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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

BOB STUMP, Chairman
GARY PIERCE
BRENDA BURNS
ROBERT BURNS
SUSAN BITTER SMITH

2013 OCT 15 P 2:50

AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE APPLICATION OF FAR WEST WATER & SEWER, INC., AN ARIZONA CORPORATION, FOR A DETERMINATION OF THE CURRENT FAIR VALUE OF ITS UTILITY PLANT AND PROPERTY AND FOR INCREASES IN ITS WASTEWATER RATES AND CHARGES BASED THEREON FOR UTILITY SERVICE

DOCKET NO. WS-03478A-12-0307

**COMPLIANCE FILING
FIRST AMENDED CONSENT
JUDGMENT
REVISED TARIFFS**

As required by Decision No. 74097, Far West Water and Sewer, Inc. ("Far West") files a copy of the October 15, 2013, First Amended Consent Judgment between Far West and the State of Arizona/Arizona Department of Environmental Quality ("ADEQ"). (Exhibit A). The First Amended Consent Judgment resolves all open issues between ADEQ and Far West.

Exhibit B is a copy of the revised tariffs required by Decision No. 74097. These are identical to the tariffs filed on September 25, 2013, with the exception of the issuance and the effective dates.

With the filing of these documents, Far West believes that it has satisfied all conditions that Decision No. 74097 required for the approved Phase 1 rates to be charged.

Respectfully submitted on October 15, 2013, by:

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Arizona Corporation Commission

DOCKETED

OCT 15 2013

DOCKETED BY

Original and 13 copies filed
on October 15, 2013, with:

Arizona Corporation Commission
Docket Control
1200 West Washington Street
Phoenix, AZ 85007

Copies mailed
on October 15, 2013, to:

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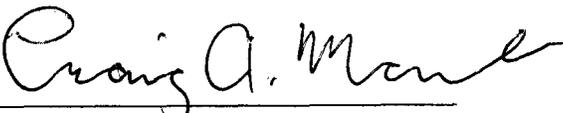
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Craig A. Marks

Exhibit A

1 **THOMAS C. HORNE**
 2 **ATTORNEY GENERAL**
 Firm Bar No. 14000

3
 4 **CURTIS COX**
 Assistant Attorney General
 5 State Bar No.019040
 1275 West Washington Street
 6 Phoenix, Arizona 85007-2926
 Telephone: (602)-542-8500
 7 Fax: (602) 542-7798

8 Attorneys for Plaintiffs

9
 10 **THE SUPERIOR COURT OF THE STATE OF ARIZONA**
 11 **FOR MARICOPA COUNTY**

12 **STATE OF ARIZONA, ex rel. HENRY R.**
 13 **DARWIN, Director, Arizona Department of**
Environmental Quality,

14 **Plaintiffs,**

15 **vs.**

16 **FAR WEST WATER AND SEWER, INC., an**
Arizona Corporation, and H & S
 17 **DEVELOPERS, INC., an Arizona**
Corporation.

18 **Defendants.**

Civil Action No. CV2008-021676

**FIRST AMENDED CONSENT
JUDGMENT**

(Non-classified Civil)

19
20 **I. NATURE OF THE CASE**

21 A. On September 9, 2008, the Plaintiff, State of Arizona ex rel. Henry R. Darwin,
 22 Director, Arizona Department of Environmental Quality (the "State" or "Plaintiff"), filed a
 23 Complaint against the defendants Far West Water and Sewer, Inc. ("Far West" or "Defendant"),
 24

1 and H & S Developers, Inc. ("H&S"). The Complaint sought civil penalties and injunctive
2 relief.

3
4 B. On April 28, 2010, the State and the defendants, Far West and H&S, signed a
5 consent judgment to settle the allegations in the Complaint. The signed consent judgment was
6 filed with the Court. On June 22, 2010, the Court adopted and entered the original Consent
7 Judgment.

8
9 C. H&S satisfied its obligations under the original Consent Judgment as stated in
10 Satisfaction of Judgment as to Defendant H&S Developers, Inc., filed on November 15, 2010.
11 H&S is not a party to this First Amended Consent Judgment.

12
13 D. Far West did not complete its obligations under the original Consent Judgment. In
14 December 2010, Far West began missing deadlines in the compliance schedules of the original
15 Consent Judgment, and since December 2010, Far West has remained in continuous non-
16 compliance with the original Consent Judgment.

17
18 E. Far West has admitted the Court has jurisdiction and that venue is proper in
19 Maricopa County.

20
21 F. The State and Far West ("parties") agree that amending the original Consent
22 Judgment is the most appropriate means of resolving Far West's non-compliance under the
23 original Consent Judgment. Therefore, the parties hereby enter into this First Amended Consent
24 Judgment and agree that upon approval by the Court, it will supercede the requirements of the
25 original Consent Judgment that Far West has not completed.

26

1 **NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED**

2 as follows:

3

4

II. JURISDICTION AND VENUE

5 A. The Court has jurisdiction over the subject matter of this action and the parties
6 pursuant to A.R.S. §§ 49-123, 262, 263, 354, 462, 463, 12-1801, and Ariz. Const. Art. 6, Sec.
7 14. The Complaint states claims upon which relief may be granted against the Defendant.

