of the nature of this Agreement under the laws of the State of Arizona.
- 24.2. Entire Agreement. 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 understandings between the Parties (including the MOU) regarding the subject matter of this Agreement, and binds and inures to the benefit of the Parties, their successors, assigns and purchasers for value. Neither of the Parties has entered into this Agreement in reliance upon any oral or written representation or information provided by the other Party.
- 24.3. 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 shall 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.

- 24.4. 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.
- 24.5. Modification and Waiver. A 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.
- 24.6. Assignment. No Party shall assign this Agreement or the rights and privileges herein, in whole or in part, without the prior written consent of the other Party. Absent such consent, any attempted assignment shall be void. Notwithstanding any assignment, each Party shall remain primarily liable and responsible for fulfilling the terms and conditions of this Agreement.
- 24.7. Governing Law. The laws of the State of Arizona govern the interpretation and performance of this Agreement.
- 24.8. Severability. If any provision of this Agreement or the application thereof to any person or circumstance is held to be invalid, illegal, or unenforceable to any extent in an arbitration or court proceeding and such holding has become final and non-appealable, the remainder of this Agreement and the application thereof will not be affected and will be enforceable to the fullest extent permitted by law.
- 24.9. 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 not a Party.
- 24.10. No Party the Drafter. This Agreement is the product of negotiation between the Parties. No Party is deemed the drafter of this Agreement.
- 24.11. Headings. Section headings used in this Agreement are for convenience and reference only and do not define, limit, or describe the scope or intent of any provision of this Agreement.
- 24.12. 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 shall 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 to the following address:

To Adaman at:

Adaman Mutual Water Company
Attn: Dave Schofield
16251 West Glendale Avenue
Litchfield Park, Arizona 85340

or to such other address as Adaman may advise the City in writing, and to the City at:

City of Goodyear
Attn: _____
119 North Litchfield Road
P.O. Box 5100
Goodyear, Arizona 85338

or to such other address as the City may advise Adaman in writing. The designation of such person and/or address may be changed at any time by either Party by giving written notice given under this Section 24.12. All notices, demands, requests, or other communications sent pursuant to this Section 24.12 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.) Arizona 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.) Arizona 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 shall be followed by delivery on the next business day by overnight express carrier or by hand.

- 24.13. Authority and Responsibility. This Agreement shall not be construed to imply authority to perform any tasks, or accept any responsibility not expressly set forth herein. This Agreement shall be strictly construed against the creation of a duty or responsibility unless the intention to do so is clearly and unambiguously set forth herein.
- 24.14. Authorizations. The signatories to this Agreement represent that they have been appropriately authorized to enter into this Agreement on behalf of the Party for which they sign, and that no further action or approvals are necessary before execution of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be entered into on the day and year first above written.

ADAMAN MUTUAL WATER
COMPANY, an Arizona corporation

By: David Schofield
Name: DAVID SCHOFIELD
Its: Gen. Mgr./Treas
Date: 7-23-07

CITY OF GOODYEAR, a municipal
corporation and political subdivision of the
State of Arizona

By: Brian Dalke
Name: Brian Dalke
Its: Interim City Manager
Date: August 27, 2007

Approved as to form:

Elmer J. Squire
City Attorney

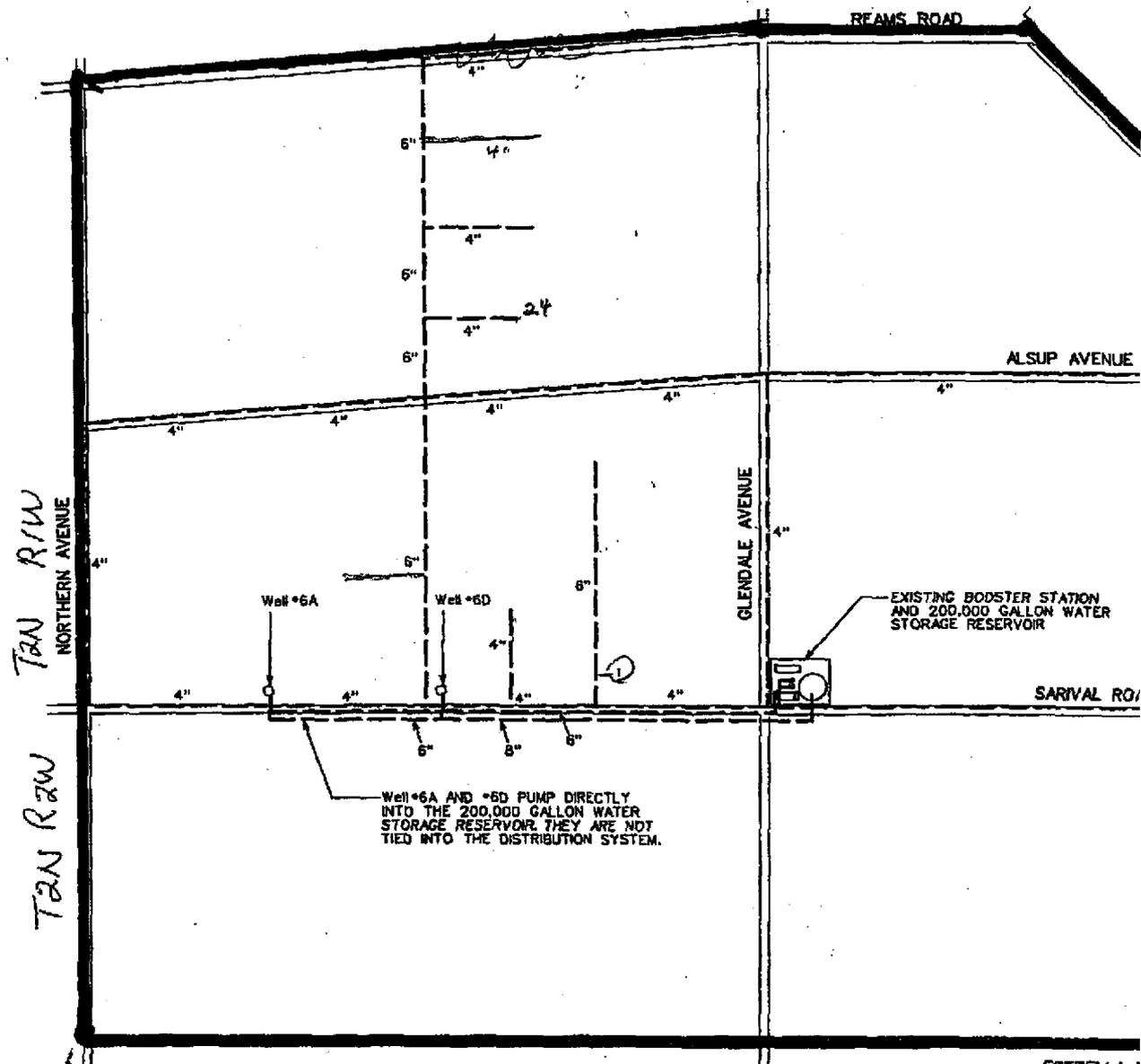
ATTEST:

Dee Carlson
City Clerk



EXHIBIT "A"

MAP OF CERTIFICATED AREA



Well #6A AND #6D PUMP DIRECTLY INTO THE 200,000 GALLON WATER STORAGE RESERVOIR. THEY ARE NOT TIED INTO THE DISTRIBUTION SYSTEM.

