

**AGREEMENT FOR DEVELOPMENT OF EFFLUENT RECHARGE FACILITY,  
EFFLUENT DISPOSAL  
AND PURCHASE AND SALE OF EFFLUENT**

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This Agreement for Development of Effluent Recharge Facilities, Effluent Disposal and Purchase and Sale of Effluent ("Agreement") is made this 6 day of February, 2014 (the "Effective Date"), between 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 Liberty Utilities (Litchfield Park Water & Sewer) Corp. (hereafter "LIBERTY "). LIBERTY and CAWCD are sometimes collectively referred to herein as the "Parties" or individually as a "Party."

**RECITALS**

A. Pursuant to A.R.S. § 48-3772, CAWCD is authorized to acquire, develop, construct, operate, maintain, replace and acquire permits for water storage for replenishment purposes. CAWCD is also authorized to acquire, transport, hold, exchange, own, or lease water and water rights for replenishment purposes.

B. CAWCD has enrolled member lands and member service areas in the West Salt River Valley groundwater basin of the Phoenix Active Management Area, and to the extent reasonably feasible, CAWCD desires to satisfy its replenishment obligation associated with such member lands and member service areas in close proximity to such members' groundwater pumping sites.

C. LIBERTY is a private water and wastewater utility company in the Phoenix Active Management Area. LIBERTY holds a Certificate of Convenience and Necessity ("CC&N") issued by the Arizona Corporation Commission ("ACC") authorizing LIBERTY to provide public water and wastewater utility service within its CC&N, including delivery of Effluent. LIBERTY's CC&N area encompasses approximately 20 square miles located west of the Agua Fria River between Luke Air Force Base and interstate highway I-10, and may be amended from time to time by order of the ACC.

D. LIBERTY owns and operates the Palm Valley Wastewater Reclamation Facility ("PVWRF") at 14222 W. McDowell Road in Goodyear, Arizona. PVWRF currently produces approximately 3.5 million gallons per day ("MGD") of A+ quality Effluent. LIBERTY is currently permitted to operate PVWRF to a maximum treatment capacity of 8.2 MGD in various phases in the future. In 2012, PVWRF generated 2,340 acre-feet of Effluent in excess of re-use demands and LIBERTY estimates that total Effluent production from PVWRF in excess of reuse demands may increase to approximately 3,000 acre-feet per annum by 2017.

E. In order to support water supply availability within LIBERTY's CC&N and to benefit LIBERTY's utility customers, LIBERTY proposes to recharge into the aquifer any Effluent discharged from the PVWRF and any other Effluent that may be available to LIBERTY

from other sources as determined by LIBERTY in its sole discretion that is not re-used or used by LIBERTY within its CC&N.

F. On June 22, 2010, CAWCD and LIBERTY executed an agreement to cost-share a hydrologic study to determine feasibility of constructing a recharge facility within LIBERTY's CC&N (the "Cost Sharing Agreement"). In entering that agreement, the mutual goal of the Parties was to initiate a long-term partnership between LIBERTY and CAWCD for the development of a recharge facility ("Effluent Recharge Project") to store excess Effluent produced at the PVWRF or other wastewater reclamation facilities, and to enter into a long-term agreement for CAWCD to acquire and receive such excess Effluent from LIBERTY and for LIBERTY to dispose of such excess Effluent. Under the Cost Sharing Agreement, LIBERTY and CAWCD agreed to share the costs of a hydrologic investigation to determine the feasibility of the proposed Effluent Recharge Project.

