

**ORIGINAL**

**NEW APPLICATION**



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**BEFORE THE ARIZONA CORPORATION COMMISSION  
RECEIVED**

**COMMISSIONERS**

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

2012 DEC 11 P 3:55  
AZ CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission  
**DOCKETED**  
DEC 17 2012

DOCKETED BY	<i>me</i>
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10 IN THE MATTER OF THE APPLICATION OF ) **DOCKET** W-02077A-12-0493  
 11 HOPEVILLE WATER COMPANY, INC. DBA )  
 12 ALLENVILLE WATER COMPANY, FOR ARIZONA )  
 13 CORPORATION COMMISSION APPROVAL TO ) **APPLICATION**  
 14 SELL ITS ASSETS AND FOR CANCELLATION )  
 15 OF ITS CERTIFICATE OF CONVENIENCE AND )  
 16 NECESSITY )  
 17 \_\_\_\_\_ )

19 Pursuant to A.R.S § 40-285 and A.R.S § 40-282, Hopeville Water Company, Inc. dba  
 20 Allenville Water Company ("Hopeville" or "Company"), submit this application for an Opinion  
 21 and Order of the Commission (i) authorizing the sale and transfer of its water system assets, and  
 22 (ii) for cancellation of the related Certificate of Convenience and Necessity ("CC&N").  
 23 Hopeville submits the following information in support of its application.

25 **I**  
 26 **BACKGROUND**

27 In November 2012, Hopeville and the Town of Buckeye ("Town") entered into an  
 28 agreement on the substantive provisions of an Asset Purchase Agreement<sup>1</sup> ("Agreement"). The  
 29 Agreement provides for (i) the sale and transfer of Hopeville's water system assets to the Town,

<sup>1</sup> The Asset Purchase Agreement is attached herewith as Exhibit A.  
 [1]

1 and (ii) for cancellation of Hopeville's CC&N. This transaction was separately approved by the  
2 Town Council on November 06, 2012, and the Company Board of Directors, on October 25,  
3 2012<sup>2</sup>. The Agreement stipulates the terms of this transaction and has been executed by Mr.  
4 Abraham Harris III, the President of Hopeville; and by Mr. Stephen Cleveland, Town Manager.

5 Hopeville was certificated by the Commission to provide water service in Decision No. 53202,  
6 dated September 1, 1982. Its current rates and charges were approved by the Commission in  
7 Decision No. 53821, dated November 28, 1983. Hopeville serves approximately 35 customers in the  
8 Town of Hopeville, located approximately 35 miles west of down town Phoenix, south of Highway  
9 I-10 and Palo Verde Road. The Company was previously located in the Salt River water shed, One-  
10 half mile south of Buckeye Road off Miller Road, before two devastating incidents of flooding in  
11 1979. After the flooding incidents, the Arizona State Department of Emergency Services and the  
12 U.S. Army Corps of Engineers relocated the community to its current location. Upon relocation, the  
13 U.S. Army Corps of Engineers constructed a new water system in the community at no cost to the  
14 Company. Over the years, the Company has invested additional capital in storage facilities,  
15 replacement of transmission and distributions mains and other appurtenances necessary for provision  
16 of service. Mr. Abraham Harris Jr. was President of Hopeville Board of Directors, until he passed  
17 away in 2004. In 2007, Mr. Abraham Harris III became the President of Hopeville and has been  
18 responsible for the day-to-day management of the Company.

19 The Town currently owns and operates a municipal utility system that is contiguous to Hopeville.  
20 As a municipal utility operator, the Town has requisite managerial and technical experience to  
21 facilitate a seamless integration of Hopeville into its water system.

## 22 II

### 23 REASON FOR THE PROPOSED SALE

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<sup>2</sup> The Town Council Approval and Hopeville Water Company, Inc. Unanimous Consent Resolution are attached herewith as Exhibit C.

1 The Board of Directors of Hopeville has resolved to sell its water utility assets and  
2 discontinue operations as a public utility. This decision was triggered by lack of adequate cash-  
3 flow to effectively manage its operations. Over several years, the Company has suffered  
4 recurring operating losses, attributable to low customer base and increasing cost of service. As a  
5 result, Hopeville does not have adequate capital to operate and maintain its aging infrastructure.  
6 Often times, the Company has had difficulty funding minor repairs, such as replacement of  
7 electric pump. Also, Mr. Harris III has indicated that he is no longer interested in the day-to-day  
8 management of the Company. For the reasons stated above, the Board of Directors resolved that  
9 it is in best interest of the community to sell the assets of Hopeville to the Town.

### 11 III

#### 12 ANTICIPATED FUTURE OPERATION OF ALLEVILLE

13 Hopeville's CC&N will terminate on the effective date of Commission approval of this  
14 transaction. The Town will immediately assume ownership of the water system, and  
15 responsibility for providing water service to existing and prospective customers within the  
16 certificated territory. To facilitate a seamless transition, the Town has agreed to (i) waive any  
17 security deposit requirements to the existing customers of Hopeville, and (ii) continue to provide  
18 water service to Hopeville's existing customers, based on current Commission approved rates and  
19 charges, for a period of three years. In other words, the Company's existing customers will  
20 experience no rate increase during the moratorium period. However, future customers connected  
21 after the effective date of Commission Order in this proceeding may be required to make security  
22 deposits.

23  
24 Hopeville anticipates that its existing customers will not be negatively impacted by this  
25 transaction. The Company has informed existing customers of the pending sale of assets, and the  
26 related transfer of existing customers to the Town, during town hall meetings. Also, a "Public

1 Notice<sup>3</sup> will be mailed to each customer of record, in December 2012. Hopeville has no  
2 outstanding balance due on customer deposit, line extension agreement and meter installation.  
3  
4

5 **IV**

6 **PUBLIC INTEREST CONSIDERATION**

7 It is in the public interest of the current and prospective customers for Hopeville to sell its  
8 water utility assets to the Town and relinquish its CC&N for several reasons. First, the Town has  
9 adequate financial, technical and managerial skills to effectively integrate Hopeville into its  
10 existing utility in a seamless manner. Second, the Town has the financial and managerial  
11 resources necessary to effectively manage the day-to-day operations of the water system. Third,  
12 the Town has the financial capability to improve existing facilities, and invest in new  
13 infrastructure that will be necessary to accommodate projected growth in the Buckeye corridor.  
14 Finally, the Town has indicated that upon Commission approval of this application, Hopeville's  
15 existing customers will neither be required to make security deposits to retain connection nor  
16 experience any change in rates for three years. Based on these positive impact on the community,  
17 Hopeville believes that its existing customers will experience improved quality of service without  
18 a rate increase for three years.  
19

20 **V**

21 **CONCLUSION**

22 For the foregoing reasons, Hopeville believes that it is in the public interest for the  
23 Commission to issue an Opinion and Order that approves its requested authority to (i) sell its  
24 water utility assets to the Town of Buckeye, and (ii) cancel its existing Certificate of Convenience  
25 and Necessity.  
26

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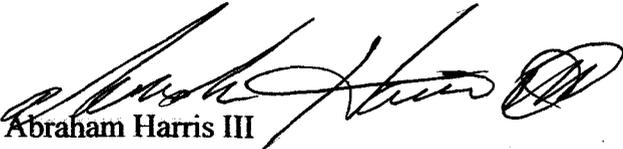
<sup>3</sup> The Public Notice is attached herewith as Exhibit B.

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Hopeville respectfully requests that the Commission issue an Opinion and Order authorizing this transaction without a hearing.

Dated December 17, 2012.

Respectfully submitted;



Abraham Harris III  
President, Hopeville Water Company, Inc.  
DBA Allenvile Water Company

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Original and thirteen (13) copies of the  
Foregoing application will be submitted  
On December 17, 2012

Docket Control Center  
Arizona Corporation Commission  
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Company Attorney

1 Mr. Abraham Harris III  
2 Hopeville water Company, Inc.  
3 Dba Alleville Water Company  
4 1415 South Palo Verde Road  
5 Phoenix, AZ 85326  
6

7 Mr. Stephen Cleveland  
8 Town Manager  
9 Town of Buckeye  
10 530 Monroe Avenue  
11 Buckeye, AZ 85326  
12

13 Scott W, Ruby, Esq.  
14 Gust Rosenfeld, PLC.  
15 One East Washington Street  
16 Suite 1600  
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18 Town Attorney  
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EXHIBIT "A"

ASSET PURCHASE AGREEMENT BETWEEN TOWN OF BUCKEYE AND  
HOPEVILLE WATER COMPANY, INC. DBA ALLENVILLE WATER COMPANY

**ASSET PURCHASE AGREEMENT  
BETWEEN THE TOWN OF BUCKEYE AND THE  
HOPEVILLE WATER COMPANY FOR THE PURCHASE AND SALE  
OF THE BUSINESS ASSETS OF HOPEVILLE WATER COMPANY**

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between **HOPEVILLE WATER COMPANY, INC.**, an Arizona corporation, ("Seller"), and **THE TOWN OF BUCKEYE, ARIZONA**, an Arizona municipal corporation ("Buyer").

WITNESSETH:

WHEREAS, Seller is the owner of a water works plant and distribution system and domestic water company known as HOPEVILLE WATER COMPANY, situated in the Town of Buckeye, Arizona; and

WHEREAS, Seller is the holder of Certificates of Convenience and Necessity issued by the Arizona Corporation Commission, which certificates authorize Seller to engage as a public service corporation in the sale of water for commercial and domestic uses in its Certificated Area; and

WHEREAS, Buyer desires to own and operate water utility systems within and without its Town limits and to provide its residents with direct control over the rates, quality, water resources management and other policies and practices relating to the provision of water utility service to its residents; and

WHEREAS, Buyer is duly authorized by the laws of the State of Arizona to purchase or lease any plant or property or portion thereof devoted or which may be devoted to the business of providing public utility water service within and without the Town limits; and

WHEREAS, Buyer desires to acquire ownership of the Hopeville Water Company water utility system assets; and

WHEREAS, the parties have voluntarily bargained and negotiated in good faith to determine the price, terms and conditions of such a sale; and

WHEREAS, Seller is desirous of selling its Business Assets to Buyer under the price, terms and conditions set forth herein.

NOW THEREFORE, IN CONSIDERATION of the foregoing Recitals, and the mutual promises, covenants and agreements hereinafter contained, and each act of the parties hereto, the parties agree as follows:

Section 1. Definitions.

Unless the context clearly indicates the contrary, the following capitalized words used in the Recitals and used below shall have the meanings set forth below:

1.1 **"ACC"** refers to the Arizona Corporation Commission in the exercise of its constitutional and statutory authority to regulate utility service in this State provided by public service corporations.

1.2 **"ACC Approval"** refers to approval by the ACC, in the exercise of its limited authority under A.R.S. § 40-285, of the disposition by Seller of the Business Assets and, if Buyer so elects, in its sole discretion, the extinguishment of Seller's Certificates of Convenience and Necessity. This Agreement is not intended to grant to the ACC any right or authority to review and approve this Agreement and its terms beyond whatever limited authority is granted to the ACC under A.R.S. § 40-285.

1.3 **"Accounts Receivable"** refers to any right for the payment to Seller for services or goods provided or rendered, whether or not evidenced by an instrument or chattel paper, arising out of or in any way related to the Business prior to Closing.

1.4 **"Agreement"** refers to this Asset Purchase Agreement for Purchase and Sale of the Business Assets.

1.5 **"Assignments"** refers to those certain documents to be given by Seller to Buyer conveying all of its interest in the Contract Rights.

1.6 **"Authority"** refers to any federal, state, local or foreign government or governmental or regulatory agency or authority.

1.7 **"Bill of Sale"** refers to that certain document to be given by Seller to Buyer conveying all of its interest in and to the Equipment and Records.