EXISTING BOOSTER STATION AND 200,000 GALLON WATER STORAGE RESERVOIR

TAN R/W
NORTHERN AVENUE
TAN R/W

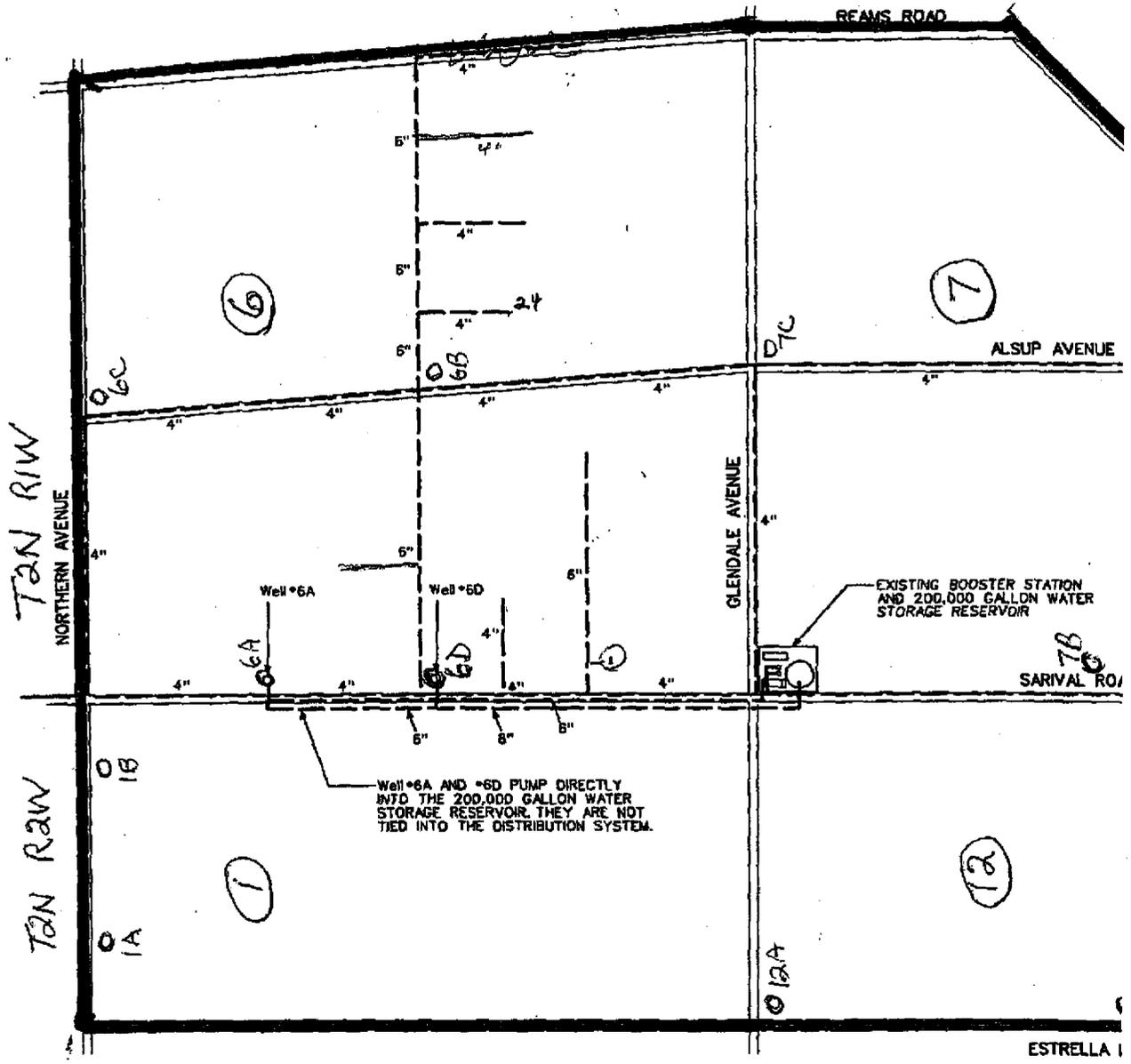
ESTRELLA I

DATE: Jan. 12, 1988
 TIME: 10:08:24
 FILE: p:\env\ton\15012901.ch800wa2.dgn

EXHIBIT "B"

MAP DEPICTING EXISTING WELLS

DATE: Jan. 12, 1966
 DESIGNED BY: J. W. B. / J. W. B. / J. W. B.
 FILE: R:\WORK\1965\12201\12201\12201.dwg



ESTRELLA I