G. The Cost Sharing Agreement provides that the Hydrologic Feasibility Study will proceed in two phases. Phase 1 involved retaining a hydrological consultant to locate and determine suitable sites for the Proposed Recharge Project. Phase 2 involved retaining a hydrological consultant to provide conceptual designs, cost estimates and a feasibility analysis for construction of the proposed Effluent Recharge Project. The Phase 1 investigation was completed on February 17, 2011 and identified several potential sites for the proposed Effluent Recharge Project. The Cost Sharing Agreement provides that if CAWCD and LIBERTY agreed that the Phase 1 Final Report of the hydrologic feasibility study identifies suitable site(s) for the Effluent Recharge Project acceptable to the Parties within or adjacent to the LIBERTY's CC&N for storage of excess Effluent generated at PVWRF or other potential sources, then LIBERTY and CAWCD would use their best efforts to negotiate and enter into a Memorandum of Understanding outlining the terms of a future agreement for the development, design, funding, construction and operation of the Effluent Recharge Project and CAWCD's acquisition and receipt of excess treated wastewater discharged from PVWRF or other potential sources. The Phase 2 investigation was completed on or about August 1, 2013 and determined that a viable, cost-effective Effluent Recharge Project capable of storing at least 5,000 acre-feet of Effluent annually can be developed and constructed within or adjacent to LIBERTY's CC&N.

H. Section 3.2 of the Cost Sharing Agreement provides that the Memorandum of Understanding shall document the Parties' agreement with respect to the following concepts: (1) the term and duration of a contract to lease excess treated wastewater discharged from PVWRF for replenishment purposes by CAWCD from LIBERTY; (2) the volume of excess treated wastewater discharged from PVWRF to be leased by CAWCD, and (3) the cost and payment terms for such lease agreement. The Parties entered a Memorandum of Understanding Regarding Development of Effluent Recharge Facility and Purchase and Sale of Effluent ("MOU") dated March 7, 2013.

I. The Parties now enter into this Agreement relating to development of the Effluent Recharge Project, disposal of Effluent and Purchase and Sale of Effluent. This Agreement is subject to review and approval by the respective Boards of Directors of LIBERTY and CAWCD and/or their respective executive management. Because the Phase 2 Final Report has concluded that a viable, cost-effective Effluent Recharge Project capable of storing at least

5,000 acre-feet of Effluent annually can be developed and constructed within or adjacent to LIBERTY's CC&N, LIBERTY and CAWCD enter this Agreement relating to construction, operation and use of the Effluent Recharge Project. This Agreement governs (1) the development, design, funding, construction and operation of the Effluent Recharge Project (the "Final Agreement for Development, Design, Funding, Construction and Operation of Effluent Recharge Project" set forth in Article 3 below); (2) the agreement between the Parties for LIBERTY to sell/dispose of and deliver to CAWCD 2,400 acre-feet of Effluent per annum for 100 years (the "Effluent Disposal Agreement" set forth in Article 4 below); and (3) the agreement between the Parties for the purchase by CAWCD of Long-Term Storage Credits accrued by LIBERTY at the Effluent Recharge Project (the "Agreement for Purchase of Long-Term Storage Credits" set forth in Article 5 below). As of the Effective Date, this Agreement shall supersede and replace the MOU between the Parties and the MOU shall be of no further force or effect.

J. The Parties understand and agree that this Agreement relates to disposal of Effluent from PVWRF by LIBERTY through the Effluent Recharge Project, and that CAWCD is not purchasing Effluent for use or re-use. The Parties understand and agree that CAWCD is acquiring an entitlement to 2,400 acre-feet of Effluent per annum for 100 years to be recharged at the Effluent Recharge Project and CAWCD is acquiring the contractual right to purchase Long-Term Storage Credits from LIBERTY relating to the Effluent Recharge Project, all in accordance with the terms and conditions set forth below.

K. All of CAWCD's costs associated with the existing Cost Sharing Agreement, the Phase 1 and Phase 2 investigations and CAWCD's obligations under this Agreement shall be paid using Central Arizona Groundwater Replenishment District funds.

