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ORIGINAL

MEMORANDUM

TO: Docket Control

FROM: Steven M. Olea EA for SMD
Director
Utilities Division

DATE: August 27, 2013

RE: THE APPLICATION OF H2O, INC. FOR APPROVAL OF A SALE OF ASSETS AND CONDITIONAL CANCELLATION OF ITS CERTIFICATE OF CONVENIENCE AND NECESSITY. (DOCKET NO. W-02234A-13-0237)

On July 3, 2013, H2O, Inc. ("H2O") filed an Application in the above-referenced docket for Approval of the Sale of its Assets to the Town of Queen Creek ("Queen Creek") and Conditional Cancellation of its Certificate of Convenience and Necessity.

In the course of processing this Application, Staff received an Asset Purchase Agreement ("Agreement") between Queen Creek and H2O, and that Agreement is being docketed for the record in this case.

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Originator: Vicki Wallace

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Arizona Corporation Commission

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DOCKET NO. W-02234A-13-0237

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ASSET PURCHASE AGREEMENT

AND

ESCROW INSTRUCTIONS

Between

H2O, INC.,

an Arizona corporation,

as Seller

and

TOWN OF QUEEN CREEK,

an Arizona municipal corporation,

as Buyer

H2O, INC. ASSETS

Queen Creek and Maricopa/Pinal Counties, Arizona

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LIST OF EXHIBITS

- A Seller's Certificated Area
- B-1 Series 2013 Purchase Agreement
- B-2 Series 2013 Obligation Indenture
- C Bill of Sale
- D Assignment and Assumption of Permits
- E Assignment and Assumption of Service Contracts
- F Special Warranty Deed
- G Affidavit of Property Value
- H Assignment of Warranties
- I Form of Tower License
- J Forms of Bond Counsel Opinions
- K Form of Buyer's Counsel Opinion

LIST OF SCHEDULES

- Schedule 2.1.1 Personal Property
- Schedule 2.1.2 Assigned Contracts
- Schedule 2.1.3 Mainline Extension Agreements - Sums Due - Master Utility Agreements
- Schedule 2.1.4 Water Infrastructure
- Schedule 2.1.5 Real Property (and Easements)
- Schedule 2.1.6 Improvements
- Schedule 2.3 Excluded Assets
- Schedule 2.4 Assumed Liabilities
- Schedule 2.7 Meter Deposit Refunds

ASSET PURCHASE AGREEMENT

AND ESCROW INSTRUCTIONS

DATED: Dated to be effective as of June 19, 2013 (the "Effective Date").

PARTIES: This Asset Purchase Agreement and Escrow Instructions (the "Agreement") is made between H2O, INC., an Arizona corporation, as "Seller", and the TOWN OF QUEEN CREEK, an Arizona municipal corporation, as "Buyer". Seller and Buyer are referred to collectively herein as the "Parties" and, individually, as a "Party".

RECITALS:

A. Seller is a public service corporation (as defined in Article 15, Section 2 of the Arizona Constitution) and, as such, is regulated by the Arizona Corporation Commission (the "Commission"). Seller holds a Certificate of Convenience and Necessity ("CC&N") granted by the Commission which authorizes Seller to provide water utility service within a defined geographic area (the "Certificated Area"), as depicted on the diagram attached hereto as Exhibit A, and as further legally described as a portion of Exhibit A, it being understood that if requested by either Party or by the Commission, either the depiction or the legal description (or both) of the Certificated Area as finally attached hereto at the Closing (as herein defined) may be amended to conform with any such requests.

B. Seller owns and operates a water system which serves customers residing within Seller's Certificated Area (the "Business").

C. Buyer desires to purchase certain assets and certain real property of Seller solely relating to the Business (the "Purchased Assets" and as further defined below) and to assume certain rights and obligations of Seller solely relating to the Business, and Seller, recognizing Buyer's power of eminent domain and under the imminent threat of condemnation, desires to sell and transfer such assets and real property to Buyer and to assign to Buyer such rights and obligations, all upon and subject to the terms and conditions set forth herein.

D. Buyer is authorized by statute to acquire, construct and renovate public utility infrastructure.

E. Buyer proposes to finance a portion of the acquisition of the Purchased Assets pursuant to this Agreement by causing the execution and delivery of certain tax-exempt municipal revenue obligations (the "Series 2013 Obligations") more fully described herein.

F. Seller will transfer the Purchased Assets to Buyer in exchange for, among other consideration, Buyer delivering the Series 2013 Obligations in accordance with this Agreement.

G. To secure the payments and obligations under the Series 2013 Obligations, Buyer will pledge certain revenues arising from the Water System (herein so called) of Buyer (which will include Buyer's current Water System as augmented by the Purchased Assets upon consummation of the transactions contemplated hereby).

H. In connection with the transaction contemplated by this Agreement (the "Purchase Transaction"), the Parties contemplate the Commission's deletion and extinguishment of Seller's CC&N. However, such deletion and extinguishment will be conditioned upon the consummation of the Purchase Transaction in accordance with the terms of this Agreement.

AGREEMENTS:

NOW THEREFORE, in consideration of the mutual promises, agreements, representations and warranties set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. INCORPORATION OF RECITALS. All of the foregoing Recitals are hereby incorporated herein by reference as agreements of the Parties.

2. SALE AND PURCHASE OF ASSETS.

2.1. Assets to be Purchased. Subject to the terms and conditions set forth in this Agreement, Seller will sell, convey, transfer, assign and deliver to Buyer, and Buyer will purchase from Seller, upon Close of Escrow (as defined herein), all of Seller's right, title and interest in and to the following assets of Seller solely related to the Business (collectively, the "Purchased Assets"):

2.1.1. The equipment, machinery, vehicles, furniture, fixtures, leasehold improvements, inventory, operating supplies and other similar personal property owned by Seller that is identified and/or described on Schedule 2.1.1 attached hereto, which shall be maintained in the condition as exists on the Effective Date, ordinary wear and tear excepted (collectively, the "Personal Property"), and all Personal Property, if any, acquired by Seller in the ordinary course of business after the Effective Date and prior to Close of Escrow as contemplated by Section 2.2 hereof;

2.1.2. Seller's interest in each of the contracts and agreements that relate to the Personal Property and the Infrastructure (as defined herein), in each case which is identified and/or described on Schedule 2.1.2 attached hereto, and to the extent transferable to Buyer pursuant to the terms thereof (collectively, "Assigned Contracts"). The Assigned Contracts shall include, but not be limited to, Seller's existing Central Arizona Project ("CAP") contract, which the Parties will, both pre-and post-Closing, reasonably cooperate with one another in effecting the assignment thereof from Seller to Buyer;

2.1.3. ~~Seller's interest in the mainline extension agreements (collectively, "MEAs") identified and/or described on Schedule 2.1.3 attached hereto, including those additional MEAs, if any, entered into by Seller after the Effective Date in accordance to the terms hereof, to the extent transferable to Buyer.~~ Seller will reasonably cooperate with Buyer in obtaining consents of the respective counter-parties to all of said MEAs (if requested by Buyer) to the respective assignments contemplated hereby. Schedule 2.1.3 also lists four (4) Master Utility Agreements (herein so called) which shall likewise be assigned at Closing;

2.1.4. The wells, storage tanks, booster pumps, water mains, service lines, water meters and fire hydrants comprising the water infrastructure used by the Business (the "Infrastructure") in connection with its provision of water utility service to customers residing within Seller's Certificated Area (collectively, "Customers"), whether owned or leased, and identified and/or described on Schedule 2.1.4 attached hereto. The Infrastructure shall include, but not be limited to, antennas and associated equipment connected with, affixed to or otherwise utilized in connection with the Communications Tower (herein so called) also identified on Schedule 2.1.4 attached;

2.1.5. Seller's interest in the real property (the "Real Property") identified and/or described on Schedule 2.1.5 attached hereto, including all utility easements, if any (collectively, the "Utility Easements"), all tenements, hereditaments and appurtenances, if any, pertaining to the Real Property, all sewer, mineral, water and irrigation rights, if any, running with or otherwise appurtenant or pertaining to the Real Property, and all of Seller's interest, if any, in any road adjoining the Real Property, to the center line thereof. The Real Property shall also include any road franchise agreements with municipalities or Counties which, together with the Utility Easements, the Parties shall transfer at the Closing under commercially reasonable terms;

2.1.6. Seller's interest, if any, in all improvements permanently affixed to the Real Property (collectively, the "Improvements") identified and/or described on Schedule 2.1.6 attached hereto;

2.1.7. any transferable award made or to be made or settlement in lieu thereof for damage, if any, to the Real Property or Improvements by reason of condemnation, eminent domain or exercise of police power by any government, any governmental entity, department, commission, board, agency or instrumentality, or any court, tribunal or judicial body, in each case whether federal, state, county or local (each, a "Governmental Agency"), excluding Buyer;

2.1.8. all of Seller's interest, to the extent transferable, in all permits, licenses, franchises, consents, rights or authorizations issued by, and all registrations and filings with, any Governmental Agency in connection with the Business (collectively, the "Permits");

2.1.9. all accounts receivable, excluding accounts receivable for water deliveries made by Seller prior to Close of Escrow as reflected on Seller's books and records as of Close of Escrow, related to Seller's Customers (collectively, "Customer Accounts") reflected on Seller's books and records as of Close of Escrow;

2.1.10. all books, records and files pertaining to the Business which Seller is required to maintain in accordance with any law, rule or regulation of any Governmental Agency (a "Legal Requirement"), together with all other computerized records (and including "paper/hard copy" as appropriate) of the Business and/or Seller relating to the Customers, to the extent reasonably determined by Buyer to be in facilitation of, or useful in connection with, the transfer of the business contemplated hereby, transfer of Customer Accounts, future Customer billings, etc. (it being understood that such information shall not include proprietary information of Seller, personal information relating to Seller's natural person principals or information related

to other businesses of Seller or its affiliates), the Business, the operation thereof and/or the assets and liabilities transferred and assumed, respectively, hereby; and

2.1.11. to the extent Seller has any interest in any software licenses, software or data, including radio licenses or communications franchises/licenses identified by Buyer during the Study Period, which shall be transferred at Closing under transfer instruments customarily utilized with regard to such types of items, in commercially reasonable form and reasonably acceptable to both Parties.

2.2. The Inventories.

2.2.1. The quantity, extent and classification of the Personal Property shall be determined by a physical inventory of the Personal Property to be conducted and completed by Seller and Buyer no later than thirty (30) days after Opening of Escrow (the "Preliminary Inventory" and the "Preliminary Inventory Deadline," respectively).

2.2.2. The Preliminary Inventory shall be updated by Seller and Buyer no earlier than the third business day preceding the date scheduled for Close of Escrow as provided in this Agreement (the "Final Inventory"). The Final Inventory shall contain or reflect such deletions and additions to the Preliminary Inventory as may have occurred in the ordinary course of Seller's Business between the date of the Preliminary Inventory and Close of Escrow. Buyer recognizes that some number of the items which may be reflected on the Preliminary Inventory (which Preliminary Inventory shall exclude any disposable supplies) may not be replaced or repaired between the date of the Preliminary Inventory and the Final Inventory. In such regard, Seller shall not remove, except for obsolescence or consumption in the ordinary course of business, any of the Personal Property, and shall maintain both the quality and quantity of the same to the standards such property has historically been maintained by Seller in the ordinary course of business, ordinary wear and tear excepted. All Personal Property reflected in the Preliminary Inventory, other than that consumed in the ordinary course of business, whether or not in working order, shall become the property of Buyer at the Close of Escrow, unless Buyer elects, as to an item or items or class of classes of items, to the contrary.

