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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS:

- GARY PIERCE, Chairman
- SANDRA D. KENNEDY
- PAUL NEWMAN
- BOB STUMP
- BRENDA BURNS

14 IN THE MATTER OF THE APPLICATION
 OF ARIZONA-AMERICAN WATER
 COMPANY, AN ARIZONA
 15 CORPORATION, FOR A DETERMINATION
 OF THE CURRENT FAIR VALUE OF ITS
 16 UTILITY PLANT AND PROPERTY AND
 FOR INCREASES IN ITS RATES AND
 17 CHARGES BASED THEREON FOR
 UTILITY SERVICE BY ITS
 18 ANTHEM/AGUA FRIA WASTEWATER
 DISTRICT, SUN CITY WASTEWATER
 19 DISTRICT, AND SUN CITY WEST
 WASTEWATER DISTRICT.

DOCKET NOS. W-01303A-09-0343
and SW-01303A-09-0343

**NOTICE OF FILING
SURREBUTTAL TESTIMONY**

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21 ...

22 ...

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1 The City of Phoenix hereby files the Surrebuttal Testimony of Allen Eneboe, Andy
2 Terrey and Denise Olson.

3 RESPECTFULLY SUBMITTED this 11th day of October, 2011.

4 GARY VERBURG, City Attorney

5 By Cynthia S. Campbell

6 CYNTHIA S. CAMPBELL

7 Assistant City Attorney

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10 Original and 13 Copies of the
11 foregoing hand delivered this
12 11th day of October, 2011 to:

13 Docket Control

14 Arizona Corporation Commission

15 1200 W. Washington

16 Phoenix, AZ 85007

17 Administrative Law Judge

18 Arizona Corporation Commission

19 1200 W. Washington Street

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21 Copies of the foregoing mailed this
22 11th day of October, 2011, to:

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By K. Brault
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22 ...

1 Q. ARE YOU FAMILIAR WITH THE WHOLESALE WATER/WASTEWATER
2 SERVICE AGREEMENT (“SERVICE AGREEMENT”) BETWEEN THE
3 CITY OF PHOENIX AND CITIZENS WATER RESOURCES COMPANY OF
4 ARIZONA DATED SEPTEMBER 22, 2000?

5 A. Yes. The Service Agreement with Citizens Water Resources Company of Arizona
6 describes the conditions under which wholesale water and wastewater services are
7 provided between the two utilities. Arizona-American Water Company (“Arizona-
8 American”) became a party to the Service Agreement when it acquired Citizens Water
9 Resources Company of Arizona. A full copy of the Service Agreement is attached as
10 Exhibit A.

11 Q. IN HER TESTIMONY MS. SANDRA MURREY STATES THAT A COST OF
12 SERVICE STUDY IS NOT NECESSARY FOR ARIZONA-AMERICAN TO
13 DESIGN AND IMPLEMENT THE STAND-ALONE REVENUE
14 REQUIREMENTS AS REQUIRED BY DECISION NO. 72047. DO YOU
15 AGREE?

16 A. No. Ms. Murrey implies that the only purpose of a cost of service study for the rates
17 charged to Phoenix in this case is to support the general proposition customer rates
18 should be reasonable. This is incorrect. Pursuant to the Service Agreement, Arizona-
19 American is *required* to support a request for a change in the rates charged to Phoenix
20 with the *actual costs Arizona-American pays or incurs for the services it specifically*
21 *provides to Phoenix*. Arizona-American has made no attempt to provide these actual
22 costs, but has instead structured a rate design that burdens Phoenix and its customers
with the revenue shortfalls between the rates it charges its retail customers and its
proposed operating budget.

Q. WHY SHOULD PHOENIX BE TREATED DIFFERENTLY THAN ARIZONA-
AMERICAN’S OTHER CUSTOMERS WITH REGARD TO THE RATES IT
PAYS FOR WASTEWATER SERVICES?

1 A. Phoenix does not ask to be treated differently; however, the City believes it should
2 pay their fair share of cost for wastewater services. Arizona-American has not
3 provided the required justification for the rate it proposes for Phoenix, based on the
4 actual costs of providing wastewater services, as required in the Service Agreement.
5 The Service Agreement is a comprehensive integrated agreement that provides
6 numerous exchanges of consideration for performance by both parties. It
7 encompasses construction and maintenance of infrastructure, transactions for potable,
8 non-potable and wastewater services, water wheeling services and operation and
9 maintenance of groundwater recharge and recovery facilities. The parties agreed to
10 require a demonstration of *actual costs of providing wastewater services* as a
11 prerequisite to changing the rates. A cost of service study would show that Phoenix is
12 not similar to any other type of customer. Unlike Arizona-American's residential and
13 commercial customers, Phoenix owns and maintains the delivery point and meter to
14 Arizona-American. Phoenix constructed and maintains the collection system from its
15 retail customers to the delivery point. Phoenix is solely responsible for insuring that
16 its customers meet all of Arizona-American's pretreatment requirements. Most
17 importantly, the West Anthem area serviced by Phoenix includes a number of
18 residential customers as well as some commercial customers. The rate proposed by
19 Arizona-American that applies only to Phoenix is based on the commercial rate. In
20 addition, as recognized by Arizona-American, not all potable water used by customers
21 becomes wastewater, which is reflected in the rate schedule applicable to Arizona-
22 American's customers which limits the commodity charge based on a "not to exceed"
monthly volume. Neither Phoenix nor its customers has the benefit of the "not to
exceed" monthly metered water volume provided to Arizona-American's retail
customers, nor is there any consideration given to the infrastructure constructed and
maintained by Phoenix. There is also no evidence regarding the quality or "strength"
of the wastewater delivered to Arizona-American which impacts the cost of
wastewater treatment. These unresolved factors, which would be considered in a cost
of service study, may result in an unfair allocation of revenue sources that provides a
subsidy to the Arizona-American wastewater customers at the expense of the Phoenix

1 wastewater customers. Phoenix acknowledges that the results of a cost of service
2 study will not necessarily result in a lower rate compared to other customers, but it
3 does ask that Arizona-American comply with the terms of the Service Agreement so
4 there is some basis to show Phoenix is paying its fair share.

5 **Q. IS THERE ANY REQUIREMENT IN THE SERVICE AGREEMENT
6 REGARDING NOTICE?**

7 A. Yes. As previously mentioned in my testimony and that of other Phoenix witnesses,
8 the Service Agreement between Arizona-American and Phoenix provides the rate
9 charged for wastewater services. Section 14.3 of the Service Agreement provides:

10 Except as otherwise specified in this Agreement, any notice, demand,
11 request or other communication required or authorized by this
12 Agreement to be given in writing to a Party must be either (a) personally
13 delivered, (b) mailed by registered or certified mail (return receipt
14 requested), postage prepaid, (c) sent by overnight express carrier, or (d)
15 sent by telecopy or electronic mail . . .

16 The Service Agreement further requires notices to be sent to the Water
17 Services Director with a copy to Jesse W. Sears in the City Attorney's Office.
18 There is no record that either individual received a notice from Arizona-
19 American about this rate case.

20 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

21 A. Yes.
22

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1 A. The Service Agreement with Citizens Water Resources Company of Arizona
2 describes the conditions under which wholesale water and wastewater services are
3 provided between the two utilities. Arizona-American Water Company ("Arizona-
4 American") became a party to the Service Agreement when it acquired Citizens Water
5 Resources Company of Arizona. A full copy of the Service Agreement is attached as
6 Exhibit A.

7 **Q. WHY IS PHOENIX ASKING ARIZONA-AMERICAN TO CONDUCT A
8 COST OF SERVICE STUDY?**

9 A. A cost of service study must be completed to support the stand-alone revenue
10 requirements and rate designs for the Anthem Wastewater District as ordered in
11 Decision No. 72047. Arizona-American has not yet fully complied with the
12 Commission's Decision because the proposed wastewater rates for Anthem do not
13 consider the terms of the Service Agreement between Phoenix and Arizona-
14 American. Section 8.5.c of the Service Agreement provides:

15 The Parties acknowledge that the rate described in paragraph (a) may be
16 altered from time to time by the [Arizona Corporation] Commission
17 with or without the consent of TreatCo. TreatCo will have the right to
18 request changes in such rate from time to time, but those requested
19 changes must be based on changes in actual cost paid or incurred by
20 TreatCo with respect to providing services pursuant to this Article.

21 Arizona-American has not provided any evidence of the actual cost paid or incurred it
22 has incurred in providing wastewater services to Phoenix. Phoenix's rate was simply
assigned to the commercial rate category even though Phoenix West Anthem's
wastewater generation is primarily from residential customers. Also, as described
below, the estimate of the test year volume wastewater generated by Phoenix West
Anthem is flawed.

**Q. WHY SHOULD THE PHOENIX-TO-TREATCO WASTEWATER DELIVERY
POINT BE USED TO MEASURE WASTEWATER FLOWS FOR THE
PURPOSE OF WHOLESALE WASTEWATER SERVICE BILLING RATHER**

1 **THAN THE TREATCO-TO-PHOENIX POTABLE WATER DELIVERY**
2 **POINT?**

3 A. The TreatCo-to-Phoenix Potable Water Delivery Point measures all water entering the
4 Phoenix West Anthem service area. Not all water used by our customers, however,
5 becomes wastewater; some water is used for landscape irrigation, swimming pool
6 uses and other purposes. If the Treatco-to-Phoenix potable water delivery point is
7 continued to be used, then the rate schedule would need to consider non-sewer usage.
8 This could perhaps be done by a billing for sewer based on consumption up to set
9 maximum volume as is done with the other Arizona American customers. A more
10 straight forward and accurate approach would be to measure actual sewer flow at the
11 Phoenix-to-TreatCo Wastewater Delivery Point (a.k.a. the wastewater flume). In
12 previous discussions between Phoenix and Arizona American, Arizona American has
13 agreed that it is more appropriate to measure wastewater flows at the wastewater
14 flume.

15 **Q. IN HER REBUTTAL TESTIMONY, SANDRA MURREY STATES THAT**
16 **THERE WOULD BE LITTLE DIFFERENCE BETWEEN THE VOLUMES**
17 **BASED ON FLUME READINGS AND THE PROXY OF WATER-METER**
18 **READINGS. DO YOU AGREE WITH THIS TESTIMONY?**

19 A. Since the Phoenix-to-Treatoco Wastewater Delivery Point has not been used for
20 wastewater billing up to this point, there has not been much impetus on Phoenix's part
21 to ensure that the flume has been properly maintained and calibrated. When we
22 inspected the flume several months ago we found a significant amount of grit and
debris had built up on the flow channel, which would cause it to read high. The
comparative meter Phoenix installed upstream from the flume that Ms. Murrey
referred to in her testimony confirmed that is indeed the case. This would explain
why the historic flume readings presented by Ms. Murrey are comparable to
Phoenix's test year water usage. Phoenix is working on correcting the problems at the
flume and expects it to be reading accurately in the near future.

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Q. IS THE PHOENIX TEST YEAR WATER USAGE AN ACCURATE PROXY OF THE ACTUAL AMOUNT OF WASTEWATER GENERATED BY PHOENIX WEST ANTHEM?

No, because not all water consumed goes down the sewer. As Ms. Murrey stated in her testimony, estimating sewer flow at 30% of total consumption is a common industry standard. A more accurate estimate, however, might be obtained by using the data recorded by Phoenix's comparative wastewater flow meter. Since the meter was installed on April 4, 2011, average measured sewer flow has been 219.5 thousand gallons (kgal) per day. Multiply this average daily figure by 365 gives us 80,189 kgal per year, which is about 35% of the test year consumption.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

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Exhibit A

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ANTHEM WHOLESALE WATER/WASTEWATER SERVICE AGREEMENT

between

CITY OF PHOENIX, ARIZONA

and

CITIZENS WATER RESOURCES COMPANY OF ARIZONA

Dated as of September 12, 2000

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- 6 Exhibit C - Phoenix Area
- 7 Exhibit D - Designation of Representative
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ANTHEM WHOLESALE WATER/WASTEWATER SERVICE AGREEMENT

AGREEMENT dated as of September __, 2000, between the CITY OF PHOENIX, ARIZONA, an Arizona municipal corporation ("Phoenix"), and CITIZENS WATER RESOURCES COMPANY OF ARIZONA, an Arizona corporation ("TreatCo").

RECITALS:

A. Anthem Arizona, L.L.C. ("Developer"), is an Arizona limited liability company that is the successor by merger to The Villages at Desert Hills, Inc., an Arizona corporation, and is an affiliate of Del Webb Corporation, a Delaware corporation ("Webb"). Developer is constructing a new residential community in Maricopa County, Arizona, known as Anthem Arizona (the "Project"). The Project is being constructed pursuant to an approved 5,661-acre Development Master Plan (DMP 94-6, as may be amended from time to time). The Project area is depicted generally on Exhibit B.

B. A portion of the Project, comprising approximately 906 acres and depicted generally on Exhibit C (the "Phoenix Area"), is located within the current geographic boundaries of Phoenix.

C. Citizens Communications Company, a Delaware corporation formerly known as Citizens Utilities Company ("Citizens"), through subsidiaries and operating divisions, provides water and wastewater services in the State of Arizona and other jurisdictions. TreatCo and Citizens Water Services Company of Arizona, an Arizona corporation ("DistCo"), are wholly-owned subsidiaries of Citizens.

1 D. Webb, Developer, Citizens, TreatCo and DistCo (the "Anthem Parties") entered into an
2 agreement regarding water/wastewater infrastructure and services for the Project, dated as of
3 September 29, 1997, as amended (the "Infrastructure Agreement").

4 E. As required by the Infrastructure Agreement, Webb and Developer have constructed or
5 will construct within the Project water and wastewater treatment, distribution and collection
6 facilities for the Project, including the Phoenix Area.

7 F. As required by the Infrastructure Agreement, Citizens, TreatCo and DistCo applied to
8 the Arizona Corporation Commission (the "Commission") for, among other things, issuance to
9 TreatCo and DistCo of certificates of convenience and necessity to provide water and wastewater
10 services within the Project, including the Phoenix Area. On June 19, 1998, the Commission granted
11 the requested certificates of convenience and necessity to DistCo and TreatCo. As required by
12 Arizona statute, the certificates pertaining to the Phoenix Area were conditioned on obtaining the
13 consent of Phoenix thereto.

14 G. Phoenix desires to be the provider of Retail Water and Wastewater Services in the
15 Phoenix Area.

16 H. Phoenix and TreatCo desire to set forth their mutual expectations regarding:

17 i. TreatCo's provision of temporary Wholesale Water and Wastewater Services to
18 Phoenix to facilitate the provision by Phoenix of Retail Water and Wastewater Services for
19 the Phoenix Area.