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 "ACC" means the Arizona Corporation Commission.
- 1.2 "ADWR" means the Arizona Department of Water Resources.
- 1.3 "Agreement for Purchase of Long-term Storage Credits" means the agreement, terms and conditions set forth in Article 5 below between CAWCD and LIBERTY for the purchase by CAWCD of Long-Term Storage Credits accrued by LIBERTY at the Effluent Recharge Project.
- 1.4 "CAGRD's Account(s)" means (i) the long-term storage account established pursuant to A.R.S. § 45-859.01 for the Phoenix Active Management Area, Account No. 70-411120.0001; (ii) the conservation district account established pursuant to A.R.S. § 45-859.01 for the Phoenix Active Management Area, Account No. 75-411120 and/or (iii) the

conservation district replenishment reserve sub-account for the Phoenix Active Management Area, Account No 70-411120.0002.

- 1.5 "CAWCD's Storage Capacity Entitlement" means CAWCD's annual entitlement to the Effluent Recharge Project's storage capacity as provided in Section 3.1.3 below and subject to the terms and conditions set forth in this Agreement.
- 1.6 "Cost Sharing Agreement" means the agreement between CAWCD and LIBERTY dated June 22, 2010 to share the costs of a feasibility study to explore jointly developing an Effluent Recharge Project and the leasing of Effluent to CAWCD.
- 1.7 "CPI-U" means the Consumer Price Index—All Urban Consumers published by the United States Bureau of Labor Statistics. If the CPI-U ceases publication during the term of this Agreement, then the Parties shall use a substantially similar consumer price index as agreed between the Parties.
- 1.8 "Delivery Point" means the delivery point interconnecting the Effluent Pipeline with the turnout for the Effluent Recharge Project as determined by LIBERTY.
- 1.9 "Effluent" means wastewater that is treated or reclaimed so that it is suitable for underground storage pursuant to A.R.S. Titles 45 and 49. Effluent includes treated wastewater that is produced now or in the future from PVWRF, including any future expansions thereof, and Effluent produced at any other wastewater treatment plant as determined by LIBERTY in its sole discretion that may be owned or controlled by LIBERTY.
- 1.10 "Effluent Entitlement" means the annual entitlement to 2,400 acre-feet of Effluent for a period of 100 years to be granted to CAWCD by LIBERTY pursuant to the terms of the Effluent Disposal Agreement set forth below and subject to the terms, conditions and any adjustments set forth in this Agreement, including the provisions of Section 4.1.6.
- 1.11 "Effluent Disposal Agreement" means the agreement terms and conditions set forth in Article 4 below between CAWCD and LIBERTY providing for the acquisition and receipt by CAWCD and the sale/disposal and delivery by LIBERTY of 2,400 acre-feet per year of Effluent for 100 years.
- 1.12 "Effluent Pipeline" means the effluent pipeline from the PVWRF to the boundary of the Effluent Recharge Project site owned by LIBERTY that conveys Effluent produced at PVWRF for reuse, disposal and discharge.
- 1.13 "Effluent Pipeline Capacity Reservation" means CAWCD's annual right to use capacity of the Effluent Pipeline as provided in this Agreement to transport Effluent from PVWRF to the Effluent Recharge Project.
- 1.14 "Effluent Recharge Project" means a constructed underground storage facility located within or adjacent to LIBERTY's CC&N capable of storing 5,000 acre-feet of treated Effluent annually.
- 1.15 "Effluent Recharge Project Operating Agreement" means the Effluent Recharge Project Operating Agreement to be executed between CAWCD and LIBERTY, the form of which is attached hereto as Exhibit A.

