

**PURCHASE AND SALE AGREEMENT  
FOR  
LONG TERM STORAGE CREDITS**

This Purchase and Sale Agreement is made this 5 day of May 2017, (the "Effective Date"), between and among the Central Arizona Water Conservation District ("CAWCD"), a multi-county water conservation district organized and existing under the laws of the State of Arizona, and Active Resource Management, LLC ("ARM"), an Arizona limited liability company.

**RECITALS**

A. CAWCD operates the Central Arizona Project ("CAP"). CAWCD also provides replenishment services to member lands and member service areas under authorities provided in Title 48, Chapter 22, Article 4 of the Arizona Revised Statutes. These replenishment authorities are commonly referred to as the Central Arizona Groundwater Replenishment District or CAGR. CAGR is not a separate legal entity, but functions within and is operated by CAWCD.

B. CAWCD desires to purchase Long-Term Storage Credits from ARM pursuant to Title 45, Chapter 3.1 of the Arizona Revised Statutes, for the benefit of CAGR member lands and member service areas.

C. ARM is willing to sell and transfer certain Long-Term Storage Credits to CAWCD upon the price, terms and conditions set forth herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, and intending to be legally bound, the parties hereby agree as follows:

**ARTICLE 1  
DEFINITIONS**

As used in this Agreement, the following terms, when capitalized, shall mean:

- 1.1 "ADWR" means the Arizona Department of Water Resources.
- 1.2 "Agreement" means this Purchase and Sale Agreement for Long-Term Storage Credits.
- 1.3 "ARM" means Active Resource Management, LLC, an Arizona limited liability company.
- 1.4 "ARM's Long-Term Storage Account(s)" means the Long-Term Storage Credit account established pursuant to Arizona Revised Statutes § 45-852.01 in the name of ARM, Account No. 70-441188.0000.
- 1.5 "CAGR" means the Central Arizona Groundwater Replenishment District, the replenishment authority operated by CAWCD.

1.6 "CAGR's Account(s)" means (i) the long-term storage account established pursuant to Arizona Revised Statutes § 45-859.01 for the Phoenix Active Management Area, Account No. 70- 441120.0001; (ii) the conservation district account established pursuant to Arizona Revised Statutes § 45-859.01 for the Phoenix Active Management Area, Account No. 75-441120.0000 and/or the (iii) the conservation district replenishment reserve subaccount for the Phoenix Active Management Area, Account No. 70-441120.0002.

1.7 "CAWCD" means the Central Arizona Water Conservation District.

1.8 "Long-Term Storage Credit" is as defined in Arizona Revised Statutes § 45-802.01(11).

1.9 "Long-Term Storage Credit Transfer Form" is a form, approved by ADWR, to effectuate the assignment of Long-Term Storage Credits, as defined in Arizona Revised Statutes § 45-854.01(B), and more specifically described in Article 3 below.

## **ARTICLE 2 PURCHASE OF LONG-TERM STORAGE CREDITS**

2.1 Sale and Purchase. Subject to the terms and conditions of this Agreement, ARM agrees to sell, transfer and assign and CAWCD agrees to purchase, acquire and pay for 50,000 acre-feet of Long-Term Storage Credits.

2.2 Type of Water. It is the intent of the parties that all Long-Term Storage Credits purchased and sold under this Agreement shall retain the identity of the source of water used to generate such Long-Term Storage Credits.

2.3 Long-Term Storage Credits. The Long-Term Storage Credits to be sold by ARM are from ARM's Long-Term Storage Account and represent credits accrued for Central Arizona Project water stored by ARM pursuant to Water Storage Permit No. 73-545695.0900 at the Roosevelt Water Conservation District Groundwater Savings Facility, ADWR Facility Permit No. 72-545695, located in the East Salt River Valley sub-basin of the Phoenix Active Management Area.

2.4 Purchase Price. The total purchase price for the 50,000 acre-feet of Long-Term Storage Credits to be sold by ARM and to be purchased by CAWCD under this Agreement is \$12.5 million. The purchase price was calculated at a per-credit price of \$250 per Long-Term Storage Credit ( $\$250/\text{Long-Term Storage Credit} * 50,000 \text{ acre-feet of Long-Term Storage Credits} = \$12.5 \text{ million}$ ).