20 ii. Phoenix's provision of "emergency" and "peak" Wholesale Potable Water
21 Services to TreatCo to facilitate the provision by DistCo of Retail Potable Water Services
22 for the Project area other than the Phoenix Area.

1 iii. TreatCo's construction, ownership and operation of certain recharge and
2 recovery facilities in the Phoenix Area.

3 iv. TreatCo's provision of Wholesale Non-Potable Water Services to Phoenix to
4 facilitate the provision by Phoenix of Retail Non-Potable Water Services for the Phoenix
5 Area.

6 I. To facilitate the provision of Retail Water and Wastewater Services within the Phoenix
7 Area, and to accommodate the desire of Phoenix that the Retail Water and Wastewater Services for
8 the Phoenix Area be provided by Phoenix (that is, that such services be provided in a manner
9 different than the manner contemplated by the Infrastructure Agreement), the Parties desire that:

10 i. Phoenix will be the actual provider of Retail Water and Wastewater Services to
11 the Phoenix Area.

12 ii. TreatCo will provide (a) Wholesale Potable Water Services to Phoenix to enable
13 Phoenix to provide Retail Potable Water Services within the Phoenix Area, until Phoenix
14 has connected the Phoenix Area to the Phoenix Potable Water Treatment Facilities, (b)
15 Wholesale Wastewater Services to Phoenix to enable Phoenix to provide Retail Wastewater
16 Services within the Phoenix Area, until Phoenix has connected the Phoenix Area to the
17 Phoenix Wastewater Treatment Facilities, and (c) Wholesale Non-Potable Water Services to
18 Phoenix to enable Phoenix to provide Retail Non-Potable Water Services within the Phoenix
19 Area, until Phoenix has connected the Phoenix Area to the Phoenix Non-Potable Water
20 Treatment Facilities.

21 J. To facilitate the provision of water service to the County Area, the Parties desire that:

1 the specimen signature of the designee(s), (b) is signed on behalf of the Party by a duly authorized
2 officer, and (c) is provided to all of the other Parties. The designation may (but is not required to
3 be) in the form attached as Exhibit D.

4 1.2.2 No Release.

5 Each Party is responsible for the acts or omissions of its
6 Representative(s). The designation of a Representative by a Party does not release the Party
7 from responsibility for performance of its obligations under this Agreement.

8 1.3 Condition Precedent; Deadline.

9 1.3.1 Cancellation of CC&Ns.

10 Cancellation by the Commission of the CC&Ns which pertain to
11 the Phoenix Area and which are held by TreatCo and DistCo (together with Commission
12 approval of this Agreement as executed by the Parties or, alternatively, Commission
13 determination that its approval of this Agreement is not necessary for the Agreement to be
14 enforceable) is a condition precedent to the Parties' rights and obligations under Articles II
15 through XII of this Agreement. If such cancellation (with the accompanying approval or
16 determination) does not occur within 121 days after the date of this Agreement, either Party may
17 terminate this Agreement on 15-days' prior written notice to the other Party.

18 1.3.2 Filing of Cancellation Request.

19 After execution of this Agreement, TreatCo and DistCo will
20 prepare, file and affirmatively support with the Commission a request for cancellation of the
21 CC&Ns as described in Section 1.3.1. Phoenix will cooperate with TreatCo and DistCo in
22 connection with that request and will affirmatively support that request.

1 2.4 Non-Potable Water Service.

2 Phoenix is solely responsible for providing Retail Non-Potable Water
3 Services to residents and other persons in the Phoenix Area, as provided in Article XI. Until
4 Phoenix has connected the Phoenix Distribution Facilities to the Phoenix Non-Potable Water
5 Treatment Facilities, TreatCo will provide Wholesale Non-Potable Water Services to Phoenix, to
6 enable Phoenix to provide such Retail Non-Potable Water Services to residents and other persons
7 in the Phoenix Area, as provided in Article X.

8 2.5 Recharge and Recovery Facilities.

9 TreatCo will own and operate certain groundwater recharge and recovery
10 facilities in the Phoenix Area (and Phoenix will grant TreatCo certain required permits and
11 licenses within the public rights-of-way and/or easements), as provided in Article XI.

12 2.6 Payments by TreatCo.

13 TreatCo will pay certain amounts to Phoenix, as provided in Article XII.

1 ARTICLE III

2 CONSTRUCTION OF BASIC INFRASTRUCTURE

3 3.1 Phoenix Distribution Facilities.

4 3.1.1 Creation of Phoenix Distribution Facilities.

5 Phoenix will design, construct, operate and maintain (or cause to
6 be designed, constructed, operated and maintained) the Phoenix Distribution Facilities. TreatCo
7 is not obligated to design, construct, operate or maintain the Phoenix Distribution Facilities.

8 3.1.2 Cost of the Facilities.

9 Phoenix is solely responsible for causing to be paid the costs of
10 designing, constructing, operating and maintaining the Phoenix Distribution Facilities. TreatCo
11 is not responsible for those costs.

12 3.2 The Delivery Points.

13 3.2.1 Siting.

14 The Parties will mutually agree on the location of the Delivery
15 Points, taking into account practical engineering and operating considerations. The Parties
16 acknowledge that it is presently contemplated that the Delivery Points will be located as depicted
17 on Exhibit C.

18 3.2.2 Ownership.

19 Phoenix will own (a) the TreatCo-to-Phoenix Potable Water
20 Delivery Point, (b) the Phoenix-to-TreatCo Wastewater Delivery Point, and (c) the TreatCo-to-
21 Phoenix Non-Potable Water Delivery Point (collectively, the "Phoenix-owned Delivery Points").
22 TreatCo will own the Phoenix-to-TreatCo Potable Water Delivery Point (also known as the
23 "TreatCo-owned Delivery Point").

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3.2.3 Plans and Specifications.

The owner of a Delivery Point will cause the plans and specifications (and the related construction timetable) for the Delivery Point, including meter installation and telemeter connections, to be prepared by Developer or other third party (in consultation with the non-owning Party) and submitted to the non-owning Party. If the non-owning Party objects to any aspect of the plans and specifications (and the related construction timetable), those objections must be made in writing and delivered to the owning Party within 30 days after delivery of the plans and specifications. If the Parties are unable to resolve their differences within 30 days after delivery of the objections, the dispute will be resolved as provided in Article XIII.

11

3.2.4 Construction.

12 After the plans and specifications (and the related construction
13 timetable) for a Delivery Point have been approved by the non-owning Party, the owning Party
14 will cause the Delivery Point to be constructed. The construction must be in accordance with the
15 plans and specifications (and the related construction timetable). The Delivery Points must be
16 completed and operable no later than the following dates:

<u>Delivery Point</u>	<u>Deadline</u>	<u>Owner</u>
TreatCo-to-Phoenix Potable Water Delivery Point	January 1, 2001	Phoenix
Phoenix-to-TreatCo Wastewater Delivery Point	January 1, 2001	Phoenix
TreatCo-to-Phoenix Non-Potable Water Delivery Point	January 1, 2001	Phoenix
Phoenix-to-TreatCo Potable Water Delivery Point (also known as the TreatCo-owned Delivery Point)	June 1, 2005	TreatCo

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3.2.5 Maintenance.

TreatCo is solely responsible for maintaining, repairing and replacing the TreatCo-owned Delivery Point, and Phoenix has no responsibility for that maintenance, repair or replacement. Phoenix is solely responsible for maintaining, repairing and replacing the Phoenix-owned Delivery Points, and TreatCo has no responsibility for that maintenance, repair or replacement.

3.2.6 Access and Calibration.

Phoenix will have a right of access at all times to the TreatCo-owned Delivery Point solely for purposes of inspection, including measuring the accuracy of the meters associated therewith. TreatCo will have a right of access at all times to the Phoenix-owned Delivery Points solely for purposes of inspection, including measuring the accuracy of the meters associated therewith.

3.2.7 Responsibility for Design and Construction Costs.

The owning Party is solely responsible for causing to be paid the costs of designing and constructing each Delivery Point owned by it. The non-owning Party is not responsible for the costs of designing and constructing that Delivery Point.

3.3 Interconnection Lines.

3.3.1 Between Delivery Points and TreatCo System.

3.3.1.1 Creation.

TreatCo will design, construct, operate, maintain, repair and replace (or cause to be designed, constructed, operated, maintained, repaired and replaced) the water and wastewater lines that connect the Delivery Points to the TreatCo System. The design and construction of those lines must be such as will enable TreatCo to deliver and receive

1 water and wastewater (as applicable) as contemplated by this Agreement. Phoenix is not
2 obligated to design, construct, operate, maintain, repair or replace those lines.

3 3.3.1.2 Cost.

4 TreatCo is solely responsible for causing to be paid the
5 costs of designing, constructing, operating, maintaining, repairing and replacing the water and
6 wastewater lines that connect the Delivery Points to the TreatCo System. Phoenix is not
7 responsible for those costs.

8 3.3.1.3 Timetable.

9 The Parties acknowledge that TreatCo has caused the water
10 and wastewater lines that connect the Delivery Points to the TreatCo System to be constructed
11 and operable.

12 3.3.1.4 Rights-of-Way.

13 If and to the extent the Delivery Points are located within
14 the Phoenix Area (so that some portion of the water and wastewater lines that connect the
15 Delivery Points to the TreatCo System are also located within the Phoenix Area), Phoenix will
16 grant TreatCo permits and licenses within the public rights-of-way and/or public easements in
17 connection with those lines. Those permits, licenses or easements will be subject to
18 requirements and conditions similar to those described in Section 11.3.

19 3.3.2 Between Delivery Points and Phoenix Distribution Facilities.

20 3.3.2.1 Creation.

21 Phoenix will design, construct, operate, maintain, repair
22 and replace (or cause to be designed, constructed, operated, maintained, repaired and replaced)
23 the water and wastewater lines that connect the Delivery Points to the Phoenix Distribution

1 Facilities. The design and construction of those lines must be such as will enable Phoenix to
2 deliver and receive water and wastewater (as applicable) as contemplated by this Agreement.
3 TreatCo is not obligated to design, construct, operate, maintain, repair or replace those lines.

4 3.3.2.2 Cost.

5 Phoenix is solely responsible for causing to be paid the
6 costs of designing, constructing, operating, maintaining, repairing and replacing the water and
7 wastewater lines that connect the Delivery Points to the Phoenix Distribution Facilities. TreatCo
8 is not responsible for those costs.

9 3.3.2.3 Timetable.

10 Phoenix will cause the water or wastewater line that
11 connects a Delivery Point to the Phoenix Distribution Facilities to be constructed and operable
12 not later than the date on which the Delivery Point has been constructed and becomes operable.

13 3.3.3 Between Phoenix Distribution Facilities, the TreatCo-owned
14 Delivery Point and Phoenix Potable Water Treatment Facilities.

15 3.3.3.1 Creation.

16 Phoenix will design, construct, operate, maintain, repair
17 and replace (or cause to be designed, constructed, operated, maintained, repaired and replaced)
18 the water lines that connect the Phoenix Potable Water Treatment Facilities to (a) the TreatCo-
19 owned Delivery Point and (b) the Phoenix Distribution Facilities. The design and construction
20 of those lines must be such as will enable Phoenix to deliver Potable Water to TreatCo according
21 to the schedule and in the amounts described in Section 6.3. TreatCo is not obligated to design,
22 construct, operate, maintain, repair or replace those lines. The Parties acknowledge that it is
23 presently contemplated that (a) the Phoenix Potable Water Treatment Facilities' connection to

1 the TreatCo-owned Delivery Point will be completed prior to the connection to the Phoenix
2 Distribution Facilities, and (b) after the connection to the TreatCo-owned Delivery Point has
3 been completed, TreatCo will be physically capable of wheeling water as contemplated by
4 Section 5.1.1(b) because the TreatCo-owned Delivery Point will be connected to the TreatCo
5 System, which in turn will be connected to the Phoenix Distribution Facilities by means of the
6 TreatCo-to-Phoenix Delivery Point. A connection by means of the TreatCo System does not
7 constitute the connection described in clause (b) of the first sentence of this Section (i.e., the
8 obligation of Phoenix to establish a connection between the Phoenix Potable Water Treatment
9 Facilities and the Phoenix Distribution Facilities).

10 3.3.3.2 Cost.

11 Phoenix is solely responsible for paying (or causing the
12 payment of) the costs of designing, constructing, operating, maintaining, repairing and replacing
13 the water lines that connect both the Phoenix Distribution Facilities and the TreatCo-owned
14 Delivery Point to the Phoenix Potable Water Treatment Facilities. TreatCo is not responsible for
15 those costs.

16 3.3.3.3 Timetable.

17 Phoenix will cause the water lines that connect both the
18 Phoenix Distribution Facilities and the TreatCo-owned Delivery Point to the Phoenix Potable
19 Water Treatment Facilities to be constructed and operable not later than June 1, 2005.

20 3.4 Effect of Delays.

21 3.4.1 Delays by TreatCo.

22 If TreatCo fails to timely complete construction of and place in
23 operation the TreatCo-owned Delivery Point as provided in Section 3.2.4, that failure will be

1 deemed a Force Majeure event entitling Phoenix to defer its obligations to deliver water at that
2 Delivery Point until the TreatCo-owned Delivery Point has been constructed and placed in
3 operation.

4 3.4.2 Delays by Phoenix.

5 3.4.2.1 As to Non-Potable Water and Wastewater.

6 If Phoenix fails to timely complete construction of and
7 place in operation the Phoenix-to-TreatCo Wastewater Delivery Point, the TreatCo-to-Phoenix
8 Non-Potable Water Delivery Point, or a water or wastewater line that connects either of those
9 Delivery Points to the Phoenix Distribution Facilities as provided in Sections 3.2.4 and 3.3.2.3,
10 respectively, that failure will be deemed a Force Majeure event entitling TreatCo to defer its
11 obligations to receive or deliver Non-Potable Water or wastewater (as applicable) at that
12 Delivery Point until the Delivery Point or the interconnection line (as applicable) has been
13 constructed and placed in operation.

14 3.4.2.2 As to Potable Water.

15 3.4.2.2.1 Potable Water Deliverable by TreatCo.

16 If Phoenix fails to timely complete construction
17 of or place in operation the TreatCo-to-Phoenix Potable Water Delivery Point or the water line
18 that connects that Delivery Point to the Phoenix Distribution Facilities as provided in Sections
19 3.2.4 and 3.3.2.3, respectively, that failure will be deemed a Force Majeure Event entitling
20 TreatCo to defer its obligations to deliver water at that Delivery Point until the Delivery Point or
21 the interconnection line (as applicable) has been constructed and placed in operation.

1 ARTICLE IV

2 RETAIL POTABLE WATER SERVICES BY PHOENIX IN PHOENIX AREA

3 4.1 Retail Potable Water Service.