- 1.16 "Effluent Recharge Project Property" means the property on which the Effluent Recharge Project is built.
- 1.17 "Extraordinary O&M Costs" means those costs that are not Ordinary O&M Costs, including but not limited to non-routine, major maintenance, repair, replacement and capital improvement costs associated with the Effluent Recharge Project and/or the Effluent Pipeline that exceed a cost of \$75,000.
- 1.18 "Final Agreement for Development, Design, Funding, Construction and Operation of the Effluent Recharge Project" means the terms and conditions set forth in Article 3 below between CAWCD and LIBERTY to develop, design, fund, construct and operate the Effluent Recharge Project in or adjacent to LIBERTY's CC&N.
- 1.19 "Long-Term Storage Credit" is as defined in A.R.S. § 45-802.01(11).
- 1.20 "Long-Term Storage Credit Transfer Form" is a form, approved by ADWR, to effectuate the assignment of Long-Term Storage Credits, as defined in A.R.S. § 45-854.01(B), and more specifically described in Section 5.1.7 below.
- 1.21 "LIBERTY's Long-Term Storage Account" means the account established pursuant to A.R.S. § 45-852.01 in LIBERTY's name, Account No. 70-441139.
- 1.22 "Notice of Substantial Completion" means the notice issued by LIBERTY warranting that construction of the Effluent Recharge Project is substantially complete.
- 1.23 "Ordinary O&M Costs" means the annual labor, overhead, and material costs for the routine operation, maintenance, monitoring and regulatory reporting at the Effluent Recharge Project. For purposes of this Agreement, the Parties agree that LIBERTY's overhead costs are equal to 10% of the ordinary O&M Costs directly charged to the Effluent Recharge Project and shall not represent or include profit earned by LIBERTY.
- 1.24 "PVWRF" means the Palm Valley Wastewater Reclamation Facility owned and operated by LIBERTY at 14222 W. McDowell Road in Goodyear, Arizona.

## **ARTICLE 2**

### **PHASE 2 HYDROLOGIC FEASIBILITY STUDY**

2.1 The Phase 2 Hydrologic Feasibility Study was completed on or about August 1, 2013 and determined that a viable, cost-effective Effluent Recharge Project capable of storing at least 5,000 acre-feet of Effluent annually can be developed and constructed within or adjacent to LIBERTY's CC&N. The Phase 2 Study identified several viable project sites located within LIBERTY's CC&N.

## **ARTICLE 3**

### **FINAL AGREEMENT FOR DEVELOPMENT, DESIGN, FUNDING, CONSTRUCTION AND OPERATION OF EFFLUENT RECHARGE PROJECT**

3.1 The Phase 2 Hydrologic Feasibility Study Final Report has concluded that a viable, cost-effective, Effluent recharge facility capable of storing at least 5,000 acre-feet of Effluent annually can be developed and constructed within or adjacent to LIBERTY's CC&N. As a result, the terms and conditions set forth in this section below shall govern the development, design, funding, construction and operation of the Effluent Recharge Project by LIBERTY and CAWCD on the Effluent Recharge Project Property.

3.1.1 **Project Construction and Design.** Upon payment of the amounts set forth below by CAWCD, LIBERTY will design, permit and construct the Effluent Recharge Project, including acquiring all necessary land interests or rights of way for the Effluent Recharge Project. LIBERTY shall be responsible for designing, permitting and constructing the Effluent Recharge Project, including hiring contractors, project scheduling, the location and siting of Effluent Recharge Project facilities and other similar issues.

3.1.2 **Project Financing.** CAWCD shall pay \$4,800,000 and LIBERTY shall pay \$1,200,000 as payment for costs associated with the development, design, permitting and construction of the Effluent Recharge Project, including any costs associated with acquisition of necessary land interests or rights of way.

3.1.2.1 **Escrow Account.** Within 30 days after execution of this Agreement, CAWCD shall deposit \$4,800,000 into an interest-bearing escrow account (the "Escrow Funds") established by LIBERTY with an escrow agent determined by LIBERTY (the "Escrow Agent"). The Parties agree to effectuate and execute necessary agreements with the Escrow Agent subject to the payment instructions set forth in Section 3.1.2.2 below.