2.2.3. In furtherance of the foregoing Section 2.2.2 and in addition thereto, Seller may, from time to time prior to or at Close of Escrow, by notice in accordance with the terms of this Agreement, supplement, amend or create any Schedule to this Agreement in order to add information or correct information previously supplied to Buyer. No such amendment shall be evidence, in and of itself, that the representations and warranties in the corresponding Section are no longer true and correct. It is specifically agreed that such Schedules may be amended to add immaterial items, as well as material items as approved by Buyer in accordance with Section 13.4.8 below, thereto. To the extent any Schedule to this Agreement is supplemented or amended pursuant to this Section 2.2.3, Seller shall provide all information related to the updated Schedule to Buyer contemporaneously with such amendment or supplementation.

2.3. Excluded Assets. The Purchased Assets do not and shall not include any assets of Seller which are not described in Section 2.1 above as the "Purchased Assets" and in particular: (i) Seller's CC&N, the cancellation and extinguishment of which will be conditioned

upon, and will be a condition precedent to the obligations of both Parties hereunder to, the consummation of the Purchase Transaction in accordance with the terms of this Agreement; (ii) any cash and cash equivalents, except as described in Section 2.1.9 (including marketable securities and short-term investments and other securities held by Seller); (iii) trademarks, trade names and logos of Seller; (iv) any bank accounts and security deposit boxes of Seller; (v) any rights which accrue or will accrue to Seller under this Agreement; (vi) any rights or choses in action arising out of occurrences before the Close of Escrow; or (vii) those assets related to the Business identified on Schedule 2.3 attached hereto (collectively, the "Excluded Assets").

2.4. Assumed Liabilities. Unless otherwise set forth herein, at Close of Escrow, Seller will assign, and Buyer shall assume (without recourse), and agree to pay, discharge or perform, as appropriate, all liabilities, duties and obligations of Seller arising from and after Close of Escrow with respect to the Purchased Assets as set forth on Schedule 2.4 attached (the "Assumed Liabilities"). The Assumed Liabilities shall also include the respective obligations to refund/pay/credit any: (i) Customer account security deposits (being defined as advance deposits made by Customers to secure payment of future charges of the respective Customer accounts) which come due after Closing and only to the extent and when they do come due; Seller shall provide to Buyer a reasonable accounting of same at Closing; and (ii) Meter Deposit Refunds (as defined, and the respective responsibilities for same are set forth, in Section 2.7 below). Seller shall execute such documents as are reasonably requested by Buyer to evidence any transfer of any rights or obligations related to any of the foregoing at no material additional cost or expense to Seller, and Buyer shall have full and complete control over disposition/payment/compromise/payment of such liabilities post-Closing.

2.5. Excluded Liabilities. Buyer shall not assume, pay, discharge, perform or in any way be responsible or liable for any of Seller's liabilities which are not described in Section 2.4 above as the "Assumed Liabilities" and in particular and without limiting the foregoing: (i) any federal, state or local income, sales or other tax payable with respect to the Business or Purchased Assets for any period prior to Close of Escrow; (ii) any liability or obligation under or in connection with any of the Excluded Assets; (iii) any liability relating to any of Seller's employees arising from or related to Seller's actions or omissions prior to Close of Escrow; (iv) any liability relating to: 1) taxes (whether income, excise, transaction privilege, *ad valorem* [real and personal property] or any tax which would constitute a lien encumbering the Assets in the hands of Buyer) owed, claimed to be owed, due or claimed to be due, by, to or through any state, local, county, municipal or federal taxing authority (collectively, "Tax Liabilities"); or 2) any pension or retirement or similar plan operated or supported by Seller; and (v) any suit or claim or liability owed or claimed to be due to any third party arising from or related to Seller's actions or omissions prior to Close of Escrow (collectively, the "Excluded Liabilities"). Subject and up to the Excluded Liability Indemnity Limit (as herein defined), Seller shall indemnify, pay, protect, defend and save and hold Buyer harmless from any cause, claim, damage, liability or obligation of any kind, type or nature arising out of the Excluded Liabilities, so long as not caused, in whole or substantial part, by the acts or omissions of Buyer (Seller's indemnity obligations in this sentence being herein called the "Excluded Liability Indemnity"). "Excluded Liability Indemnity Limit" shall mean Fifty Thousand Dollars (\$50,000.00), which Limit shall not include and is inapplicable to: a) any items prorated hereunder, for which Seller is responsible as agreed in any applicable credit to Buyer at Closing; and b) Tax Liabilities, none of which shall count against the Excluded Liability Indemnity Limit.

2.6. Post-Closing Extraordinary Financial Obligations. Seller represents, and Buyer acknowledges, that there are certain on-going financial obligations that occur in the normal course of Seller's operation of the Business that Seller must continue to incur. Seller agrees, however, that, with the exception of such ordinary course financial obligations (which shall not, without Buyer's consent, exceed the limitation set forth immediately below), except for Required Obligations (as defined immediately below) Seller shall not enter into any new financial obligation whereby it obligates Buyer to any expense to be incurred subsequent to the Close of Escrow in excess, in the aggregate, of Twenty-Five Thousand Dollars (\$25,000.00) and from and after the end of the Study Period, without the express written consent of Buyer, which consent may be given or withheld in Buyer's sole and only discretion. When used herein the term "Required Obligations" shall mean regulatory or legal obligations requiring Seller to expend funds outside the ordinary course of business as a result of actions by regulatory or public bodies in connection with Seller's regulated business as a utility provider through Closing. If Seller receives knowledge that it may be the subject of Required Obligations, Seller shall give Buyer notice thereof and the Parties shall meet and discuss the appropriate response (subject, at all times, to regulatory authority and powers).

2.7. Concerning Meter Deposits. The amount of ~~all outstanding Meter Deposits~~ (herein so called) relating to all current Customer accounts is set forth on ~~Schedule 2.7.~~ The Parties stipulate and agree that Two Hundred Sixty Seven Thousand Four Hundred Seventy Dollars (~~\$267,470.00~~) is due to be refunded (via bill credit to Customers' accounts) on or about November 30, 2013 (the "Meter Deposit Refund"). ~~The Meter Deposit Refund shall be prorated as of the Close of Escrow by dividing the Meter Deposit Refund into a pre-Closing portion (based on the number of days elapsing from and including December 1, 2012 through and including the Closing Date) and a post-Closing portion (based on the number of days elapsing from the day after the Closing Date through November 30, 2013). Seller shall be responsible for payment of the pre-Closing portion of the Meter Deposit Refund, and will provide a credit in that amount to Buyer at Closing. Buyer shall be responsible for payment of the Meter Deposit Refund.~~ Except for the Closing credit noted immediately above, Seller shall have no further obligation with respect to any future refunds of Meter Deposits.

3. PURCHASE PRICE.

3.1. Purchase Price. In consideration of the sale and transfer by Seller of the Purchased Assets, the cancellation and extinguishment of Seller's CC&N and the representations, warranties and covenants of Seller set forth herein, Buyer shall pay or cause to be paid to Seller an amount (the "Purchase Price") equal to the sum of a) and b) immediately below. The Purchase Price shall be paid as follows:

(a) ~~\$15,000,000.00 in cash, financed through a loan (the "WIFA Loan") from the Arizona Water Infrastructure Financing Authority ("WIFA") to be paid by wire transfer at Close of Escrow (the "Cash Payment");~~ and

(b) The balance of the Purchase Price shall consist of the Series 2013 Obligations, the execution and delivery of which are provided for by the Series 2013 Purchase Agreement and the Series 2013 Obligation Indenture

(respectively herein so called; collectively, with all other documents and instruments executed in connection with either of the foregoing, the "Series 2013 Obligation Documents") in substantially the forms to be attached hereto as Exhibits B-1 and B-2 (as referenced in Section 9.2.8 below), respectively, which shall consist of a thirty-year "payment stream" of obligations paid to H20, Inc., payable as follows:

Years 1-5 -- Interest only as follows:

Year 1:	\$1,539,508.00
Year 2:	\$1,609,860.00
Year 3:	\$1,679,813.00
Year 4:	\$1,747,766.00
Year 5:	\$1,819,719.00

Years 6-30: Fully amortizing payments at 8% interest factor per annum, with annual payments of \$1,819,719.00

3.2. Payment of Purchase Price. Buyer has heretofore delivered to Chicago Title Insurance Company, Attn: Mr. Alan Costley, 1959 S. Val Vista Road, Suite 115, Mesa, Arizona 85204, telephone (480) 539-6854 (the "Escrow Agent") Fifty Thousand and No/100 Dollars ~~(\$50,000.00) (the "Original Earnest Deposit") in Escrow Agent's Escrow No. C1300013 (the "Escrow").~~ The date of delivery of triplicate executed originals of this Agreement by each of Seller and Buyer, and Escrow Agent's acknowledgment of the prior deposit of the Original Earnest Deposit are referred to herein as the "Opening of Escrow". At the close of the Study Period, if Buyer wishes to continue the transactions contemplated hereby under Section 7 below, Buyer shall deposit an additional Four Hundred Fifty Thousand and No/100 Dollars (\$450,000.00) (the "Additional Earnest Deposit") which, with the Original Earnest Deposit, shall constitute the Earnest Deposit (herein so called) with regard to this Transaction. Except as may otherwise be provided herein, the Earnest Deposit and Interest, as defined below, shall be credited to the Cash Payment at Closing.

3.3. Assumption of Mainline Extension Agreements and Reimbursement; Master Utility Agreements.

3.3.1. The Parties acknowledge and agree that, pursuant to the Assignment and Assumption Agreement (as defined herein), ~~Seller will assign and Buyer will assume all obligations of Seller under the MEAs as stated on Schedule 2.4 and as of Close of Escrow.~~ Except to the extent of any liability arising prior to Close of Escrow or relating to a breach or claimed breach of the MEAs prior to Close of Escrow, Seller shall have no further obligations with respect to such MEAs following such time. Buyer and Seller acknowledge that the monetary obligations of the MEAs are payable on a yearly basis which ends on June 30 (with payment to be made on or about August 1, immediately following). An appropriate proration of respective liabilities thereunder at Closing shall be undertaken, whereby Seller shall be debited for the pro rata share (pro rated as set forth below) of such obligations for the period from July 1, 2013, through Closing. Revenues arising out of and collected for any full months completed

before the Closing shall be multiplied by the appropriate percentage reimbursement with respect to the MEA in question and at Closing Seller will be debited and Buyer will be credited for all such full months' respective obligations with regard to all MEAs. At Closing, the Parties shall make a reasonable good faith estimate of revenue received during the Closing Month and prorate based on that figure, together with a reasonable estimate of remaining revenue to be received during the remainder of the month in which Closing occurs (the "Closing Month"). Within a reasonable period of time after the Closing Month ends, if requested by either Party, the Parties shall meet and re-prorate based on actual revenue figures; the Party which is due reimbursement from the other pursuant to such re-proration shall be reasonably promptly paid by the Party required to reimburse. Seller shall make all payments due under the MEAs on or about August 1, 2013 and shall indemnify and hold harmless Buyer from the failure to make such payments. Buyer may withhold from the next due installment under the Series 2013 Obligations any amounts failed to be paid by Seller and Buyer may pay such amounts to the respective counterparties to the MEAs who or which are then unpaid. In furtherance of the foregoing (but conditioned upon such proration), Buyer expressly agrees that it shall be responsible for reimbursement of all reimbursable sums outstanding under MEAs in force as of Close of Escrow to which Seller is a party (and to the extent sums are set forth on Schedule 2.1.3 attached hereto), and Buyer shall defend, indemnify and hold Seller harmless for, from and against any and all losses, liabilities, claims, costs, damages and expenses, including without limitation, reasonable attorneys' fees, experts' fees and court costs, incurred or which may be incurred by Seller directly or indirectly arising out of Buyer's acts or omissions with respect to such MEAs following Close of Escrow. Seller shall defend, indemnify and hold Buyer harmless for, from and against any and all losses, liabilities, claims costs, damages and expenses, including without limitation, reasonable attorneys' fees, experts' fees and court costs incurred or which may be incurred by Buyer directly or indirectly arising out of or related to a breach or claimed breach of such MEAs by Seller prior to Close of Escrow or any other liability thereunder which arose prior to Close of Escrow and which is not an Assumed Liability hereunder.