4 Phoenix will provide (and will have sole responsibility for providing)
5 Retail Potable Water Services to residents, businesses, schools and other persons, including
6 Phoenix itself, within the Phoenix Area. TreatCo has no responsibility for providing Retail
7 Potable Water Service in the Phoenix Area.

8 4.2 Authorizations.

9 Phoenix will at its own expense on a timely basis take all reasonable steps
10 necessary to obtain, maintain and renew any Authorizations necessary in connection with its
11 activities described in this Article. TreatCo will cooperate with (and affirmatively support)
12 Phoenix in obtaining any such Authorizations.

13 4.3 Billing of Customers.

14 Phoenix will bill (and will have sole responsibility for billing) its
15 customers for Retail Potable Water Services. The billing will be done in accordance with the
16 Phoenix City Code. TreatCo has no responsibility for that billing or for collection of amounts so
17 billed.

18 4.4 Code Compliance.

19 Phoenix will enforce all of the Phoenix City Code provisions applicable to
20 Retail Potable Water Service in the Phoenix Area.

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4.5 Maintenance and Ownership.

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Phoenix will be solely responsible for maintenance and ownership of all

3 public Potable Water lines located within public rights-of-way or easements within the Phoenix

4 Area.

1 ARTICLE V

2 WHOLESALE POTABLE WATER SERVICES BY TREATCO TO PHOENIX

3 5.1 Transfer of Potable Water.

4 5.1.1 Before Interconnection Between the Phoenix Potable Water
5 Treatment Facilities and the TreatCo-owned Delivery Point.

6 Until the Phoenix Potable Water Treatment Facilities are
7 connected to the TreatCo-owned Delivery Point as described in Section 3.3.3.1(a), TreatCo will
8 deliver Potable Water to Phoenix for resale. These deliveries will be in quantities and at flow
9 rates sufficient to meet the reasonable demands (including peak and fire flow demands) of the
10 customers of Phoenix described in the following sentence. Phoenix may use the Potable Water
11 only to provide Retail Potable Water Services in the following areas and for no other purpose: (a)
12 in the Phoenix Area as contemplated by Article IV, and (b) outside the Phoenix Area, if (and
13 only if) both (i) the Phoenix City Code requires Phoenix to extend Retail Potable Water Services
14 to a customer outside the Phoenix Area and (ii) that usage does not reduce the level of service
15 provided by Phoenix within the Phoenix Area or cause TreatCo to reduce the level of service
16 provided by TreatCo in the Project or elsewhere.

17 5.1.2 After Interconnection Between the Phoenix Potable Water
18 Treatment Facilities and the TreatCo-owned Delivery Point, but Before Interconnection Between
19 the Phoenix Potable Water Treatment Facilities and Phoenix Distribution Facilities.

20 During the period commencing with the connection of the Phoenix
21 Potable Water Treatment Facilities to the TreatCo-owned Delivery Point as described in Section
22 3.3.3.1(a) and ending with the connection of such Treatment Facilities to the Phoenix
23 Distribution Facilities as described in Section 3.3.3.1(b), TreatCo will, at the option of Phoenix,

1 either (a) deliver to Phoenix, for resale, Potable Water which was treated in the TreatCo System,
2 or (b) deliver to Phoenix ("wheel") Potable Water which was treated in the Phoenix Potable
3 Water Treatment Facilities and delivered by Phoenix to TreatCo at the TreatCo-owned Delivery
4 Point for such wheeling. The option of Phoenix is elected by Phoenix' notifying TreatCo from
5 time to time (no later than ten days before the first day of a month) of the alternative which is to
6 be applicable for that month and any specified subsequent months. The election may be
7 amended or withdrawn by Phoenix from time to time, as long as notice of the amendment or
8 withdrawal is made no later than ten days before the first day of the month for which Phoenix
9 desires the change to be effective. In the absence of Phoenix' timely election, Phoenix is deemed
10 to have elected the alternative described in clause (b) of the first sentence of this Section (i.e.,
11 wheeling). To the extent that the TreatCo-owned Delivery Point is being used simultaneously
12 for delivery of Potable Water by Phoenix to TreatCo both for wheeling to Phoenix under this
13 Article and for resale by TreatCo under Article VI, the Parties will devise a mutually agreeable
14 methodology for determining the amount of Potable Water delivered at that Delivery Point for
15 each purpose during each month. These deliveries will be in quantities and at flow rates
16 sufficient to meet the reasonable demands (including peak and fire flow demands) of the
17 customers of Phoenix described in the following sentence. Phoenix may use the Potable Water
18 only to provide Retail Potable Water Services in the following areas and for no other purpose:
19 (x) in the Phoenix Area as contemplated by Article IV, and (y) outside the Phoenix Area, if (and
20 only if) both (i) the Phoenix City Code requires Phoenix to extend Retail Potable Water Services
21 to a customer outside the Phoenix Area and (ii) that usage does not reduce the level of service
22 provided by Phoenix within the Phoenix Area or cause TreatCo to reduce the level of service
23 provided by TreatCo in the Project or elsewhere.

1 5.1.3 After Interconnection Between the Phoenix Potable Water
2 Treatment Facilities and Phoenix Distribution Facilities.

3 After the Phoenix Potable Water Treatment Facilities are
4 connected to the Phoenix Distribution Facilities as described in Section 3.3.3.1(b), this Article
5 will terminate. TreatCo will thereafter deliver Potable Water to Phoenix only if the Parties
6 mutually agree in writing (by amendment to this Agreement or by separate agreement) as to the
7 terms and conditions of those deliveries. The Parties acknowledge that any such subsequent
8 agreement will contain provisions to the effect that (a) Phoenix may use the Potable Water only
9 to provide Retail Potable Water Services in the Phoenix Area as contemplated by Article IV and
10 for no other purpose, (b) those deliveries will be made only for supplemental "emergency" (but
11 not "peak") purposes, and (c) since the occurrence, nature and extent of an emergency cannot be
12 foreseen, these deliveries will be in quantities that are subject to availability, and there can be no
13 assurance that the quantity delivered will be adequate for the emergency.

14 5.2 Point of Delivery.

15 The Potable Water will be delivered by TreatCo to Phoenix at the
16 TreatCo-to-Phoenix Potable Water Delivery Point. TreatCo will have no responsibility for the
17 Potable Water after the Potable Water has been delivered to the TreatCo-to-Phoenix Potable
18 Water Delivery Point.

19 5.3 Water Quality.

20 TreatCo makes no representations or warranties regarding the quality of
21 the Potable Water delivered to Phoenix under this Article, other than that (a) the quality of the
22 Potable Water delivered to Phoenix pursuant to this Article will be generally similar to the
23 quality of Potable Water that TreatCo delivers to DistCo for delivery to DistCo's retail

1 customers, and (b) the Potable Water delivered to Phoenix under this Article will meet all
2 applicable state and federal drinking water standards.

3 5.4 Calibration of Instruments.

4 5.4.1 General.

5 Phoenix will be responsible for calibration and preventive
6 maintenance of all metering, instrumentation and telemetry equipment required by TreatCo for
7 delivery of the Potable Water at the TreatCo-to-Phoenix Potable Water Delivery Point. All
8 necessary calibration will be performed by an independent contractor every year at Phoenix's
9 cost. TreatCo's Representative will be notified in advance and will be entitled to be present
10 during the calibration (but the calibration may be conducted in accordance with the notice even if
11 that Representative fails to appear).

12 5.4.2 Reconciliation.

13 Discrepancies greater than three percent (3%) that are discovered
14 during the calibration will be adjusted as follows:

15 a. One-half of the discrepancy percentage will be charged or
16 refunded for all Potable Water delivered between the date of the last calibration and the date the
17 discrepancy is discovered.

18 b. If the meter fails or stops recording, an estimate of the Potable
19 Water delivered during the months of failure will be prepared for billing purposes in accordance
20 with TreatCo's standard practice for such estimations. To avoid continued estimation, Phoenix
21 will act diligently in seeking to repair or replace the meter. In no event will the meter go
22 unrepaired or not replaced for more than three consecutive billing periods.

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5.4.3 Payment for Instrumentation.

Phoenix will be responsible for connecting (or causing to be connected) delivery meter output signals to TreatCo's electronic telemetry systems as directed by TreatCo. Phoenix will pay all costs for equipment and labor necessary to connect such system to TreatCo's standards and satisfaction.

5.4.4 Calibration Reports.

Phoenix will provide TreatCo with a copy of all preventive maintenance and calibration contracts and with copies of calibration reports. This documentation will be provided to Citizens Water Resources Company of Arizona, Attn: Operations Manager, 15626 North Del Webb Boulevard, P.O. Box 1687, Sun City, Arizona 85372.

5.5 Estimate of Water Demand.

5.5.1 Periodic Estimates.

On or before November 1 of each year, Phoenix will provide TreatCo with a written estimate of the amount of Potable Water that Phoenix may require TreatCo to deliver in the following calendar year. The estimate will also set forth the estimated amount for each month.

5.5.2 Meter Readings.

Meters will be read jointly by both Parties on a monthly basis for billing purposes.

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5.6 Service Connection.

5.6.1 Valves and Fittings.

The TreatCo-to-Phoenix Potable Water Delivery Point will contain all necessary valves and fittings to ensure that:

a. The maximum amount of Potable Water delivered will not exceed the Potable Water demand for the Phoenix Area.

b. No backflow will occur. Phoenix will install and maintain, to the reasonable satisfaction of TreatCo, backflow prevention assemblies on the TreatCo-to-Phoenix Potable Water Delivery Point. All such assemblies will be located on Phoenix's property or on other public rights-of-way.

c. "Water hammers" (that is, circumstances in which valves open or close too quickly) will be minimized.

5.6.2 Replacement.

If meters, gates or valves installed by Phoenix as required by this Article become undersized, inoperative or inaccurate for the range flows through such facilities based on applicable water engineering standards, Phoenix will at its expense replace such meters, gates or valves as required by TreatCo.

5.6.3 Disinfection.

Phoenix will be required to provide any additional treatment disinfection of the Potable Water entering the Phoenix Distribution Facilities to comply with the requirements of the Safe Drinking Water Act. Any such treatment disinfection facilities will be located on Phoenix's property.

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5.7 No Loan or Exchange.

This Article does not provide or authorize any loaning or exchange of Potable Water of any type to Phoenix by TreatCo (other than Potable Water to be delivered by TreatCo pursuant to of this Article). Phoenix will order and take from TreatCo only the amount of Potable Water provided for herein. If the amount of Potable Water delivered to Phoenix pursuant to this Article exceeds the maximum amount permitted in this Article in any calendar year, Phoenix will immediately cease use of the TreatCo-to-Phoenix Water Delivery Point and make arrangements satisfactory to TreatCo to restore to TreatCo such excessive Potable Water use within 30 days. TreatCo may immediately, without further notice to Phoenix, discontinue delivery of Potable Water to Phoenix upon a reasonable good faith determination by TreatCo that Phoenix has exceeded the amount permitted by this Article, until such time as Phoenix has so restored to TreatCo such excessive Potable Water used.

5.8 Storage and Pressure.

TreatCo makes no warranties or covenants that it is providing storage or pressure capacity to Phoenix, except that TreatCo will provide the Potable Water to Phoenix at the TreatCo-to-Phoenix Delivery Point at the pressures indicated in the approved June, 2000, Anthem/Phoenix Master Plan Addendum as approved by Phoenix. Inside the Phoenix Area, and except as provided in the preceding sentence, Phoenix will be solely responsible for its own delivery infrastructure, including storage and pumping capacity for maintaining adequate pressure.

5.9 Transmission and Treatment Losses.

TreatCo will determine the amount of losses occurring in the treatment and transportation of Potable Water to the TreatCo-to-Phoenix Water Delivery Point. Unless the

1 Parties mutually agree otherwise in writing, the determination will be made in accordance with
2 the percentage of losses reported by TreatCo to ADWR each year (or, in the absence of such
3 reports, the percentage derived from another reasonable methodology). Notwithstanding the
4 foregoing, the percentage of losses will not exceed ten percent (10%). The losses will increase
5 the amount of Potable Water deemed to have been delivered by TreatCo to Phoenix at the
6 TreatCo-to-Phoenix Potable Water Delivery Point and will be accounted for as an additional
7 amount (i.e., added to the meter reading at the TreatCo-to-Phoenix Potable Water Delivery
8 Point).

9 5.10 Shut Downs.

10 TreatCo will have the right to suspend the delivery of Potable Water
11 pursuant to this Article for an emergency or for purposes of routine maintenance and repair.
12 TreatCo will provide (a) 30-days' prior written notice of any suspension for routine maintenance
13 and repair, and (b) such prior written notice as may be practicable of any suspension for an
14 emergency. TreatCo will not be liable to Phoenix, to any customer of Phoenix or to any other
15 person for any claim, demand, loss or damage of any nature or character whatsoever due to, or
16 arising out of, any suspension of delivery of Potable Water pursuant to this Article for an
17 emergency or for purposes of routine maintenance and repair.

18 5.11 Phoenix Distribution.

19 TreatCo's obligation to Phoenix under this Article will terminate at the
20 TreatCo-to-Phoenix Potable Water Delivery Point. Phoenix is responsible, and assumes full
21 liability, for the distribution of Potable Water received at the TreatCo-to-Phoenix Potable Water
22 Delivery Point and for all operation and maintenance costs for delivery to Phoenix's users.
23 Phoenix will indemnify, defend and hold TreatCo harmless from and against all expense,

1 liability and claims for damage to property or for injury to or death of any persons arising out of
2 or in any way connected with the distribution, nondistribution or quality of Potable Water once
3 such water is delivered to the TreatCo-to-Phoenix Potable Water Delivery Point. Except as
4 permitted by Section 5.1.1, Potable Water delivered by TreatCo to Phoenix pursuant to this
5 Article will be distributed by Phoenix only to locations within the Phoenix Area for end use
6 within the Phoenix Area.

7 5.12 Rate for Wholesale/Wheeling Water Service.

8 5.12.1 Rate for Wholesale Water Service.

9 In consideration of TreatCo agreeing to deliver Potable Water to
10 Phoenix for resale as described in Section 5.1.1 or 5.1.2(a) pursuant to this Article, Phoenix will
11 pay TreatCo for Potable Water delivered to the TreatCo-to-Phoenix Potable Water Delivery
12 Point at a wholesale Potable Water delivery rate determined as follows:

13 a. The wholesale Potable Water delivery rate will be \$2.32 per
14 one thousand gallons of Potable Water delivered, less TreatCo's then applicable raw water
15 charges per one thousand gallons of Ak Chin Water.