1.8 **"Business"** refers to that certain business known as Hopeville Water Company currently owned by Seller and engaged as a public service corporation in the sale of water for domestic, commercial and other uses in its Certificated Area pursuant to its Certificate of Convenience and Necessity issued by the ACC, and other related services in connection therewith.

1.9 **"Business Assets"** refers collectively, to the Subject Water Facilities, the Real Property, all Improvements, Equipment, Inventory, Contract Rights and Records owned and used by Seller in connection with the Business, and to any Subject Water Facilities, real property, Improvements, Equipment, Inventory, Contract Rights and Records owned by Seller or Allenville Water Company.

1.10 **"Buyer"** refers to the Town of Buckeye, Arizona, an Arizona municipal corporation.

1.11 **"Buyer's Address"** shall mean c/o Town Manager, Town of Buckeye, 530 East Monroe Avenue, Buckeye, Arizona 85326.

1.12 **"Certificates of Convenience and Necessity"** shall refer to those certain Certificates of Convenience and Necessity issued by the ACC held by Seller and/or Allenville Water Company and authorizing Seller and/or Allenville Water Company to engage as a public service corporation in the sale of water for domestic, commercial and other uses in its Certificated Area.

1.13 **"Certificated Area"** refers to the areas set forth in Exhibit "A" in which Seller conducts its Business, which areas are more particularly shown on the map of the existing service area attached hereto as Exhibit "B", which map is for the purposes of showing the boundaries of the

Certificated Area, size and extent of water mains and pipes, easements, and any other areas served by the Business.

1.14 **"Closing; Date of Closing"** refers to that point in time when (a) all of Seller's obligations and Buyer's obligations hereunder have been fulfilled; (b) the Escrow Agent has received all funds, is prepared to disburse the same in accordance with this Agreement and has recorded all of the Transfer Instruments; and (c) the Escrow Agent has disbursed all of the sales proceeds as required by this Agreement.

1.15 **"Contract Rights"** refers to the right to have services or goods provided to the Business by third persons.

1.16 **"Creditors"** refers to any and all persons or entities to whom Seller owes money, goods or services.

1.17 **"Equipment"** refers to tangible personal property, whether affixed or not to the Real Property, which has been acquired or is under lease with Seller for use primarily in the Business, including but not limited to all equipment used in the operation of wells and tanks, the water distribution system, office equipment and motor vehicles.

1.18 **"Escrow Agent"** refers to Great American Title Agency, Inc., 497614.

1.19 **"Improvements"** refers to wells, tanks, water lines and distribution systems, and any other structures or tangible property used in connection with the Subject Water Facilities.

1.20 **"Inventory"** refers to goods which are held by Seller for the treatment of water or otherwise used or consumed in connection with the Business, in the ordinary course of operating its Business.

1.21 **"Liens"** refers to any lien, judgment, charge, claim, security interest, mortgage or encumbrance on or against the Business Assets or any one or more of the Business Assets or that, individually or in the aggregate, has a material adverse effect upon the ownership of the Business Assets or the conduct or operation of the Business.

1.22 **"Payables"** refers to all trade payables, accounts payable and other liabilities of and claims against Seller.

1.23 **"Permitted Encumbrances"** refers to those matters of record set forth on Schedule B of the Preliminary Title Report and such other matters approved in writing by Buyer.

1.24 **"Purchase Price"** means the sum of SEVEN HUNDRED SEVENTY-ONE THOUSAND AND NO/100 DOLLARS (\$771,000.00) which is the total purchase price for the Business Assets as set forth under Section 3 of this Agreement.

1.25 **"Real Property"** refers to all well sites, easements, licenses and other real property interests located in the Town of Buckeye or Maricopa County, Arizona, legally described in Exhibit "C" attached hereto, including all Improvements, fixtures and any other rights and appurtenances pertaining thereto which are used by Seller in the Business; provided, however, that the parties acknowledge and agree that the Real Property does not include that certain parcel of real property located in the vicinity of the Real Property, consisting of approximately 15.62 acres, and owned by

Hopeville Community for Progress, Inc. ("HCP") and which is the subject of a separate Option Agreement between Buyer and HCP.

1.26 "**Records**" refers to all of Seller's service agreements, service and repair records, water treatment records, hydrology and assured water supply studies and reports, Department of Water Resources filings and correspondence, customer data base information (including master file information, billing histories, complaints), meter reading information, operations manuals, construction drawings, and other related documents arising out of or in any way relating to the Business Assets.

1.27 "**Seller**" refers to Hopeville Water Company, an Arizona corporation and a regulated public service corporation and water utility (ACC Utility No. W-02077A).

1.28 "**Seller's Address**" means 1421 W. Palo Verde Rd. Buckeye, AZ 85326.

1.29 "**Subject Water Facilities**" refers to all of the water utility plan, system, business, real and personal property and interests in property, and other facilities utilized or which may be utilized to provide water service to the public, as well as the Certificates of Convenience and Necessity, franchise(s), intangible assets and rights, and all other assets of any type or nature owned by and/or associated in any way with the utility operations of the Hopeville Water Company and/or the Allenville Water Company, located within and without the Town of Buckeye, in Maricopa County, Arizona, including but not limited to those facilities, pumps, wells, waterlines, meters, personal property and/or other equipment, properties and rights used or useful to provide water service in the Hopeville Water Company system, including, but not limited to, well sites, easements, leaseholds and other interests in real property described in Exhibit "C" attached hereto and incorporated herein by this reference, and all equipment and facilities located thereon.

1.30 "**Tax Claim**" refers to a claim or assertion of an unpaid property tax and other taxes of any kind (current taxes due and any delinquent taxes, tax liens, tax levies, certificates of purchase and all other assertions of a tax obligation by any taxing jurisdiction or agency), that is not apparent as being facially invalid or unenforceable, on or that may be enforced or collected against or from the Business Assets or proceeds of this acquisition that are the legal obligation of Seller.

1.31 "**Title Insurer**" means First American Title Insurance Company.

1.32 "**Transfer Instruments**" refers to those instruments customarily required for the transfer of the Assets, including, but not limited to:

- (i) Special Warranty Deed to the Property;
- (ii) Foreign Investment in Real Property Tax Act Affidavit;
- (iii) Bill of Sale to all personal property to be transferred to Buyer hereunder;
- (iv) Assignments as to all Contract Rights, franchise rights and certificates which are transferable.

## Section 2. Conveyance of Business Assets.

Subject to and upon the terms and conditions contained in this Agreement, Seller agrees to sell, assign, transfer and convey to Buyer on the Closing Date, and Buyer agrees to purchase,

accept and receive from Seller on the Closing Date, the Business Assets, free and clear of any Liens. Buyer does not agree to assume or pay any of the Payables or any of the Retained Liabilities (as defined below), and Seller agrees to pay all of the Payables and all of the Retained Liabilities as they become due. Seller acknowledges that Buyer intends to use the Business Assets to provide water service to areas not currently serviced by Seller and that Seller shall have no right to and shall not object to any third party, including without limitation the ACC or the Arizona Department of Water Resources, regarding Buyer's use of the Business Assets to provide service to such additional areas. The provisions of this Section 2 shall survive the Closing.

2.1 Equipment, Inventory and Records.

The Equipment, Inventory and Records shall be conveyed at Closing by the execution and delivery by Seller of the Bill of Sale. The Bill of Sale shall include a list identifying all Equipment and shall be in the form of Exhibit "D" attached hereto.

2.2 Contract Rights.

To the extent that any person shall be required to consent to the transfer of Contract Rights, then Seller shall obtain that consent in writing as a condition of Closing.

2.3 Real Property.

Conveyance of the Real Property shall be by special warranty deed, subject only to Permitted Encumbrances.

2.3.1 Title Insurance. Seller shall furnish Buyer at Closing with an extended owner's title insurance policy in the amount of \$\_\_\_\_\_ insuring Buyer's interest in the Real Property, subject only to those exceptions described in Section 2.3 above (the "**Owner's Policy**").

2.3.2 Title Report and Objections.

(a) Seller shall cause Title Insurer to issue and deliver to Buyer and Seller a preliminary commitment for title insurance concerning the Real Property, together with copies of all instruments referred to therein which will remain as exceptions to title following Closing (the "**Preliminary Title Report**"), and an insured closing letter issued by Title Insurer, within ten (10) days following the Opening of Escrow. The Preliminary Title Report is to be preliminary to the Owner's Policy to be issued by Title Insurer. Buyer shall have until the expiration of the Investigation Period (as defined below) in which to advise Seller, in writing, either (i) that the condition of title to the Real Property as evidenced by the Preliminary Title Report is acceptable; or (ii) to object to any easements, liens, encumbrances or other items, exceptions or requirements in the Preliminary Title Report (collectively, "**Buyer's Title Objections**"), except for (A) any financing liens and tax liens, lis pendens, leases and parties in possession, if any, which shall be released and terminated at Seller's cost at the Closing (the "**Existing Liens**") and (B) matters (such as taxes and assessments not yet delinquent) which will be prorated between the parties at Closing. If Buyer shall not have notified Seller of Buyer's Title Objections within such time specified above, Buyer shall be deemed to have approved the condition of title to the Real Property as shown by the Preliminary Title Report and elected to proceed toward Closing and the entire Earnest Money Deposit shall be non-refundable to

Buyer except in the case of Seller default or as otherwise expressly provided to the contrary in this Agreement.

(b) Seller shall have ten (10) days after Seller's receipt of Buyer's Title Objections (if any) within which to advise Buyer, in writing, whether Seller will attempt to cure any or all of Buyer's Title Objections by Closing ("**Seller's Title Notice**"). If Seller does not so notify Buyer within the time specified, Seller shall be deemed to have delivered Seller's Title Notice to Buyer on the tenth (10<sup>th</sup>) day after receiving Buyer's Title Objections stating that Seller is unwilling to cure Buyer's Title Objections.

(c) On or before the tenth (10<sup>th</sup>) day after Buyer's receipt (or deemed receipt) of Seller's Title Notice, if Seller shall not have agreed to cure or attempt to cure all of Buyer's Title Objections, Buyer shall either (i) waive, in writing, the curing of such Buyer's Title Objections as Seller shall have been unwilling to cure and proceed toward Closing; or (ii) elect to terminate this Agreement by giving written notice to Seller, in which event the Earnest Money Deposit (less the \$5,000 previously released to Seller) shall be returned to Buyer and this Agreement shall terminate as provided in Section 2.5 hereof. Notwithstanding the foregoing, if Buyer fails to so provide such notice, Buyer shall be deemed to have elected to cancel this Agreement, in which event the Earnest Money Deposit (less the \$5,000 previously released to Seller) shall be returned to Buyer and this Agreement shall terminate as provided in Section 2.5 hereof. If Seller shall elect to attempt to cure Buyer's Title Objections and should Seller thereafter fail to cure Buyer's Title Objections by the Closing, Buyer shall either (A) waive, in writing, the curing of such Buyer's Title Objections and proceed toward Closing; or (B) elect to terminate this Agreement by giving written notice to Seller, in which event the Earnest Money Deposit (less the \$5,000 previously released to Seller) shall be returned to Buyer and this Agreement shall terminate as provided in Section 2.5 hereof. Notwithstanding the foregoing, if Buyer fails to so provide such notice, Buyer shall be deemed to have elected to cancel this Agreement, in which event the Earnest Money (less the \$5,000 previously released to Seller) shall be returned to Buyer and this Agreement shall terminate as provided in Section 2.5 hereof.