8

9

10 B. ADEQ maintains its principal office at 1110 West Washington Street, Phoenix,
11 AZ, in Maricopa County. Venue is proper in Maricopa County pursuant to A.R.S. §§ 12-265
12 and 12-401(17).

12

13

III. BINDING EFFECT

14 A. This First Amended Consent Judgment constitutes and embodies the full and
15 complete understanding of the parties and supersedes all prior understandings or agreements,
16 whether oral or in writing, which are in conflict with the First Amended Consent Judgment, and
17 which pertain to the subject matter contained herein.

18

19

20 B. This First Amended Consent Judgment applies to and is binding upon the State
21 and Far West. The State and Far West hereby consent to its terms and its entry by the Court.
22 The State and Far West and its officers and directors, agents, servants, employees, successors,
23 assigns, related entities, attorneys and persons and entities acting on behalf of Far West agree
24 not to contest this First Amended Consent Judgment's validity in any subsequent proceeding.

24

25

26 C. Far West shall provide a copy of this First Amended Consent Judgment with the
Revised Compliance Schedule in Attachment A and the Supplemental Environmental Project

1 approved by ADEQ, to each primary and/or general contractor retained to perform an activity
2 described in Revised Compliance Schedule, Attachment A or the Supplemental Environmental
3 Project. In any action to enforce this First Amended Consent Judgment, the Defendant shall not
4 raise as a defense the failure by any of its agents, servants, primary or general contractors,
5 subcontractors, employees, successors or assigns to take actions necessary to comply with this
6 First Amended Consent Judgment.
7

8
9 D. Any change in ownership status of the Far West wastewater treatment plants
10 ("WWTPs"), sewage collection system(s), or public water system(s) as well as any and all parts
11 or components thereof, including but not limited to any transfer of assets or real or personal
12 property shall in no way alter Far West's responsibilities under this First Amended Consent
13 Judgment. If Far West sells or otherwise conveys or assigns any of its rights, title or interests in
14 any of its WWTPs, sewage collection system, public water system, or components thereof, such
15 sale, conveyance or assignment shall not release Far West from any obligation imposed by this
16 First Amended Consent Judgment, unless:
17

18 1) The party to whom the right, title or interest has been sold, transferred or
19 assigned agrees in writing to fulfill the obligations of this First Amended Consent Judgment;
20
21 and,

22 2) ADEQ reasonably approves the provision transferring the obligations.
23

24 E. Far West shall notify the State in writing of any purchase or succession in interest
25 no later than thirty (30) days after such transfer. Far West shall give written notice of the
26

1 existence of this action and provide a copy of this First Amended Consent Judgment to any
2 successors in interest or transferees.

3
4 F. Far West certifies that its undersigned representative is fully authorized by the
5 Defendants, respectively, to enter into the terms and conditions of this First Amended Consent
6 Judgment, to execute it on behalf of Far West, and to legally bind Far West to its terms.

7
8 **IV. DEFINITIONS**

9 The terms used in this First Amended Consent Judgment shall have the same meanings as
10 defined in Title 49 A.R.S., Chapters 2 and 3 and all applicable rules and regulations enacted
11 thereunder.

12 “Complaint” means the Civil Complaint No. CV2008-021676 filed by the State in the
13 Superior Court of Arizona, County of Maricopa, against the Defendants on or about September
14 9, 2008.

15
16 “Consent Judgment” and “original Consent Judgment” mean the Consent Judgment
17 signed by the parties on April 28, 2010 and adopted by the Court and entered on June 22, 2010
18 and is distinguishable from “Amended Consent Judgment” and “First Amended Consent
19 Judgment.”

20
21 “Day” shall mean a calendar day, unless otherwise noted. In computing any period
22 under this First Amended Consent Judgment, where the last day would fall on a Saturday,
23 Sunday, or a State or Federal holiday, the period shall run until the close of business of the next
24 business day.
25
26

1 “Effective Date” shall be the date that the First Amended Consent Judgment is entered by
2 this Court.

3
4 “Force Majeure” is defined as any event arising from causes beyond the reasonable
5 control of the Defendants and/or their employees or contractors that delays the performance of
6 any obligation under this First Amended Consent Judgment. Force Majeure does not include
7 financial inability to complete any requirement of this First Amended Consent Judgment.

8
9 “State” means the Plaintiff, State of Arizona ex rel. Henry R. Darwin, Director, Arizona
10 Department of Environmental Quality. For purposes of this First Amended Consent Judgment,
11 the State does not include any other Agency, Board, Commission, Department, Officer or
12 employees of the State of Arizona.

13
14 “Covered Matters” shall mean any claims for civil liability for violations which arise or
15 could be alleged from the facts in the fifty counts of the Complaint in CV2008-021676, Consent
16 Order Nos. P-18-06 and P-105-06 (ADEQ), violations of the Safe Drinking Water Act, the
17 Arizona Aquifer Protection Permit Program, the Reclaimed Water for Reuse Program, and
18 A.A.C. § R18-2-730(D) of the Air Pollution Control Program which occurred prior to the
19 Effective Date of this First Amended Consent Judgment, and violations of a continuing nature
20 which are intended to be remedied by this First Amended Consent Judgment.