16 b. The Parties acknowledge that the rate described in paragraph
17 (a) may be altered from time to time by the Commission with or without the consent of TreatCo.
18 TreatCo will have the right to request changes in such rate from time to time, but those requested
19 changes must be based on changes in the actual costs paid or incurred by TreatCo with respect to
20 providing the services pursuant to this Article.

21 5.12.2 Rate for Wheeling Water Service.

22 In consideration of TreatCo agreeing to deliver Potable Water to
23 Phoenix by providing wheeling services as described in Section 5.1.2(b) pursuant to this Article,

1 Phoenix will pay TreatCo for Potable Water delivered to the TreatCo-to-Phoenix Potable Water
2 Delivery Point at a wheeling Potable Water delivery rate as determined as follows:

3 a. The wheeling Potable Water delivery rate will be \$0.30 per one
4 thousand gallons of Potable Water delivered.

5 b. The Parties acknowledge that the rate described in paragraph
6 (a) may be altered from time to time by the Commission with or without the consent of TreatCo.
7 TreatCo will have the right to request changes in such rate from time to time, but those requested
8 changes must be based on changes in the actual costs paid or incurred by TreatCo with respect to
9 providing the services pursuant to this Article.

10 5.13 Monthly Water Bill.

11 5.13.1 Terms.

12 TreatCo will monthly prepare and send to Phoenix a billing invoice
13 for Potable Water delivered to Phoenix pursuant to this Article during the preceding month.
14 Monthly bills will be due and payable by Phoenix within 30 days after the billing invoice date
15 printed on the billing invoice.

16 5.13.2 Disputed Bill.

17 If Phoenix disputes any portion of any bill, Phoenix will pay the
18 disputed amount under protest when due and include with its payment a written statement
19 indicating the basis for the protest. If the protest is found to be valid, TreatCo will refund to
20 Phoenix any overpayment within 30 days after that finding.

21 5.13.3 Delinquent Bill.

22 If any bill is not paid within 30 days after receipt of written
23 notification of the delinquency, TreatCo will have the right, without liability of any kind, to

1 suspend the delivery of Potable Water pursuant to this Article, and to refuse such services as
2 long as the said amount remains unpaid. Nothing in this Section will limit the rights of TreatCo
3 to use any other available legal remedy to effect collection of said amount.

4 5.14 Term of Article; Discontinuance of Delivery.

5 5.14.1 Term.

6 This Article will be for an initial term of 10 years, unless
7 terminated earlier as provided in Section 5.1.2.

8 5.14.2 Disconnection.

9 Phoenix will disconnect (also known as "valve off") or otherwise
10 sever the TreatCo-to-Phoenix Potable Water Delivery Point, and TreatCo will be entitled to
11 discontinue delivery of Potable Water to such Delivery Point, within 30 days of the occurrence
12 of the following:

13 a. Expiration of the term of this Article or other termination of
14 this Article as provided in Section 5.14.1.

15 b. Breach of any of the obligations of Phoenix set forth in this
16 Article which have not been expressly waived in writing by TreatCo.

17 c. The occurrence of a condition for disconnecting ("valving
18 off") or otherwise severing the Delivery Point as described in this Article.

19 5.14.2 Conditions for Disconnection.

20 Phoenix at its sole expense will design and construct all facilities
21 necessary to disconnect the TreatCo-to-Phoenix Water Delivery Point. Phoenix and TreatCo
22 may mutually agree to arrangements to allow those facilities and the Delivery Point to remain in
23 place. Any work performed on the TreatCo System by Phoenix's contractor will be done in a

1 satisfactory and workmanlike manner and in accordance with plans and specifications approved
2 by TreatCo. Phoenix will not permit work to be done by its contractor until said plans and
3 specifications have been approved by TreatCo. The plans and specifications will include a right
4 by TreatCo to inspect the work of Phoenix's contractors.

5 5.15 Approvals Required by Law.

6 Phoenix and TreatCo will cooperate in seeking any approvals or permits
7 required by applicable law to effectuate the delivery of Potable Water pursuant to this Article. If
8 any such approval cannot be obtained, then Phoenix and TreatCo will be relieved of their
9 respective obligations set forth in this Article (but the Parties will not thereby be relieved of their
10 respective obligations under Section 1.3.2). As between Phoenix and TreatCo, Phoenix will
11 take the initiative and use its reasonable best efforts in seeking any approvals or permits required
12 by applicable law to effectuate the delivery of Potable Water pursuant to this Article that would
13 not be required to be obtained but for this Article.

14 5.16 Provisions Regarding CAWCD.

15 5.16.1 CAWCD Approval.

16 Phoenix will obtain and provide to TreatCo written documentation
17 evidencing the consent of CAWCD that (a) the Phoenix Water Supply can be diverted by
18 TreatCo into TreatCo System for delivery to Phoenix pursuant to this Article, and (b) all water
19 delivered by TreatCo to Phoenix under this Article will be charged to the Phoenix Water Supply
20 accounts pursuant to those CAWCD/CAP Agreements.

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5.16.2 Phoenix Supply Diversion.

TreatCo will be under no obligation to deliver Potable Water to Phoenix pursuant to this Article unless and until Phoenix has provided to TreatCo the consent documentation described in Section 5.16.1. Phoenix will comply with the terms of that consent.

5.16.3 Water Accounting.

Phoenix will indemnify and hold harmless TreatCo from any costs that may be charged against the TreatCo Water Supply in delivering Potable Water to Phoenix pursuant to this Article during any water accounting year.

5.16.4 Payment of Charges; Limit on Amount of Water.

Phoenix will pay (and will indemnify and hold harmless TreatCo from and against) any and all assessments, fees or other charges that the CAWCD or the United States may impose or otherwise require under any CAWCD/CAP Agreement to which Phoenix is a party in connection with the delivery of Potable Water pursuant to this Article. The amount of Potable Water that Phoenix has the right to receive pursuant to this Article will not exceed the amount of CAP Water that Phoenix has the right to receive pursuant to any such CAWCD/CAP Agreement. Phoenix will monitor (or cause the CAWCD and the United States to monitor) Phoenix's total usage of CAP Water and inform TreatCo if delivery of further Potable Water pursuant to this Article will exceed that limit.

5.16.5 Phoenix Reporting.

Phoenix will carry out any reporting procedure required by the CAWCD and the United States to ensure proper accounting of the Potable Water delivered pursuant to this Article.

1 ARTICLE VI

2 SUPPLEMENTAL "PEAK" AND "EMERGENCY" POTABLE WATER

3 SUPPLY SERVICES BY PHOENIX TO TREATCO

4 6.1 Transfer of Potable Water After Interconnection.

5 6.1.1 Before June 1, 2005.

6 If prior to June 1, 2005 Developer, with the approval of Phoenix,
7 constructs and places in service a water line (having a size and location as determined by
8 Phoenix) that connects the Phoenix Potable Water Treatment Facilities to the TreatCo System
9 (the "Anthem Interconnect Water Line"), then Phoenix will deliver Potable Water to TreatCo in
10 an amount not to exceed one million gallons per day (1.0 MGD) for resale if (and only if):

11 a. The Potable Water is to be used only as an emergency backup
12 supply.

13 b. The Potable Water is available, after first taking into account
14 the immediate needs of Phoenix and its Potable Water customers.

15 c. A water line and a storage tank have been constructed by other
16 developers, with the water line connecting the Phoenix Potable Water Treatment Facilities to a
17 Carefree Highway location prior to June 1, 2002.

18 d. Developer has installed at a location to be determined by
19 Phoenix a flow control valve that will limit the maximum amount available for delivery by
20 Phoenix to TreatCo to one million gallons per day (1.0 MGD).

21 e. Developer has oversized the Anthem Interconnect Water Line
22 as requested by Phoenix (which oversizing is to be accomplished at Developer's expense), with
23 Phoenix to be the owner and operator of the Anthem Interconnect Water Line.

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6.1.2 After June 1, 2005.

On and after June 1, 2005, Phoenix will deliver Potable Water to TreatCo for resale. TreatCo may use the Potable Water only to provide Potable Water to DistCo for use as contemplated by the Infrastructure Agreement and for no other purpose. These deliveries will be in quantities and at flow rates set forth in Section 6.3. If the necessary connections have been constructed and placed in operation prior to June 1, 2005, the Parties may (but are not obligated to) mutually agree on an earlier date for commencement of deliveries.

6.2 Point of Delivery.

The Potable Water will be delivered by Phoenix to TreatCo at the Phoenix-to-TreatCo Potable Water Delivery Point. The connection will be 16 inches in diameter. The connection will include such flow control valves as are necessary in the reasonable judgment of Phoenix to regulate the flow so as to achieve the amounts described in Section 6.3. That point will not be the same as the TreatCo-to-Phoenix Potable Water Delivery Point. Phoenix will have no responsibility for the Potable Water after the Potable Water has been delivered to the Phoenix-to-TreatCo Potable Water Delivery Point.

6.3 Delivery Amounts.

From June 1, 2005 until June 1, 2006 (the "2005-2006 Period"), the amount of "peak" and "emergency" Potable Water delivered pursuant to this Article will not exceed one million gallons per day (1.0 MGD). After June 1, 2006, the amount of such Potable Water delivered pursuant to this Article will not exceed five million gallons per day (5.0 MGD). During the 2005-2006 Period, the average daily amount of such Potable Water delivered during a calendar year will not exceed one-half million gallons per day (0.5 MGD). During the 2005-2006 Period, such Potable Water will be available on demand at a flow rate of not less than (and

1 not greater than) one million gallons per day (1.0 MGD). After June 1, 2006, the average daily
2 amount of such Potable Water delivered during a calendar year will not exceed two and one-half
3 million gallons per day (2.5 MGD). After June 1, 2006, such Potable Water will be available on
4 demand at a flow rate of not less than (and not greater than) five million gallons (5.0 MGD).

5 6.4 Water Quality.

6 Phoenix makes no representations or warranties regarding the quality of
7 the Potable Water delivered to TreatCo under this Article, other than that (a) the quality of the
8 Potable Water delivered to TreatCo pursuant to this Article will be generally similar to the
9 quality of Potable Water that Phoenix delivers within its municipal water system to Phoenix's
10 retail customers, and (b) the Potable Water delivered to TreatCo under this Article will meet all
11 applicable state and federal drinking water standards.

12 6.5 Calibration of Instrumentation.

13 6.5.1 General.

14 TreatCo will be responsible for calibration and preventive
15 maintenance of all metering, instrumentation and telemetry equipment required by Phoenix for
16 delivery of the Potable Water at the Phoenix-to-TreatCo Potable Water Delivery Point. All
17 necessary calibration will be performed by an independent contractor every year at TreatCo's
18 cost. Phoenix's Representative will be notified in advance and will be entitled to be present
19 during the calibration (but the calibration may be conducted in accordance with the notice even if
20 that Representative fails to appear).

21 6.5.2 Reconciliation.

22 Discrepancies greater than three percent (3%) that are discovered
23 during the calibration will be adjusted as follows:

1 a. One-half of the discrepancy percentage will be charged or
2 refunded for all Potable Water delivered between the date of the last calibration and the date the
3 discrepancy is discovered.

4 b. If the meter fails or stops recording, an estimate of the
5 Potable Water delivered during the months of failure will be prepared for billing purposes in
6 accordance with Phoenix's standard practice for such estimations. To avoid continued
7 estimation, TreatCo will act diligently in seeking to repair or replace the meter. In no event will
8 the meter go unrepaired or not replaced for more than three consecutive billing periods.

9 6.5.3 Payment for Instrumentation.

10 TreatCo will be responsible for connecting (or causing to be
11 connected) delivery meter output signals to Phoenix's SCADA systems. TreatCo will pay all
12 reasonable costs for equipment and labor necessary to connect such system to Phoenix's
13 standards and reasonable good faith satisfaction.

14 6.5.4 Calibration Reports.

15 TreatCo will provide Phoenix with a copy of all preventive
16 maintenance and calibration contracts and with copies of calibration reports. This
17 documentation will be addressed to Water Production Division, City of Phoenix, 5204 East
18 Thomas Road, Phoenix, Arizona 85018.

19 6.6 Estimate of Water Demand.

20 6.6.1 Periodic Estimates.

21 On or before November 1 of each year, TreatCo will provide
22 Phoenix with a written estimate of the amount of supplemental "peak" and "emergency" Potable

1 Water that TreatCo may require Phoenix to deliver in the following calendar year. The estimate
2 will also set forth the estimated amount for each month.

3 6.6.2 Meter Readings.

4 Meters will be read jointly by both Parties on a monthly basis for
5 billing purposes.

6 6.7 Service Connection.

7 6.7.1 Valves and Fittings.

8 The Phoenix-to-TreatCo Potable Water Delivery Point will contain
9 all necessary valves and fittings to ensure that:

10 a. The maximum amount of Potable Water delivered will not exceed
11 five million gallons per day (5.0 MGD).

12 b. No backflow will occur. TreatCo will install and maintain, to the
13 reasonable good faith satisfaction of Phoenix, backflow prevention assemblies on the Phoenix-
14 to-TreatCo Potable Water Delivery Point. All such assemblies will be located on TreatCo's
15 property or easement.

16 c. "Water hammers" (that is, circumstances in which valves open or
17 close too quickly) will be minimized.

18 6.7.2 Replacement.

19 If meters, gates or valves installed by TreatCo as required by this
20 Article become undersized, inoperative or inaccurate for the range of flows through such
21 facilities based on applicable water engineering standards, TreatCo will at its expense replace
22 such meters, gates or valves as required by Phoenix.

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6.7.3 Disinfection.

TreatCo will be required to provide any additional treatment disinfection of the Potable Water entering the TreatCo System to comply with the requirements of the Safe Drinking Water Act. Any such treatment disinfection facilities will be located on TreatCo's property.

6.8 No Loan or Exchange.

This Article does not provide or authorize any loaning or exchange of Potable Water of any type to TreatCo by Phoenix (other than Potable Water to be delivered by Phoenix pursuant to this Article). TreatCo will order and take from Phoenix only the amount of Potable Water provided for herein. If the amount of Potable Water delivered to TreatCo pursuant to this Article exceeds the maximum amount permitted in this Article in any calendar year, TreatCo will immediately cease use of the Phoenix-to-TreatCo Potable Water Delivery Point and make arrangements reasonably satisfactory to Phoenix to restore to Phoenix such excessive Potable Water use within 30 days. Phoenix may immediately, without further notice to TreatCo, discontinue delivery of Potable Water to TreatCo upon a reasonable good faith determination by Phoenix that TreatCo has exceeded the amount permitted by this Article, until such time as TreatCo has so restored to Phoenix such excessive Potable Water used.