## **ARTICLE 3 TIME AND MANNER OF TRANSFER**

3.1 Long-Term Storage Credit Transfer Form. To evidence the transfer of Long-Term Storage Credits, ARM and CAWCD shall complete, sign and deliver the Long-Term Storage Credit Transfer Form to ADWR within five business days of the full execution of this Agreement. A copy of the Long-Term Storage Credit Transfer Form is attached as Exhibit A to this Agreement. After ARM has executed and delivered the Long-Term Storage Credit Transfer Form to CAWCD, CAWCD shall promptly deliver the fully executed Long-Term Storage Credit Transfer Form to ADWR.

3.2 Additional Actions and Documentation. CAWCD shall pay any administrative fees established by ADWR to effectuate the transfer of Long-Term Storage Credits into CAGR D's Account(s). The parties shall cooperate to take such further actions and execute such further documents as may be determined by either party to be necessary or advisable in order to complete the transfer of the Long-Term Storage Credits contemplated by this Agreement.

#### **ARTICLE 4 COMPLETION OF DELIVERY AND PAYMENT**

4.1 Completion of Delivery. Delivery of the Long-Term Storage Credits to be transferred pursuant to this Agreement shall be deemed complete when ADWR notifies CAWCD in writing that it has received and accepted the Long-Term Storage Credit Transfer Form and intends to transfer the Long-Term Storage Credits pursuant to this Agreement into CAGR D's Account(s) or when evidence of such transfer is otherwise reflected in ADWR's records ("ADWR Acceptance"), whichever first occurs. CAWCD and ARM shall cooperate with ADWR to facilitate completion of such transfer by ADWR.

4.2 Payment. CAWCD shall pay the full amount of \$12.5 million, as specified in Article 2.4 above, no later than 10 business days after ADWR Acceptance.

#### **ARTICLE 5 REJECTION OR INVALIDATION OF TRANSFER**

If ADWR, pursuant to Arizona Revised Statutes § 45-854.01(C), rejects or invalidates any transfer or assignment of Long-Term Storage Credits made hereunder before CAWCD has paid for such Long-Term Storage Credits, CAWCD shall not be obligated to pay for the number of Long-Term Storage Credits affected by such rejection or invalidation. If such rejection or invalidation occurs after payment has been made by CAWCD, ARM shall refund an amount equal to the number of Long-Term Storage Credits affected by such rejection or invalidation times the price per acre-foot for the affected Long-Term Storage Credits, as such price is established in Article 2.4 above. ARM shall refund such amount within 20 business days after either CAWCD or ARM receives any notice of rejection or invalidation from ADWR. CAWCD shall transfer and assign back to ARM the number of credits affected by any such rejection or invalidation. ARM's obligation to refund any payments under this Article 5 shall expire 30 days after ADWR has issued a non-appealable final agency decision approving the transfer and assignment of the Long-Term Storage Credits into CAGR D's Account(s). The Parties' rights and obligations under this Article 5 shall remain in full force and effect, and shall survive termination of this Agreement for purposes of addressing a circumstance where ADWR rejects or invalidates any transfer of Long-Term Storage Credits made hereunder.

#### **ARTICLE 6 EFFECTIVE DATE**

This Agreement shall be effective as of the date set forth in the introductory paragraph of this Agreement (the "Effective Date") and shall stay in effect until all provisions under the Agreement have been met.

## **ARTICLE 7 DEFAULT AND REMEDIES**

7.1 Default. The occurrence of any of the following events constitutes an event of default by a party to this Agreement:

7.1.1 The failure of either party to perform any term, covenant, or condition of this Agreement, if that failure continues for thirty days following the receipt of written notice from the other party.

7.1.2 (i) The filing by or against either party of a petition to have the party adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against a party, the same is dismissed within 60 days); (ii) the making by a party of any general assignment for the benefit of creditors; (iii) the appointment of a trustee or receiver to take possession of substantially all of the party's assets, when possession is not restored to the party within 60 days; or (iv) the attachment, execution, or other judicial seizure of substantially all of a party's assets, where such seizure is not discharged within 60 days.

7.2 Remedies. If an event of default occurs, the non-defaulting party may immediately terminate this Agreement by written notice to the defaulting party and/or may pursue any other rights available to it in law or equity. The obligation of the defaulting party to pay any amounts due but unpaid as of the date of termination under this provision shall survive such termination.