21
22 Covered Matters shall not include:

23 1. Compliance with the Defendant’s obligations under this First Amended Consent
24 Judgment;
25
26

1 2. Forty thousand U.S. dollars and no cents (\$40,000) in liquidated damages pursuant
2 to the requirements of Section XII of the original Consent Judgment to resolve Far West's
3 additional violations of the original Consent Judgment.
4

5 C. Far West agrees to complete the payment of the additional penalties under this
6 section according to the following monthly payment schedule: Far West shall pay at least ten
7 thousand U.S. dollars (\$10,000) to ADEQ by January 15, 2014, and shall pay at least ten
8 thousand U.S. dollars (\$10,000) by the 15th day of each month thereafter until payment of the
9 total additional penalties under this section is paid in full. If less than ten thousand U.S. dollars
10 of the additional penalties remains due at any point during the payment schedule, then Far West
11 agrees to pay the total remaining amount of the additional penalties no later than the 15th of the
12 following month and thereby complete the payment of the additional penalties. Far West also
13 agrees to complete payment of the total additional penalties no later than August 15, 2014.
14
15

16 D. Pursuant to A.R.S. § 49-113, interest on any unpaid amount shall accrue from the
17 date the amount is past due until the amount is paid in full. Payments shall be made pursuant to
18 the terms in Section VI below.
19

20 E. Far West and the State agree that the civil penalties and liquidated damages
21 imposed by the State and agreed to by Far West constitute a debt for a fine, penalty or forfeiture
22 payable to and for the benefit of a governmental unit, is not compensation for actual pecuniary
23 loss, and is specifically non-dischargeable under 11 U.S.C. § 523(a)(7). Upon entry of this First
24 Amended Consent Judgment, the State shall be deemed a judgment creditor for purposes of
25 collecting the civil penalty.
26

1 F. The State shall have the right to record this First Amended Consent Judgment in
2 every County in Arizona.

3
4 **VI. MANNER OF PAYMENT**

5 All payments made to the State under this First Amended Consent Judgment, including
6 the monetary judgment, interest payments, liquidated damages, and stipulated penalties, shall be
7 made by cashier's check or money order payable to ADEQ and shall be hand-delivered or
8 mailed and postmarked, postage prepaid, to:

9
10 Chief Financial Officer
11 Arizona Department of Environmental Quality
12 ATTN: Accounts Receivable
13 1110 W. Washington Street
14 Phoenix, Arizona 85007

15 with a letter tendering the payment. In the alternative, upon prior written notification to the
16 Chief Financial Officer at the above address, the payments may be made by wire transfer to
17 "Arizona Department of Environmental Quality", Bank of America, Account No. 252844527,
18 Routing No. 026009593. All letters regarding payment shall identify this case by the names of
19 the Parties and the Court docket number, CV2008-021676.

20 Copies of the letters shall be sent to the Office of the Attorney General at:

21 Curtis Cox
22 Assistant Attorney General
23 Environmental Enforcement Section
24 Office of the Attorney General
25 1275 W. Washington Street
26 Phoenix, Arizona 85007; or
curtis.cox@azag.gov

and to ADEQ at:

Water Quality Enforcement Unit
Water Quality Compliance Section

1 Arizona Department of Environmental Quality
2 1110 W. Washington Street
3 Phoenix, Arizona 85007; or
4 mrc@azdeq.gov

5 **VII. CIVIL PENALTY HELD IN ABEYANCE AND COMPLIANCE SCHEDULE**

6 Under the original Consent Judgment, Far West was required to open and maintain a
7 Suspended Civil Penalty Account for the duration of Compliance Schedule A, Attachment A to
8 the original Consent Judgment. Under this First Amended Consent Judgment, Far West's
9 obligations to maintain the Suspended Penalty Account shall be terminated.

10 **VIII. ADDITIONAL COMPLIANCE SCHEDULE**

11 Under the original Consent Judgment, Far West was required to complete work in accord
12 with Compliance Schedules A and B. Under this First Amended Consent Judgment, Far West's
13 work obligations under Compliance Schedules A and B have been superceded by the revised
14 work requirements and deadlines contained in Revised Compliance Schedule, Attachment A to
15 this First Amended Consent Judgment. Therefore, Defendant Far West shall conduct and
16 complete the following tasks:
17

18
19 A. Defendant Far West shall complete all tasks stated in the Revised Compliance
20 Schedule , Attachment A, by the corresponding deadline stated in Revised Compliance Schedule
21

22
23 B. Within ten (10) days of the completion date of each scheduled event in the
24 Revised Compliance Schedule, Attachment A, Defendant Far West shall submit to ADEQ a
25 written notice that the compliance requirement has been completed. Far West's written notice
26 shall comply with the requirements in Section XI below.