6.9 Storage and Pressure.

Phoenix makes no warranties or covenants that it is providing storage or pressure capacity to TreatCo, except that Phoenix will provide the Potable Water to TreatCo at the Phoenix-to-TreatCo Delivery Point at a pressure that is not less than the pressure necessary and appropriate to enable the Potable Water to be discharged into the ground storage tanks of the TreatCo System by means of a sixteen (16) inch interconnection water line extending from the

1 Phoenix-to-TreatCo Delivery Point to those storage tanks. Inside the County Area, and except as
2 provided in the preceding sentence, TreatCo will be solely responsible for its own delivery
3 infrastructure, including storage and pumping capacity for peaking and fire flows.

4 6.10 Transmission and Treatment Losses.

5 Phoenix will determine the amount of losses occurring in the treatment
6 and transportation of Potable Water within the Phoenix Area to the Phoenix-to-TreatCo Potable
7 Water Delivery Point. Unless the Parties mutually agree otherwise in writing, the determination
8 will be made in accordance with the percentage of losses reported by Phoenix to ADWR each
9 year (or, in the absence of such reports, the percentage derived from another reasonable
10 methodology). Notwithstanding the foregoing, the percentage of losses will not exceed ten
11 percent (10%). The losses will increase the amount of Potable Water deemed to have been
12 delivered by Phoenix to TreatCo at the Phoenix-to-TreatCo Potable Water Delivery Point and
13 will be accounted for as an additional amount (i.e., added to the meter reading at the Phoenix-to-
14 TreatCo Potable Water Delivery Point).

15 6.11 Shut Downs

16 Phoenix will have the right to suspend the delivery of Potable Water
17 pursuant to this Article for an emergency or for purposes of routine maintenance and repair.
18 Phoenix will provide (a) 30-days' prior written notice of any suspension for routine maintenance
19 and repair, and (b) such prior written notice as may be practicable of any suspension for an
20 emergency. Phoenix will not be liable to TreatCo, to any customer of TreatCo or to any other
21 person for any claim, demand, loss or damage of any nature or character whatsoever due to, or
22 arising out of any suspension of delivery of Potable Water pursuant to this Article for an
23 emergency or for purposes of routine maintenance and repair.

1 6.12 TreatCo Distribution.

2 Phoenix's obligation to TreatCo under this Article will terminate at the
3 Phoenix-to-TreatCo Potable Water Delivery Point. TreatCo will be responsible, and assumes
4 full liability, for the distribution of Potable Water received at the Phoenix-to-TreatCo Potable
5 Water Delivery Point and for all operation and maintenance costs for delivery to TreatCo's users.
6 TreatCo will indemnify, defend and hold Phoenix harmless from and against all expense,
7 liability and claims for damage to property or for injury to or death of any persons arising out of
8 or in any way connected with the distribution, nondistribution or quality of the delivered Potable
9 Water once such water is delivered to the Phoenix-to-TreatCo Potable Water Delivery Point.
10 Except as specifically otherwise provided herein or in the Infrastructure Agreement, Potable
11 Water delivered by Phoenix to TreatCo pursuant to this Article will be distributed by TreatCo
12 only to locations within the Project, including the Phoenix Area, for end use in such area.

13 6.13 Rate for Wholesale Water Service.

14 In consideration of Phoenix agreeing to deliver Potable Water pursuant to
15 this Article, TreatCo will pay Phoenix for Potable Water delivered to the Phoenix-to-TreatCo
16 Potable Water Delivery Point at a wholesale Potable Water delivery rate determined as follows:

17 a. The initial wholesale water delivery rate will be seventy-five and
18 one-tenth percent (75.1%) of Phoenix's then applicable combined (i) total "commodity" water
19 rate for the spring and fall seasons as set forth in Section 37-63(b) of the Phoenix City Code and
20 (ii) water environmental rate for residential users as set forth in Section 27-133(a) of the Phoenix
21 City Code (which combined rate is presently \$1.32 per hundred cubic feet).

1 b. Since the Phoenix City Code states the water rate and water
2 environmental rate in terms of a rate per hundred cubic feet, an appropriate conversion factor
3 will be used to convert the rate per hundred cubic feet to a rate per thousand gallons.

4 c. The Parties acknowledge that the rate described in paragraph (a)
5 may be altered from time to time by the City Council of Phoenix. Phoenix will have the right to
6 request its City Council to change such rate from time to time or adopt a separate wholesale rate
7 for water delivered to TreatCo (in which event, paragraph (a) will not apply), but any such
8 requested changes must be based on changes in the actual costs paid or incurred by Phoenix in
9 providing the services pursuant to this Article.

10 6.14 Monthly Water Bill.

11 6.14.1 Terms.

12 Phoenix will monthly prepare and send to TreatCo a billing invoice
13 for Potable Water delivered to TreatCo pursuant to this Article during the preceding month.
14 Monthly bills will be paid within 30 days of the billing invoice date printed on the billing
15 invoice.

16 6.14.2 Disputed Bill.

17 If TreatCo disputes any portion of any bill, TreatCo will pay the
18 disputed amount under protest when due and include with its payment a written statement
19 indicating the basis for the protest. If the protest is found to be valid, Phoenix will refund to
20 TreatCo any overpayment within 30 days after the finding.

21 6.14.3 Delinquent Bill.

22 If any bill is not paid within 30 days after receipt of written
23 notification of the delinquency, Phoenix will have the right, without liability of any kind, to

1 suspend the delivery of Potable Water pursuant to this Article as long as the said amount remains
2 unpaid. Nothing in this Section will limit the rights of Phoenix to use any other available legal
3 remedy to effect collection of said amount.

4 6.15 Term of Article: Discontinuance of Delivery.

5 6.15.1 Term and Termination.

6 6.15.1.1 Term.

7 This Article will be for an initial term of 25 years, and may
8 be renewed by TreatCo for a subsequent additional 25-year term.

9 6.15.1.2 Termination.

10 Within the second 25-year term, either Party may terminate
11 this Article prior to the end of such 25-year term if the terminating Party gives five-years' prior
12 written notice of such termination to the other Party. Upon such notice being given, this Article
13 will terminate five years from the date of delivery of such notice to the other Party. This Article
14 may also be terminated at any time if both Parties agree that it is mutually beneficial to terminate
15 this Article.

16 6.15.2 Disconnection.

17 TreatCo will disconnect (also known as "valve off") or otherwise
18 sever the Phoenix-to-TreatCo Potable Water Delivery Point, and Phoenix will be entitled to
19 discontinue delivery of Potable Water to such Delivery Point, within 30 days of the occurrence
20 of the following:

21 a. Expiration of the term of this Article or other termination of
22 this Article as provided in Section 6.15.1.

1 6.17 Provisions Regarding CAWCD.

2 6.17.1 CAWCD Approval.

3 TreatCo will obtain and provide to Phoenix written documentation
4 evidencing the consent of CAWCD that (a) the TreatCo Water Supply can be diverted by
5 Phoenix into the Phoenix Treatment Facilities and the Phoenix Distribution Facilities for delivery
6 to TreatCo pursuant to this Article, and (b) all water delivered by Phoenix to TreatCo under this
7 Article will be charged to the TreatCo Water Supply accounts pursuant to those CAWCD/CAP
8 Agreements.

9 6.17.2 TreatCo Supply Diversion.

10 Phoenix will be under no obligation to deliver Potable Water to
11 TreatCo pursuant to this Article unless and until TreatCo has provided to Phoenix the consent
12 documentation described in Section 6.17.1. TreatCo will comply with the terms of that consent.

13 6.17.3 Water Accounting

14 TreatCo will indemnify and hold harmless Phoenix from any costs
15 that may be charged against the Phoenix Water Supply in delivering Potable Water pursuant to
16 this Article during any water accounting year.

17 6.17.4 Payment of Charges; Limits on Amount of Water.

18 TreatCo will pay (and will indemnify and hold harmless Phoenix
19 from any against) any and all assessments, fees or other charges that the CAWCD or the United
20 States may impose or otherwise require under any CAWCD/CAP Agreement to which TreatCo
21 is a party in connection with the delivery of Potable Water pursuant to this Article. The amount
22 of Potable Water that TreatCo has the right to receive pursuant to this Article will not exceed the
23 amount of CAP Water that TreatCo has the right to receive pursuant to any such CAWCD/CAP

1 Agreement. TreatCo will monitor (or cause the CAWCD and the United States to monitor)
2 TreatCo's total usage of CAP Water and inform Phoenix if delivery of further Potable Water
3 pursuant to this Article will exceed that limit.

4 6.17.5 TreatCo Reporting.

5 TreatCo will carry out any reporting procedure required by the
6 CAWCD and the United States to ensure proper accounting of the Potable Water delivered
7 pursuant to this Article.

1 ARTICLE VII

2 RETAIL WASTEWATER SERVICES BY PHOENIX IN PHOENIX AREA

3 7.1 Retail Wastewater Services.

4 Phoenix will provide (and will have sole responsibility for providing)
5 Retail Wastewater Services to residents, businesses, schools and other persons, including
6 Phoenix itself, within the Phoenix. TreatCo has no responsibility for providing Retail
7 Wastewater Services in the Phoenix Area.

8 7.2 Authorizations.

9 Phoenix will at its own expense on a timely basis take all reasonable steps
10 necessary to obtain, maintain and renew any Authorizations necessary in connection with its
11 activities described in this Article. TreatCo will cooperate with (and affirmatively support)
12 Phoenix in obtaining any such authorizations.

13 7.3 Billing of Customers.

14 Phoenix will (and will have sole responsibility for billing) its customers
15 for Retail Wastewater Services. The billing will be done in accordance with the Phoenix City
16 Code. TreatCo has no responsibility for that billing or for collection of amounts so billed.

17 7.4 Code Compliance; Pretreatment Requirements.

18 Phoenix will enforce all of the Phoenix City Code provisions applicable to
19 Retail Wastewater Service in the Phoenix Area, including all applicable treatment provisions of
20 the Phoenix City Code and pretreatment program.

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7.5 Maintenance and Ownership.

2

Phoenix will be solely responsible for maintenance and ownership of all

3 public Wastewater lines located within public rights-of-way or easements within the Phoenix

4 Area.

1 ARTICLE VIII

2 WHOLESALE WASTEWATER SERVICES BY TREATCO TO PHOENIX

3 8.1 Acknowledgments.

4 The Parties acknowledge that Phoenix cannot presently provide wholesale
5 sewer service to the Phoenix Area because, among other things, the existing Wastewater system
6 of Phoenix does not presently connect with the Wastewater collection system to be constructed
7 in the Phoenix Area. The Parties further acknowledge that TreatCo can provide Wholesale
8 Wastewater Services to Phoenix for the benefit of the Phoenix Area. The Parties further
9 acknowledge that, at some future date, Phoenix may be able to provide Wholesale Wastewater
10 Services to the Phoenix Area.

11 3.2 Wholesale Wastewater Services; Transfer of Wastewater.

12 During the term of (and as provided in) this Article, TreatCo will provide
13 Wholesale Wastewater Services to Phoenix for Wastewater flows that TreatCo received from
14 Phoenix, and, in furtherance thereof, Phoenix will collect, deliver and transfer to TreatCo all
15 Wastewater generated in the Phoenix Area. Notwithstanding the foregoing, the amount of
16 Wastewater delivered and transferred pursuant to this Article will not exceed nine hundred
17 thousand gallons per day (.90 MGD) measured as a peak-month average.

18 3.3 Point of Delivery.

19 The Wastewater will be delivered by Phoenix to TreatCo at the Phoenix-
20 to-TreatCo Wastewater Delivery Point. Phoenix will have no responsibility for (or any right,
21 title, interest or claim in or to) the Wastewater after the Wastewater has been delivered to the
22 Phoenix-to-TreatCo Wastewater Delivery Point.

1 8.4 Effluent and Related Credits.

2 All effluent and related credits associated with the treatment of the
3 Wastewater will belong to TreatCo.

4 8.5 Rate for Wholesale Wastewater Service.

5 8.5.1 Rate.

6 In consideration of TreatCo agreeing to provide Wholesale
7 Wastewater Service pursuant to this Article, Phoenix will pay TreatCo for Wastewater delivered
8 to the Phoenix-to-TreatCo Wastewater Delivery Point at a Wholesale Wastewater Service rate
9 determined as follows:

10 a. The initial Wholesale Wastewater Services rate will be \$2.32
11 per one thousand gallons of Potable Water delivered by TreatCo to Phoenix at the TreatCo-to-
12 Phoenix Potable Water Delivery Point.

13 b. If and when Potable Water Service from TreatCo to Phoenix
14 under this Agreement is discontinued, the rate pursuant to this Section will converted to a
15 Wastewater metered rate as mutually agreed by the Parties.

16 c. The Parties acknowledge that the rate described in paragraph
17 (a) may be altered from time to time by the Commission with or without the consent of TreatCo.
18 TreatCo will have the right to request changes in such rate from time to time, but those requested
19 changes must be based on changes in the actual costs paid or incurred by TreatCo with respect to
20 providing the services pursuant to this Article.

21 8.5.2 Termination Right if Rate Exceeds Benchmark.

22 If TreatCo's Wholesale Wastewater Service rate increases in any
23 one calendar year by an amount that when expressed as a percentage and combined with the

1 cumulative annual percentage increases in that rate during the term of this Agreement, exceeds
2 the cumulative annual percentage increases for that calendar year and all preceding calendar
3 years (or portion thereof) during the term of this Agreement in the United States Department of
4 Labor's Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U), All
5 Items, Western United States (2000 equals 100) (or, if necessary or applicable, the successor of
6 such Consumer Price Index or a reasonable substitute therefor), Phoenix will have the right (but
7 not the obligation) to disconnect (also known as "valve off") or otherwise sever the Phoenix-to-
8 TreatCo Wastewater Delivery Point within thirty (30) days after the end of that calendar year and
9 terminate this Article as provided in Section 8.7.2(d).

10 8.6 Monthly Wastewater Bill.

11 8.6.1 Terms.

12 TreatCo will monthly prepare and send to Phoenix a billing invoice
13 for the amount of Wastewater received by TreatCo during the preceding month. Monthly bills
14 will be due and payable by Phoenix within 30 days after the billing invoice date printed on the
15 billing invoice.

16 8.6.2 Disputed Bill.

17 If Phoenix disputes any portion of any bill, Phoenix will pay the
18 disputed amount under protest when due and include with its payment a written statement
19 indicating the basis for the protest. If the protest is found to be valid, TreatCo will refund to
20 Phoenix any overpayment within 30 days after that finding.

21 8.6.3 Delinquent Bill.

22 If any bill is not paid within 30 days after receipt of written
23 notification of the delinquency, TreatCo will have the right, without liability of any kind, to

1 suspend acceptance of Wastewater pursuant to this Article as long as the said amount remains
2 unpaid. Nothing in this Section will limit the rights of TreatCo to use any other available legal
3 remedy to effect collection of said amount.