(d) If at any time prior to Closing, Title Insurer shall issue a supplemental title report which discloses additional matters (other than matters created by or with the written consent of Buyer or arising as a result of any work performed by or other activities of Buyer regarding the Real Property), the provisions set forth above in this Section 2.3.2 shall govern the review, objection and resolution obligations of the parties with respect to such additional matters; provided that Buyer shall have only ten (10) days to deliver any objection to Seller following Buyer's receipt of such supplemental report and copies of any additional documents disclosed therein. If Buyer fails to deliver any objection, Buyer shall be deemed to have elected to proceed toward Closing and the Earnest Money Deposit shall be non-refundable to Buyer except in the case of Seller default or as otherwise expressly provided to the contrary in this Agreement.

**2.3.3 Condition of Title.** Seller shall preserve title to the Property and at the time of closing shall deliver the Property in substantially as good condition with respect to title as of the date of the Preliminary Title Report, except to remove an objectionable item.

## 2.4 Inspection of Business Assets.

2.4.1 Investigation Period. For a period of sixty (60) days from the Opening of Escrow (the "**Investigation Period**"), Buyer shall have the right to satisfy itself that all aspects of the Business Assets are acceptable to Buyer, which right shall include the right to inspect the interior of the water tanks used by Seller in the operation of the Business. Seller acknowledges and agrees that such inspection of the water tanks will require that the water level in said tanks be drawn down during the Investigation Period. Buyer's obligations hereunder shall be conditioned upon Buyer's satisfaction with or waiver of such matters, which satisfaction or waiver shall be in Buyer's sole and absolute discretion. If Buyer, at any time on or before the expiration of the Investigation Period, gives written notice to Seller and Escrow Agent that Buyer does not approve of the Business Assets, then the Escrow shall be terminated, the Earnest Money shall be returned to Buyer and this Agreement shall be terminated in accordance with the provisions of Section 2.5. Buyer's failure to notify Seller in writing prior to the expiration of the Investigation Period of Buyer's election to terminate this Agreement in accordance with the terms of this Section 2.4.1 shall be deemed Buyer's election to waive its right to cancel this Agreement pursuant to this Section 2.4.1 and proceed to Closing.

2.4.2 Review of Documents. Seller shall, within ten (10) business days of the Opening of Escrow, deliver to Buyer for review by Buyer, to the extent in existence and in Seller's possession or control, or reasonably obtainable by Seller, as of the date of this Agreement, all of the documents and information pertaining to the Business Assets and list on Exhibit "E" attached hereto (the "**Due Diligence Materials**").

2.4.3 Access. Seller shall (a) permit Buyer and its representatives, at Buyer's expense, reasonable access during normal business hours to all of Seller's assets, properties, contracts, documents, book, records, tax returns and reports, and other information pertinent to Buyer's due diligence investigation of the Business Assets and the Business, (b) provide Buyer and its representatives the opportunity to inspect and audit Seller's books and records and otherwise to make reasonable investigations of the Business Assets and the Business, and (c) furnish to Buyer and its representatives all reasonable information with respect to the Business Assets and the Business that Buyer may reasonably request.

## 2.5 Termination.

Upon any termination by either of the parties hereto as expressly allowed under this Agreement: (a) Buyer shall promptly return to Seller any materials concerning the Business Assets previously delivered by Seller or Seller's representatives to Buyer; (b) any funds held by Escrow Agent shall be immediately delivered by Escrow Agent to the party entitled thereto as specified by this Agreement; and (c) the parties shall thereafter be relieved from further liability hereunder, except with respect to any obligations which expressly survive the termination of this Agreement. A copy of any notice of termination allowed under this Agreement shall also be sent to Escrow Agent by the party electing to terminate.

## 2.6 Limitations.

The purchase of the Assets pursuant hereto shall not constitute a purchase of Seller by Buyer nor render Buyer a successor in interest to Seller. This Agreement is limited to the purchase and sale of the Business Assets only and Buyer is not assuming any liabilities of

Seller with respect to the Assets or the Business which may exist at any time prior to their transfer hereunder.

2.7 Retained Liabilities.

Buyer shall not assume any indebtedness, liabilities or obligations of Seller, including without limitation prepayments and cash deposits made by customers, or any claims against Seller, whether such indebtedness, liabilities, obligations or claims relate to payment, performance or otherwise, of any of the Payables or any other indebtedness, liabilities, obligations or claims (collectively, "**Retained Liabilities**"). Seller shall pay each of the Retained Liabilities as they become due, and Seller shall promptly repay to customers all prepayments and cash deposits.

Section 3. Purchase Price.

3.1 Total Purchase Price.

Buyer agrees to pay Seller as the total Purchase Price for Seller's interest in the Business Assets, the sum of SEVEN HUNDRED SEVENTY-ONE THOUSAND AND NO/100 DOLLARS (\$771,000.00) payable as follows:

3.1.1 Earnest Money. \$27,500 in cash, payable by Buyer's warrant, which shall constitute the "**Earnest Money**," shall be deposited by Buyer in Escrow with the Escrow Agent by 5:00 p.m., Phoenix time, within three (3) days of the Opening of Escrow. ✓

3.1.2 Cash at Closing. The balance of the Purchase Price, approximately \$743,500.00 plus or minus prorations and other adjustments as provided in this Agreement, if any, shall be due at Closing and shall be paid by Buyer's warrant to Escrow Agent, for and on behalf of Seller, by 1:00 p.m. Phoenix time, on the Closing Date.

3.1.3 Disposition of Earnest Money. The Earnest Money shall be deposited with Escrow Agent. The Earnest Money, including all interest earned thereon, if any, shall be applied (and Buyer shall receive a credit in the amount of the Earnest Money) toward the cash payment of the Purchase Price upon the Closing of this transaction.

3.1.4 Release of Earnest Money to Seller. Installments of the Earnest Money shall become non-refundable to Buyer, except in the event of Seller's default hereunder or except as otherwise expressly provided in this Agreement, and shall be released to Seller, as follows:

(a) \$5,000.00 of the Earnest Money shall, immediately upon deposit by Buyer, be released to Seller. ✓

(b) An additional \$5,000.00 of the Earnest money shall be released to Seller upon Seller's execution and delivery to Buyer of the Option Agreement (as defined below). ✓

(c) An additional \$5,000.00 of the Earnest Money shall be released to Seller upon completion of a meeting, as evidenced by a certificate from Buyer

acknowledging the completion of said meeting, attended by Seller, Buyer and the appropriate representatives of the Arizona State Land Department ("SLD") for the purpose of specifically discussing modifications to the existing restrictions in favor of the SLD encumbering the Option Property (as defined below) so as to permit the use of the Option Property by Buyer for general municipal purposes.

(d) An additional \$7,500 of the Earnest Money shall be released to Seller upon Seller's filing of an application with the ACC, in form and content reasonably acceptable to Buyer, for the approval of the sale of Seller's Business Assets to Buyer. Escrow Agent shall have no obligation to release the portion of the Earnest Money referenced in this subparagraph (d) until it shall have received written notice from Buyer stating that Seller has complied with the necessary condition precedent to such release.

(e) The final \$5,000 of the Earnest Money shall be released to Seller upon the expiration of the Investigation Period, unless Buyer shall have previously exercised its right to terminate this Agreement in accordance with the provisions of Section 2.4.1 hereof.

### 3.2 Allocation.

Pursuant to Section 1060 of the Internal Revenue Code, the consideration for the Business Assets shall be allocated in accordance with the form of Exhibit "F".

## Section 4. Regulatory Contingency.

### 4.1 Contingencies.

Buyer's obligations under this Agreement are contingent upon Seller obtaining (a) all necessary approvals from the ACC for the sale of Seller's Business Assets and (b) if required, any necessary approvals from Maricopa County for the transfer of ownership of the Business Assets from Seller to Buyer (collectively, the "**Regulatory Approvals**"). Closing under this Agreement shall not occur until such Regulatory Approvals have been obtained and placed in Escrow. Seller shall assume all risks and liabilities associated with compliance with the regulatory authority of the ACC regarding this Agreement. Seller shall faithfully and diligently prosecute an application before the ACC requesting ACC Approval including, if Buyer so elects in its sole discretion, the extinguishment of Seller's Certificates of Convenience and Necessity as provided in this Agreement. Buyer shall reasonably cooperate with Seller in the prosecution of that application, including but not limited to filing a position statement with the ACC in support of the application and expressing support for the ACC Approval at any hearings on the application held under ACC jurisdiction by an administrative law judge, hearing officer or the Commission. Buyer shall not be required to take any action that Buyer believes may have the effect of subjecting Buyer to utility regulation by the ACC or may broaden the limited authority of the ACC beyond that of the ACC Approval.

## Section 5. Covenants, Representations and Warranties By Seller and Buyer.

### 5.1 Seller's Representations.

Except as otherwise set forth in this Agreement, and in addition to all other covenants, warranties and representations of Seller herein, Seller hereby represents and warrants to Buyer the following:

5.1.1 Authority. Seller has full power and authority to own and operate the Business Assets and to conduct the Business. Seller has full power and authority and, as to the individual executing this Agreement on behalf of Seller, capacity to make, execute, deliver and perform this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary corporate action on Seller's part. This Agreement is a legal, valid and binding obligation of Seller and is enforceable against Seller in accordance with its terms.

5.1.2 Title. Seller has good and marketable title to the Business Assets free and clear of any Liens and, upon the Closing, Buyer shall have and receive good and marketable title to the Business Assets free and clear of any Liens.

5.1.3. No Other Sale. Seller has not entered into, and there is not existing as of the date of this Agreement, any other agreement, written or oral, under which Seller is obligated to sell the Business Assets or any portion thereof to any third party.

5.1.4 Liabilities. Seller has no actual knowledge of any judgments, liens, actions or proceedings pending against Seller or the Business Assets which would adversely affect this transaction or the title which Buyer will receive, other than as set forth in the Preliminary Title Report.

5.1.5 Liens. No judgments, liens, security interests or other monetary obligations against the Business Assets will be outstanding at the time of Closing, except Permitted Encumbrances and current real estate taxes which are not yet due and payable.

5.1.6 Labor, Materials. All bills and invoices for labor and materials furnished to or on behalf of the Business Assets which have been incurred by Seller prior to the time of conveyance and transfer to Buyer, if any, will be paid by Seller and acknowledged in writing as paid by the laborer or supplier, as the case may be.

5.1.7 Compliance. To the best of Seller's knowledge, the operation of the Business and the use of the Business Assets and the Real Property have been and are being conducted in accordance with all applicable laws, ordinances, rules and regulations of all Authorities having jurisdiction. Seller has not received notice that any Authority presently claims Seller's conduct or operation of the Business, use or ownership of the Business Assets, or use of the Real Property, to be in violation of any law, ordinance, rule, regulation or order of any Authority, and Seller does not know of any circumstance that might give rise to such a claim by any Authority and to the best of Seller's knowledge no such violation exists.

5.1.8 Proceedings. There are no actions, suits or proceedings pending or, to the best of Seller's knowledge, threatened against Seller, at law or in equity, before or by any court, arbitrator or Authority that, individually or in the aggregate, would have a material adverse effect upon the Business or the Business Assets if conducted and used in the manner heretofore conducted and used, or would adversely affect the validity of this Agreement or its enforceability against Seller, the consummation by

Seller of the transactions contemplated hereby, or the compliance with the terms hereof by Seller. Seller is not a party to or bound by any agreement or any judgment, order, writ, injunction or decree of any court or Authority that prevents or restricts Seller from performing this Agreement.

5.1.9 Taxes. All sales or transaction privilege taxes, personal and real property taxes, payroll (including, Medicare and FUTA) and withholding taxes (including federal and state withholding), and income taxes that are required to be paid by Seller as shown on tax returns filed by Seller prior to the date of this Agreement, or as subsequently assessed by the taxing Authority, with respect to the Business Assets or the operation of the Business, have been paid, other than current property taxes that are not yet delinquent. All such sales, income, property, payroll and withholding tax returns of Seller, required to be filed prior to the date of this Agreement, have been filed. No agreements made by Seller for the extension of time for the assessment of any such taxes is now in force.