3.3.2. In consideration of Buyer's assumption of Seller's reimbursement obligations under the MEAs, Seller agrees that Buyer shall be entitled to a credit against the Purchase Price in an amount equal to the amount owed by Seller under the MEAs as of the Close of Escrow as stated above.

3.3.3. The Master Utility Agreements shall likewise be assigned by Seller at Closing under instruments of assignment reasonably acceptable to the Parties and, where required by the underlying Agreement, to the counter-party to the affected Master Utility Agreement(s).

4. DISPOSITION OF EARNEST DEPOSIT.

4.1. Disposition of the Earnest Deposit. Seller and Buyer hereby instruct Escrow Agent to place the Earnest Deposit, as respectively received, in a federally insured daily interest-bearing passbook account on behalf of Seller and Buyer. The Earnest Deposit and interest thereon to the date of withdrawal (the "Interest") shall be applied as follows:

4.1.1. If: (i) Buyer cancels this Agreement as a result of a Seller Event of Default (as defined herein); or (ii) a Buyer condition to Closing hereunder is not fulfilled,

Escrow Agent shall immediately pay the Original Earnest Deposit and Interest thereon to Seller and the Additional Earnest Deposit and Interest thereon to Buyer, all upon written notice given by Buyer to Escrow Agent and Seller of such Seller Event of Default or such failure of condition.

4.1.2. If: (i) a Buyer Event of Default (as defined herein) exists prior to or at Close of Escrow, and such Buyer Event of Default is not cured within the applicable notice and cure period; (ii) a Buyer condition to Closing fails to occur through no fault of Seller; or (iii) Buyer finds the Property infeasible of acquisition under Section 7 hereof and does not timely make the Additional Earnest Deposit (after notice from Escrow Agent as set forth in Section 7 hereof), Escrow Agent shall pay the Original Earnest Deposit and Interest to Seller and return the Additional Earnest Deposit to Buyer and Interest (if therefore deposited by Buyer), without further written instructions from Seller or Buyer. Further, if a Buyer Event of Default occurs after the Additional Earnest Deposit deposited by Buyer is not timely cured in accordance with the terms hereof, the Additional Earnest Deposit and Interest shall likewise be paid by Escrow Agent to Seller.

4.1.3. If escrow closes, the Earnest Deposit and Interest shall be credited towards Buyer's Cash Payment to Seller at Close of Escrow.

5. THE CLOSING.

5.1. Time, Date and Place of Closing. The Purchase Transaction shall close (the "Closing"; as a verb, to "Close") and all deliveries to be made at Close of Escrow shall take place at the office of Escrow Agent at or before 2:00 p.m. local time, within five (5) business days (the "Closing Date") after the Appeal Date (as herein defined). Except as otherwise set forth herein, the Closing Date shall not be extended for any reason, without written agreement of the Parties. The term "Close of Escrow" shall mean the deliveries to be made by the Parties at the Closing Date in accordance with this Agreement.

5.2. Seller's Obligations at Close of Escrow. At or prior to Close of Escrow, Seller shall execute and/or deliver or cause to be executed and/or delivered to Escrow Agent on behalf of Buyer:

5.2.1. a bill of sale from Seller to Buyer, a specimen of which is attached hereto as Exhibit C, with appropriate schedules attached (the "Bill of Sale");

5.2.2. an assignment and assumption of permits and licenses, a specimen of which is attached hereto as Exhibit D, with appropriate schedules attached (the "Assignment and Assumption of Permits");

5.2.3. an assignment and assumption of service contracts, a specimen of which is attached hereto as Exhibit E, with appropriate schedules attached (the "Assignment and Assumption of Service Contracts");

5.2.4. a special warranty with respect to Seller's interest in the Real Property, a specimen of which is attached hereto as Exhibit F (the "Deed"), together with a form

of assignment or assignments of the Seller's interest in the Utility Easements in form or forms reasonably satisfactory to the Parties;

5.2.5. a sworn affidavit, in the form of Exhibit G attached hereto (the "Non-Foreign Affidavit") stating under penalty of perjury that Seller is not a "foreign person" as such term is defined in Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended (the "Code");

5.2.6. an assignment of warranties, a specimen of which is attached hereto as Exhibit H (the "Assignment of Warranties");

5.2.7. the Communications Tower License, lasting a period not to exceed one (1) year after Closing, a specimen of which is attached hereto as Exhibit I (the "Tower License")

5.2.8. any assignments of any well rights, water rights, well interests or any other item of similar nature relating to the Arizona Department of Water Resources ("ADWR") or to any other relevant Governmental Agencies which Buyer may reasonably require, all in the forms promulgated by Buyer, ADWR or such Agency (collectively, the "Water Rights Transfer Instruments");

5.2.9. wire transfer instructions for the disbursement of the Cash Payment; and

5.2.10. such other instruments and documents of the type or nature that are customarily provided by selling parties in connection with transactions of the type contemplated hereby and which Buyer reasonably deems to be necessary for Close of Escrow.

5.3. Buyer's Obligations at Close of Escrow. At or prior to Close of Escrow, Buyer shall execute and/or deliver or cause to be executed and/or delivered to Seller:

5.3.1. the Assignment and Assumption of Permits, the Assignment and Assumption of Service Contracts, the Assignment of Warranties and the Tower License;

5.3.2. the balance of the Cash Payment by wire transfer of immediately available funds to Escrow Agent for deposit in the Escrow. Escrow Agent shall, by wire transfer of immediately available funds to such account(s) as Seller shall advise Escrow Agent in writing, pay such funds and Interest to Seller at Close of Escrow;

5.3.3. The following items relating to the Series 2013 Obligation Documents:

a) copies of all documents, agreements, certificates and related items executed or delivered in connection with the WIFA Loan and any other loans or obligations payable in whole or in part (whether in a senior or subordinate position) from the revenues pledged to Seller in connection with the Series 2013 Obligations, certified by an authorized official of Buyer as being a true and complete copy of each such item;

- b) a fully executed counterpart original of each of the Series 2013 Obligation Documents;
- c) copies of all documents, agreements, certificates and related items executed or delivered in connection with the issuance and delivery of the Series 2013 Obligations;
- d) documents evidencing the acquisition of ownership of the Series 2013 Property by the Trustee (as such terms are respectively defined in the Series 2013 Purchase Agreement);
- e) the unconditional approving opinion of Greenberg Traurig LLP, Bond Counsel (herein so called) to Buyer, dated the Closing Date and addressed to Seller, and a supplemental opinion of Bond Counsel relating to the Series 2013 Obligation Documents, in the respective forms of Exhibit J attached; and
- f) the opinion of Dickinson Wright Mariscal Weeks, counsel to Buyer, dated the Closing Date and addressed to Seller, in the form of Exhibit K attached.

5.3.4. such other instruments and documents of the type or nature that are customarily provided by purchasing parties in connection with transactions of the type contemplated hereby and which Seller reasonably deems to be necessary for Close of Escrow.

5.4. Transfer Documents. The Bill of Sale, the Assignment of Permits, the Assignment and Assumption Agreement, the Assignment of Warranties, the Deed, the Water Rights Transfer Instruments, the Series 2013 Obligation Documents and all documents which may be necessary to transfer the Purchased Assets are hereinafter collectively referred to as the "Transfer Documents."

6. PRELIMINARY TITLE REPORT AND OBJECTIONS.

6.1. The Report and Objections.

6.1.1. Seller shall cause Escrow Agent to issue and deliver to the Parties a preliminary title report (commitment for title insurance) concerning the Real Property (together with such Utility Easements as may be reasonably required by Buyer) together with legible copies of all instruments referred to therein (collectively, the "Report") by 5:00 p.m. local time on the 7th day following the Opening of Escrow. The Report is to be preliminary to the ALTA extended coverage owner's policy of title insurance to be issued to Buyer by Escrow Agent insuring Buyer's fee simple title to the Real Property, certain of the Utility Easements and the Improvements in the amount noted below (the "Owner's Policy"). Buyer shall pay all additional costs in regard to the extended coverage portion of the Owner's Policy as well as for any endorsements requested by Buyer, and Seller shall pay only the premium for an ATLA standard owner's policy in an insured amount not to exceed (at Seller's expense) \$15,000,000.00, the

Parties' agreed upon approximation of the value of the Real Property and associated Improvements.

6.1.2. Buyer shall have until 5:00 p.m. local time on the 10th business day after Buyer's receipt of the Report in which to advise Seller and Escrow Agent, in writing, either: (i) that the condition of title to the Real Property as evidenced by the Report is acceptable; or (ii) to object to any easements, liens, encumbrances or other exceptions or requirements in the Report (excluding real property taxes and assessments not yet due and payable which may constitute a lien on the Real Property) (collectively, the "Buyer's Objections"). If Buyer, for any reason, shall not have either approved the condition of title of the Real Property as shown by the Report or provided Buyer's Objections within the time specified in this Section 6.1.2, then Buyer shall be deemed to have approved of the condition of title of the Real Property as shown by the Report (the "Permitted Exceptions").

6.1.3. If Buyer's Objections are made within the time specified, Seller shall attempt, to the extent commercially reasonable, to cure Buyer's Objections within thirty (30) business days of receipt of same. If Seller is unable to cure Buyer's Objections within such period, Buyer shall either waive, in writing, the curing of such Buyer's Objections or Buyer shall cancel this Agreement, whereupon the Additional Earnest Deposit plus Interest thereon shall be payable immediately by Escrow Agent to Buyer and the Original Earnest Deposit and Interest thereon shall be released to Seller and, except as otherwise provided in this Agreement, neither Seller nor Buyer shall have any further liability or obligation under this Agreement. If Buyer does not provide the written waiver of Buyer's Objections by the end of the thirty day period, Buyer shall be deemed to have elected to terminate this Agreement.