7.3 Termination for Delayed ADWR Acceptance. Notwithstanding any other provision of this Article 7, if ADWR Acceptance, as that term is defined in Article 4.1, is not received by CAWCD by January 26, 2017, ARM may, at its option: (a) immediately terminate this Agreement by providing written notice to CAWCD; or (b) elect to provide an additional period of time within which ADWR may provide ADWR Acceptance. ARM must notify CAWCD of its decision to terminate this Agreement or to provide an additional time for ADWR Acceptance pursuant to this Article 7.3 no later than 5:00 p.m. (Arizona time) on February 2, 2017. Failure of ARM to timely notify CAWCD of its decision to terminate this Agreement or provide additional time for ADWR Acceptance pursuant to this Article 7.3 will be deemed a waiver of ARM's right to terminate this Agreement pursuant to this Article 7.3. If ARM elects to provide additional time for ADWR Acceptance and CAWCD does not receive ADWR Acceptance within the additional period of time provided by ARM under this Article 7.3, ARM may immediately terminate this Agreement by providing written notice to CAWCD.

## **ARTICLE 8 MISCELLANEOUS PROVISIONS**

8.1 Interpretation. This Agreement is governed by and must be construed and interpreted in accordance with and in reference to the laws of the State of Arizona, without regard to its

conflicts of laws provisions. Any action to resolve any dispute regarding this Agreement shall be taken in a state court of competent jurisdiction located in Maricopa County, Arizona.

8.2 ARM's Warranty of Title. ARM warrants that to the best of its actual knowledge it has good and marketable title to the Long-Term Storage Credits that are the subject of this Agreement and agrees to convey marketable title to such Long-Term Storage Credits free and clear of all liens and encumbrances. ARM shall warrant and defend title against all persons claiming by or through ARM and no other.

8.3 Amendments. This Agreement may be modified, amended or revoked only by the express written agreement of the parties hereto.

8.4 Entire Agreement. This Agreement constitutes the entire agreement between the parties and no understandings or obligations not expressly set forth in this Agreement are binding upon the parties.

8.5 Waiver. No delay in exercising any right or remedy shall constitute a waiver unless such right or remedy is waived in writing signed by the waiving party. A waiver by any party of any right or remedy hereunder shall not be construed as a waiver of any other right or remedy, whether pursuant to the same or a different term, condition or covenant.

8.6 Captions. All captions, titles, or headings in this Agreement are used for the purpose of reference and convenience only and do not limit, modify, or otherwise affect any of the provisions of this Agreement.

8.7 Rules, Regulations and Amendment or Successor Statutes. All references in this Agreement to the Arizona Revised Statutes include all rules and regulations promulgated by ADWR under such statutes and all amendment statutes and successor statutes, rules, and regulations to such statutes, rules, and regulations existing as of the date of this Agreement.

8.8 Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single agreement. Delivery of counterparts may be accomplished by either facsimile or electronic mail.

8.9 Notices. Except as otherwise required by law, any notice given in connection with this Agreement must be in writing and must be given by personal delivery, overnight delivery, facsimile, or United States certified or registered mail. Any such notice must be addressed to the appropriate party at the following address (or at any other address as a party may hereafter designate by written notice given as required by this paragraph):

**CAWCD:**

For delivery use: c/o General Manager  
23636 N. 7<sup>th</sup> Street  
Phoenix, AZ 85024

For U.S. Mail use: c/o General Manager  
P.O Box 43020  
Phoenix, AZ 85080-3020

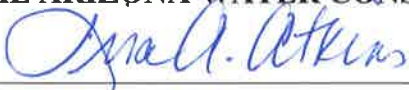
**ARM:**


Active Resource Management, LLC  
c/o Vidler Water Company, Inc.  
3480 GS Richards Blvd., Ste. 101  
Carson City, NV 89703  
Attn: Dorothy Timian-Palmer, P.E.  
President and CEO  
dorothy@vidlerwater.com

Notice is deemed to have been given on the date on which notice is personally delivered, delivered to an overnight delivery service, transmitted by facsimile or mailed. Notice is deemed to have been received on the date on which the notice is actually received or delivery is refused.

IN WITNESS WHEREOF, the parties to this Agreement have executed this Agreement as of the date first set forth above.