5.1.10 Equipment. All machinery, equipment and other operable tangible personal property included in the Equipment is clean and in good working condition, and Seller shall maintain, until the Closing Date, the Equipment in a clean and good working condition.

5.1.11 No Violations. The execution and delivery of this Agreement do not, and the consummation of the transactions contemplated by this Agreement by Seller and the compliance with the terms, conditions and provisions of this Agreement by Seller will not: (a) contravene any provision of the articles of incorporation or bylaws of Seller; (b) either (i) result in a breach or constitute a default (or an event that might, with the passage of time or the giving of notice, or both, constitute a default) under, or (ii) result in or permit the termination or amendment of any provision of, or (iii) result in or permit the acceleration of the maturity or cancellation of performance of any obligation under, or (iv) result in the creation or imposition of any Lien upon, any of the Business Assets or give to any person any interest or rights under any indenture, mortgage, loan or credit agreement, license, contract or other agreement or commitment to which Seller is a party or by which Seller or the Business Assets or the Business is bound or affected, or any judgment or order of any court or Authority or any applicable law, rule or regulation.

5.1.12. No Bankruptcy. Seller has not (a) made a general assignment for the benefit of creditors, (b) filed any voluntary petition or suffered the filing of an involuntary petition by Seller's creditors, (c) suffered the appointment of a receiver to take all, or substantially all, of Seller's assets, (d) suffered the attachment or other judicial seizure of all, or substantially all, of Seller's assets, or (e) admitted in writing its inability to pay its debts as they fall due, and no such action is threatened or contemplated.

5.1.13 Best Actual Knowledge. All information prepared by Seller and provided or to be provided by Seller to Buyer and all representations by Seller are accurate to the best of Seller's actual knowledge without Seller having made any specific investigation thereof; as to all other information provided or to be provided by Seller to Buyer, Seller knows of no inaccuracies,

5.1.14 Regulations. To the best of Seller's actual knowledge, there are currently no violations of any applicable zoning regulation or ordinance or other law, order, ordinance, rule, regulation or requirement, or of any covenant, condition or restriction affecting or relating to the use or occupancy of the Property from any governmental agency having jurisdiction over the Business Assets or from any other person entitled to enforce the same.

5.1.15 Permits. Seller has all permits, licenses, authorization and approvals required by law or any governmental agency to conduct the Business.

5.1.16 Condemnation. To the best of Seller's knowledge, there are no pending or threatened condemnation or eminent domain proceedings which would affect the Business Assets.

5.1.17 Disclosure. None of the representations or warranties made by Seller in this Agreement, nor any document, statement, certificate, schedule or other information furnished or to be furnished to Buyer pursuant to this Agreement or in connection with the transaction contemplated hereunder contains, or will as of the Closing Date contain, any untrue statement or a material fact, or omits, or will as of the Closing Date omit, to state a material fact necessary to make the statements of facts contained therein not misleading.

5.1.18 Creditors. As of the closing except as set forth in Section 12, all bills and invoices for goods and services related to or which are a part of the Business Assets, if any, shall be paid; all Creditors shall be paid; all employees (if any) and salaries, wages, bonuses, vacation pay and benefits accrued up to the date of Closing shall be paid; all withholdings, payroll taxes, unemployment insurance, worker's compensation benefits, and all other similar payments shall be paid current to the date of Closing; and no claims by Creditors shall exist which may encumber the Business Assets.

5.1.19 Organization. Seller has been duly formed and presently exists as an Arizona corporation, and has the full right and authority to enter into this Agreement, to consummate the sale contemplated herein and to observe and perform all of its covenants and obligations hereunder. The person executing this Agreement and any other document required hereby has full authority to act on behalf of and to bind the Seller in and to the obligations imposed on it by this Agreement. Seller shall furnish to Buyer such documentation to evidence such authority as Buyer may reasonably request.

5.1.20 Environmental Matters. Seller has used the Business Assets and the Real Property only for the conduct of the Business.

(a) There is not now on or under the Real Property, including the soil, drywells, wells, sumps, surface water and groundwater, any Hazardous Materials, and Seller is not aware of any Hazardous Materials on or under the Real Property; there are no underground storage tanks, underground gasoline or diesel tanks, or underground vessels located on the Real Property.

(b) Neither Seller nor the Real Property has been or currently is subject to any judicial or administrative proceedings, or civil or criminal complaint alleging a

violation of any federal, state or local governmental health and safety statute or regulation.

(c) Neither Seller nor the Real Property has been or currently is subject to any federal, state or local investigation evaluating whether any remedial action is needed to respond to the release of Hazardous Materials.

(d) There are no conditions on the Real Property that may give rise to any claim by a regulatory agency or a third party for violation of any federal, state or local environmental or health and safety statute or regulation.

(e) Seller has not generated, used, treated, transported to or from, stored or disposed of Hazardous Materials on, under or about the Real Property, and there is nothing that may prevent or interfere with the continued use of the Real Property or the continued operation of the Business in full compliance with all applicable environmental laws.

(f) The term "**Hazardous Materials**" includes any material or substance defined or treated in any environmental law as posing potential risk to persons, property, public health, safety, welfare or the environment and all waste, materials and substances that could lead to any liability, costs, damages and/or penalties under any environmental law or permit, including, without limitation, "solid waste," "hazardous substances," "hazardous air pollutant," "asbestos," "pollutant," "contaminant," "hazardous material," "hazardous waste," "toxic chemical," "petroleum or petroleum products," "toxic," "hazardous chemical," "extremely hazardous substance," "pesticide," or "chemical substance" as those terms are now or hereafter defined, deemed, determined, classified or regulated by any federal, state or local law, regulation, ordinance, policy or directive dealing with health, safety or the environment.

The "actual knowledge" of Seller, as used in this Section 5.1, means the actual, present knowledge of Abraham Harris, III as of the date of this Agreement. As to any of the representations or warranties in this Section 5.1 that are based on Seller's knowledge, if, after the date of this Agreement and prior to the Closing, Seller obtains actual knowledge (as defined in the first sentence of this paragraph) that any of such representations or warranties have become incorrect or inaccurate in any material respect, then Seller shall give notice thereof to Buyer by 5:00 p.m., Phoenix time, on the date that is three (3) business days immediately following the date on which Seller obtains knowledge of such incorrectness or inaccuracy. Upon giving such notice, Seller's representations and warranties in this Section 5.1 shall be deemed modified to the extent described in the notice. Notwithstanding the foregoing, if Seller gives Buyer notice under this paragraph of the modification of any of Seller's representations or warranties, Buyer shall have until 5:00 p.m., Phoenix time, on the date that is seven (7) business days immediately following the date on which Buyer receives Seller's notice to give Seller notice of Buyer's objection to such modifications if Buyer reasonably determines that the new facts or conditions disclosed by such modifications reasonably could have a negative impact on Buyer's proposed development or use of the Business Assets. If Buyer delivers the objection notice within the time provided, Buyer and Seller shall proceed to negotiate in good faith to resolve such objections; however, Seller shall have no obligation to pay any monies or incur any liabilities or obligations to accomplish such resolution. If Buyer's

objections are not resolved by the earlier of: (a) 5:00 p.m., Phoenix time, on that date that is ten (10) days immediately following the date on which Seller receives notice of Buyer's objections; or (b) 12:00 noon, Phoenix time, on the Closing Date (the "**Resolution Deadline**"), then Buyer shall either: (i) terminate this Agreement by giving written notice of such termination to Seller and Escrow Agent by the Resolution Deadline and Escrow Agent and/or Seller, as applicable, shall immediately return the Earnest Money to Buyer; or (ii) waive such objections and proceed with Closing. If Buyer does not give notice of termination by the Resolution Deadline, Buyer shall be deemed to have waived its right to terminate this Agreement pursuant to this paragraph.

Notwithstanding anything to the contrary contained in this Agreement, it is understood and agreed that all representations and warranties of Seller set forth in this Agreement shall survive the Closing of this Agreement.

## 5.2 Buyer's Representations.

Buyer hereby represents to Seller as follows:

5.2.1 Authority. Buyer has been duly formed and presently exists as a municipal corporation under the laws of the state of Arizona, and the entering into of this Agreement and the performance of Buyer's obligations hereunder have been duly authorized by all proper and necessary actions, and do not violate any applicable governmental statute, rule, regulation, ordinance, contract or other restriction. The person executing this Agreement and any other documents required hereby has full authority to act on behalf of and to bind the Buyer in and to the obligations imposed on it by this Agreement.

5.2.2 Binding Agreement. This Agreement and all documents required to be executed by Buyer are and shall be valid, legally binding obligations of Buyer, enforceable against Buyer in accordance with their terms.

## 5.3 Joint Representations and Warranties.

Seller and Buyer represent and warrant to each to the other that they have not dealt with any real estate broker or agent in connection with the purchase and sale transaction that is the subject matter of this Agreement, and each party agrees to indemnify, defend and hold harmless the other from and on account of any claims, demands, costs and expenses including, but not limited to, reasonable attorneys' fees, that may be asserted against, suffered or incurred by the indemnitee on account of the default by the indemnitor under this Section 5.3. Seller's and Buyer's representations and warranties set forth in this Section 5.3 shall survive the termination of this Agreement.

## 5.4 Covenants of Seller.

5.4.1 Conduct of Business. From and after the execution of this Agreement by the parties and until Closing, Seller shall preserve its business organization intact. Except as otherwise permitted by this Agreement or approved in advance by Buyer in writing, until the Closing:

(a) The Business shall be conducted only in the ordinary course and consistent with past practice, which without limitation shall include compliance with all applicable laws, regulations and administrative orders of all Authorities the noncompliance with which could, individually or in the aggregate, have a material adverse effect on the Business;

(b) Seller shall maintain in full force all insurance policies, fidelity bonds and performance bonds currently in force and shall pay when due all premiums for all such policies and bonds;

(c) Seller shall not engage in any activities or transactions that are outside the ordinary course of the Business or inconsistent with past practice that, individually or in the aggregate, would have a material adverse effect on the Business; and

(d) Seller shall not make any commitments or take any actions that would or might cause any of Seller's representations and warranties in this Agreement to be untrue, inaccurate or incomplete.

(e) Seller shall pay and discharge when due all liabilities and obligations of Seller relating to the Business Assets and the Business through the Closing Date.

(f) Seller shall perform all of its obligations under contracts relating to the Business Assets or the Business.

(g) Seller shall not enter into any contract or commitment, incur any liability, absolute or contingent, waive any right or enter into any other transaction that could materially and adversely affect the Business Assets or the conduct of the Business.

(h) Seller shall not mortgage, pledge, hypothecate or encumber any of the Business Assets.

5.4.2 Seller's Taxes. Seller shall pay before delinquent all the following taxes of Seller and the Business, to the extent applicable: (a) income taxes; (b) transaction privilege or sales taxes and use taxes; (c) payroll taxes (including, without limitation, federal and state withholding, FICA, Medicare and FUTA); (d) income taxes due on the sale by Seller and the purchase by Buyer of the Business Assets; and (e) transfer taxes, filing fees, transfer fees, lien release fees, set-up and termination fees and collection service fees if any. Seller shall obtain and deliver to Buyer, as soon as reasonably practicable, a certificate of good standing from the Arizona Department of Revenue to the Seller to the effect that Seller has filed its income, withholding or payroll, and transaction privilege tax returns on a current basis and that Seller has no outstanding liabilities thereunder, such certificate to be dated as close to the Closing Date as is practicable.