6.2. Supplemental Title Report and Objections.

6.2.1. Escrow Agent shall issue and deliver to the Parties any supplemental title report(s) deemed necessary by Escrow Agent (the "Supplemental Report"). Buyer shall have until 5:00 p.m. local time on the 5th business day after Buyer's receipt of any Supplemental Report in which to advise Seller and Escrow Agent, in writing, of any objections Buyer may have to any item disclosed by the Supplemental Report(s) which was not set forth in the Report or a previous Supplemental Report (the "Supplemental Objections"). If Buyer, for any reason, shall not have notified Seller and Escrow Agent that the Supplemental Report is acceptable or, alternatively, notified Seller and Escrow Agent of Buyer's Supplemental Objections within the time specified in this Section 6.2.1, Buyer shall be deemed to have approved of the condition of title of the Real Property as shown by the Supplemental Report.

6.2.2. The provisions of Section 6.1.3 shall apply with regard to any attempted title cure by Seller, it being agreed that Seller shall have until 5:00 p.m. local time on the 30th business day after Seller's receipt of the Supplemental Objections, if any, within which Seller, in Seller's sole discretion, may attempt to cure the Supplemental Objections; provided, however, that in the event such time period would necessitate an extension of the date of Close of Escrow, the Parties shall be deemed to have mutually agreed to such reasonable extension as necessary to allow cure of the Supplemental Objections.

7. BUYER'S DUE DILIGENCE.

7.1. Buyer's Due Diligence Investigation. For the sole purpose of conducting Buyer's due diligence investigation of the Business, Seller agrees that Buyer and its counsel, accountants and other representatives shall have, upon reasonable notice and at Buyer's sole expense, access during normal business hours to all of Seller's properties, Infrastructure, books, accounts, records, Assigned Contracts, MEAs, hydrology studies and other documents relating to the Business. Buyer's due diligence investigation may include, but not be limited to: (i) a financial audit of Seller's books, records and data management systems; (ii) an engineering review of all of Seller's assets; (iii) a review of Seller's employee records; (iv) a review of historical and current budgets, volumetric and customer data; (v) a review of any outstanding developer and/or mainline extension agreements; and (vi) the right to copy, at Buyer's sole expense, all information and documents required by Buyer in regard to Purchase Transaction. Buyer shall have until 5:00 p.m. on the date which is sixty (60) days after the execution and delivery of this Agreement by both Parties (the "Study Period"), in which to complete its due diligence investigation and advise Seller, in writing, of any objections Buyer may have to any item(s) disclosed by Buyer's due diligence investigation. In the event Buyer provides notice of any objection, Seller shall, in its sole discretion, take commercially reasonable steps to cure such objections within thirty (30) business days of receipt of such objections. If Seller is unable to cure Buyer's objections within such period, Buyer shall either waive, in writing, the curing of such objections or Buyer may cancel this Agreement, whereupon the Additional Earnest Deposit plus Interest shall be payable immediately by Escrow Agent to Buyer, the Original Earnest Deposit shall be released to Seller and, except as otherwise provided in this Agreement, neither Seller nor Buyer shall have any further liability or obligation under this Agreement. If Buyer does not provide the written waiver of Buyer's objections by the end of the Study Period, Buyer shall be deemed to have elected to waive such objections. It is understood that information which is discovered by Buyer in its investigations shall not be deemed to be items which cause Seller any damage and therefore not subject to the obligations of indemnity above-stated.

7.2. Buyer's Inspection of the Real Property.

7.2.1. Access to the Real Property. Seller shall permit Buyer access to the Real Property at any time or times reasonable following Opening of Escrow, provided Buyer shall give Seller notice prior to entry upon the Real Property, to conduct Buyer's due diligence investigation. Buyer, its agents and consultants, subject to the requirements and obligations of Sections 7.3 and 7.4, shall use commercially reasonable steps to not materially disrupt or interfere with the operations of the Business during such investigation.

7.2.2. Prohibitions. Any provision of this Agreement to the contrary notwithstanding, Buyer shall not be entitled to conduct inspections or any Phase II environmental report or other study which may require the drilling of holes in the Real Property, or the removal of soil samples, without Seller's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned.

7.3. Buyer's Restoration of the Real Property. Buyer, at Buyer's sole cost and on or before the earlier of: (a) the completion of Buyer's due diligence investigation; or (b) termination of this Agreement, shall repair and restore any material damage to the Real

Property or the Improvements caused by any entry, testing and/or inspection of, on or upon the Real Property or the Improvements by Buyer or Buyer's representatives ("Buyer's Restoration Obligation").

7.4. Buyer's Indemnity. Buyer shall and does hereby agree to indemnify, defend and hold Seller harmless against any loss, damage or claim for personal injury or property damage arising from any acts or omissions on the part of Buyer or any agents, contractors or employees of Buyer in connection with Buyer's due diligence investigation (the "Buyer's Indemnity Obligations," and, together with Buyer's Restoration Obligation, the "Buyer's Restoration and Indemnity Obligations"). Buyer's Restoration and Indemnity Obligations shall survive any termination of this Agreement or the Close of Escrow, as applicable, for a period of one (1) year after which Buyer's Restoration and Indemnity Obligations shall automatically terminate unless prior to the end of such one-year period, Seller shall have commenced an action against Buyer exclusively in the Maricopa County, Arizona Superior Court (the "Court") to enforce Buyer's obligations under this Section 7. It is understood that information which is discovered by Buyer in its investigations shall not be deemed to be items which cause Seller any damage and therefore not subject to the obligations of indemnity above-stated.

7.5. Return of Information. In the event Escrow is cancelled, for any reason, Buyer shall promptly deliver to Seller (without retention of any copies) all documents and other information obtained from Seller in connection with the Purchase Transaction, and shall immediately destroy any notes, extracts, summaries or other materials derived in any way from materials provided by Seller to Buyer with respect to the Purchase Transaction.

8. SURVEY.

8.1. The Survey. If Buyer, in Buyer's sole discretion, elects to obtain a current survey of all or by portion of the Real Property and the Improvements, Buyer, at Buyer's sole cost, on or before the end of the Study Period, shall cause a certified ALTA survey of such portion of the Real Property and the Improvements as Buyer may determine (collectively, the "Survey") to be completed before the end of the Study Period by a surveyor licensed in the State of Arizona (the "Surveyor") and deposited with Escrow Agent and Seller, whereupon the legal description in the Survey shall control over the description in Schedule 2.1.5 to the extent they may be inconsistent, in which case Schedule 2.1.5 shall be deemed amended pursuant to Section 2.2.3 hereof. Buyer's election to obtain a Survey shall not be a condition to Close of Escrow. The Survey, if any, shall be certified by the Surveyor in favor of Seller, Buyer and the Escrow Agent. Seller shall provide to Buyer any current surveys of the Real Property in Seller's possession or control and shall reasonably cooperate with Buyer in updating such surveys (if possible).

9. CONDITIONS PRECEDENT.

9.1. Buyer's Conditions Precedent. Buyer's obligation to perform under this Agreement is expressly subject to the written satisfaction (or waiver, in writing, by Buyer) at or prior to Close of Escrow of the following:

9.1.1. The representations and warranties of Seller contained in Section 11 of this Agreement shall be true and correct in all material respects as of the Effective Date, and shall be true and correct in all material respects as of Close of Escrow as if made at and as of such time, except for: (i) changes permitted or contemplated hereby; and (ii) representations and warranties which are as of a specific date, in which event they shall be true and correct as of such date.

9.1.2. Seller shall have fully and timely performed all material obligations under this Agreement required to be performed by it at or prior to Close of Escrow pursuant to the terms hereof.

9.1.3. Escrow Agent shall have issued to Buyer the Owner's Policy (or a binding written commitment therefor), subject only to the Permitted Exceptions and those other matters, if any, approved or deemed approved by Buyer pursuant to this Agreement.

9.1.4. Buyer's Common Council (the "Council") shall have entered a final resolution approving this Agreement and the Purchase Transaction pursuant to Section 10.1, which order shall not be subject to appeal or reversal (the "Council Approval"). The Council Approval shall be obtained by Buyer at Buyer's sole cost and shall contain a provision confirming that this Agreement and the transaction contemplated hereby are being entered into by Seller in lieu of Buyer's condemnation of the Business and the Purchased Assets pursuant to Buyer's power of eminent domain.

9.1.5. Seller shall have, pursuant to Section 10.2, filed an Application for cancellation of its CC&N with the Commission.

9.1.6. The Commission shall have entered a final order approving, among other things, the deletion and extinguishment of Seller's CC&N and the transfer of Seller's Customers to Buyer, subject only to the consummation of the Purchase Transaction (the "Commission Order"), and all appeal periods therefrom shall have run with no appeal having been filed (the date upon which such appeal periods have run being herein called the "Appeal Date").

9.1.7. Buyer, at Buyer's sole cost and on terms acceptable to Buyer, in Buyer's sole discretion, shall have obtained (and closed, contemporaneously with the Closing hereunder) from WIFA, a loan or loans in the minimum principal amount of \$15,000,000.00, at an annualized weighted average interest rate not to exceed 7% as of the Close of Escrow (collectively, the "Down Payment Loan"), the proceeds of which shall be used by Buyer in the acquisition of the Purchased Assets.

9.1.8. All conditions to the execution and delivery by Buyer of the Series 2013 Obligations shall have been fulfilled including, without limitation, any reasonable and justified obligations or requirements imposed by Bond Counsel, the Trustee thereunder or any other party having any current interest in any documentation related to the Series 2013 Obligations including, without limitation, WIFA.

9.1.9. There shall have been no material adverse change in business, financial position, operation or results of operation of the Business, the Purchased Asset or Seller since the close of the Study Period.

Notwithstanding the foregoing Buyer may, in Buyer's sole discretion and if one or more of the foregoing conditions are not fulfilled as of the scheduled Closing Date, adjourn the Closing from time to time (and for as many times as Buyer may determine in its sole discretion), but in no event beyond December 31, 2013, in order to endeavor to fulfill such condition or conditions (and Seller shall continue to cooperate and Buyer shall continue to use commercially reasonable efforts during any such extended time to obtain fulfillment of such condition or conditions). It is understood that Buyer may, nevertheless, elect not to further adjourn the Closing and either waive any unfulfilled conditions and proceed to Closing or cancel this Agreement, whereupon, so long as the failure of condition was not caused by the acts or omissions of Buyer, the Additional Earnest Deposit (with Interest thereon) shall be returned to Buyer, the Original Earnest Deposit with Interest thereon) shall be paid to Seller and neither party shall have further liability to the other hereunder, except as specifically stated herein.

9.2. Seller's Conditions Precedent. Seller's obligation to perform under this Agreement is expressly subject to the written satisfaction (or waiver in writing by Seller) at or prior to Close of Escrow of the following:

9.2.1. The representations and warranties of Buyer contained in Section 12 of this Agreement shall be true and correct in all material respects as of the Effective Date and shall be true and correct in all material respects as of Close of Escrow as if made at and as of such time, except for: (i) changes permitted or contemplated hereby; and (ii) representations and warranties which are as of a specific date, in which event they shall be true and correct as of such date.

9.2.2. Buyer shall have fully and timely performed all material obligations under this Agreement required to be performed by it at or prior to Close of Escrow pursuant to the terms hereof.

9.2.3. Buyer shall have, within thirty (30) business days of Opening of Escrow and at Buyer's sole cost, filed an application with WIFA to obtain the Down Payment Loan.

9.2.4. Buyer shall have obtained approval of the Down Payment Loan at or before the regularly scheduled WIFA meeting now believed to be scheduled for on or about June 19, 2013.

9.2.5. The Commission shall have entered the Commission Order.

9.2.6. Buyer shall have filed, within twenty (20) business days of the Opening of Escrow, all necessary documents and applications, if any, required by the Commission.