1 **IX. SUPPLEMENTAL ENVIRONMENTAL PROJECT**

2 A. Under the original Consent Judgment, Far West submitted to ADEQ a
3 Supplemental Environmental Project ("SEP") proposal valued at one hundred fifty thousand
4 U.S. dollars and no cents (\$150,000) or more. Far West provided a list of major milestones
5 along with deadlines for completion of each major milestone. The ADEQ approved the SEP
6 Proposal based on the demonstrations and certifications required under the original Consent
7 Judgment. The SEP obligations contained in the original Consent Judgment are also required
8 under this First Amended Consent Judgment. However, the SEP deadlines are revised by this
9 First Amended Consent Judgment as stated below.
10
11

12 B. Far West shall complete the ADEQ-approved SEP within one year of the Effective
13 Date. The parties agree that if Far West fails to complete the SEP obligations within one year of
14 the Effective Date, then Far West will be liable for and shall pay an additional civil penalty of
15 one hundred and fifty thousand dollars and no cents (\$150,000) by no later than thirty (30) days
16 after the date the SEP was required to be completed. Far West shall pay this additional civil
17 penalty under the terms in Section V, Paragraphs C and D, and Section VI of this First Amended
18 Consent Judgment.
19
20

21 C. Within thirty (30) days of completing the SEP obligations, Far West shall submit
22 to ADEQ a SEP Completion Report containing the following information:
23

- 24 1. A detailed description of the SEP as implemented;
- 25 2. A description of any operating problems encountered and the solutions
26 implemented;

1 and copies of submissions to ADEQ shall be sent to the Office of the Attorney General at:

2
3 Curtis Cox
4 Assistant Attorney General
5 Environmental Enforcement Section
6 Office of the Attorney General
7 1275 W. Washington Street
8 Phoenix, Arizona 85007;
9 curtis.cox@azag.gov.

10 B. All certified reports, progress reports, notices, bank statements, and SEP
11 certifications, referenced herein, submitted to the State pursuant to this First Amended Consent
12 Judgment shall certify under penalty of law that the information contained in the document is
13 true, accurate and complete by having an authorized representative of Far West include and sign
14 the following statement:

15 I certify under penalty of law that this document and all attachments, if any, were
16 prepared under my direction or supervision by qualified personnel responsible for
17 properly gathering and evaluating the information submitted. Based on my
18 inquiry of the person or people who are responsible for gathering and evaluating
19 the information, to the best of my knowledge and belief, the information submitted
20 is true, accurate and complete. I am aware that there are significant penalties for
21 knowingly submitting false information, including the possibility of fines and
22 imprisonment for knowing violations.

23 C. Documents, materials or notices submitted to Far West in accordance with this
24 First Amended Consent Judgment will be deemed submitted when postmarked, return receipt
25 requested, accepted for delivery by a commercial delivery service, sent by telecopy, emailed or
26 hand-delivered to Far West at:

12486 South Foothills Boulevard
Yuma, Arizona 85367
c/o Paula Capestro and
Andy Capestro;
pcaestro@msn.com and
acaestro@aol.com

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XII. FUTURE LIQUIDATED DAMAGES

A. Far West agrees that calculating the harm to the State for violations of Sections VIII, IX, X, XI, or Attachment A, of this First Amended Consent Judgment would be very difficult. Far West therefore agrees that a violation of the provisions of these stated sections of the First Amended Consent Judgment renders Far West liable for liquidated damages. The liquidated damages shall begin to accrue on the day that performance is due, and shall continue to accrue through the day before performance is completed. Interest on any unpaid amount shall accrue pursuant to A.R.S. §49-113, and be paid from the date said payment is due until the amount owed is paid in full.

<u>Period of Failure to Comply</u>	<u>Damages per Day of Violation</u>
1 st through 31 st day	\$1,250 per day per violation
32 nd through 60 th day	\$1,500 per day per violation
After 60 days	\$2,000 per day per violation

B. Unless Far West invokes, in writing, the dispute resolution procedure specified in Section XIII of this First Amended Consent Judgment, it shall pay the liquidated damages set forth in this Section within thirty (30) days following written demand by the State. Payment shall be made in the manner set forth in Section VI. Liquidated damages shall begin to accrue on the day after performance is due and shall continue through the final day of completion, even if no notice is sent to Far West. Nothing herein shall prevent the simultaneous accrual of separate liquidated damages for separate violations of these stated sections of the First Amended Consent Judgment.

1 C. Liquidated damages shall accrue as provided in this Section during the dispute
2 resolution procedure required by Section XIII of this First Amended Consent Judgment, but the
3 due date for payment of liquidated damages shall be extended until the dispute resolution
4 process is concluded.
5

6 **XIII. DISPUTE RESOLUTION**

7 A. The decisions of the State rendered pursuant to this First Amended Consent
8 Judgment, including, but not limited to, the meaning or the application of this First Amended
9 Consent Judgment and its provisions, or whether the Defendants are in compliance with its
10 terms, shall be delivered in writing to the Defendant with an explanation for the decision. Such
11 decisions shall be final unless the Defendant invokes the dispute resolution provisions below.
12

13 B. The State's comments and decisions regarding the Supplemental Environmental
14 Project under Section IX are not subject to the dispute resolution provisions under this section.
15

16 C. After notice is received by the Defendant as provided in Paragraph A above, the
17 Parties shall engage in informal negotiations regarding the dispute for a period of thirty (30)
18 business days, or for a longer period mutually agreed upon by the Parties.
19