## Section 6. Indemnification.

### 6.1 Seller.

Seller shall indemnify, defend and hold Buyer harmless against and in respect of:

6.1.1 All liabilities and obligations of, or claims against the Business Assets not expressly assumed by the Buyer herein;

6.1.2 Any damage or deficiency prior to Closing resulting from any misrepresentation, breach of warranty or nonfulfillment of any agreement on the part of the Seller hereunder or from any misrepresentation in or omission from any certificate or other instrument furnished or to be furnished to the Buyer under this Agreement; and

6.1.3 All actions, suits, proceedings, demands, claims, assessments, judgments, costs and expenses incident to any of the foregoing or any obligations or liabilities of Seller in connection with the Business Assets transferred hereunder arising out of the Business prior to the date of Closing.

Buyer shall promptly notify Seller in writing of any claim, act or notice which could give rise to a claim of indemnification under this Agreement. If Seller desires to contest the claim, it shall do so at its sole cost and expense without reimbursement from Buyer and shall keep Buyer advised as to the status of the defense as reasonably required by Buyer. If Seller shall fail to successfully contest a claim as provided for above; pay a claim or final judgment rendered against it; or remove any lien or attachment within ten (10) days after imposition, then Buyer may, but shall not be obligated to, pay any such claim, judgment or lien. In the event of such payment by Buyer, Buyer shall be entitled to an offset in the amount so paid by Buyer, plus costs, actual attorneys' fees and costs, and interest at the legal rate in connection therewith. In the event Buyer claims any such offset hereunder, Buyer shall so notify Seller in writing. Any amount due Buyer not paid by such offset shall be immediately due and payable by Seller. The provisions of this Section 6.1 shall survive Closing.

## 6.2 Buyer.

To the extent permitted by law, Buyer shall indemnify, defend and hold Seller harmless against and in respect of:

6.2.1 Any costs, expenses, damages or deficiencies resulting from any misrepresentation, breach of warranty or nonfulfillment of any agreement on the part of Buyer hereunder or from any misrepresentation in or omission from any certificate or other instrument furnished or to be furnished to Seller by Buyer under this Agreement:

Seller shall promptly notify Buyer in writing of any claim, act or notice which could give rise to a claim of indemnification under this Agreement. Seller shall not settle, pay or confess judgment with regard to such claim if Seller receives from Buyer within fifteen (15) days after the aforesaid notice of such claim a statement in writing by Buyer that Buyer will diligently defend the claim. If Buyer desires to contest the claim, it shall do so at its sole cost and expense without reimbursement from Seller and shall keep Seller advised as to the status of the defense as reasonably required by Seller. If Buyer shall fail to successfully contest a claim as provided for above; pay a claim or final judgment rendered against it; or remove any lien or attachment within ten (10) days after imposition, then Seller may, but shall not be obligated to, pay any such claim, judgment or lien. In the event of such payment by Seller, the amount of such payment plus costs, and actual attorneys' fees together with interest thereon at the

legal rate per annum shall be paid by Buyer to Seller within thirty (30) days. The provisions of this Section 6.2 shall survive Closing.

## Section 7. Tax Claims

### 7.1 Determination

The parties shall jointly determine whether there exist any Tax Claims upon the execution of this Agreement or as soon thereafter as is practicable. If any such claims exist, Seller shall take all steps necessary to effect removal and/or satisfaction of any such claims, whether by assertion, levy, lien and administrative or judicial action, prior to the Closing Date. Filing of an unconditional Disclaimer of Interest by the taxing jurisdiction will satisfy the requirements of this Section 7.1 as to Tax Claims by the referenced taxing jurisdictions. In the event that Seller does not effect removal and/or satisfaction of one or more Tax Claims prior to the Closing Date, Buyer is authorized to withhold from the Purchase Price an amount that Buyer determines in good faith is reasonably necessary and prudent to ensure that all outstanding Tax Claims can be satisfied in full.

### 7.2 Indemnification for Tax Claims.

Seller shall hold Buyer harmless against all assertions, liens or attempts to collect on Tax Claims against Buyer or the Business Assets and all revenues Buyer receives from operating the Subject Water Facilities, and shall reimburse Buyer for its reasonable attorneys' fees, costs and expenses, as well as damages and losses proven by Buyer, as a result of all Tax Claims. The provisions of this Section 7.2 shall survive the Closing

## Section 8. Conditions Precedent.

### 8.1 Buyer's Conditions Precedent.

The following are conditions precedent to the obligations of Buyer under this Agreement. If any of the conditions are not satisfied or expressly waived by Buyer in its sole discretion within the time provided in this Agreement, Buyer may terminate this Agreement and receive the return of all Earnest Money, in which event Buyer and Seller shall have no further duties, liabilities or obligations under this Agreement except those that expressly survive termination of this Agreement. In addition to the foregoing, Buyer may conditionally waive the conditions precedent set forth in this Section 8.1 by delivery of written notice to Seller:

8.1.1 On or before the expiration of the Investigation Period, Buyer shall have approved of all matters which Buyer is entitled to inspect, review or approve pursuant to Sections 2.3 and 2.4 of this Agreement.

8.1.2 Seller's warranties, representations and covenants contained in this Agreement are true and correct as of the Closing Date in all material respects, and Seller shall have performed each covenant and obligation of Seller set forth in this Agreement.

8.1.3 Seller shall have provided to Buyer copies of its company resolutions providing that Seller is authorized to sell the Business Assets to Buyer in accordance with the terms of this Agreement (as amended, if applicable) and to enter into, executive, deliver and perform this Agreement and that Abraham Harris, III is

authorized on behalf of Seller to execute and deliver all documents relating thereto (the "**Seller Resolutions**").

8.1.4 Seller's legal counsel shall have provided to Buyer a legal opinion ("**Seller's Legal Opinion**"), in form and content reasonably acceptable to Buyer, opining that (i) Seller has the requisite corporate power and authority to sell the Business Assets to Buyer and (ii) the execution, delivery and performance of the Agreement have been duly authorized by all requisite corporate action on the part of Seller.

8.1.4 The physical condition of the Equipment shall be in a clean and good working condition on the Closing Date.

8.1.5 All Regulatory Approvals have been obtained.

8.1.6 To the best of Seller's knowledge, no statute, rule or regulation of any court or Authority shall be in effect that restrains or prohibits the transactions contemplated by this Agreement or that would adversely affect the ownership and operation of the Business Assets in the manner in which the Business Assets have been owned and operated by Seller. There shall not be pending or threatened any litigation, suit, action or proceeding by any party that (i) would adversely affect the ownership or operation of the Business Assets as owned and operated by Seller; (ii) seeks to restrain or prohibit the transactions contemplated by this Agreement; (iii) challenges the legality or validity of the transactions contemplated by this Agreement; or (iv) seeks damages from Buyer as a result of the transactions contemplated by this Agreement.

8.1.7 Seller have provided either (a) evidence reasonably satisfactory to Buyer that easements for waterlines exist in the locations shown on the attached Exhibit "F" or (b) easements for water lines in said locations, executed and acknowledged by the owners of the properties to be subjected to said easements, in form and content reasonably acceptable to Buyer.

8.1.8 The parties shall each have executed that certain Real Estate Purchase Option Agreement (the "**Option Agreement**"), in such form as shall have been reasonably agreed upon by the parties, granting to Buyer the option to purchase from Seller that certain real property located in Maricopa County, Arizona, and legally described in Exhibit "G" attached hereto (the "**Option Property**"), said option to extend for a period of ten (10) years from the date of the Option Agreement and to permit Buyer to purchase the Option Property for a purchase price equal to the appraised value of the land at the time the option to purchase the Option Property is exercised.

## 8.2 Seller's Conditions Precedent.

The following are conditions precedent to the obligations of Seller under this Agreement. If any of the conditions are not satisfied or expressly waived by Seller in its sole discretion within the time provided in this Agreement, Seller may terminate this Agreement and all Earnest Money shall be returned to Buyer (unless the failure of a condition is the result of Buyer's breach of this Agreement, in which case the provisions of Section 16.2 below shall apply), and Buyer and Seller shall have no further duties, liabilities or obligations under this Agreement except those that expressly survive termination of this Agreement. In addition to

the foregoing, Seller may conditionally waive the conditions precedent set forth in this Section 8.2 by delivery of written notice to Buyer:

8.2.1 Buyer's warranties, representations and covenants contained in this Agreement are true and correct as of the Closing Date in all material respects.

8.2.2 Buyer shall have performed each covenant and obligation of Buyer set forth in this Agreement, including, without limitation, the timely delivery of the Purchase Price.

8.2.3 Each party has executed the Option Agreement.

8.2.4 All Regulatory Approvals have been obtained.

8.2.5 No statute, rule or regulation or order of any court or Authority shall be in effect that restrains or prohibits the transactions contemplated by this Agreement.

### 8.3 Cooperation.

Buyer and Seller shall reasonably cooperate in connection with the satisfaction of the closing conditions, including, without limitation, executing any necessary applications or other required documents.

## Section 9. Escrow Agent.

### 9.1 Closing Agent.

The Escrow Agent shall serve as the Closing agent for this transaction.

### 9.2 Delivery of Transfer Instruments.

The Transfer Instruments and any other documents required by this Agreement or applicable laws shall be placed by the parties into escrow with the Escrow Agent and shall be delivered to the appropriate party upon Closing.

### 9.3 Other.

The Escrow Agent agrees to do all things reasonably required by the terms of this Agreement to close this transaction.

## Section 9. Closing Date.

The Closing of this sale shall take place on or before \_\_\_\_\_ [given timeline for ACC approval, this date will probably need to be early in 2013). In the event the parties wish to extend the Closing Date, they may do so provided a written instrument is executed by the parties and delivered to the Escrow Agent setting a new date for Closing. The new Closing date shall also be the new date for proration.

## Section 10. Closing Documents.

### 10.1 Seller's Deposits.

Prior to Closing, Seller shall deposit in escrow for delivery to Buyer, the following:

10.1.1 The Transfer Instruments required by this Agreement.

10.1.2 Any other documents or instruments required by this Agreement.

10.1.3. Any other instruments necessary to or reasonably required by Buyer to effectuate the transaction contemplated herein.

10.2 Buyer's Deposits.

Prior to Closing, Buyer shall deposit in escrow for delivery to Seller the following:

10.2.1 All sums required of Buyer to close this transaction.

10.2.2 Such Transfer Instruments as are required of Buyer.

10.2.3 Any other instruments necessary to or reasonably required by Seller to effectuate the transaction contemplated herein.

Section 11. Costs.

Costs of Closing and/or expenses connected with the transfer of the Business Assets and the sale thereof shall be divided between Buyer and Seller, and paid through escrow, as follows:

11.1 Attorneys' Fees.

Each party shall pay its own attorneys' fees and costs.

11.2 Escrow Fees.

The escrow fee and all filing and recording fees shall be divided equally between Buyer and Seller, to the extent that such recording fees or filing fees are for the Transfer Instruments. If any recording fees or filing fees are necessary as a result of recordings required to clear title, they shall be paid by Seller.

11.3 Title Insurance.

The premium for the standard title insurance policies required to be provided by this Agreement shall be paid by Seller. Buyer shall pay the difference between the standard premium and an extended premium, if any.

Section 12. Prorations.

All of the following in 12.1 and 12.2 shall be prorated as of 12:01 a.m. on the Date of Closing.

12.1 Taxes.

All current real estate taxes against the Real Property. Any delinquent taxes, penalties and interest thereon for the Real Property shall be paid by Seller on or before Closing.

12.2 Assessments.

All current assessments, both principal and interest, against the Real Property. Any delinquent amounts shall be paid by Seller on or before Closing.