9.2.7. With respect to Seller's assignment and Buyer's assumption of the MEAs, Buyer shall have obtained, at its sole cost, all requisite approvals of the Commission, if any.

9.2.8. Seller shall have received and approved all documents required by Section 5.3.3 above which are not currently attached as Exhibits hereto, it being understood that the Parties will use commercially reasonable efforts to endeavor to negotiate/finalize the forms of the Series 2013 Obligation Documents (and thereupon attach the same hereto as Exhibits), with the intent that the same shall be presented to the Council at its July 17, 2013 meeting, together with the WIFA Loan documents, for final approval.

9.2.9. Buyer shall have executed and delivered the Series 2013 Obligation Documents.

10. PRE-CLOSING COVENANTS OF THE PARTIES.

10.1. Council Approval. Any provision of this Agreement to the contrary notwithstanding, Buyer shall not be bound by this Agreement until Buyer obtains the Council Approval. If the Council approves this Agreement in its entirety (except for missing Exhibits noted herein), Buyer shall deposit evidence thereof with Escrow Agent, whereupon Escrow Agent will provide written notice of such deposit to Seller. If the Council fails or for any reason refuses to approve this Agreement on or before June 19, 2013, this Agreement will be deemed automatically cancelled, the Original Earnest Deposit and Interest, if any, shall be paid by Escrow Agent to Seller and neither of the Parties shall have any further liability or obligation under this Agreement. Any provision of this Agreement to the contrary notwithstanding, Buyer shall have no liability or obligation under this Agreement unless and until the Council approves this Agreement in its entirety, even if Buyer executes this Agreement.

10.2. Commission Approval.

10.2.1. Within ten (10) days after Opening of Escrow, Seller shall file with the Commission an application (the "Application") requesting the permanent cancellation and extinguishment of the CC&N, subject to the consummation of the Purchase Transaction. Buyer shall have the right, and currently intends, to intervene in such proceeding and support the Application.

10.2.2. Seller shall be responsible for preparing, filing and prosecuting the Application. Buyer agrees to support the Application filed by Seller (and intends to intervene in such proceeding as aforesaid) and shall reasonably expeditiously provide information reasonably requested by Seller in prosecuting the Application, including letters of support, written testimony, responses to data requests and other discovery, and attend meetings, public comment sessions, procedural conferences, hearings and open meetings.

10.2.3. In the event the Commission denies the Application, the Parties shall work cooperatively to remedy, to the extent commercially reasonable, the circumstance or circumstances which caused the Commission to deny the Application. However, the Parties shall be under no obligation to accept any stipulations, responsibilities or liabilities imposed by

the Commission which are not acceptable to a Party in its reasonable discretion in order to obtain approval of the Application.

10.2.4. Upon Commission approval of the Application and Close of Escrow, Buyer shall assume the sole right, duty and obligation to provide water service within the Certificated Area and shall take all necessary and appropriate actions relating to such water utility service.

10.3. Further Assurances. Subject to the terms and conditions of this Agreement, each Party will use commercially reasonable efforts to: (i) take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable under applicable laws to consummate the Purchase Transaction as soon as practicable after the Opening of Escrow; (ii) obtain and maintain all approvals required to be obtained from any third party and/or any Governmental Agency that are necessary to consummate the Purchase Transaction; (iii) obtain and maintain all financing necessary to consummate the Purchase Transaction; and (iv) obtain and maintain all approvals necessary to deliver the Series 2013 Obligations and consummate the Purchase Transaction. Said assurances shall include, without limitation, any post-Closing obligations relating to water transfers otherwise imposed by ADWR, the CAP or by any other relevant Governmental Agency. Prior to Closing, each Party shall also cooperate with one another with regard to the preparation, processing and execution of the Water Transfer Instruments.

10.4. Covenant to Satisfy Conditions. Seller will use its commercially reasonable efforts to ensure that the conditions set forth in Section 9 of this Agreement are satisfied, insofar as such matters are within the reasonable control of Seller. Buyer will use its commercially reasonable efforts to ensure that the conditions set forth in Section 9 of this Agreement are satisfied, insofar as such matters are within the reasonable control of Buyer.

10.5. Concerning Any Existing WIFA Loans. Seller is presently indebted to WIFA in the approximate amount of \$140,000.00 ("Seller's Outstanding WIFA Loan"). Contemporaneous with Closing (or earlier if required by WIFA) Seller shall retire in full Seller's Outstanding WIFA Loan, together with any other indebtedness which WIFA requires to be retired/addressed, which will then permit the WIFA Loan to be consummated. If acceptable to WIFA, Buyer has no objection to the contemporaneous retirement at the Closing of Seller's Outstanding WIFA Loan and/or any such other indebtedness by utilizing a portion of the Cash Payment direct from Escrow.

11. SELLER'S REPRESENTATIONS AND WARRANTIES. Subject to the terms, conditions and limitations set forth in this Agreement, Seller hereby represents and warrants to Buyer as of the Effective Date and again, except as may otherwise be disclosed in writing as a result of changed circumstances subsequent to the Effective Date, as of Close of Escrow as follows:

11.1. To Seller's knowledge, there are no unrecorded leases which may affect title to the Real Property.

11.2. There are no outstanding or unresolved notices of violation with regard to any applicable regulation, ordinance, requirement, covenant, condition or restriction relating to the present use or occupancy of the Real Property or the Improvements from any Governmental Agency.

11.3. With the exception of Buyer's threat to condemn the Business and the Purchased Assets pursuant to Buyer's power of eminent domain, no legal action or proceeding has been undertaken or, to Seller's knowledge, threatened with respect to or in any manner affecting the Purchased Assets.

11.4. Seller's consummation of the Purchase Transaction will not in any way violate any of the Assigned Contracts or MEAs, except: (i) where Seller has obtained or will obtain prior to Close of Escrow the necessary written agreements, waivers or consents of the other parties to any Assigned Contracts or MEAs to avoid, release or waive any such violation with respect to such Assigned Contracts or MEAs; or (ii) where any such violation would not result in a material adverse effect on the business, financial position, operation or results of operation of the Business or Purchased Assets (a "Material Adverse Effect").

11.5. Subject only to the Commission's approval of the Application and entry of the Commission Order, Seller has power and authority to execute, deliver and perform under this Agreement as well as the Transfer Documents.

11.6. To Seller's knowledge, no party to any of the Assigned Contracts, or the MEAs is in default under any such Assigned Contract, or MEA.

11.7. Except for the approval of the Commission and the Council and except as may be required under the Assigned Contracts or the MEAs, no consent of any third party is required in order for Seller to enter into this Agreement and perform Seller's obligations hereunder.

11.8. All general real estate taxes, assessments and personal property taxes that have become due with respect to the Purchased Assets (including those that will be prorated at Close of Escrow in accordance with this Agreement) have been paid or will be so paid by Seller prior to Close of Escrow.

11.9. Information supplied and statements made by Seller in any financial statement (including, without limitation, balance sheets and profit and loss statements, as well as tax returns) or financial information or current budget prior to or contemporaneously with this Agreement are true and correct, to Seller's knowledge, in all material respects and do not omit to state any fact which is required to be stated therein to make such statements not misleading in any material respect.

11.10. All underground well equipment and casings shall be in good working order at Closing. If, within six (6) months of the date of Closing: (i) Buyer is reasonably required to expend an amount exceeding Twenty-Five Thousand Dollars (\$25,000) to repair any single underground facility described above (the "Underground Facility Indemnity Floor"); (ii) begins any such repairs within that six (6) month period and reasonably diligently thereafter

prosecutes the same to completion; or (iii) Buyer gives written notice to Seller (which may be by electronic means) of the necessity for and of such repairs, within ninety (90) days after the date of such notice commences same and reasonably diligently thereafter prosecutes the same to completion, then Seller shall be responsible for all (whether or not completed within such six [6] month period) such repair costs (collectively, "Excess Repair Costs") up to an aggregate amount of One Hundred Fifty Thousand Dollars (\$150,000.00) (collectively, the "Underground Facility Indemnity Cap"). For purposes of this Section 11.10, any repairs to a single underground facility that do not exceed Twenty-Five Thousand Dollars (\$25,000.00) shall be considered normal repair costs incurred in the ordinary course of business by Buyer, which shall not apply towards either the Underground Facility Indemnity Floor or the Underground Facility Indemnity Cap. Buyer shall, within thirty (30) days after completion of any repair to an underground facility that exceeds the Underground Facility Indemnity Floor, provide Seller with notice of such repair and all documentation reasonably necessary to evidence such expenditure. If, after receipt of such notice, Seller does not promptly reimburse Buyer for any such expenditures, Buyer shall have the right to offset such amounts against the next payment due under the Series 2013 Obligations.

12. BUYER'S REPRESENTATIONS AND WARRANTIES. Subject to the terms, conditions and limitations set forth in this Agreement, Buyer hereby represents and warrants to Seller as follows:

12.1. Buyer is a governmental entity and political subdivision of the State of Arizona, duly created and existing under the provisions of A.R.S. Title 9.

12.2. Subject only to receipt of Council Approval, Buyer has full power and authority to execute, deliver and perform Buyer's obligations under this Agreement as well as the Transfer Documents.

12.3. There are no actions or proceedings pending or to Buyer's knowledge, after due inquiry, threatened against Buyer which may in any manner whatsoever affect the validity or enforceability of this Agreement or any of the Transfer Documents.

12.4. The execution, delivery and performance of this Agreement and the Transfer Documents have not and will not constitute a breach or default under any other agreement, law or court order under which Buyer is a party or may be bound.

12.5. Information supplied and statements made by Buyer in any financial statement or current budget prior to or contemporaneously with this Agreement are true and correct in all material respects.

12.6. Buyer acknowledges and affirms that it: (i) has had access to the Purchased Assets and information made available by Seller pertaining to the Business; (ii) has had access to the personnel, officers, operations and records of Seller; (iii) has had access to the Real Property and the Improvements; and (iv) in making the decision to enter into this Agreement and to consummate the Purchase Transaction, has relied on the express representations, warranties, covenants and agreements of Seller set forth in this Agreement, and other than such reliance, it has relied solely on the basis of its own independent investigation, analysis and evaluation of the Business and the Purchased Assets.

13. PRE-CLOSING COVENANTS OF THE PARTIES.

13.1. After the end of the Study Period and prior to Close of Escrow or any earlier termination of this Agreement, Seller will not enter into or execute any employment, management or service contract with respect to the Business which will survive Close of Escrow without Buyer's prior written consent, which consent shall not be unreasonably withheld or delayed. Any such contract so entered by Seller with Buyer's consent shall provide that such contract can be terminated by Seller or Seller's successor, at any time without penalty, upon not more than thirty (30) days' prior written notice to the other party thereto. When any such contracts are fully executed, Seller shall contemporaneously deliver a copy thereof to Buyer.

13.2. After the end of the Study Period and prior to Close of Escrow or any earlier termination of this Agreement, Seller shall not amend, modify or terminate any Assigned Contract or MEA without Buyer's prior written consent, which consent may be withheld in Buyer's sole discretion.

13.3. Except for any item to be prorated at Close of Escrow in accordance with this Agreement, all bills or other charges, costs or expenses arising out of or in connection with or resulting from Seller's use, ownership, or operation of the Business up to Close of Escrow shall be paid in full by Seller on or before Close of Escrow. Seller's obligations under this Section 13.3 shall survive Close of Escrow.