20 D. If the dispute is not resolved pursuant to the informal process described in
21 Paragraph C above, the decision of the State shall be considered final and binding unless the
22 Defendant requests, in writing and within thirty (30) days of receipt of the State's decision, that
23 the ADEQ Director of the Water Quality Division ("Division Director") reconsider the initial
24 decision. The Division Director shall issue a final written decision after receipt of the request.
25
26

1 The written decision of the Division Director is final and binding except as otherwise provided
2 in Paragraph E.

3
4 E. A judicial review of the Division Director's decision made pursuant to Paragraph
5 D above may be brought by the Defendant by filing a motion in this Court. In any such
6 proceeding, the Defendant shall have the burden of proving that the decision of the Division
7 Director is arbitrary and capricious, an abuse of discretion, or contrary to law. Review by the
8 Court shall be based exclusively upon the written administrative record that was before the
9 Division Director at the time of the decision, without any evidentiary hearing or discovery.
10

11 F. For decisions made pursuant to this First Amended Consent Judgment, including
12 decisions under this Section, Defendant waives any statutory rights to review of an
13 administrative decision pursuant to A.R.S. Title 12, any formal administrative appeal pursuant
14 to A.R.S. Title 41, or any further informal appeal of disputes under this First Amended Consent
15 Judgment.
16

17 G. The Defendant's invocation of this Section shall not itself toll or extend any time
18 periods for performance by the Defendant under the provisions of this First Amended Consent
19 Judgment.
20

21 **XIV. FORCE MAJEURE**

22 A. Defendant shall perform all the requirements of this First Amended Consent
23 Judgment according to the time limits and schedules set forth herein, unless the performance is
24 prevented or delayed by events which constitute a Force Majeure. Defendant shall take all
25
26

1 reasonable measures to prevent or minimize any delay in performing the requirements of this
2 First Amended Consent Judgment.

3
4 B. If any Force Majeure event occurs that may delay the performance of any work
5 under this First Amended Consent Judgment, the Defendant shall notify the Water Division
6 Compliance Section Manager at ADEQ within 48 hours of discovering the Force Majeure event
7 or of the time that the Force Majeure reasonably should have been discovered. Within ten (10)
8 days of actual or reasonable date of discovery of the Force Majeure event, the Defendant shall
9 provide and submit to Water Quality Division Compliance Section manager at ADEQ in the
10 manner provided under Section XI a written explanation and description of the reasons for the
11 delay in performance; the anticipated duration of the delay; all actions taken or to be taken to
12 prevent or minimize the delay; a schedule for implementation of any measures to be taken to
13 prevent or mitigate the delay or the effect of the delay; and the rationale for attributing such
14 delay to a Force Majeure event. Defendant shall provide a copy to the Attorney General's
15 Office, Environmental Enforcement Section in the manner provided under Section XI. Failure
16 to comply with the above requirements shall preclude the Defendants from asserting any claim
17 of Force Majeure. The Defendant shall be deemed to have knowledge of any Force Majeure
18 circumstance of which its contractors or any party acting on its behalf had or should have had
19 knowledge.
20
21
22

23
24 C. If the State agrees that the delay in performance is attributable to a Force Majeure
25 event or is reasonable under the circumstances, the time for performance of the obligations
26 under this First Amended Consent Judgment that are affected by the Force Majeure event and

1 the time for performance of any activity dependent on the delayed activity shall be extended for
2 such time as is necessary to complete those obligations. An extension of time for performance of
3 the obligations affected by the Force Majeure event or non-Force Majeure event shall not, of
4 itself, extend the time for performance of any other obligation. If the State does not approve the
5 delay or agree that the delay or anticipated delay has been or will be caused by a Force Majeure
6 event, or is not otherwise reasonable, the State shall notify the Defendant in writing of its
7 decision. If the State agrees that the delay is attributable to a Force Majeure event or is
8 reasonable under the circumstances, the State shall notify Defendant in writing of the length of
9 the extension which will be equivalent in time to the reasonable delay, if any, for performance of
10 the obligations affected by the Force Majeure event, or as otherwise approved by the State. The
11 decision of the State pursuant to this paragraph is subject to the dispute resolution procedure in
12 Section XIII of this First Amended Consent Judgment.
13
14
15

16 **XV. MATERIAL BREACH**

17 Any failure to pay the monetary judgment within the times specified by Section V, pay
18 the liquidated damages within the times specified by Section XII, conduct the work within the
19 times specified by Section VIII and Attachment A, or complete the requirements in Section IX,
20 unless delayed by a Force Majeure event or unless otherwise agreed to by the State, shall
21 constitute a material breach and violation of this First Amended Consent Judgment. The State,
22 in its sole discretion, shall have the option of either:
23
24

25 A. Enforcing this First Amended Consent Judgment through the Court against the
26 Defendant, in which case Defendant shall be liable for interest and additional penalties pursuant

1 to the provisions of A.R.S. § 49-113(B) and the State's reasonable costs and attorney fees
2 incurred in enforcing this First Amended Consent Judgment if the State prevails; or
3

4 B. Declaring the First Amended Consent Judgment null and void against the
5 Defendant, and the State may pursue the Complaint or re-file this action against the Defendant.
6 In this event, the Defendant shall be barred from alleging the affirmative defenses of estoppel,
7 laches, or the expiration of any statute of limitations. In any future actions for the violations
8 contained in the Complaint, the Defendant shall receive credit for any civil penalties paid to the
9 State pursuant to this First Amended Consent Judgment.
10