CAWCD: **CENTRAL ARIZONA WATER CONSERVATION DISTRICT**

By:   
Its: President

ATTEST:   
Secretary

ARM: **ACTIVE RESOURCE MANAGEMENT, LLC,**  
**an Arizona limited liability company,**

By:   
Dorothy Timian-Palmer  
Its: Manager

**EXHIBIT A**  
**to**  
**Purchase and Sale Agreement for Long Term Storage Credits**  
**ADWR LONG-TERM STORAGE CREDIT TRANSFER FORM A.R.S. § 45-854.01**

**ARIZONA DEPARTMENT OF WATER RESOURCES**  
 Water Planning & Permitting Division  
 1110 West Washington St., Suite 310  
 Phoenix, Arizona 85007  
 Telephone (602) 771-8599  
 Fax (602) 771-8689

**LONG-TERM STORAGE CREDIT TRANSFER FORM**  
**A.R.S. § 45-854.01**

For Official Use Only

DATE RECEIVED: \_\_\_\_\_

The fee for a Long-Term Storage Credit Transfer is \$250.00 per water storage transfer. Only one transaction may be requested per form. Payment may be made by cash, check, or credit card. Checks should be made payable to the Arizona Department of Water Resources. Failure to enclose the fee will cause the form to be returned. Fees for a Long-Term Credit Transfer are authorized by A.A.C. R12-15-104.

**[FOR SELLER]**

\_\_\_\_\_  
Name of Seller

\_\_\_\_\_  
Long-Term Storage Account No.

\_\_\_\_\_  
Contact Person/Telephone Number

\_\_\_\_\_  
Facility Permit Number (where source water was stored)

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
Water Storage Permit Number (authority to store source water)

\_\_\_\_\_  
City/State/Zip

\_\_\_\_\_  
Email

Number of long-term storage credits (in acre-feet) transferred by type(s) of water and year credits were earned.

Type: \_\_\_\_\_ acre-feet \_\_\_\_\_ year earned \_\_\_\_\_

Type: \_\_\_\_\_ acre-feet \_\_\_\_\_ year earned \_\_\_\_\_

**[FOR BUYER]**

\_\_\_\_\_  
Name of Buyer

If the transfer includes long-term storage credits earned from the storage of Central Arizona Project (CAP) water in an Active Management Area (AMA), please state:

\_\_\_\_\_  
Contact Person/Telephone Number

1. The date of Buyer's formation (if Buyer is a legal entity): \_\_\_\_\_

\_\_\_\_\_  
Mailing Address

2. The amount of groundwater withdrawn by Buyer in the AMA during the calendar year that the credits were earned:  
\_\_\_\_\_

\_\_\_\_\_  
City/State/Zip

a. The groundwater right number(s) the Buyer withdrew the groundwater pursuant to:  
\_\_\_\_\_

\_\_\_\_\_  
Email

\_\_\_\_\_  
Long -Term Storage Account No. (if any)

*Required Signature Block is on Page 2*



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Pursuant to A.R.S. § 45-854.01(C), the director of the Arizona Department of Water Resources may reject and invalidate any assignment of long-term storage credits in which the stored water would not have met the requirements for long-term storage credits as prescribed by A.R.S. § 45-852.01 if the assignee had stored the water.

The undersigned hereby certify, under penalty of perjury, that the information contained in this report is, to the best of their knowledge and belief, correct and complete and that they are authorized to sign on behalf of the party for whom their signature appears.

\_\_\_\_\_  
Authorized Signature for Seller      DATE

\_\_\_\_\_  
Authorized Signature for Buyer      DATE

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

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#### NOTICE

A.R.S. § 41-1030(B), (D), (E) and (F) provide as follows:

**B.** An agency shall not base a licensing decision in whole or in part on a licensing requirement or condition that is not specifically authorized by statute, rule or state tribal gaming compact. A general grant of authority in statute does not constitute a basis for imposing a licensing requirement or condition unless a rule is made pursuant to that general grant of authority that specifically authorizes the requirement or condition.

**D.** This section may be enforced in a private civil action and relief may be awarded against the state. The court may award reasonable attorney fees, damages and all fees associated with the license application to a party that prevails in an action against the state for a violation of this section.

**E.** A state employee may not intentionally or knowingly violate this section. A violation of this section is cause for disciplinary action or dismissal pursuant to the agency's adopted personnel policy.

**F.** This section does not abrogate the immunity provided by section 12-820.01 or 12-820.02.