13.4. Seller agrees that, between the end of the Study Period and Close of Escrow or any earlier termination of this Agreement, Seller, at Seller's sole cost, shall:

13.4.1. continue to operate and maintain the Business as heretofore operated by Seller subject only to the right of Buyer to approve or disapprove any Major Transaction (as defined below) pursuant to this Section 13.4;

13.4.2. maintain the Real Property and the Improvements in their current condition in accordance with historical operating practices;

13.4.3. pay, in the normal course of business, all sums due for work, materials or services furnished or otherwise incurred in the ownership, use or operation of the Purchased Assets, but in no event will the failure to pay prior to Close of Escrow relieve Seller of its obligation to deliver the Purchased Assets to Buyer free of mechanics', material suppliers' and similar liens for work, materials or services furnished with respect to the Purchased Assets prior to Close of Escrow;

13.4.4. comply, in all material respects, with all Legal Requirements applicable to the Business;

13.4.5. except in the ordinary course of Seller's Business or as required by a Governmental Agency in connection with the termination of Seller's Business: (i) not place or permit to be placed on any portion of the Real Property any new Improvements of any kind; or (ii) remove or permit any Improvements to be removed from the Real Property without the prior written consent of Buyer, which consent may be withheld at Buyer's sole discretion;

13.4.6. not restrict, rezone, file or modify any development plan or zoning plan or establish or participate in the establishment of any improvement district with respect to all or any portion of the Real Property without Buyer's prior written consent, which consent may be withheld at Buyer's sole discretion;

13.4.7. not further cause, create any easement, encumbrance, or mechanic's or materialmen's liens, and/or similar liens or encumbrances to arise or to be imposed upon the Purchased Assets or any portion thereof, that will affect title thereto subsequent to Close of Escrow, without Buyer's prior written consent, which consent may be withheld at Buyer's sole discretion; and

13.4.8. after Opening of Escrow, not, (unless the same is a Required Obligation hereunder) without Buyer's prior written consent, which consent may be withheld in Buyer's sole discretion, make any material change to the water delivery system (whether of a tangible nature, such as equipment or other real or personal property, or of an intangible nature, such as business practices, procedures, dealings, etc.) operated by Seller or to Seller's existing methods of business practice related thereto which would have a Material Adverse Effect on the value of the Property or the business conducted thereat and thereabout in the hands of Buyer (individually and collectively, a "Major Transaction").

13.5. Should Seller receive notice or knowledge of any material information regarding any of the matters set forth in Section 11 or this Section 13 after the Effective Date and prior to Close of Escrow, Seller will promptly notify Buyer of the same in writing.

13.6. Should Buyer receive notice or knowledge of any material information regarding any of the matters set forth in Section 11 (as a result of its due diligence investigation), Section 12 or this Section 13 after the Effective Date and prior to Close of Escrow, Buyer will promptly notify Seller of the same in writing.

14. KNOWLEDGE OF THE PARTIES.

14.1. As used herein, "Buyer's knowledge", "knowledge of Buyer" or words of similar intent or effect mean the extent of the actual and current knowledge as of the Effective Date or as of Closing, as the case may be, of Patrick Flynn and/or Paul Gardner, without independent inquiry and excluding any imputed knowledge or matters which should have been known. Any provision of this Agreement to the contrary notwithstanding, Messrs. Flynn and Gardner shall not have any personal liability in regard to the representations and warranties in this Agreement.

14.2. As used herein, "Seller's knowledge", "knowledge of Seller" or words of similar intent or effect mean the extent of the actual and current knowledge as of the Effective Date or as of Closing, as the case may be, of Brad Schnepf or Doug Odom, without independent inquiry and excluding any imputed knowledge or matters which should have been known. Any provision of this Agreement to the contrary notwithstanding, Messrs. Odom and Schnepf shall not have any personal liability in regard to the representations and warranties in this Agreement.

15. SURVIVAL PERIODS. All representations made in this Agreement by either Party (except as specifically set forth above with regard to offset rights) shall survive the execution and delivery of this Agreement and the cancellation of this Agreement or Close of Escrow for a period of six (6) months, after which each Party's warranties and related indemnity obligations shall automatically terminate, unless, prior to the end of the six (6) month period, either Party shall have brought suit against the other (only in the Court) to enforce the other's warranties. Unless otherwise stated herein, obligations of indemnity of the Parties not articulated in Sections 11 and 12 above shall survive the Closing for a period of one (1) year unless, prior to the expiration of said one (1) year period, the Party claiming indemnity shall give written notice to the other Party of the existence of such a claim or claims of indemnity; provided, that the total liability of Seller for such indemnities ("Indemnity Limit") shall not exceed One Hundred Thousand Dollars (\$100,000.00), it being understood that said Indemnity Limit is in addition to, and does not count against or operate to reduce or be reduced by application of, the Excluded Liability Indemnity (subject to the Excluded Indemnity Liability Limit), nor the obligation to pay Excess Repair Costs (subject to the Underground Facility Indemnity Cap); provided further, that Seller's obligation to indemnify related to Tax Liabilities shall survive the Closing for a period of five (5) years and then expire.

16. POST-CLOSING MAINTENANCE OF AND ACCESS TO INFORMATION. Seller and Buyer acknowledge that after Close of Escrow, Seller or Buyer may need access to information or documents in the control or possession of the other Party for the purposes of concluding the Purchase Transaction, tax returns or audits, compliance with the government reimbursement programs and other laws and regulations, and the prosecution or defense of third party claims. Accordingly, Seller and Buyer shall keep, preserve and maintain in the ordinary course of business, and as required by law and relevant insurance carriers, all books, records, documents and other information in the possession or control of such Party and relevant to the foregoing purposes for a period of five (5) years from Close of Escrow or such longer period of time as may be required by any legal requirement.

17. SELLER'S EMPLOYEES.

17.1. No less than thirty (30) business days prior to Close of Escrow, Seller shall designate, in writing, to Buyer the active employees and positions of Seller connected with operation of the Business. On or before Close of Escrow, Buyer, at Buyer's sole option and discretion, may designate the positions within Buyer's organization that may be available following Close of Escrow and which some, or all, of Seller's employees may be eligible to apply to fill such positions.

17.2. Although Buyer is under no obligation to hire any of Seller's active employees employed by Seller as of Close of Escrow, Seller shall be entitled to give written notice to Seller's active employees that such active employees can apply for employment by Buyer after Close of Escrow by making application to Buyer in accordance with Buyer's published, written employment application requirements. Any employees of Seller who, in Buyer's sole discretion, are hired as employees of Buyer after Close of Escrow shall be employed and compensated in accordance with Buyer's then-applicable rules and regulations and Buyer's then-applicable employment terms regarding, among other things, compensation, vacation, health insurance and pension plans.

17.3. Any provision of this Agreement to the contrary notwithstanding, Seller's employees shall no longer be employed in connection with the Business (except as stated herein), and Seller, at Seller's sole cost, shall pay all of Seller's employees' unpaid wages, vacation pay, health insurance and related benefits, retirement and related benefits and all outstanding claims by such employees, if any, against Seller, it being agreed by Seller that Buyer shall have no obligations to such employees in regard to any item accrued prior to Close of Escrow even if any of such employees are subsequently employed by Buyer after Close of Escrow.

18. BROKER'S COMMISSION. The Parties represent and warrant to one another that they have not dealt with any finder, broker or realtor in connection with this Agreement. If any person shall assert a claim to a finder's fee or brokerage commission on account of alleged employment as a finder or broker in connection with the Purchase Transaction, the Party under whom the finder or broker is claiming shall indemnify and hold the other Party harmless from and against any such claim and all costs, expenses and liabilities incurred in connection with such claim or any action or proceeding brought on such claim, including, but not limited to, counsel and witness fees and court costs in defending against such claims. The provisions of this Section 18 shall survive Close of Escrow or the earlier termination of this Agreement.

19. ASSIGNMENT.

19.1. Buyer's Assignment. Except as contemplated by the Series 2013 Obligation Documents, Buyer shall not have the right or authority to assign this Agreement or any of Buyer's rights under this Agreement to any person, partnership, corporation or other entity without the prior written consent of Seller, which consent shall be in Seller's sole discretion. In the event Seller consents to such an assignment, the consent shall be conditioned upon the assignee's assumption, in writing, of Buyer's duties and obligations under this Agreement by delivering to Seller and Escrow Agent duplicate originals of an assumption agreement in form and substance acceptable to Seller, in Seller's reasonable discretion.

19.2. Seller's Assignment. Seller may not assign any or all of Seller's rights or obligations under this Agreement without the prior written consent of Buyer, which consent shall be in Buyer's sole discretion.

20. NO PREPAYMENT OPTION. Buyer may not prepay its obligations under the Series 2013 Obligation Documents.

21. RISK OF LOSS.

21.1. Minor Damage. In the event of loss or damage to the Purchased Assets or any portion thereof which is not "major" (as defined below) and which occurs after the Effective Date, this Agreement shall remain in full force and effect, provided Seller assigns to Buyer at Close of Escrow all of Seller's right, title and interest to any claims and proceeds Seller may have with respect to any casualty insurance policies or condemnation awards relating to the premises in question. Seller shall maintain the insurance coverages and amounts in effect at the Effective Date through Close of Escrow. Upon Close of Escrow, full risk of loss with respect to the Purchased Assets shall pass to Buyer. Seller, at no material cost to Seller, shall reasonably

cooperate with Buyer, both before and after the Closing Date, to adjust such losses and to endeavor to see to it that the insurance proceeds are paid to Buyer.

21.2. Major Damage. In the event of loss or damage to the Purchased Assets or any portion thereof which is "major", Buyer may terminate this Agreement by written notice to Seller and Escrow Agent, in which event the Original Earnest Deposit and Interest thereon shall be released to Seller and the Additional Earnest Deposit and Interest thereon shall be returned to Buyer, all as provided in Section 4.1.1. If Buyer fails to notify Seller and Escrow Agent in writing of its intent to proceed with Close of Escrow within ten (10) business days after Buyer receives written notice from Seller of the occurrence of a loss or damage to the Purchased Assets which is major, which notice shall specify whether or not insurance proceeds are available to pay for the costs of restoration, then Buyer shall be deemed to have elected to terminate this Agreement. In the event Buyer elects to proceed with Close of Escrow, the Purchase Price shall be reduced by an amount equal to the deductible amount under Seller's insurance policy. Seller's right and obligation to assign such claim hereunder shall be without regard to the adequacy of insurance proceeds. Upon Close of Escrow, full risk of loss with respect to the Purchased Assets shall pass to Buyer. Seller, at no cost to Seller, shall reasonably cooperate with Buyer respecting such insurance proceeds in the manner set forth in Section 21.1.

21.3. Definition of "Major" Loss or Damage. For purposes of this Agreement, "major" loss or damage means: (a) loss or damage to the Real Property or Improvements, or any portion thereof, such that the cost of repairing or restoring the premises in question to a condition substantially identical to that of the premises in question prior to the event of damage would be, in the opinion of an architect selected by Buyer and reasonably approved by Seller, equal to or greater than One Hundred Thousand Dollars (\$100,000.00); (b) any loss due to a condemnation which permanently and materially impairs the current ability to use the Purchased Assets; and (c) any loss to the Personal Property in the amount of Twenty-Five Thousand Dollars (\$25,000.00).