12.3 Other.

12.3.1 Insurance shall be canceled by Seller as of Closing.

12.3.2 Telephone bills and listings shall be prorated.

12.3.3 Utility service shall be transferred by Seller to Buyer as of Closing.

12.3.4 Utility deposits, if any, shall be returned to Seller, and Buyer shall make its own utility deposit arrangements.

12.3.5 Maintenance contracts for services, supplies or Equipment as approved by Buyer in writing, shall be prorated as of Closing.

12.3.6 Leases for Equipment (including vehicles if any) shall be prorated as of Closing.

12.3.7 Personal property tax shall be prorated as of Closing.

12.3.8 Billing and collections shall be prorated in accordance with Section 19.

Section 13. Risk of Loss.

13.1 Prior to Closing.

The risk of loss for damage by fire or other casualty, or the taking by eminent domain, until Closing, shall be assumed by and shall be the responsibility of Seller. Upon the happening of any material loss and within ten (10) business days after notification thereof, Buyer may elect in writing to terminate this Agreement or close the sale. If any election to terminate the Agreement is made, the Earnest Money shall be returned to Buyer and this Agreement shall thereupon become null and void. In the alternative, if an election to proceed with Closing is made by Buyer, any insurance proceeds and/or condemnation award in connection with the loss shall be assigned to Buyer, but there shall be no adjustment to the Purchase Price.

13.2 After Closing.

The risk of loss or damage by fire or other casualty, or the taking by eminent domain, shall be assumed by Buyer after the Closing date.

Section 14. Insurance.

Buyer shall place its own insurance coverage on the property and Seller shall terminate any insurance coverage it may have as of Closing. Escrow Agent shall not be responsible for monitoring this change.

Section 15. Assignment of Agreement.

The rights of any party under this Agreement are not assignable without the prior written consent of the other party, which may only be withheld with cause.

## Section 16. Default.

16.1 Default by Seller. If Seller breaches or is in default under any of its obligations hereunder, and provided that Buyer is not then in breach or default of its obligations hereunder, then Buyer, at Buyer's option, shall be entitled to (i) seek specific performance of Seller's obligations hereunder; (ii) terminate this Agreement by written notice to Seller and Escrow Agent, in which event the Earnest Money, any accrued interest thereon and all other sums previously deposited by Buyer with Escrow Agent or which were paid to Seller on account of this Agreement shall be returned to Buyer, and Buyer may pursue any claim for its actual damages not to exceed \$50,000.00 plus attorneys' fees and costs as provided by law; or (iii) waive such breach and proceed to Closing. Notwithstanding any such termination, Buyer shall have the continuing right to enforce any surviving obligations provided for in this Agreement.

16.2 Default by Buyer. If Buyer breaches or is in default under any of its obligations hereunder, and provided that Seller is not then in breach or default hereunder, Seller as its sole remedy for Buyer's breach shall be entitled to terminate this Agreement by written notice to Buyer and Escrow Agent, in which event Seller shall be entitled to receive (or retain if Seller has already received) the Earnest Money as liquidated damages for Buyer's breach, and this Agreement shall terminate. Payment to Seller of the Earnest Money shall terminate all of Seller's rights and remedies at law or in equity against Buyer with respect to this transaction for Buyer's breach of this Agreement. The parties hereby agree that the amount of the Earnest Money shall be and constitutes liquidated damages for Buyer's breach of this Agreement, Buyer and Seller acknowledging and agreeing that it is difficult or impossible to determine the actual damages Seller would suffer from Buyer's default under this Agreement and that the agreed upon liquidated damages are not punitive or penalties and are just, fair, and reasonable. Notwithstanding any such termination for Buyer's failure to close this transaction, Seller shall have the continuing right to enforce any surviving obligations provided for in this Agreement.

16.3 Notice and Cure. Notwithstanding anything in this Agreement to the contrary, no party shall ever be in default hereunder unless such breaching party first receives written notice of default from the non-defaulting party hereunder, stating with specificity the purported default or events of default, and thereafter the defaulting party fails to cure such default to the reasonable satisfaction of the non-defaulting party within ten (10) business days of the defaulting party's receipt of such written notice of default.

## Section 17. Customer Deposits.

### 17.1 Seller's Responsibility.

17.1.1 Seller shall retain all customer deposits and meter deposits and Buyer shall not receive any credit against the Purchase Price therefor.

17.1.2 Seller shall be responsible for refunding all customer deposits and meter deposits, and shall do so in accordance with any requirements established by the ACC. Seller shall be entitled to offset customer deposits and meter deposits against amounts due from customers, in accordance with any requirements established by the ACC. Seller shall refund the remaining balance of customer deposits and meter deposits as a credit to the final month's water service billing rendered by Seller, and

shall provide documentation of same to Buyer and to the Arizona Corporation Commission.

#### Section 18. Employees.

##### 18.1 Seller's Responsibilities.

18.1.1 Seller shall be responsible for paying all FICA, existing benefits and accrued vacation pay to all employees employed by seller as of Closing and Seller shall hold Buyer harmless for any claims by or obligations owed to such employees arising by reason of Buyer's acquisition of the Business Assets.

18.1.2 Seller shall terminate the employment of all remaining employees as of midnight on the date of Closing.

18.1.3 Seller shall not make any salary adjustments, nor hire additional employees or promote any employees after the date of this Agreement without the written consent of Buyer.

18.1.4 All independent contract employees (if any) will be canceled upon the effective date of transfer of the Business Assets to Buyer.

#### Section 19. Meter readings and Billings.

##### 19.1 Meter Readings.

The parties shall jointly read all customer meters and agree upon all meter readings on the Closing Date. Seller will bill all customers for water served by Seller prior to the joint meter reading on the Closing Date. Buyer will bill customers for all water served by Buyer following the joint meter reading on the Closing Date. The parties shall cooperate with respect to payments made in the ordinary course by any third party so that Buyer and Seller each receive the third party payments appropriately payable to them under this Agreement. Seller shall be entitled to receive all accounts receivable for water deliveries made by Seller through the joint meter reading on the Closing Date. Buyer shall be entitled to receive all payments for water deliveries made after the joint meter reading on the Closing Date.

#### Section 20. Post-Closing Cooperation

##### 20.1 Access.

Seller shall reasonably cooperate with Buyer with regard to the transfer of Seller's system to Buyer, including but not limited to providing access to Seller's knowledgeable water operators and maintenance personnel to assist Buyer's water operations personnel in becoming familiar with the system and its operations.

##### 20.2 Use of Seller's Personnel

If Buyer were to decide that it needed active assistance of Seller's water operators or other employees on an interim basis after the Closing during the transition of operation of the water system, Seller agrees to provide that assistance for a fee to be negotiated between the parties. In

that event, the employees so provided by Seller would remain Seller's employees and all burdens and obligations of the employer would be borne by Seller, who would remain an independent contractor of Buyer.

20.3 Miscellaneous Charges. The provisions of this Agreement contemplate that the parties will provide, after the Closing, reasonable amounts of information and documentation to each other to allow the purposes of the Agreement and the acquisition to be completed, without charge. This cooperation shall include turning over records, as-builts and other documents (to the extent they exist) to accomplish a transfer of system operations with a minimum of disruption to the water customers and to the orderly processes required. The parties shall cooperate reasonably in resolving any dispute over the documentation and other information and assistance needed.

## Section 21. Miscellaneous Provisions.

### 21.1 Notices.

All notices and communications hereunder shall be in writing and shall be given by personal delivery or mailed first class, registered or certified mail, postage prepaid, and shall be deemed received upon the earlier of actual delivery or one hundred twenty (120) hours after deposit in the United States Mail as aforesaid. Notices to Seller or Buyer as the case may be shall be delivered or mailed to the addresses set forth in Section 1 of this Agreement. In addition, a copy of the notice shall be mailed or delivered to the Escrow Agent in care of the address set forth in Section 1.

### 21.2 Nature of Agreement.

21.2.1 Agreement Negotiated. The terms and provisions of this Agreement represent the results of negotiations between Seller and Buyer, each of which has been represented by counsel of its own choosing and none of which have acted under duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings, and Seller and Buyer hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of the Agreement, including (without limitation) any rule of law to the effect that ambiguous or conflicting terms or provisions contained in this Agreement shall be interpreted or construed against the party whose attorney prepared the executed draft or any earlier draft thereof.

21.2.2 Integration. This Agreement represents the entire agreement of the parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement.

21.2.3 Other Inducements. The parties agree that there are no promises, inducements, representations or agreements in connection with this Agreement except those specifically set forth herein in writing.

21.2.4 Modification. This Agreement may not be changed orally, but only by an agreement in writing, signed by the parties.

21.2.5 Other Agreements. Seller shall not enter into any contracts, leases, agreements or amendments to existing agreements or encumbrances affecting the Business Assets while this Agreement remains in force or subsequent to Closing of this transaction without the express written consent of Buyer, other than to remove a matter which the Title Insurer required be removed to Close.

21.2.6 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement. This Agreement will be binding upon and inure solely to the benefit of the parties and their successors and permitted assigns, and nothing herein, express or implied, is intended to or will confer upon any person or party any legal or equitable right, benefit or remedy of any nature whatsoever.

21.2.7 Right to Cancel. Buyer may cancel this Agreement, pursuant to A.R.S. § 38-511, without penalty or further obligations by Buyer or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of Buyer or any of its departments or agencies is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity or a consultant to any other party to the Agreement with respect to the subject matter of the Agreement.

### 21.3 Relation of Parties.

21.3.1 No Agency. It is expressly agreed and understood by the parties hereto that neither party is the agent, partner, or joint venture partner of the other. It is also expressly agreed and understood that neither Seller nor Buyer has any obligations or duties to the other except as specifically provided for in this Agreement.

### 21.4 Attorney's Fees.

If any party defaults hereunder, the defaulting party shall pay the other party's reasonable attorneys' fees, expert witness fees, travel and accommodation expenses, deposition and trial transcript costs, costs of court and other similar costs or fees paid or incurred by the non-defaulting party by reason of or in connection with the default (whether or not legal or other proceedings are instituted). In the event any party hereto finds it necessary to bring an action at law or other proceeding against the other party to enforce any of the terms, covenants or conditions hereof or any instrument executed in pursuance of this Agreement, or by reason of any breach hereunder, the party prevailing in any such action or other proceedings shall be paid all costs and reasonable attorneys' fees by the defaulting party, and in the event any judgment is secured by such prevailing party, all such costs and attorneys' fees shall be included in any such judgment, with attorneys' fees to be set by the court and not by the jury. In the event the parties elect to arbitrate a dispute, then this section shall also apply to arbitration, except that the provisions referring to a court shall refer to the arbitrator.

### 21.5 Construction.

21.5.1 Time. Time is, of the essence of this agreement. However, if any action is required to be taken on a Saturday, Sunday or legal holiday, the action shall be deemed timely taken if it is taken on the next regular business day.

21.5.2 Headings. The headings of this Agreement have been inserted for convenience of reference only and are to be ignored in any construction of the provisions hereof. Whenever a personal pronoun is used in any one gender, it shall be deemed to include all other genders as the case may require, and the singular shall include the plural, and vice versa, unless the context indicates to the contrary.

21.5.3 Adverbs. Whenever the terms "herein", "hereunder", "hereof", "therefore", "thereover", or similar terms are used, they shall refer to this entire Agreement as a whole and shall not refer solely to any particular section.

21.5.4 Exhibits. All recitals, schedules and exhibits to this Agreement are fully incorporated herein as though set forth at length herein.

21.5.5 State Law. This Agreement and the conveyance provided for herein shall be governed by the laws of the State of Arizona and suit pertaining to this Agreement may be brought only in courts in the State of Arizona.

21.5.6 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon and all of which shall together constitute one and the same instrument. Each of the parties shall be provided with a fully executed original of this Agreement. Signatures of the parties may be submitted via facsimile or other commercially acceptable electronic means (including but not limited to "pdf") and such signatures shall be deemed to be original signatures and fully enforceable.