11 **XVI. RELEASE**

12 A. Upon termination of this First Amended Consent Judgment against the Defendant,
13 pursuant to Section XXIV, the Defendant and all of its past, present, and future directors,
14 officers, shareholders, employees, agents, trustees, attorneys, successors, assigns, parent
15 corporation and related entities, shall be released from any and all civil liability to the State for
16 the Covered Matters.
17

18 B. This release does not cover criminal liability under any local, state or federal
19 statute or regulation.
20

21 C. Defendant and all of its past, present, and future directors, officers, shareholders,
22 employees, agents, trustees, attorneys, successors, assigns, parent corporation and related
23 entities, release the State of Arizona, its agencies, departments, officials, employees or agents
24 from any and all claims or causes of action against, arising under, or related to the allegations
25 contained in the Complaint and Covered Matters.
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XVII. SEVERABILITY

This First Amended Consent Judgment is not severable. If any Section of this First Amended Consent Judgment is declared by this Court to be invalid or unenforceable, the entire First Amended Consent Judgment is rendered invalid and the parties shall return to the positions they occupied prior to the execution of the original Consent Judgment except as against any defendant whom the First Amended Consent Judgment has been terminated under Section XXIV.

XVIII. APPLICABLE LAW

The validity, meaning, interpretation, enforcement and effect of this First Amended Consent Judgment shall be governed by the law of the State of Arizona.

XIX. COSTS

Each party shall bear its own costs and attorney's fees in this action, except that pursuant to Section XV, the Defendants shall be liable for the State's reasonable costs and attorney fees incurred in enforcing this First Amended Consent Judgment if the State prevails.

XX. RESERVATION OF RIGHTS

A. Entry of this First Amended Consent Judgment is solely for the purpose of settling the Complaint, the Covered Matters, and violations of the original Consent Judgment and except as expressly set forth herein, does not preclude the Plaintiff or any other agency or officer of the State of Arizona, or subdivision thereof, from instituting an action for matters not included in the Complaint, Covered Matters, and original Consent Judgment against the Defendants as may be appropriate now or in the future.

1 B. This First Amended Consent Judgment does not encompass issues not expressly
2 covered by the terms of this First Amended Consent Judgment. The State reserves the right to
3 take any appropriate legal action against the Defendants for violations which are not within the
4 Covered Matters. The State reserves the right to take any and all appropriate action necessary to
5 protect the public health, welfare, or the environment.
6

7 C. Nothing in this First Amended Consent Judgment shall constitute a permit of any
8 kind, or a modification of any permit of any kind, under federal, state or local law. Except as
9 specifically provided herein, nothing in this First Amended Consent Judgment shall in any way
10 alter, modify or revoke federal, state or local statutes, regulations, rules or requirements. Nor
11 shall this First Amended Consent Judgment affect or relieve Defendant in any manner of its
12 obligations to apply for, obtain and comply with applicable federal, state and local permits.
13 Compliance with the terms of this First Amended Consent Judgment shall be no defense to an
14 action to enforce any such permits or requirements. Although all actions required by Defendant
15 hereunder are agreed by the Parties to be lawful, the State does not by its consent to the entry of
16 this First Amended Consent Judgment, warrant or aver that compliance with this First Amended
17 Consent Judgment will constitute or result in compliance with Arizona law. Notwithstanding
18 the State's review and approval of any materials submitted pursuant to this First Amended
19 Consent Judgment, the Defendant shall remain solely responsible for compliance with any other
20 applicable federal, state or local law or regulation. Any submissions made to the State pursuant
21 to this First Amended Consent Judgment shall not be interpreted as a waiver or limitation of the
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1 State's authority to enforce any federal, state, or local statute or regulation including permit
2 conditions.

3
4 D. The State shall have the right to take enforcement action for any and all violations
5 of this First Amended Consent Judgment and reserves the right to pursue all legal and equitable
6 remedies.

7
8 E. Except as provided herein, this First Amended Consent Judgment does not affect
9 any Consent Orders in effect between the State and Defendants.

10 F. The entry of this First Amended Consent Judgment shall not serve as a basis for
11 any defenses of claim splitting, estoppels, laches, res judicata, or waiver challenging the State's
12 legal right to bring an action regarding matters not expressly covered by this First Amended
13 Consent Judgment.
14

15 **XXI. RIGHT OF ENTRY**

16 The State or its representatives, contractors, consultants and agents, shall have the right to
17 enter the Facility at any location, at all reasonable times, upon presentation of credentials to the
18 site representative for the purpose of:
19

20 A. Observing and monitoring the progress and compliance with the provisions of this
21 First Amended Consent Judgment.