22. EVENTS OF DEFAULT.

22.1. Buyer's Event of Default. Buyer shall be in default under this Agreement if any of the following events shall occur:

22.1.1. Buyer shall fail to fully and timely perform any of Buyer's obligations under this Agreement and such failure shall continue past 5:00 p.m. local time on the 10th business day after Buyer's receipt of written notice from Seller specifying Buyer's non-compliance (or such longer period as is reasonably necessary to cure such non-compliance). Failure of the Commission to enter the Commission Order prior to the Closing Date or failure of any other condition precedent to Buyer's obligations to Close hereunder not caused, in whole or substantial part, by the acts or omissions of Buyer shall not constitute a Buyer's Event of Default;

22.1.2. if any representation or warranty made by Buyer in this Agreement shall be false or misleading in any material respect;

22.1.3. if Buyer shall: (i) voluntarily be adjudicated as bankrupt or insolvent; (ii) seek, consent to or not contest the appointment of a receiver or trustee for itself or

for all or any part of its property; (iii) file a petition seeking relief under the bankruptcy, arrangement, reorganization of other debtor relief laws of the United States, any state or any other competent jurisdiction; or, (iv) make a general assignment for the benefit of its creditors; or

22.1.4. if a court of competent jurisdiction enters an order, judgment or decree appointing, without the consent of Buyer, a receiver or trustee for Buyer, or for all or any part of Buyer's property.

22.2. Seller's Event of Default. Seller shall be in default under this Agreement if any of the following events shall occur:

22.2.1. Seller shall fail to fully and timely perform any of Seller's obligations under this Agreement and such failure shall continue past 5:00 p.m. local time on the 10th business day after Seller's receipt of written notice from Buyer specifying Seller's non-compliance (or such longer period as is reasonably necessary to cure such non-compliance). Failure of the Commission to enter the Commission Order prior to the Closing Date shall not constitute a Seller's Event of Default;

22.2.2. if any representation or warranty made by Seller in this Agreement shall be false or misleading in any material respect;

22.2.3. if Seller shall: (i) voluntarily be adjudicated as bankrupt or insolvent; (ii) seek, consent to or not contest the appointment of a receiver or trustee for itself or for all or any part of its property; (iii) file a petition seeking relief under the bankruptcy, arrangement, reorganization of other debtor relief laws of the United States, any state or any other competent jurisdiction; or, (iv) make a general assignment for the benefit of its creditors; or

22.2.4. if a court of competent jurisdiction enters an order, judgment or decree appointing, without the consent of Seller, a receiver or trustee for Seller, or for all or any part of Seller's property.

23. REMEDIES.

23.1. Seller's Breach. If a Seller Event of Default shall exist, Buyer, at Buyer's sole option, may either: (i) by written notice to Seller and Escrow Agent cancel this Agreement, obtain a refund of the Earnest Deposit and Interest in accordance with Section 4.1.1 and seek to recover its liquidated damages in accordance with Section 23.4.2 herein; (ii) seek specific enforcement against Seller, in which event Close of Escrow shall be automatically extended as necessary; or (iii) seek binding arbitration as provided in Section 23.3 as to any matter or dispute other than as provided in clause (i) or (ii) of this Section 23.1. Buyer's election to pursue the remedy set out in clause (i) of this Section 23.1 shall be exclusive of all other remedies, and shall constitute Buyer's knowing and intentional waiver of any right to seek damages or any other legal or equitable remedy against Seller in connection with this Agreement.

23.2. Buyer's Breach. Except as otherwise provided in this Agreement, if a Buyer Event of Default shall exist, Seller, at Seller's sole option, may either: (i) by written notice to Buyer and Escrow Agent cancel this Agreement and seek to recover its liquidated

damages in accordance with Section 23.4.1 herein; provided, however, that if Buyer fails to fully and timely perform Buyer's Restoration and Indemnity Obligations under this Agreement or Buyer's indemnity obligations under Section 3.3.1, Seller shall also be entitled to seek and enforce all legal and equitable remedies against Buyer in regard thereto; or (ii) seek mandatory, binding arbitration as provided in Section 23.3 as to any matter or dispute other than as provided in clause (i) of this Section 23.2. Except as provided in this Section 23.2 and in Section 23.4, Seller hereby waives any right to seek any equitable or legal remedies against Buyer in connection with this Agreement.

23.3. Binding Arbitration.

23.3.1. Any dispute or controversy between Seller and Buyer with respect to any issue arising under this Agreement (other than one determined by the condemnation court, or as specifically otherwise provided for elsewhere in this Agreement as a matter to be decided other than by arbitration), which is unable to be resolved by good faith negotiations among the Parties, shall be determined and resolved by binding arbitration in Phoenix, Arizona, in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") in effect on the date the arbitration is commenced. In the event of any inconsistency between such rules and the terms of this Agreement, this Agreement shall supersede the rules of the AAA. Judgment on any award rendered in the arbitration may be entered by the Court and shall be final, binding, non-appealable and conclusive. The AAA shall have jurisdiction over all Parties to this Agreement for purposes of the arbitration. The provisions of this Agreement pertaining to arbitration shall be binding upon the successors and assigns, if any, of the Parties hereto.

23.3.2. The AAA shall administer the arbitration. The arbitration panel shall consist of three independent and impartial arbitrators. Each Party shall appoint one arbitrator within thirty (30) days of any claim or demand for arbitration. If a Party fails to appoint an arbitrator within such thirty-day period, the AAA shall appoint an arbitrator on behalf of such Party within ten (10) days of the expiration of such thirty-day period. The two Party-appointed arbitrators shall, within ten (10) days of their appointment, select the third arbitrator from a list of candidates provided by the AAA. The place of the arbitration shall be Phoenix, Arizona and the substantive law governing the merits of the dispute between the Parties shall be Arizona law. Any and all submissions, materials, exhibits, testimony, decisions, awards or other material related to the arbitration process or the underlying dispute shall be treated as confidential under this Agreement.

23.3.3. The arbitration proceeding shall commence no later than forty-five (45) days from the date of the selection of the third arbitrator. All hearings shall be completed not later than ninety (90) days from the date of the selection of the third arbitrator, and the arbitrators shall issue the final award not later than thirty (30) days thereafter. The decision of a majority of the arbitrators shall be in writing and in duplicate, one counterpart thereof to be delivered to Seller and Buyer. The award of the arbitrators shall be binding, final and conclusive on Seller and Buyer, subject to the terms and conditions of the Uniform Arbitration Act (A.R.S. §§12-1501 et seq.).

23.3.4. The arbitrators are not empowered to award punitive, exemplary, or treble damages in excess of actual, direct damages and each Party hereby irrevocably waives any right to recover such damages with respect to any dispute within the scope of this clause. In the event any legal action, arbitration or other proceeding is brought to enforce this Agreement, the prevailing Party, as determined by the Court or arbitrator, shall be entitled to recover reasonable attorneys' fees and other related costs and expenses incurred, in addition to any compensation to which it may be entitled.

23.3.5. Each Party in the arbitration shall initially bear its own attorneys' fees and costs of arbitration. The non-prevailing Party in the proceeding shall be ordered to pay, and shall have ultimate responsibility for, all of the arbitrators' fees and the fees of the AAA and the attorneys' fees, expert witness fees and costs of the prevailing Party, and all such fees and costs shall be included in the judgment to be entered against the non-prevailing Party.

23.3.6. Anything to the contrary in this Section 23.3 notwithstanding, either Party may seek preliminary injunctive relief if, in its judgment, such action is necessary to avoid irreparable damage during the pendency of the arbitration procedures.

23.4. Liquidated Damages.

23.4.1. If Buyer fails to proceed to Close of Escrow for any reason other than: (i) the existence of a Seller Event of Default as defined herein; (ii) the failure of any condition precedent set forth herein to the obligations of Buyer to Close hereunder so long as not caused, in whole or substantial part, by the acts or omissions of Buyer; or (iii) the existence of any uncured objection, material change or failure of condition pursuant to Section 6.1.2, Section 6.1.3, Section 6.2.1, Section 7.1, Section 10.1 or Section 21.2 of this Agreement, Buyer shall pay to Seller the sum of Five Hundred Thousand Dollars (\$500,000.00) ("Seller's Liquidated Damages"). Buyer and Seller acknowledge that it would be difficult, if not impossible, to ascertain Seller's actual damages in such circumstances and that Seller's Liquidated Damages are a reasonable forecast of just compensation to Seller for damages resulting from Buyer's breach or default. The Parties acknowledge that the payment of such liquidated damages is not intended as a forfeiture or penalty, but is intended to constitute liquidated damages to Seller. Upon Buyer's failure to proceed to Close of Escrow (except for the reasons set out in (i), (ii) or (iii) above), and upon delivery of a written notice by Seller to Buyer and Escrow Agent that Seller has elected to terminate this Agreement, Seller shall be entitled to pursue an action for Seller's Liquidated Damages as provided for in Section 23.2. The foregoing provisions for liquidated damages and limitations on Buyer's liability shall not apply to any action by Seller against Buyer for any continuing obligations or indemnities of Buyer under any provisions of this Agreement that are stated to survive Close of Escrow or termination of this Agreement, and Buyer shall have full and complete liability for such obligations and indemnities. In all other instances of breach or default, the Parties reserve the right to seek recovery of their actual damages as allowed under Section 23 of this Agreement.

23.4.2. If Seller fails to proceed to Close of Escrow for any reason other than: (i) the existence of a Buyer Event of Default as defined herein; or (ii) the existence of any uncured objection, material change or failure of condition pursuant to Section 6.1.2, Section 6.1.3, Section 6.2.1, Section 7.1, Section 10.1 or Section 21.2 of this Agreement, Seller shall pay

to Buyer the sum of Five Hundred Thousand Dollars (\$500,000.00) ("Seller's Liquidated Damages"). Seller and Buyer acknowledge that it would be difficult, if not impossible, to ascertain Buyer's actual damages in such circumstances and that Seller's Liquidated Damages are a reasonable forecast of just compensation to Buyer for damages resulting from Seller's breach or default. The Parties acknowledge that the payment of such liquidated damages is not intended as a forfeiture or penalty, but is intended to constitute liquidated damages to Buyer. Upon Seller's failure to proceed to Close of Escrow (except for the reasons set out in (i) and (ii) above), and upon delivery of a written notice by Buyer to Seller and Escrow Agent that Buyer has elected to terminate this Agreement, Buyer shall be entitled to pursue an action for Buyer's Liquidated Damages as provided for in Section 23.2. The foregoing provisions for liquidated damages and limitations on Seller's liability shall not apply to any action by Buyer against Seller for any continuing obligations or indemnities of Seller under any provisions of this Agreement that are stated to survive Close of Escrow or termination of this Agreement, and Seller shall have full and complete liability for such obligations and indemnities.

24. ATTORNEYS' FEES. Subject to the limitations set forth in this Agreement regarding litigation and remedies, if there is any litigation to enforce any provisions or rights arising herein whether in Court or in arbitration, the unsuccessful Party in such litigation, as determined by the Court or the arbitrator(s), as applicable, shall pay the successful Party, as determined by the Court, all costs and expenses, including, but not limited to, reasonable attorneys' fees incurred by the successful Party, such fees to be determined by the Court.