4 8.7 Term and Termination.

5 8.7.1 Term.

6 This Article will be for a term of 30 years.

7 8.7.2 Disconnection.

8 Phoenix will disconnect (also known as "valve off") or otherwise
9 sever the Phoenix-to-TreatCo Wastewater Delivery Point, and TreatCo will be entitled to
10 discontinue acceptance of Wastewater at such Delivery Point, within 30 days of the occurrence
11 of the following:

12 a. Expiration of the term of this Article as provided in Section
13 8.7.

14 b. Breach of any of the obligations of Phoenix set forth in this
15 Article which have not been expressly waived in writing by TreatCo.

16 c. The occurrence of a condition for disconnecting ("valving off")
17 or otherwise severing the Delivery Point as described in this Article.

18 d. The rate ratio being exceeded as described in Section 8.5.2.

19 8.7.3 Conditions for Disconnection.

20 Phoenix at its sole expense will design and construct all facilities
21 necessary to disconnect the Phoenix-to-TreatCo Wastewater Delivery Point. Phoenix and
22 TreatCo may mutually agree to arrangements to allow those facilities and the Delivery Point to
23 remain in place. Any work performed on the TreatCo System by Phoenix's contractor will be

1 done in a satisfactory and workmanlike manner and in accordance with plans and specifications
2 approved by TreatCo. Phoenix will not permit work to be done by its contractor until said plans
3 and specifications have been approved by TreatCo. The plans and specifications will include a
4 right by TreatCo to inspect the work of Phoenix's contractors.

5 3.8 Calibration of Instruments.

6 8.8.1 General.

7 Phoenix will be responsible for calibration and preventive
8 maintenance of all metering, instrumentation and telemetry equipment required by TreatCo for
9 delivery of the Wastewater at the Phoenix-to-TreatCo Wastewater Delivery Point. All necessary
10 calibration will be performed by an independent contractor every year at Phoenix's cost.
11 TreatCo's Representative will be notified in advance and will be entitled to be present during the
12 calibration (but the calibration may be conducted in accordance with the notice even if that
13 Representative fails to appear).

14 8.8.2 Recalculation.

15 Discrepancies greater than three percent (3%) that are discovered
16 during the calibration will be adjusted as follows:

17 a. One-half of the discrepancy percentage will be charged or
18 refunded for all Wastewater received between the date of the last calibration and the date the
19 discrepancy is discovered.

20 b. If the meter fails or stops recording, an estimate of the
21 Wastewater received during the months of failure will be prepared for billing purposes in
22 accordance with TreatCo's standard practice for such estimations and, if Wastewater is still
23 being received by TreatCo from Phoenix under this Agreement during that period, will take into

1 account the amount of such Wastewater received during that period. To avoid continued
2 estimation, Phoenix will act diligently in seeking to repair or replace the meter. In no event will
3 the meter go unrepaired or not replaced for more than three consecutive billing periods.

4 8.8.3 Payment for Instrumentation.

5 Phoenix will be responsible for connecting (or causing to be
6 connected) delivery meter output signals to TreatCo's electronic telemetry systems as directed by
7 TreatCo. Phoenix will pay all costs for equipment and labor necessary to connect such system to
8 TreatCo's standards and satisfaction.

9 8.8.4 Calibration Reports.

10 Phoenix will provide TreatCo with a copy of all preventive
11 maintenance and calibration contracts and with copies of calibration reports. This
12 documentation will be provided to Citizens Water Resources Company of Arizona, Attn:
13 Operations Manager, 15626 North Del Webb Boulevard, P.O. Box 1687, Sun City, Arizona
14 85372.

15 8.9 Phoenix Collection.

16 Wastewater delivered by Phoenix to TreatCo pursuant to this Article will
17 have been collected by Phoenix only from the following areas and from no other areas: (a)
18 locations within the Phoenix Area, provided such Wastewater has been generated only within the
19 Phoenix Area, and (b) locations outside the Phoenix Area, if (and only if) both (i) the Phoenix
20 City Code requires Phoenix to extend Retail Wastewater Services to a customer outside the
21 Phoenix Area and (ii) the acceptance of that Wastewater does not reduce the level of service
22 provided by Phoenix within the Phoenix Area or cause TreatCo to reduce the level of service
23 provided by TreatCo in the Project or elsewhere.

1 ARTICLE IX

2 RETAIL NON-POTABLE WATER SERVICES BY PHOENIX IN PHOENIX AREA

3 9.1 Retail Non-Potable Water Service.

4 Phoenix will provide (and will have sole responsibility for providing)
5 Retail Non-Potable Water Services to residents, businesses, schools and other persons, including
6 Phoenix itself, within the Phoenix Area in accordance with the Phoenix City Code. TreatCo has
7 no responsibility for providing Retail Non-Potable Water Services in the Phoenix Area.

8 9.2 Authorizations.

9 Phoenix will at its own expense on a timely basis take all reasonable steps
10 necessary to obtain, maintain and renew any Authorizations necessary in connection with its
11 activities described in this Article. TreatCo will cooperate with (and affirmatively support)
12 Phoenix in obtaining any such Authorizations.

13 9.3 Billing of Customers.

14 Phoenix will bill (and will have sole responsibility for billing) its
15 customers for Retail Non-Potable Water Services. The billing will be done in accordance with
16 the Phoenix City Code. TreatCo has no responsibility for that billing or for collection of
17 amounts so billed.

18 9.4 Code Compliance.

19 Phoenix will enforce all of the Phoenix City Code provisions applicable to
20 Retail Non-Potable Water Service in the Phoenix Area.

1

9.5 Maintenance and Ownership.

2

Phoenix will be solely responsible for maintenance and ownership of all

3 public Non-Potable Water lines located within public rights-of-way or easements within the

4 Phoenix Area.

1 ARTICLE X

2 WHOLESale NON-POTABLE WATER SERVICES BY TREATCO TO PHOENIX

3 10.1 Transfer of Non-Potable Water.

4 TreatCo will deliver Non-Potable Water to Phoenix for resale. Phoenix
5 may use the Non-Potable Water only to provide Retail Non-Potable Water Services in the
6 Phoenix Area as contemplated by Article IX and for no other purpose. These deliveries will be
7 in quantities and at flow rates sufficient to meet the reasonable demands of the customers of
8 Phoenix in the Phoenix Area.

9 10.2 Point of Delivery.

10 The Non-Potable Water will be delivered by TreatCo to Phoenix at the
11 TreatCo-to-Phoenix Non-Potable Water Delivery Point. TreatCo will have no responsibility for
12 the Non-Potable Water after the Non-Potable Water has been delivered to the TreatCo-to-
13 Phoenix Non-Potable Water Delivery Point.

14 10.3 Water Quality.

15 Except as provided herein, TreatCo makes no representations or
16 warranties regarding the quality of the Non-Potable Water delivered to Phoenix under this
17 Article, other than that the quality of the Non-Potable Water delivered to Phoenix pursuant to
18 this Article will be generally similar to the quality of Non-Potable Water that TreatCo delivers to
19 its retail customers and will be of a quality to meet applicable state requirements for open access
20 irrigation uses set forth in the regulations promulgated by ADWR for the reuse of reclaimed
21 Wastewater.

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10.4 Calibration of Instruments.

10.4.1 General.

Phoenix will be responsible for calibration and preventive maintenance of all metering, instrumentation and telemetry equipment required by TreatCo for delivery of the Non-Potable Water at the TreatCo-to-Phoenix Non-Potable Water Delivery Point. All necessary calibration will be performed by an independent contractor every year at Phoenix's cost. TreatCo's Representative will be notified in advance and will entitled to be present during the calibration (but the calibration may be conducted in accordance with the notice even if that Representative fails to appear).

10.4.2 Reconciliation.

Discrepancies greater than three percent (3%) that are discovered during the calibration will be adjusted as follows:

- a. One half of the discrepancy percentage will be charged or refunded for all Non-Potable Water delivered between the date of the last calibration and the date the discrepancy is discovered.
- b. If the meter fails or stops recording, an estimate of the Non-Potable Water delivered during the months of failure will be prepared for billing purposes in accordance with TreatCo's standard practice for such estimations. To avoid continued estimation, Phoenix will act diligently in seeking to repair or replace the meter. In no event will the meter go unrepaired or not replaced for more than three consecutive billing periods.

10.4.3 Payment for Instrumentation.

Phoenix will be responsible for connecting (or causing to be connected) delivery meter output signals to TreatCo's electronic telemetry systems as directed by

1 TreatCo. Phoenix will pay all costs for equipment and labor necessary to connect such system to
2 TreatCo's standards and satisfaction.

3 10.4.4 Calibration Reports.

4 Phoenix will provide TreatCo with a copy of all preventive
5 maintenance and calibration contracts and with copies of calibration reports. This
6 documentation will be provided to Vice President and General Manager, Citizens Water
7 Resources Company of Arizona, Attn: Operations Manager, 15626 North Del Webb Boulevard,
8 P.O. Box 1687, Sun City, Arizona 85372.

9 10.5 Estimate of Water Demand.

10 10.5.1 Periodic Estimates.

11 On or before November 1 of each year, Phoenix will provide
12 TreatCo with a written estimate of the amount of Non-Potable Water that Phoenix may require
13 TreatCo to deliver in the following calendar year. The estimate will also set forth the estimated
14 amount for each month.

15 10.5.2 Meter Readings.

16 Meters will be read jointly by both Parties on a monthly basis for
17 billing purposes.

18 10.6 Service Connection.

19 10.6.1 Valves and Fittings.

20 The TreatCo-to-Phoenix Non-Potable Water Delivery Point will
21 contain all necessary valves and fittings to ensure that:

- 22 a. The maximum amount of Non-Potable Water delivered will not
23 exceed the Non-Potable Water demand for the Phoenix Area.

1 b. No backflow will occur. Phoenix will install and maintain, to
2 the reasonable satisfaction of TreatCo, backflow prevention assemblies on the TreatCo-to-
3 Phoenix Non-Potable Water Delivery Point. All such assemblies will be located on Phoenix's
4 property or on other public rights-of-way.

5 c. "Water hammers" (that is, circumstances in which valves open
6 or close too quickly) will be minimized.

7 10.6.2 Replacement.

8 If meters, gates or valves installed by Phoenix as required by this
9 Article become undersized, inoperative or inaccurate for the range of flows through such
10 facilities based on applicable water engineering standards, Phoenix will at its expense replace
11 such meters, gates or valves as required by TreatCo.

12 10.7 Storage and Pressure.

13 TreatCo makes no warranties or guarantees that it is providing storage or
14 pressure capacity to Phoenix. Inside the Phoenix Area, Phoenix will be solely responsible for its
15 own delivery infrastructure, including storage and pumping capacity for maintaining adequate
16 pressure.

17 10.8 Transmission and Treatment Losses.

18 TreatCo will determine the amount of losses occurring in the treatment
19 and transportation of Non-Potable Water to the TreatCo-to-Phoenix Non-Potable Water Delivery
20 Point. Unless the Parties mutually agree otherwise in writing, the determination will be made in
21 accordance with the percentage of losses reported by TreatCo to ADV/R each year (or, in the
22 absence of such reports, the percentage derived from another reasonable methodology).
23 Notwithstanding the foregoing, the percentage of losses will not exceed ten percent (10%). The

1 losses will increase the amount of Non-Potable Water deemed to have been delivered by TreatCo
2 to Phoenix at the TreatCo-to-Phoenix Non-Potable Water Delivery Point and will be accounted
3 for as an additional amount (i.e., added to the meter reading at the TreatCo-to-Phoenix Non-
4 Potable Water Delivery Point).

5 10.9 Shut Downs.

6 TreatCo will have the right to suspend the delivery of Non-Potable Water
7 pursuant to this Article for an emergency or for purposes of routine maintenance and repair.
8 TreatCo will provide (a) 30-days' prior written notice of any suspension for routine maintenance
9 and repair, and (b) such prior written notice as may be practicable of any suspension for an
10 emergency. TreatCo will not be liable to Phoenix, to any customer of Phoenix or to any other
11 person for any claim, demand, loss or damage of any nature or character whatsoever due to, or
12 arising out of, any suspension or delivery of Non-Potable Water pursuant to this Article for an
13 emergency or for purposes of routine maintenance and repair.

14 10.10 Phoenix Distribution.

15 TreatCo's obligation to Phoenix under this Article will terminate at the
16 TreatCo-to-Phoenix Non-Potable Water Delivery Point. Phoenix is responsible, and assumes
17 full liability, for the distribution of Non-Potable Water received at the TreatCo-to-Phoenix Non-
18 Potable Water Delivery Point and for all operation and maintenance costs for delivery to
19 Phoenix's users. Phoenix will indemnify, defend and hold TreatCo harmless from and against all
20 expense, liability and claims for damage to property or for injury to or death of any persons
21 arising out of or in any way connected with the distribution, nondistribution or quality of the
22 delivered Non-Potable Water by Phoenix once such water is delivered to the TreatCo-to-Phoenix
23 Non-Potable Water Delivery Point. Non-Potable Water delivered by TreatCo to Phoenix

1 pursuant to this Article will be distributed by Phoenix only to locations within the Phoenix Area
2 for end use within the Phoenix Area

3 10.11 Payment for Wholesale Non-Potable Water Service.

4 In consideration of TreatCo agreeing to deliver Non-Potable Water
5 pursuant to this Article, Phoenix will pay TreatCo for Non-Potable Water delivered to the
6 TreatCo-to-Phoenix Non-Potable Water Delivery Point at a wholesale Non-Potable Water
7 delivery rate determined as follows:

8 a. The wholesale Non-Potable Water delivery rate will be seventy-
9 five percent (75%) of TreatCo's then applicable retail Non-Potable Water rate for retail Non-
10 Potable Water customers of TreatCo (which rate is presently \$0.64 per one thousand gallons).

11 b. The Parties acknowledge that the rate described in paragraph (a)
12 may be altered from time to time by the Commission with or without the consent of TreatCo.
13 TreatCo will have the right to request changes in such rate from time to time, but those requested
14 changes must be based on changes in the actual costs paid or incurred by TreatCo with respect to
15 providing the services pursuant to this Article.

16 10.12 Monthly Water Bill.

17 10.12.1 Terms.

18 TreatCo will monthly prepare and send to Phoenix a billing invoice
19 for Non-Potable Water delivered to Phoenix pursuant to this Article during the preceding month.
20 Monthly bills will be due and payable by Phoenix within 30 days after the billing invoice date
21 printed on the billing invoice.

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10.12.2 Disputed Bill.

If Phoenix disputes any portion of any bill, Phoenix will pay the disputed amount under protest when due and include with its payment a written statement indicating the basis for the protest. If the protest is found to be valid, TreatCo will refund to Phoenix any overpayment within 30 days after that finding.