22 B. Verifying any data or information submitted to the State in accordance with the
23 terms of the First Amended Consent Judgment;
24

25 C. Obtaining samples, and, upon request, splits of any samples taken by the
26 Defendant or its consultants.

1 This right of entry shall be in addition to, and not in limitation of or substitution for, the
2 State's rights under applicable law. The State's Right of Entry in no way affects or reduces any
3 rights of entry or inspection that the State has under any law or regulation.
4

5 **XXII. MODIFICATIONS**

6 Any modification of this First Amended Consent Judgment must be in writing and
7 approved by the parties and the Court, except that any extensions for the performance of any
8 requirement of this First Amended Consent Judgment may be requested in writing by the
9 Defendant and consented to in writing by the State.
10

11 **XXIII. RETENTION OF JURISDICTION**

12 The Court shall retain jurisdiction over both the subject matter of this First Amended
13 Consent Judgment and the parties to effectuate and enforce this First Amended Consent
14 Judgment or to provide further orders, direction, or relief as may be necessary or appropriate for
15 the construction, modification, or execution of this First Amended Consent Judgment. Upon the
16 Effective Date, however, all claims stated and relief sought in the Complaint and the original
17 Consent Judgment in this matter are resolved by this First Amended Consent Judgment subject
18 to Section XV herein.
19
20

21 **XXIV. TERMINATION OF FIRST AMENDED CONSENT JUDGMENT**

22 The provisions of this First Amended Consent Judgment shall be deemed satisfied and
23 shall terminate with respect to the Defendant as follows:
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25 1. As to Defendant Far West, the provision of this Consent Judgment shall be
26 deemed satisfied and shall terminate with completion of the following actions:

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- a. Payment of all civil penalties due under Sections V and any liquidated damages due under Sections XII of this Consent Judgment; and
- b. Completion of all actions required under Sections VIII, IX, and X, and Attachment A, of this First Amended Consent Judgment.

After satisfaction of the First Amended Consent Judgment by Far West, as set forth above, and upon request by Defendant, the State shall, within 30 days of such request, execute and file a satisfaction of judgment with respect to the First Amended Consent Judgment and the subject matter for that Defendant with this Court and in any County in which this Judgment was recorded.

SO ORDERED this _____ day of _____, _____.

Judge of the Superior Court

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CONSENT TO JUDGMENT

Paula Capestro, President of Far West Water and Sewer, Inc., on behalf of Defendant, Far West, hereby acknowledges that she is authorized to sign this First Amended Consent Judgment and bind the Defendant to its entry, has read the foregoing First Amended Consent Judgment in its entirety, agrees with the statements made therein, consents to its entry by the Court, and agrees that Defendant will abide by the same.

DATED this 1ST day of October, 2013.

/s/ Paula Capestro
Paula Capestro
President
Far West Water and Sewer, Inc.

Michael A. Fulton, Division Director, Water Quality Division, ADEQ, on behalf of Plaintiff State of Arizona, hereby acknowledges that he is authorized by the Director of ADEQ to sign this First Amended Consent Judgment, has read the foregoing in its entirety, agrees with the statements made therein, consents to its entry by the Court, and agrees that the State will abide by the same.

DATED this 2nd day of October, 2013.

/s/ Michael A. Fulton
Michael A. Fulton
Division Director
Water Quality Division
Arizona Department of Environmental Quality

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eSignature Page 1 of 1

Filing ID: 5497387 Case Number: CV2008-021676
Original Filing ID: 5481975

Granted as Submitted



/S/ Robert Oberbillig Date: 10/14/2013
Judicial Officer of Superior Court

ENDORSEMENT PAGE

CASE NUMBER: CV2008-021676

SIGNATURE DATE: 10/14/2013

E-FILING ID #: 5497387

FILED DATE: 10/15/2013 8:00:00 AM

ARTURO I VILLARREAL

CAROLYN R MATTHEWS

CURTIS A COX

DAVID R NELSON

Exhibit B

		1st Revised	Sheet No.	TOC
Far West Water and Sewer, Inc.		Cancelling Original	Sheet No.	TOC
Sewer Division				

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RULES AND REGULATIONS

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Rule No. S-1, Sewer Main Extensions	4
Rules and Regulations	R3.0

	(Month, Day, Year)			(Month, Day, Year)
ISSUED	October 15, 2013	ISSUED BY: Andrew J. Capestro 13157 E. 44 th Street Yuma, Arizona 85367	EFFECTIVE	November 1, 2013
		Decision No. 74097		

		1st Revised	Sheet No.	1.0
Far West Water and Sewer, Inc.		Cancelling Original	Sheet No.	1.0
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General Sanitary Sewer Service

Availability

Available to all customer classes, except the Recreational Vehicle Park class.

Schedule of Charges

	<u>Phase 1 Usage Charge</u>	<u>Phase 2 Usage Charge</u>
Residential – All except RV	\$39.05	\$56.92
<u>Commercial by Meter Size</u>		
Commercial – ALL	N/A	N/A
Commercial – 5/8"	\$58.58	\$85.38
Commercial – 3/4"	58.58	85.38
Commercial – 1"	101.54	147.98
Commercial – 1 1/2"	203.07	295.97
Commercial – 2"	320.23	466.72
Commercial – 3"	624.84	910.67
Commercial – 4"	976.31	1,422.92
Commercial – 6"	1,952.62	2,845.85
- except Rancho Rialto		

Phase 1 charges are effective October 1, 2013 through March 31, 2014.

Phase 2 charges are effective April 1, 2014 and thereafter.

Terms and Conditions

Sewer service provided under this rate schedule is subject to the Company's Service Charges applicable to Sewer Service.