21.5.7 Severability. If any provision of this Agreement or any portion of any provision of this Agreement shall be deemed to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not alter the remaining portion of such provision, or any other provision hereof, as each provision of this Agreement shall be deemed severable from all other provisions hereof.

## 21.6 Foreign Investment.

Seller shall fully comply with all applicable state and federal laws governing foreign investment, including the Foreign Investment in Real Property Tax Act and Section 1445 of the Internal Revenue Code, as amended from time to time, and shall hold Buyer harmless from any claim or action arising therefrom.

## 21.7 Forms.

Buyer and Seller agree that the forms described herein below shall be the forms, with attached exhibits to those forms as reference exhibits, to be used by the parties to complete the transaction contemplated by this Agreement, together with such other forms as may be required to effectuate the Closing:

20.7.1 Form of Special Warranty Deed as shown on Exhibit "H" attached hereto and made a part hereof.

20.7.2 Form of Assignment of Easements and Property Rights as shown on Exhibit "I" attached hereto and made a part hereof.

20.7.3 Form of Bill of Sale as shown on Exhibit "J" attached hereto and made a part hereof.

20.7.4 Form of Assignment and Assumption of Maintenance Agreements, Service Contracts and Warranties as shown on Exhibit "K" attached hereto and made a part hereof.

20.7.5 Form of Assignment of Water Rights and Well Rights as shown of Exhibit "L" attached hereto and made a part hereof.

Section 22. Bulk Sale Requirements.

In lieu of compliance with Article 6 (Bulk Transfers) of the Arizona Commercial Code, A.R.S. Section 47-6101, et seq., the parties agree, as follows:

22.1 Indemnification.

As set forth above, Seller has agreed to convey the Business Assets free of the claims of any creditors. Therefore, in the event that any creditors make any claim against the proceeds of this transaction or seek to set aside this transaction, then Seller shall indemnify, defend and hold Buyer harmless from any such claims, as set forth under Section 6.1, above.

22.2 Buyer Not Liable for Seller's Debts.

The parties hereto specifically agree that Buyer shall not be liable or obligated for any of Seller's debt or obligations. Accordingly, all such debts or obligations must be paid in full as of Closing if they arose as a result of the purchase of the Business Assets to be transferred hereunder.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date set forth above.

BUYER:

**TOWN OF BUCKEYE,  
ARIZONA**, an Arizona  
municipal corporation

By: Stephen Chulard

Its: Town Manager

ATTEST: Lucinda J. Ipi

Town Clerk

SELLER:

**HOPEVILLE WATER COMPANY,**  
an Arizona corporation

By: [Signature]

Its: PRESIDENT

Approved as to form:

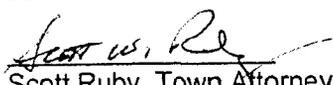
By:   
Scott Ruby, Town Attorney

EXHIBIT "\_\_\_"

List of Due Diligence Materials

"Company" shall mean the Hopeville Water Company, Inc.

1. List of Company's assets
2. Last 3 year's Company tax returns
3. Last 3 years of monthly billings to water users
4. Copies of easements for water lines and facilities
5. Contracts, agreements, warranties, related to the Company or its facilities
6. Last 3 year's power bills paid by the Company
7. Company's financial statements consisting of a balance sheet and the related statement of income and cash flows reflecting the results of operations and financial position of Company at and for the 12-month period ended December 31, 2010, and at and for the 4-month period ended April 30, 2011
8. All permits, licenses, orders or approvals of governmental or administrative authorities, including without limitation, from the Arizona Department of Water Resources, required to permit Company to carry on the business as currently conducted
9. Company's books and records containing a correct and complete list of each of the customers of the Company's business
10. A list of names and titles as of Company's employees, officers, independent contractors and directors, the annual rate of total compensation (including, without limitation, bonuses) being paid to each such employee, officer, independent contractor and director
11. All as-builts and any other plans of the Company's water system
  - a. Waterline sizes and locations, in-service dates
  - b. Meter sizes, types, in-service dates
  - c. Meter routes
  - d. System repair records
  - e. Well plans, including drilling reports, O&M manuals, in-service dates
  - f. Treatment system report, plans, O&M, component in-service dates
  - g. Water productions records
  - h. Water quality records, current and history
  - i. Maintenance records for all equipment and major components
  - j. Records of any inspections and testing of waterlines, systems and components
12. Billing records
  - a. All current meter billing locations, including addresses, meter sizes and similar or related information

- b. History of billing records, deposits, existing balances, payment records, logs and reports.
  - c. Any delinquent accounts.
  - d. Record of any electrical accounts needed for the system. History of these billings
  - e. List of rates, new connection fees and other fees or charges
13. Current management and maintenance agreements/contracts
- a. Any management, maintenance or utility operations contracts in place relating to the water system, operations, staffing or other contractors
  - b. Information on full time and part time utilization of employees working on the system
  - c. Any other contracts for the system
14. All records and documents concerning the real property owned by the Company and being acquired by the City.
- a. Deeds and other title and related documents
  - b. Any agreements currently in place regarding the real property
  - c. Any waterline easements or rights-of-way or other similar or related documents.
15. All organizational documents of the Company, including Articles of Incorporation and Bylaws

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EXHIBIT "B"

PUBLIC NOTICE OF AN APPLICATION FOR THE SALE OF ASSETS AND THE  
CANCELLATION OF THE CERTIFICATE OF CONVENIENCE AND NECESSITY

DOCKET NO. U-2077-12-

**HOPEVILLE WATER COMPANY, INC.  
DBA ALLENVILE WATER COMPANY  
1415 SOUTH PALO VERDE ROAD  
BUCKEYE, AZ 85326**

On December 17, 2012, Hopeville Water Company, Inc. dba Allenville Water Company has filed with the Arizona Corporation Commission an application for authority to sell its assets and cancel its Certificate of Convenience and Necessity to provide water service. Hopeville Water Company, Inc. dba Allenville Water Company's system has been purchased by the Town of Buckeye. If the application is approved, the Town of Buckeye would be the exclusive provider of water service to your area and will establish its own rates and charges. However, the Town of Buckeye has agreed to continue to bill existing customers, at Hopeville Water Company, Inc. dba Allenville Water Company's current rates and charges for a period of three years.

If you have any claims against Hopeville Water Company, Inc. dba Hopeville Water Company, including claims for refunds of security deposits, service line and meter installations or main extension agreements and you have not already been contacted by the Company, you must present your claim to Hopeville Water Company, Inc. dba Hopeville Water Company on or before January 31, 2013. Direct your claim(s) to:

**Mr. Abraham Harris III  
Hopeville water Company, Inc.  
DBA Allenville Water Company  
1415 South Palo Verde Road  
Buckeye, AZ 85326  
(623) 817-8497**

Approval of the application may be given without a hearing. If you have any questions or concerns about this application, have any objections to its approval or would like to request information on intervention in the proceeding, you may contact the Consumer Services Section of the Arizona Corporation Commission at 1200 West Washington Street, Phoenix, Arizona 85007 or call 602-542-4251 or toll free 1-800-222-7000.

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EXHIBIT "C"

UNANIMOUS CONSENT RESOLUTION AUTHORIZING SALE OF HOPEVILLE  
WATER COMPANY, INC. DBA ALLEVILLE WATER COMPANY

&

TOWN OF BUCKEYE COUNCIL APPROVAL AUTHORIZING ACQUISITION OF THE  
WATER UTILITY ASSETS OF HOPEVILLE WATER COMPANY, INC. DBA  
ALLEVILLE WATER COMPANY

**UNANIMOUS CONSENT RESOLUTION  
IN LIEU OF A SPECIAL MEETING  
OF THE BOARD OF DIRECTORS  
OF  
HOPEVILLE WATER COMPANY, INC.  
(an Arizona corporation)**

Pursuant to A.R.S. §10-704 the Board of Directors (the "Board") of HOPEVILLE WATER COMPANY, INC., an Arizona corporation (the "Corporation"), hereby join unanimously in their written consent that the following actions and resolutions be taken and adopted as the actions and resolutions of the Corporation and its Board, in lieu of written notice and a formal meeting.

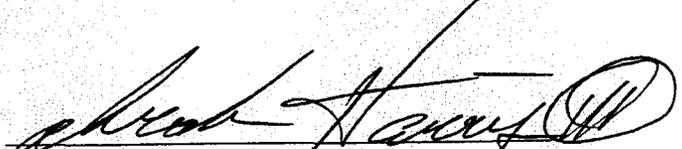
WHEREAS, the Corporation's Board has met to review and approve an offer from the Town of Buckeye in the amount of \$771,000.00.

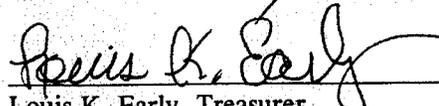
NOW, THEREFORE, it is unanimously

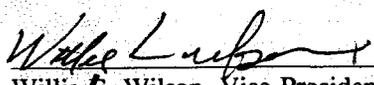
RESOLVED, approved and ratified that the Board shall authorize Abe Harris to continue to take all steps necessary on behalf of the Corporation, including hiring and paying attorneys and consultants to complete the transaction.

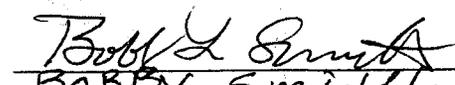
RESOLVED, that Abe Harris shall be authorized to execute and file any and all documents or instruments necessary to carry out and give effect to the actions authorized herein.

IN WITNESS WHEREOF, the undersigned Board of the Corporation have duly executed this Unanimous Consent Resolution, and intend for it to be effective as of October 25, 2012.

  
Abe Harris, President

  
Louis K. Early, Treasurer

  
Willie E. Wilson, Vice President

  
BOBBY SMITH

---

## Taylor Bell

---

**To:** William Lally  
**Subject:** RE: Hopeville Water Company

**From:** Pamela Rollings [<mailto:PRollings@gustlaw.com>]  
**Sent:** Thursday, December 13, 2012 4:56 PM  
**To:** William Lally  
**Cc:** Scott Ruby; Frank Tomkins; Shiela Schmidt  
**Subject:** FW: Hopeville Water Company

It was not approved by Resolution. The following is an excerpt from the Town Minutes from their November 6, 2012 meeting. I have attached a complete copy of the minutes for your records.

**7D. Action Asset Purchase Agreement between the Town of Buckeye and the Hopeville Water Company for the Purchase and Sale of the Business Assets of the Hopeville Water Company**

**Staff Liaison: Stephen Cleveland, Town Manager**

**District No. N/A APPROVED**

Council to approve the Asset Purchase Agreement between the Town of Buckeye and the Hopeville Water Company for the Purchase and Sale of the Business Assets of the Hopeville Water Company and authorizing the execution and delivery of said Agreement on behalf of the Town.

*Council Action: Motion to approve.*

Thank you.

Pam

Pamela Rollings  
Secretary to Scott Ruby  
Gust Rosenfeld P.L.C.  
One East Washington Street, Suite 1600  
Phoenix, AZ 85004-2553  
602.257.7415 (direct)  
602.340.1538 (fax)  
[prollings@gustlaw.com](mailto:prollings@gustlaw.com)

**IMPORTANT & CONFIDENTIAL:** This message is from the law firm of Gust Rosenfeld P.L.C. and is for the intended recipient only. It is privileged and confidential information exempt from disclosure under applicable law.

If you are not the intended recipient, any copying, use or distribution is prohibited. If you received this message by mistake, please call me collect at 602.257.7415 and destroy the original message. Thank you.

---

**From:** Scott Ruby  
**Sent:** Thursday, December 13, 2012 3:08 PM

**To:** Pamela Rollings  
**Cc:** Frank Tomkins; Shiela Schmidt  
**Subject:** FW: Hopeville Water Company

Pam do you have a copy of this you can send him?