25. NOTICES.

25.1. Addresses. Except as otherwise required by law, any notice required or permitted hereunder shall be in writing and shall be given by personal delivery, or by deposit in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the Parties at the addresses set forth below, or at such other address as a Party may designate in writing pursuant hereto, or tested telex, or telegram, or telecopies, or any express or overnight delivery service (e.g. Federal Express), delivery charges prepaid:

if to Seller: H2O, Inc
41502 North Schnepf Road
San Tan Valley, Arizona 85140
Attn: Brad Schnepf
 Doug Odom
Telephone No.: (480) 491-6970
Facsimile No.: (480) 491-6739

with a copy to: Bryan Cave LLP
Two North Central Ave., Suite 2200
Phoenix, Arizona 85004
Attn: Steven A. Hirsch, Esq. and Stanley Lutz, Esq.
Telephone No.: (602) 364-7319
Facsimile No.: (602) 716-8319

if to Buyer: Town of Queen Creek
22350 South Ellsworth Road
Queen Creek, Arizona 85242-9311
Attn: John Kross, Town Manager
Telephone No.: (480) 358-3000
Facsimile No.: (480) 358-3189

with a copy to: Dickinson Wright Mariscal Weeks
2901 N. Central Avenue, Suite 200
Phoenix, Arizona 85012
Attn: Fredda J. Bisman, Esq.
Telephone No.: (602) 285-5047;
Facsimile No.: (602) 285-5100

if to Escrow Agent: Chicago Title Insurance Company
1959 S. Val Vista Road, Suite 115
Mesa, Arizona 85204
Attn: Mr. Alan Costley
Telephone No.: (480) 539-6854
Facsimile No.: (480) 539-6860

25.2. Effective Date of Notices. Notice shall be deemed to have been given on the date on which notice is delivered, if notice is given by personal delivery or facsimile and on the date of deposit in the mail, if mailed or deposited with the overnight carrier, if used. Notice shall be deemed to have been received on the date on which the notice is received, if notice is given by personal delivery, overnight courier or facsimile and on the second day following deposit in the mail, if notice is mailed. Following Opening of Escrow, a copy of any notice given to a Party shall also be given to Escrow Agent by regular mail or by any other method provided for herein.

26. CLOSING COSTS AND PRORATIONS. Seller and Buyer agree to pay all respective closing costs as provided in this Agreement. All prorations shall be calculated through escrow as of Close of Escrow based upon the latest available information. Any other closing costs not specifically designated as the responsibility of either Party in this Agreement shall be paid by Buyer and Seller according to the usual and customary allocation of the same by Escrow Agent in Maricopa County, Arizona. Seller agrees that all closing costs payable by Seller shall be deducted from Seller's proceeds otherwise payable to Seller at Close of Escrow. Buyer shall deposit with Escrow Agent sufficient cash to pay all of Buyer's closing costs. Except as provided in this Agreement, Seller and Buyer shall each bear their own costs in regard to the Purchase Transaction.

27. ESCROW CANCELLATION CHARGES. If escrow fails to close because of a Seller's Event of Default, Seller shall be liable for any cancellation charges of Escrow Agent. If escrow fails to close because of a Buyer's Event of Default, Buyer shall be liable for any cancellation charges of Escrow Agent. If escrow fails to close for any other reason, Seller and Buyer shall each be liable for one-half of any cancellation charges of Escrow Agent.

28. APPROVALS. Concerning all matters in this Agreement requiring the consent or approval of a Party or as a condition precedent to action by any of the Parties, the Parties agree that any such consent to each approval shall not be unreasonably withheld unless otherwise provided in this Agreement.

29. ADDITIONAL ACTS. The Parties agree to execute promptly such other documents and to perform such other acts as may be reasonably necessary to carry out the purpose and intent of this Agreement.

30. GOVERNING LAW; JURISDICTION; VENUE. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Arizona. In regard to any litigation or arbitration which may arise in regard to this Agreement, Seller and Buyer shall and do hereby submit exclusively to the jurisdiction of, and Seller and Buyer hereby agree that the proper venue shall be exclusively in, the Court, as to permitted litigation, and in Phoenix, Arizona, as to the arbitration.

31. BINDING AGREEMENT. This Agreement constitutes the binding agreement between Seller and Buyer for the sale and purchase of the Purchased Assets subject to the terms set forth in this Agreement. Subject to the limitations on assignment set forth in this Agreement, this Agreement shall bind and inure to the benefit of the Parties and their respective successors and assigns. This Agreement supersedes all other written or verbal agreements between the Parties concerning the Purchase Transaction including, but not limited to, that certain Term Sheet dated December 31, 2012, and any correspondence by or between to the Parties, whether post-dating or predating the aforesaid Term Sheet, which references any of the transactions contemplated hereby. No claim of waiver or modification concerning any provision of this Agreement shall be made against a Party unless based upon a written instrument signed by the Parties.

32. CONSTRUCTION. The terms and provisions of this Agreement represent the results of negotiations among the Parties, each of which has been or has had the opportunity to be represented by counsel of its own choosing, and neither of which has acted under any duress or compulsion, whether legal, economic or otherwise, except as noted herein. Consequently, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings, and the Parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Agreement that ambiguous or conflicting terms or provisions contained in this Agreement shall be interpreted or construed against the Party whose attorney prepared the executed Agreement or any earlier draft of the same.

33. TIME OF ESSENCE. Time is of the essence of this Agreement. However, if this Agreement requires any act to be done or action to be taken on a date which is a Saturday, Sunday or legal holiday in the State of Arizona, such act or action shall be deemed to have been validly done or taken if done or taken on the next succeeding day which is not a Saturday, Sunday or legal holiday in the State of Arizona.

34. INTERPRETATION. If there is any specific and direct conflict between, or any ambiguity resulting from, the terms and provisions of this Agreement and the terms and

provisions of any document, instrument or other agreement executed in connection herewith or in furtherance hereof, including any Exhibits hereto, the same shall be consistently interpreted in such manner as to give effect to the general purposes and intention as expressed in this Agreement which shall be deemed to prevail and control.

35. HEADINGS AND COUNTERPARTS. The headings of this Agreement are for reference only and shall not limit or define the meaning of any provision of this Agreement. This Agreement may be executed in any number of counterparts facsimile or so-called "PDF" signature, each of which shall be an original but all of which shall constitute one and the same instrument.

36. INCORPORATION BY REFERENCE. All Exhibits to this Agreement are fully incorporated herein as though set forth at length herein.

37. SEVERABILITY. If any provision of this Agreement is determined by the Court or the arbitrator(s), as applicable, to be unenforceable, the remaining provisions shall nevertheless be kept in effect.

38. NO PARTNERSHIP OR OTHER LIABILITY. Any and all provisions, implications, or interpretations of or from this Agreement to the contrary notwithstanding, no partnership, joint venture or other relationship is created, implied or acknowledged between or among the Parties.

39. GENERAL PROVISIONS REGARDING ESCROW AGENT.

39.1. Calculation of Prorations. Escrow Agent will make all adjustments and/or prorations on the basis of the actual number of days in a month, and by credit and/or debit to the respective accounts of Seller and Buyer in the Escrow.

39.2. Close of Escrow. For purposes of the instructions to Escrow Agent and all other purposes hereunder, the expression "Close of Escrow" shall mean the date the Deed is recorded.

39.3. Disbursements. Escrow Agent shall: (i) make disbursements by wire transfer of federal funds; (ii) mail instruments to the addresses set forth in Section 25, unless Escrow Agent is instructed otherwise; and (iii) wire funds to Seller by wire transfer as directed by Seller.

39.4. Amendments to Instructions. No change of instructions shall be of any effect on the Escrow unless given in writing by Seller and Buyer. In the event conflicting demands are made or notices served upon Escrow Agent with respect to the Escrow, the Parties hereto expressly agree that Escrow Agent shall have the absolute right at Escrow Agent's election to do either or both of the following: (i) withhold and stop all further proceedings in, and performance of, the Escrow; or (ii) file a suit in interpleader and obtain an order from the Court requiring the Parties to interplead and litigate in such Court their several claims and rights among themselves. In the event such interpleader suit is brought, Escrow Agent shall ipso facto be fully released and discharged from all obligations to further perform any and all duties or obligations

imposed upon Escrow Agent in the Escrow, and the Parties jointly and severally agree to pay all reasonable costs, expenses, and reasonable attorneys' fees expended or incurred by Escrow Agent, the amount thereof to be fixed and a judgment therefor entered by the Court in such suit.

39.5. Release of Escrow Agent. Except for Escrow Agent's negligence, fraud or breach of contract, Escrow Agent shall not be held liable for the identity, authority or rights of any person executing any document deposited in the Escrow, or for Seller or Buyer's failure to comply with any of the provisions of any agreement, contract or other instrument deposited in the Escrow and Escrow Agent's duties hereunder shall be limited to the safekeeping of such money, instruments, or other documents received by Escrow Agent as escrow holder, and for the disposition of same in accordance with the written instructions accepted by Escrow Agent in the Escrow.

39.6. Escrow Transaction. It is agreed by the Parties that so far as Escrow Agent's rights and liabilities are concerned, this transaction is an escrow and not any other legal relation.

40. COVENANTS OF SELLER SUBSEQUENT TO THE CLOSE OF ESCROW. Seller, at Seller's cost, shall cause the operations of the Business to be suspended at Close of Escrow with the effect that, except as provided in this Agreement, all contractual arrangements of Seller related to the Business shall have been terminated as of Close of Escrow.

41. NO CONFLICT OF INTEREST. Seller understands and agrees that pursuant to the provisions of A.R.S. §38-511, Buyer may terminate this Agreement within three (3) years after execution of the Agreement without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of Buyer is or becomes, at any time while the Agreement or an extension of the Agreement is in effect, an employee of, or a consultant to, a Party to this Agreement with respect to the subject matter of the Agreement.

42. WAIVER OF JURY TRIAL. To the extent permitted by law, the Parties each hereby waive their right to a trial by jury.

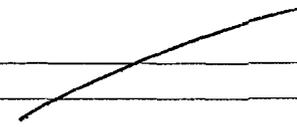
[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Asset Purchase Agreement and Escrow Instructions as of the Effective Date.

SELLER:

H2O, INC., an Arizona corporation

By:  6.24.13 Brian Schindler
Its: CHAIRMAN

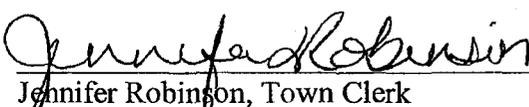
By:  6.24.13
Its: _____

BUYER:

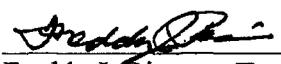
TOWN OF QUEEN CREEK, an Arizona municipal corporation

By: 
Gail Barney, Mayor

ATTEST:


Jennifer Robinson, Town Clerk

APPROVED AS TO FORM:

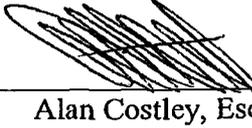

Fredda J. Bisman, Town Attorney

ESCROW AGENT'S ACCEPTANCE

The foregoing fully executed Asset Purchase Agreement and Escrow Instructions ("Agreement") together with the Original Earnest Deposit is accepted by the undersigned this 27 day of June, 2013, which, for the purposes of this Agreement, shall be deemed to be the date of "Opening of Escrow."

CHICAGO TITLE INSURANCE COMPANY

By: _____


Alan Costley, Escrow Officer