All charges under this rate schedule are subject to their proportionate share of any privilege, sales, use and franchise tax per Commission Rule 14-2-608.D.5.

Service provided under this rate schedule is subject to the Company's Rules and Regulations applicable to Sewer Service.

	(Month, Day, Year)			(Month, Day, Year)
ISSUED	October 15, 2013	ISSUED BY: Andrew J. Capestro 13157 E. 44 th Street Yuma, Arizona 85367	EFFECTIVE	November 1, 2013
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		1st Revised	Sheet No.	2.0
Far West Water and Sewer, Inc.		Cancelling Original	Sheet No.	2.0
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Recreational Vehicle Park Sewer Service

Availability

1. The RV Rate shall apply only to a parcel of land under single ownership on which three (3) or more Recreational Vehicles are occupied as temporary residences, regardless of whether or not a charge is collected for such accommodations (RV Park).

2. A Recreational Vehicle is a vehicle that is built on a single chassis, four hundred (400) square feet or less in size, designed to be self-propelled (motor home) or permanently towed (trailer, fifth wheel, or camper), and designed primarily for use as temporary living quarters for recreational, camping, travel, or seasonal use and not for use as a permanent dwelling. A Recreational Vehicle includes park model trailers, provided that they have not been altered to increase living space beyond 400 square feet. Recreational Vehicles do not include Manufactured Homes (a/k/a Mobile Homes).

3. Each RV Park shall be assessed a single base charge for the sewer usage at clubhouses, laundries and other common areas. In addition, a fee shall be paid for each RV Park space whether occupied or not.

4. Combined facilities that include both an RV Park and Manufactured Home Park shall pay the RV Park rate for the RV Park portion of the facility with the residential tariff applying to the Manufactured Home spaces within the facility.

Schedule of Charges

	<u>Phase 1 Usage Charge</u>	<u>Phase 2 Usage Charge</u>
RV Parks - Common Areas Only	\$58.58	\$85.38
RV Spaces	\$13.02	\$18.97

Phase 1 charges are effective October 1, 2013 through March 31, 2014.
Phase 2 charges are effective April 1, 2014 and thereafter.

Terms and Conditions

Sewer service provided under this rate schedule is subject to the Company's Service Charges applicable to Sewer Service.

All charges under this rate schedule are subject to their proportionate share of any privilege, sales, use and franchise tax per Commission Rule 14-2-608.D.5.

Service provided under this rate schedule is subject to the Company's Rules and Regulations applicable to Sewer Service.

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Far West Water and Sewer, Inc.		Cancelling Original	Sheet No.	3.0
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Effluent

Availability

Available to large turf and landscape irrigators for use on golf courses, lakes, school grounds, park lands, rights of ways, and similar open spaces. Also available to land developers and their contractors and subcontractors for use on large construction projects which require significant amounts of dirt moving, grading, trenching or other water intensive construction activities. Effluent availability is subject to compliance with terms and conditions of ADEQ issued reuse permit and commitments to other users. Effluent is made available at Company's treatment plants.

Schedule of Charges

Sale of Effluent, per thousand gallons – "Market" rate, minimum \$0.25 and no maximum

Terms and Conditions

Service provided under this rate schedule is subject to the Company's Service Charges applicable to Sewer Service.

All charges under this rate schedule are subject to their proportionate share of any privilege, sales, use and franchise tax per Commission Rule 14-2-608.D.5.

Service provided under this rate schedule is subject to the Company's Rules and Regulations applicable to Sewer Service.

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Far West Water and Sewer, Inc.				
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Service Charges

Service Establishment, Reconnection and Re-Establishment

As provided in Rule R14-2-603.D.1, the Company will charge the following rates for the establishment, reconnection and re-establishment of sewer service:

Establishment	\$40.00
Reconnection (Delinquent)	\$30.00
Re-establishment (Within 12 Months)	Months off system times the minimum (R14-2-603.D.1)
After Hours Service Charge	\$35.00
Disconnect and Reconnect (Delinquent)	Cost
(For Non-Far West water customers only, where physical disconnection and reconnection is performed)	

Insufficient Funds (NSF) Check

As provided in Rule R14-2-608.E.1, the Company will charge the following rate for each instance that a customer tenders payment with an insufficient funds check:

NSF Check	\$30.00
-----------	---------

Late Fees

As provided in Rule R14-2-608.F.1, the Company shall charge a late payment penalty as follows:

Deferred Payment, Per Month	1.50%
Late Payment, Per Month	1.50%

Deposits

Deposit (Residential)	two times the residential class bill (R14-2-603.B.7.a)
Deposit (Non-Residential)	Two and one-half times customers estimated monthly maximum bill (R14-2-603.B.7.b)
Deposit Interest	6.0% (R14-2-603.B.3)

All charges under this rate schedule are subject to their proportionate share of any privilege, sales, use and franchise tax per Commission Rule 14-2-608.D.5.

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		Original	Sheet No.	R3.0
Far West Water and Sewer, Inc.				
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Rules and Regulations

The Company has adopted the Rules and Regulations established by the Commission as the basis for its operating procedures. A.A.C. R14-2-601 *et seq.* will be controlling of Company procedures unless specific Commission Order(s) provide otherwise.

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