---

**From:** William Lally [<mailto:WLally@rhlfirm.com>]  
**Sent:** Thursday, December 13, 2012 1:55 PM  
**To:** Scott Ruby  
**Cc:** 'alexander igwe'; 'Abraham Harris'; Taylor Bell  
**Subject:** Hopeville Water Company

Scott, can you forward me a copy of the signed resolution of the Town of Buckeye authorizing the purchase of the Hopeville Water Company. We need it for the ACC application.

Thank you,

---

William E. Lally  
Attorney at Law  
*Ridenour, Hinton & Lewis, P.L.L.C.*  
Chase Tower  
201 North Central Avenue, Suite 3300  
Phoenix, Arizona 85004  
E. [WLally@rhlfirm.com](mailto:WLally@rhlfirm.com) | O. 602.254.9900 | F. 602.254-8670 | W. [www.rhlfirm.com](http://www.rhlfirm.com)

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PLEASE SILENCE ALL ELECTRONIC COMMUNICATION DEVICES (INCLUDING CELL PHONES/PAGERS) BEFORE THE MEETING IS CALLED TO ORDER.

THANK YOU.

**NOTICE OF POSSIBLE QUORUM OF THE TOWN OF BUCKEYE PLANNING AND ZONING COMMISSION OR OTHER COUNCIL APPOINTED BOARD: PLEASE NOTE THAT THERE MAY BE A QUORUM PRESENT BUT THERE WILL BE NO VOTING TAKING PLACE BY THE TOWN PLANNING AND ZONING COMMISSION OR OTHER COUNCIL APPOINTED BOARD AT THIS MEETING.**

**TOWN OF BUCKEYE  
REGULAR COUNCIL MEETING  
NOVEMBER 6, 2012  
MOTIONS**

**Town Council Chambers  
530 E. Monroe Ave.  
Buckeye, AZ 85326  
6:00 p.m.**

*Accessibility for all persons with disabilities will be provided upon request. Please telephone your accommodation request (623) 349-6911, 72 hours in advance if you need a sign language interpreter or alternate materials for a visual or hearing impairment.*

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*Members of the Town Council will either attend in person or by telephone conference call or video presentation. Items listed may be considered by the Council in any order.*

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**1. Call to Order/Invocation/ Pledge of Allegiance/Roll Call**

*Council Action: None.*

**2A. Comments from the Public - Members of the audience may comment on any item of interest.**

*Council Action: Open Meeting Law does not permit Council discussion of items not specifically on the agenda.*

**2B. Awards/Presentations/Proclamations**

Mayor Meck will proclaim the month of November, 2012 to honor our veterans with special emphasis on November 11, 2012 as a special day of remembrance and celebration.

**3. Minutes *APPROVED***

Council to approve the minutes of the Special Council Workshop of October 1, 2012 and the Council Workshop and Regular Meeting of October 2, 2012.

*Council Action: Motion to approve.*

**4. Expenditures *APPROVED***

Council to ratify the payment of the accounts payable expenditures made. Copies of invoices are available at Town Hall.

*Council Action: Motion to ratify.*

**CONSENT AGENDA ITEMS**

Approval of items on the Consent Agenda - All items with an (\*) are considered to be routine matters and will be enacted by one motion and vote of the Town Council. There will be no separate discussion of these items unless a Councilmember requests, in which event the item will be removed from the consent agenda and considered in its normal sequence.

**\*5. New Business**

**\*5A. Modification, Permitting and Testing of the Buckeye Airport Well #2; Phase I and Phase II**

**Staff Liaison: Dave Nigh, Water Resources Director**

**District No. N/A APPROVED**

Council to approve the staff recommendation to proceed with the modification, permitting and testing of the proposed Buckeye Airport Well #2 under the Scope of Work for Phase I and Phase II provided by Tres Rios Engineering/Southwest Groundwater, with the contract amount not to exceed \$794,950, to be funded from the Water Resources Fiscal Year 2012/2013 Capital Improvement Plan.

**\*5B. Non-Profit Community Funding Program Sub-Committee Recommendations**

**Staff Liaison: Daniel Higgins, Community Services Department**

**District No. All APPROVED**

Council to approve the Non-Profit Community Funding (NPCF) sub-committee recommendations to fund various non-profits that serve the residents of Buckeye, in an amount budgeted not to exceed \$45,000.

**\*5C. Resolution No. 114-12 Accepting the Federal Fiscal Year 2012 Urban Areas Security Initiative Grant Award from the Arizona Department of Homeland Security**

**Staff Liaison: Bob Costello, Fire Chief**

**District No. All APPROVED**

Council to adopt Resolution No. 114-12 ratifying the submission of a grant request made by the Town of Buckeye Fire Department for a training project related to enhancing the Town's response to man-made and natural disasters and accepting the resulting grant award and authorizing the Fire Chief to execute and deliver said Agreement on behalf of the Town.

**\*5D. Resolution No. 112-12 Accepting the Federal Fiscal Year 2012 Urban Areas Security Initiative Grant Award from the Arizona Department of Homeland Security**

**Staff Liaison: Mark Mann, Police Chief**

**District No. All APPROVED**

Council to adopt Resolution No. 112-12 ratifying the submission of a grant request made by the Town of Buckeye Police Department for equipment project related to enhancing the Town's response to man-made and natural disasters and accepting the resulting grant award and authorizing the Chief of Police to execute and deliver said Agreement on behalf of the Town.

**\*5E. Resolution No. 113-12 Approving the Intergovernmental Agreement (IGA) Among Multiple Agencies and the Town of Buckeye Relating to the Creation and Participation in the Arizona Child Abduction Response Team**

**Staff Liaison: Mark Mann, Police Chief**

**District No. All APPROVED**

Council to adopt Resolution 113-12, approving the Intergovernmental Agreement among multiple agencies and the Town of Buckeye relating to the creation and participation in the Arizona Child Abduction Response Team and authorizing the Mayor to execute and deliver said Agreement on behalf of the Town.

- \*5F. Resolution No. 119-12 New Fees and Charges for Services and Programs  
Rendered by the Community Services Department  
Staff Liaison: Miranda Gomez, Community Services  
District No. All APPROVED**

Council to adopt Resolution No. 119-12 adopting new fees and charges for services and programs rendered by the Community Services Department providing for repeal of conflicting resolutions; and providing for severability.

- \*5G. Request to Place the Social Services Advisory Board from Active and Scheduled Status to Inactive Status  
Staff Liaison: Lucinda Aja, Town Clerk  
District No. All APPROVED**

Council to place the Social Services Advisory Board from Active and Scheduled status to Inactive status.

- \*5H. Requested Boards and Commissions Appointments  
Staff Liaison: Lucinda Aja, Town Clerk  
District No. 1, 4 APPROVED**

Council to approve placing Social Services Board Members Linda Gross (District 1) and Christie McCauley (District 4) on the Community Services Board as regular members with terms expiring December, 2013.

**6. Continued / Tabled Items - None.**

**7. Public Hearings / Non-Consent - New Business**

- 7A. Action Resolution No. 115-12 Approving the Change to the Current Council Meeting Schedule by Cancelling the Regular Town Council Meetings Scheduled for November 20, 2012 and January 1, 2013, and Holding One Council Meeting for the Months of November and January  
Staff Liaison: Lucinda Aja, Town Clerk  
District No. All APPROVED**

Council to adopt Resolution No. 115-12 approving a change in the current Council Meeting Schedule by cancelling the Regular Town Council Meetings scheduled for November 20, 2012 and January 1, 2013, and holding one council meeting for the months of November and January.

*Council Action: Motion to approve.*

- 7B. Action Approval of the Submittal of a Loan Repayment Request to the Water Infrastructure Finance Authority (WIFA) Board  
Staff Liaison: Larry Price, Finance Director  
District No. All APPROVED**

Council to approve the submittal of a Water Infrastructure Finance Authority (WIFA) loan repayment request to the Water Infrastructure Finance Authority (WIFA) Board.

*Council Action: Motion to approve.*

**7C. Action Resolution No. 99-12 Fire Memorandum of Understanding (MOU)**  
**Staff Liaison: Stephen Cleveland, Town Manager**  
**District No. All APPROVED**

Council to approve, deny or modify Resolution No. 99-12 relating to items set forth in the Memorandum of Understanding (MOU) between the Town Manager and the United Buckeye Firefighters Association.

*Council Action: Motion to approve, deny or modify.*

**7D. Action Asset Purchase Agreement between the Town of Buckeye and the Hopeville Water Company for the Purchase and Sale of the Business Assets of the Hopeville Water Company**  
**Staff Liaison: Stephen Cleveland, Town Manager**  
**District No. N/A APPROVED**

Council to approve the Asset Purchase Agreement between the Town of Buckeye and the Hopeville Water Company for the Purchase and Sale of the Business Assets of the Hopeville Water Company and authorizing the execution and delivery of said Agreement on behalf of the Town.

*Council Action: Motion to approve.*

**7E. Action Real Estate Purchase Option Agreement between the Town of Buckeye Hopeville Community for Progress, Inc. Granting the Town the Option to Purchase Approximately 15 Acres of Vacant Real Property Owned by Hopeville Community for Progress, Inc.**  
**Staff Liaison: Stephen Cleveland**  
**District No. N/A APPROVED**

Council to approve the Real Estate Purchase Option Agreement between the Town of Buckeye and Hopeville Community for Progress, Inc., granting the Town the option to purchase approximately 15 acres of vacant real property owned by Hopeville Community for Progress, Inc. and authorizing the execution and delivery of said Agreement on behalf of the Town.

*Council Action: Motion to approve.*

**8. Town Manager's Report and Intergovernmental Affairs Update**

*Council will receive brief project and program updates from Town Manager and his designees*

- *Council may ask questions that will be researched and staff will report before and at next meeting*
- *No legal action will be taken at the meeting on matters discussed*
- *Reports may be received on the topics list attached to the agenda*

**9. Comments from the Mayor and Council**

*Mayor and Council may present a brief summary on current events and/or report on any of the Boards and Commissions and other organizations as necessary.*

Councilmember Strauss:

Library Board

Social Services Advisory Board

Councilmember Hess:

Community Development Advisory Board (CDAC Alternate Member)

Community Services Advisory Board

Main Street Board

Public Safety Retirement Board (Police)

Councilmember Orsborn:

Buckeye Pollution Control Corporation

Community Development Advisory Committee (CDAC Regular Member)

Valley Metro RPTA Board

WESTMARC

Councilmember Heustis:

All Faith Board

Planning and Zoning

Public Safety Retirement Board (Fire)

Vice Mayor McAchran:

Airport Advisory Board

All Faith Board

Greater Phoenix Economic Council (GPEC)

Southwest Lending Closet

Way Out West (WOW) Coalition

Mayor Meck:

All Faith Board President

Chamber of Commerce Board

MAG Economic Development Committee

MAG Regional Council

MAG Transportation Policy Committee

*The Council may not propose, discuss, deliberate, or take any legal action on information presented. Council may direct inquiries to staff.*

- 10.** Move to convene into Executive Session pursuant to A.R.S Section 38-431.03(A) (3) and (4) for the purposes of: (a) receiving legal advice pertaining to nondisclosure agreements and negotiations, (b) discussion and consultation with attorneys regarding the Town's position in potential negotiations of contracts pertaining to the potential acquisition of water utility infrastructure or services and (c) discussion with attorneys of the litigation filed against the town by Buckeye Land Management, Inc. and the 2A/2B developer group.

*Council Action: Motion to approve.*

- 11. Council to Reconvene into the Public Meeting**

*Council Action: Motion to approve.*

- 12. Adjournment**

*Council Action: Motion to adjourn.*