10.12.3 Delinquent Bill.

If any bill is not paid within 30 days after receipt of written notification of the delinquency, TreatCo will have the right, without liability of any kind, to suspend the delivery of Non-Potable Water pursuant to this Article as long as the said amount remains unpaid. Nothing in this Section will limit the rights of TreatCo to use any other available legal remedy to effect collection of said amount.

10.13 Term of Article or Discontinuance of Delivery.

10.13.1 Term and Termination.

This Article will be for an initial term of 10 years, and may be renewed by Phoenix for a subsequent additional 10-year term, provided however Phoenix may on 90-days' prior notice to TreatCo terminate this Article prior to the expiration of the initial 10-year term if Phoenix has connected the Phoenix Distribution Facilities to the Phoenix Non-Potable Water Treatment Facilities

10.13.2 Termination.

Within the second 10-year term, either Party may terminate this Article prior to the end of such 10-year term if the terminating Party gives five-years' prior written notice of such termination to the other Party. Upon such notice being given, this Article will terminate five years from the date of delivery of such notice to the other Party. This Article

1 may also be terminated at any time if both Parties agree that it is mutually beneficial to terminate
2 this Article. Within the second 10-year term, Phoenix may on 90-days' prior notice to TreatCo
3 terminate this Article prior to the expiration of that term, if Phoenix has connected the Phoenix
4 Area to a Non-Potable Water system owned and operated by Phoenix.

5 10.13.3 Disconnection.

6 Phoenix will disconnect (also known as "valve off") or sever the
7 TreatCo-to-Phoenix Non-Potable Water Delivery Point, and TreatCo will be entitled to
8 discontinue delivery of Non-Potable Water to such Delivery Point, within 30 days of the
9 occurrence of the following:

10 a. Expiration of the term of this Article or other termination of
11 this Article as provided in Section 10.4.1.

12 b. Breach of any of the obligations of Phoenix set forth in this
13 Article which have not been expressly waived in writing by TreatCo.

14 c. The occurrence of a condition for disconnecting ("valving
15 off") or otherwise severing the Delivery Point as described in this Article.

16 10.13.4 Conditions for Disconnection.

17 Phoenix at its sole expense will design and construct all facilities
18 necessary to disconnect the TreatCo-to-Phoenix Non-Potable Water Delivery Point. Phoenix and
19 TreatCo may mutually agree to arrangements to allow these facilities and the Delivery Point to
20 remain in place. Any work performed on the TreatCo System by Phoenix's contractor will be
21 done in a satisfactory and workmanlike manner and in accordance with plans and specifications
22 approved by TreatCo. Phoenix will not permit work to be done by its contractor until said plans

1 and specifications have been approved by TreatCo. The plans and specifications will include a
2 right by TreatCo to inspect the work of Phoenix's contractors.

3 10.14 Approvals Required by Law.

4 Phoenix and TreatCo will cooperate in seeking any approvals or permits
5 required by applicable law to effectuate the delivery of Non-Potable Water pursuant to this
6 Article. If any such approval cannot be obtained, then Phoenix and TreatCo will be relieved of
7 their respective obligations set forth in this Article (but the Parties will not thereby be relieved of
8 their respective obligations under Section 1.3.2). As between Phoenix and TreatCo, Phoenix
9 will take the initiative and use its reasonable best efforts in seeking any approvals or permits
10 required by applicable law to effectuate the delivery of Non-Potable Water pursuant to this
11 Article that would not be required to be obtained by TreatCo but for this Article.

1 ARTICLE XI

2 TREATCO RECHARGE/RECOVERY FACILITIES

3 11.1 Acknowledgements.

4 The Parties acknowledge that, pursuant to the Infrastructure Agreement,
5 TreatCo plans to locate TreatCo Recharge/Recovery Facilities in the Phoenix Area to enable
6 TreatCo to recharge and recover water transported to the recharge site located in the Phoenix
7 Area.

8 11.2 Recovery Wells.

9 11.2.1 Drilling.

10 Phoenix consents to TreatCo's location of seven recovery wells
11 and will provide letters to other governmental bodies confirming this consent. Those wells are to
12 be subject to the use restrictions set forth in Sections 11.2.4 and 11.2.5. The location of the
13 Recharge/Recovery Facilities (including the recovery wells) to which Phoenix consents is set
14 forth on Exhibit C.

15 11.2.2 Reports.

16 After the recovery wells which are located in the Phoenix Area and
17 which are part of the TreatCo Recharge/Recovery Facilities have been drilled, completed and
18 placed in service, TreatCo will provide copies of additional engineering and hydrology reports (if
19 any) that TreatCo has prepared or received regarding the location, groundwater table underlying,
20 and effect of the recovery wells to Phoenix for its records.

21 11.2.3 Isolation Use Restriction.

22 Notwithstanding Sections 5.14 and 10.13, if TreatCo desires to
23 continue to use the recovery wells which are located in the Phoenix Area and which are part of

1 the TreatCo Recharge/Recovery Facilities after the disconnection of the TreatCo-to-Phoenix
2 Potable Water Delivery Point or the TreatCo-to-Phoenix Non-Potable Water Delivery Point as
3 described in those Sections, TreatCo will design and install in the Phoenix Area valves and
4 mains that are isolated from and not connected to the Phoenix Facilities, and in connection with
5 that design and installation) Phoenix will grant TreatCo such permits or licenses for the use of
6 public rights-of-way and/or public easements as may be necessary for the location of (and access
7 to) those valves and mains. Unless and until such isolated and unconnected valves and mains are
8 installed, TreatCo will use such wells only for supplemental "emergency" purposes.

9 11.2.4 Use Restriction; Connections to Phoenix Area.

10 Until June 1, 2005, TreatCo will operate its recovery wells only as
11 an emergency backup for that Wholesale Potable Water Service, unless TreatCo first blends the
12 withdrawn well water with TreatCo's surface water supply. Such emergency conditions will be
13 limited to an outage (whether in whole or of at least 50% of TreatCo's treatment capacity) of the
14 surface water treatment plant or catastrophic water main break. TreatCo will notify the water
15 services director of Phoenix as soon as practicable of operation of any well for discharge to the
16 Potable Water distribution system which provides Wholesale Potable Water Service to Phoenix.
17 The recovery wells will be constructed such that direct withdrawal of discharged reclaimed water
18 does not occur.

19 11.2.5 Restriction on Number and Use of Wells.

20 During the time that Phoenix is providing Wholesale Potable
21 Water Service to TreatCo as provided in this Agreement, TreatCo will limit the number of
22 recovery wells which are located in the Phoenix Area and owned by TreatCo to no more than
23 seven (7) recovery wells. In addition, TreatCo will limit the total amount of water withdrawn

1 from the wells to not more than 2,000 acre feet per year, subject to the use limitations described
2 in Section 11.2.4.

3 11.3 Rights-of-Way in Favor of TreatCo.

4 The Parties have mutually agreed (or will mutually agree from time to
5 time) on the location of the lines connecting the TreatCo Recharge/Recovery Facilities located in
6 the Phoenix Area with the TreatCo System. Phoenix acknowledges that, concurrently with the
7 execution of this Agreement, Developer will grant to TreatCo an initial water line easement for
8 the location of (and access to) TreatCo's lines, which easement will be substantially in the form
9 attached as Exhibit E, and pertaining to premises described therein (the "Developer Water Line
10 Easement"). The Developer Water Line Easement will include the conditions set forth in
11 Attachment I to the Developer Water Line Easement, but any public streets, public easements or
12 other interests of Phoenix with respect to the premises described in the Developer Water Line
13 Easement are subordinate and junior to the rights granted to TreatCo by the Developer Water
14 Line Easement. Phoenix also acknowledges that Developer will from time to time grant to
15 TreatCo additional water line easements substantially in the form attached as Exhibit E and
16 pertaining to other locations in the Phoenix Area. The Parties acknowledge that the premises
17 described in the Developer Water Line Easement consist of four (4) non-contiguous segments
18 separated by "gaps." Accordingly, to facilitate an uninterrupted right-of-way for TreatCo's lines,
19 Phoenix acknowledges and agrees that, concurrently with the execution of this Agreement,
20 Phoenix will grant to TreatCo an initial water line easement as to the "gaps" for the location of
21 (and access to) TreatCo's lines, which easement will be substantially in the form attached as
22 Exhibit F, and pertaining to the premises described therein (the "Phoenix Water Line
23 Easement"). In addition, Phoenix will grant TreatCo such additional permits and licenses with

1 standard conditions required of similar permittees or licensees in public streets and public
2 easements as may be necessary for the location of (and access to) those lines to the recharge area.

3 11.4 Recharge Credits.

4 Recharge and related credits (including Recharge Credits) relating to
5 recharge and recovery through or by means of the TreatCo Recharge/Recovery Facilities belong
6 to and are the property of TreatCo.

7 11.5 Forbearance and Waiver of Condemnation Rights.

8 To the extent permitted by applicable law, and for a period from the date
9 of this Agreement to the fifteenth (15th) anniversary of the date that Phoenix first provides Retail
10 Potable Water Services in the Phoenix Area, Phoenix will not acquire or attempt to acquire by
11 condemnation, eminent domain proceedings or otherwise, the property of TreatCo providing
12 water and wastewater services outside the present Phoenix Area

1 ARTICLE XII

2 PAYMENTS

3 12.1 Payment by TreatCo.

4 In consideration for the additional water and wastewater service capacity
5 that becomes available to TreatCo by virtue of this Agreement and other good and valuable
6 consideration, the receipt and sufficiency of which are hereby acknowledged, and provided that
7 Phoenix has otherwise complied with Sections 3.3 and 6.3, TreatCo will pay or cause to be paid
8 to Phoenix the aggregate amount of five million dollars (\$5,000,000). That amount will be paid
9 to Phoenix in five (5) equal installments of one million dollars (\$1,000,000) each, as follows:

10 a. The first installment will be paid on the thirtieth (30th) day after
11 the later of (i) June 1, 2002, or (ii) the day on which the amount of Potable Water available to
12 TreatCo at the Phoenix-to-TreatCo Potable Water Delivery Point pursuant to Article V equals
13 one million gallons per day (1.0 MGD).

14 b. The second installment will be paid on the thirtieth (30th) day
15 after the day on which the amount of Potable Water available to TreatCo at the Phoenix-to-
16 TreatCo Potable Water Delivery Point pursuant to Article V equals four million gallons per day
17 (4.0 MGD).

18 c. The third, fourth and fifth installments will be paid on the third,
19 fourth and fifth anniversaries, respectively, of the payment of the second installment.

20 No interest will accrue on or otherwise be payable with respect to the foregoing amounts.

1 ARTICLE XIII

2 DISPUTE RESOLUTION

3 13.1 Scope of Article.

4 This Article governs the resolution of all disputes that arise under this
5 Agreement (including any dispute as to the arbitrability of a matter).

6 13.2 Good Faith Negotiations.

7 A Party that believes a dispute exists under this Agreement will first refer
8 the dispute to the Representatives for resolution. The Representatives of each Party will
9 personally meet and attempt in good faith to resolve the dispute. If the Designated
10 Representatives cannot resolve the dispute within 21 days, the matter will be referred to senior
11 management of the Parties for resolution. If these persons are unable to resolve the dispute
12 within 21 days, a Party that still believes a dispute requires resolution may avail itself of the
13 provisions of Section 13.3.

14 13.3 Mediation and Arbitration.

15 If a Party still believes a dispute requires resolution after following the
16 procedures of Section 13.2, that Party will first give a detailed written notice of dispute to the
17 other Party setting forth the nature of the dispute. The Parties will then, before resorting to
18 arbitration, first try in good faith to settle the dispute by mediation in accordance with mutually
19 agreed mediation rules. The mediator must have substantial experience with the public and
20 private water utility industry.

21 Any dispute not resolved by mediation within 60 days after the initial
22 meeting of the Representative may upon agreement by both parties, be submitted to non-binding
23 arbitration administered by the American Arbitration Association ("AAA") before a single

1 arbitrator. If the controversy or claim relates to construction, and if the Parties mutually agree to
2 arbitration, the arbitration will be conducted in accordance with the AAA's Construction Industry
3 Arbitration Rules; otherwise, the AAA's Commercial Arbitration Rules will apply, as well its
4 expedited hearing rules and optional rules. In any case, the arbitrator must have substantial
5 experience with the public and private water utility industry. The arbitrator has no power to amend
6 or modify this Agreement. Unless the Parties otherwise agree, the award rendered by the arbitrator
7 is not binding on the Parties and is not admissible in any court proceeding.

8 13.4 Other Remedies.

9 The preceding paragraphs of this Article are intended to set forth the first
10 procedure to resolve all disputes under this Agreement. It is desirable that all disputes that
11 would traditionally be resolvable by a law court would be resolvable under this procedure.
12 However, the Parties recognize that certain business relationships could give rise to the need for
13 one Party to seek equitable remedies from a court, such as emergency, provisional or summary
14 relief, and injunctive relief. Immediately following the issuance of any such equitable relief, the
15 Parties will stay any further judicial proceeding pending mediation or arbitration of all
16 underlying claims between the Parties.

17 13.5 Confidentiality.

18 Except as otherwise agreed by the Parties in writing, (a) the fact of the
19 pending arbitration will not be disclosed or confirmed by the Parties or the arbitrator to any
20 person who is not a party to, or called to testify at, the proceedings until the arbitration award has
21 been made, (b) the proceedings will not be recorded or transcribed in any manner, and (c) all
22 documents, testimony and records (other than the contract documents out of which the dispute

1 arises) will be received, heard and maintained by the arbitrator, available for inspection only by
2 the Parties.

1 ARTICLE XIV

2 GENERAL PROVISIONS

3 14.1 Force Majeure.

4 No Party will be liable to another Party for failure, default or delay in
5 performing any of its obligations under this Agreement, other than for the payment of money
6 obligations specified in this Agreement, if such failure, default or delay is the result of any cause
7 or event not within the control of the Party affected and which, by the exercise or reasonable
8 diligence, such Party is unable to prevent or mitigate (such a cause or event being "Force
9 Majeure"). Force Majeure includes the failure of the other Party to timely construct
10 interconnection lines as described in Sections 3.4.1 and 3.4.2.1. Force Majeure does not include
11 changes in local, state, national or international general economic conditions. The Party's
12 failure, default or delay in performance will be excused only for as long as such cause or event is
13 present. If any of the foregoing occur, the Parties will proceed with diligence to do what is
14 reasonable and necessary to enable each Party to perform its obligations under this Agreement.
15 A Party will not in any event incur any liability to any other Party for consequential or any other
16 damages which may result from delays in initiating service, or from interruptions in or other
17 malfunctions of service, based upon the foregoing circumstances.

18 14.2 Assignment.

19 This Agreement may be assigned by TreatCo (or, to the extent it is a party
20 hereto, by DistCo) to (a) a parent corporation of which it is a wholly-owned subsidiary, or to a
21 wholly-owned subsidiary of the parent, or to a wholly-owned subsidiary of a wholly-owned
22 subsidiary of the parent or another entity wherein Citizens has a controlling interest, (b)
23 American Water Works Company, Inc. (or a subsidiary or other affiliate thereof) or a person

1 who merges with TreatCo or DistCo or any of the foregoing or who acquires all or substantially
2 all of the stock or assets of TreatCo or DistCo or any of the foregoing, or (c) an assignee of the
3 rights and obligations of TreatCo, DistCo or any of the foregoing under the Infrastructure
4 Agreement. This Agreement will not be otherwise assignable by a Party without the prior
5 written consent of the other Parties, which consent will not be unreasonably withheld.

6 14.3 Notices.

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

12 To TreatCo or DistCo at:

13 Vice President and General Manager
14 Citizens Water Resources Company of Arizona
15 15626 North Del Webb Boulevard
16 P.O. Box 1387
17 Sun City, Arizona 85372

18 with a copy to:

19 Craig A. Marks
20 Associate General Counsel
21 Citizens Utilities Company
22 2901 North Central Avenue
23 Phoenix, Arizona 85004

1 and with a further copy to:

2 Gallagher & Kennedy, P.A.
3 Attn: Terence W. Thompson, Esq.
4 2600 North Central Avenue
5 Phoenix, Arizona 85004

6 or to such other address as DistCo or TreatCo may advise the other Parties in writing, and to

7 Phoenix at:

8 City of Phoenix
9 200 West Washington Street, Suite 900
10 Phoenix, Arizona 85003
11 Attn: Water Services Director
12 Telephone: (602) 262-6627
13 Fax: (602) 495-5542

14 with a copy to:

15 Jesse W. Sears
16 Assistant Chief Counsel
17 City Attorney's Office
18 City of Phoenix Law Department
19 200 West Washington Street, Suite 1300
20 Phoenix, Arizona 85003-1611
21 Telephone: (602) 495-3910
22 Fax: (602) 534-2476

1 or to such other address as Phoenix may advise the other Parties in writing. The designation of such
2 person and/or address may be changed at any time by a Party on written notice given under this
3 Section. All notices, demands, requests or other communications sent pursuant to this Section will
4 be deemed received (i) if personally delivered, on the Business Day of delivery, (ii) if sent by
5 telecopy or electronic mail before noon (12:00 p.m.) Phoenix time, on the day sent if a Business
6 Day or, if such day is not a Business Day or if sent after noon (12:00 p.m.) Phoenix time, on the
7 next Business Day, (iii) if sent by overnight express carrier, on the next Business Day immediately
8 following the day sent, or (iv) if sent by registered or certified mail, on the earlier of the third
9 Business Day after the day sent or when actually received. Any notice by telecopy or electronic
10 mail will be followed by notice sent by other means as well.

11 14.4 Entire Agreement; Attachments.

12 14.4.1 Entire Agreement.

13 This Agreement constitutes the entire understanding between the Parties
14 regarding the subject matter of this Agreement. This Agreement supersedes any and all previous
15 understandings between the Parties (including any letter of intent) regarding the subject matter of
16 this Agreement. This Agreement binds and inures to the benefit of the Parties, their successors
17 and assigns. None of the Parties has entered into this Agreement in reliance upon any oral or
18 written representation or information provided by any other Party.

19 14.4.2 Attachments.

20 Attachments not complete at the effective date of this Agreement will be
21 added as they are completed by written amendment, signed by each Party. Each attachment that
22 is completed or modified by a subsequent amendment will note on its face the date and number
23 of that amendment.

1 14.5 Further Assurances.

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

8 14.6 No Waiver.

9 The failure of a Party to enforce at any time any of the provisions of this
10 Agreement (or to require at any time performance by the other Party of any of its provisions) is
11 not to be construed as a waiver of such provisions and does not in any way affect the validity of
12 this Agreement or the right of such Party to enforce any provision.

13 14.7 Modification or Waiver.

14 A modification or waiver of all or any part of this Agreement is not valid
15 unless it is reduced to a written agreement.

16 14.8 Governing Law and Interpretation.

17 The laws of the State of Arizona govern the interpretation and
18 performance of this Agreement.

19 14.9 Counterparts.

20 This Agreement may be executed in several counterparts.

21 14.10 No Third Party Beneficiaries.

22 Nothing in this Agreement, express or implied, is intended to confer any
23 rights or remedies under or by reason of this Agreement on any persons other than the Parties.

1 Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any
2 third person to any Party. This Agreement does not create any duty, liability or standard of care
3 to any person not a Party.

4 14.11 Confidential and Proprietary Information.

5 To the extent permitted by law, any information provided by one Party to
6 another Party that is conspicuously labeled "CONFIDENTIAL AND PROPRIETARY", or any
7 matter derived from such information, may not be disclosed by the receiving Party to any third
8 party, except: (i) with the providing Party's consent, not to be unreasonably withheld, (ii) in
9 response to a subpoena, other legal process, court order, or regulatory authority order obtained
10 after the receiving Party has used reasonable efforts to obtain an order of the court protecting the
11 confidentiality of the information and/or restricting its dissemination, (iii) if such dissemination
12 is necessary after the occurrence of a default under this Agreement by the Party supplying such
13 information in connection with the enforcement of the rights of the non-defaulting Party, or (iv)
14 if the information provided by one Party to another Party is otherwise publicly available. If a
15 Party that receives confidential information becomes aware of any attempt by any third party or
16 court to obtain any confidential information, the Party will, as soon as practicable, notify the
17 Party that labeled the information as confidential of the attempt to obtain the information. Upon
18 request of the providing Party, the information must be promptly returned. Notwithstanding the
19 foregoing expectation, the Parties acknowledge that Phoenix is a public entity subject to the
20 provisions of the Arizona Public Records Law, which may make certain of the foregoing
21 expectations unenforceable as a matter of law.

1 14.12 Review of Facilities.

2 Review, audit or inspection by a Party of a facility constructed by another
3 Party or of a document drafted by another Party does not constitute an endorsement or warranty
4 of any of them or a waiver of any right under this Agreement.

5 14.13 Computation of Time.

6 In computing any period of time proscribed or allowed under this
7 Agreement, the day of the act, event or default from which the designated period of time begins
8 to run is included. Weekend and holidays are also included. Section 14.3 sets forth special rules
9 as to when notices and other communications are deemed received.

10 14.14 No Party the Drafter; Legal Representation.

11 This Agreement is the product of negotiation among the Parties. No Party
12 is deemed the drafter of this Agreement. In connection with this Agreement and the transactions
13 contemplated hereby, TrentCo and its Affiliates are represented by Gallagher & Kennedy, P.A.,
14 and Phoenix is represented by the City Attorney's Office, and each Party hereby consents to such
15 representation and waives any potential or actual conflict of interest with respect to such
16 representation (including representation in connection with any dispute that may arise under this
17 Agreement or that may otherwise arise between the Parties or their respective Affiliates).

18 14.15 Term of Agreement.

19 Subject to the express provisions of this Agreement that otherwise
20 terminate, limit or extend the time period during which a Party is obligated to perform a certain
21 obligation, this Agreement will terminate 100 years from the date of execution.

1 14.16 Interest on Late Payments.

2 Except as otherwise provided herein, all payments under this Agreement
3 that are not paid within 30 days of the due date of the payment will accrue interest thereon at the
4 Prime Rate plus two percent (2%) per annum, compounded monthly from the due date of the
5 payment until the amount is paid. For purposes of this Agreement, "Prime Rate" means, for any
6 day, the rate of interest in effect for such day as publicly announced from time to time by Bank
7 One, Arizona, NA, a national banking association, as its "reference rate" or any similar preferred
8 rate announced by any successor to Bank One Arizona, NA, in Phoenix, Arizona.

9 14.17 Conflict of Interest.

10 The Parties acknowledge that this Agreement is subject to cancellation
11 under the provisions of A.R.S. § 38-511.

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

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CITIZENS WATER RESOURCES COMPANY
OF ARIZONA

By: Ray J. Jones
Its: Vice President & General Manager

CITY OF PHOENIX, ARIZONA

By: Frank Fairbanks, City Manager

By: Michael J. Fitzgibbon
His duly authorized representative

ATTEST: [Signature]
ACTING City Clerk

RECEIVED
CITY OF PHOENIX
NOV 14 2003

1 APPROVED AS TO FORM:

2

3

4

William B. ...

ACTING City Attorney *WB*

1
2
3 AGREEMENT OF DISTCO

4 Solely for the purpose of facilitating the cancellation of certain CC&Ns as contemplated by
5 Section 1.3, DistCo agrees to be bound by Section 1.3 and Articles XIII and XIV.

6 Dated as of the date first above written.

7
8 CITIZENS WATER SERVICES COMPANY
9 OF ARIZONA

10
11 By: *Ray J. Jones*
12 Its: *Vice President & General Manager*
13
14
15

1 **SURREBUTTAL TESTIMONY**

2 **OF**

3 **ALLEN LEE ENEBOE**

4 **REGARDING NOTICE TO THE CITY OF PHOENIX OF**
5 **THE RATE DESIGNS FOR THE ANTHEM WASTEWATER DISTRICT**

6 **ON BEHALF OF**

7 **THE CITY OF PHOENIX**

8 **OCTOBER 10, 2011**

9 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

10 A. My name is Allen (Al) Lee Eneboe. My current business address is City of Phoenix,
11 302 North 1st Avenue Suite 900, Phoenix, Arizona 85003.

12 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

13 A. The purpose of my surrebuttal testimony is to address the statements of Sandra L.
14 Murrey of Arizona-American Water Company ("Arizona-American") regarding
15 written notice of the rate increase in Docket No. 09-0343.

16 **Q. HOW LONG HAVE YOU WORKED FOR THE CITY OF PHOENIX AND**
17 **WHAT IS YOUR CURRENT POSITION?**

18 A. I have worked for the City for 23.5 years. My current job title is Administrative
19 Assistant II in the Public Transit Department, a position I have held since August 17,
20 2007.

21 **Q. WHAT WAS YOUR PREVIOUS TITLE AND RESPONSIBILITIES FOR THE**
22 **CITY OF PHOENIX?**

A. I was a Budget Analyst II in the Water Services Department/Management Services
Division/Budget & Fiscal Section from October 15, 2001 through August 17, 2007. I

1 was one of three budget analysts in Management Services that worked with the
2 operating budgets of all divisions within the Water Services Department.

3 **Q. WHAT TYPES OF CORRESPONDENCE/PAYMENTS/NOTICES DID YOU**
4 **RECEIVE IN THAT POSITION, ESPECIALLY ITEMS THAT MIGHT**
5 **COME FROM ARIZONA-AMERICAN WATER COMPANY (ARIZONA-**
6 **AMERICAN) AS A PROVIDER OF WHOLESALE WATER AND**
7 **WASTEWATER SERVICES?**

8 A. It has been four years since I have worked in the Water Services Department. It has
9 been much longer since I worked with Arizona-American. My duties as a Budget
10 Analyst II consisted of evaluating invoices for payment for water services, including
11 wholesale water and wastewater services. When I worked directly with Arizona-
12 America, they would send me monthly invoices for processing. These invoices would
13 be reviewed by me for payment approval. When approved, the invoices would then
14 be forwarded to the Account Clerk III in my section to process for payment.

15 **Q. DO YOU HAVE ANY RECOLLECTIONS REGARDING THE BILLING OR**
16 **CORRESPONDENCE PRACTICES BETWEEN THE CITY OF PHOENIX**
17 **AND ARIZONA-AMERICAN DURING THAT TIME?**

18 A. Yes. One thing that really stood out during my period of working with Arizona-
19 American was their inability to follow through on any question related to an invoice,
20 whether it was a question of the billing being correct or how the billing was
21 determined. It was very difficult to get them to even correct the Water Services'
22 contact person. Because of that, it took months to get information on billing, months
to get billing corrected and months to get the Water Services' contact name corrected.

Q. DURING THE TIME YOU WORKED WITH ARIZONA-AMERICAN ON
BEHALF OF THE WATER SERVICES DEPARTMENT, WHAT TYPE OF
DOCUMENTS DID YOU RECEIVE FROM ARIZONA-AMERICAN?

1 A. While I was working with Arizona-American's account the only correspondence I
2 received from Arizona-American was in the form of the monthly invoices. A legal
3 notice was not something I would normally receive in the course of my employment
4 with the Water Services Department. I was not in a position of authority to speak for
5 the City regarding rate increases or changes to City agreements with wholesale water
or wastewater providers. That was not in the scope of my work responsibilities.

6 **Q. DID YOU RECEIVE A NOTICE REGARDING A RATE INCREASE IN
DOCKET NO. 09-0343?**

7
8 A. No. My understanding is that the referenced rate case began in 2009. That was two
9 years after I left the Water Services Department. If a notice was sent to me, it was not
forwarded to the Public Transit Department.

10 **Q. WAS ANY ATTEMPT MADE BY THE CITY OF PHOENIX TO CHANGE
11 THE CONTACT INFORMATION FOR BILLING PURPOSES WITH
12 ARIZONA-AMERICAN?**

13 A. Multiple efforts were made by me and other staff in the Water Services Department to
14 change the contact information with Arizona-American while I was there and before I
15 left my position in 2007. Arizona-American was one of the worst companies I have
16 dealt with in working with their staff to get a response to questions or get a correction
17 to invoices. During the period I was in Water Services, several successive budget
18 analysts, including me, were the designated contact to receive Arizona-American
19 invoices. When attempts were made to change the contact name with Arizona-
American it took months for Arizona-American to send invoices to the appropriate
contact.

20 **Q. DO YOU HAVE ANY OTHER INFORMATION TO OFFER ABOUT THE
21 ISSUE OF INTERACTIONS WITH ARIZONA-AMERICAN REGARDING
22 INVOICES?**

1 A. It has been four years since I left the Water Services Department and approximately
2 five years since I was the actual contact with Arizona-American for billing matters.
3 Ms. Murrey's testimony that Arizona-American considers me to be the current contact
4 for any type of correspondence between Arizona-American and the City is a reflection
5 on Arizona-American's staff and system, especially as Arizona-American received
6 multiple notices more than four years ago that I would no longer be the contact
7 working with them on their billing account with the City of Phoenix. Based on my
8 observations of their past practices and lack of follow up and follow through, it is not
9 surprising that Arizona-American failed to send a document to the correct address and
10 person at the City.

9 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

10 A. Yes.

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