3.1.2.2 **Escrow Instructions.** LIBERTY shall be entitled from time to time to withdraw all or any amounts of the Escrow Funds for land acquisition, design, development, permitting and construction of the Effluent Recharge Project upon delivery to the Escrow Agent, with a courtesy copy to CAWCD, of a written certificate executed by an officer of LIBERTY requesting that such funds be released as necessary to cover costs for land acquisition, design, permitting and/or construction of the Effluent Recharge Project. Upon LIBERTY's delivery of such written certification and payment direction to Escrow Agent, Escrow Agent shall immediately release and pay to LIBERTY that portion of the Escrow Funds requested from escrow in the amounts and as directed by LIBERTY. CAWCD understands the \$4,800,000 payment represents the costs associated with the acquisition of the Effluent Entitlement and CAWCD's Storage Capacity Entitlement (as defined below), and is, therefore, non-refundable to CAWCD in the event that actual costs for development, design, permitting and construction of the Effluent Recharge Project are less than \$6,000,000.

3.1.2.3 **Development Costs.** LIBERTY's and CAWCD's costs for the Phase 1 and Phase 2 Hydrologic Feasibility Studies under the Cost Sharing Agreement shall be considered development costs under Section 3.1.2 above. CAWCD shall be entitled to a credit for its portion of costs paid pursuant to the Cost Sharing Agreement against its \$4,800,000 payment referenced in Section 3.1.2 above. LIBERTY shall be entitled to a credit for its portion of costs paid pursuant to the Cost Sharing Agreement against its \$1,200,000 payment referenced in Section 3.1.2 above.

3.1.2.3.1 CAWCD and LIBERTY believe that the Effluent Recharge Project can be constructed for an amount of \$6,000,000 or less, including land acquisition, permitting and construction. If the total cost of the Effluent Recharge Project is less than \$6,000,000, then any interest accrued on funds deposited into escrow pursuant to Section 3.1.2 will be credited to CAWCD subject to Section 3.1.2.3.2 below.

3.1.2.3.2 If the total cost of the Effluent Recharge Project plus LIBERTY's attorney's fees and legal costs associated with seeking ACC approval pursuant to Section 6.1 below is greater than \$6,000,000, then LIBERTY's attorney's fees and legal costs associated with seeking ACC approval pursuant to Section 6.1 shall be included as costs associated with the development, design, permitting and construction of the Effluent Recharge Project. In the event that the total costs of the Project (including LIBERTY's attorney's fees and legal costs noted above) is greater than \$6,000,000, then any interest accrued on funds deposited into escrow pursuant to Section 3.1.2.1 will be applied to cover project costs (including LIBERTY's attorney's fees and legal costs noted above) in excess of \$6,000,000. If, after the application of interest on escrowed funds, there are still excess project costs, then LIBERTY will pay the excess costs, or LIBERTY may request that CAWCD pay the excess costs, and in such event CAWCD shall pay such excess costs upon request by LIBERTY. If, after application of interest on escrowed funds, there is still remaining interest earned, then any such remaining interest shall be credited to CAWCD. If CAWCD pays excess costs pursuant to this section above the application of interest, then the Parties shall amend the Effluent Disposal Agreement in Article 4 below to increase the volume of the Effluent Entitlement at a rate of one additional acre-foot of Effluent to be disposed of by LIBERTY and delivered to CAWCD for every \$2,547 of excess cost paid by CAWCD. Also, CAWCD's Storage Capacity Entitlement and Effluent Pipeline Capacity Reservation shall be increased to correspond with any adjustment to the Effluent Entitlement pursuant to this Section 3.1.2.3.2.

By way of example and for illustration purposes only, if the project costs of the Effluent Recharge Project total \$5,980,000 and LIBERTY incurs \$50,000 in attorney's fees and legal costs, then the total cost of the Project under this section is \$6,030,000. If the \$4,800,000 deposited in escrow earned \$20,000 in interest, then that \$20,000 in interest will be applied to pay the total project cost of \$6,030,000. In this example, the remaining \$10,000 of unpaid Project costs either would be paid by LIBERTY or, at LIBERTY's request, would be paid by CAWCD with an associated increase in Effluent Entitlement, CAWCD's Storage Capacity Entitlement and Effluent Pipeline Capacity Reservation of 3.93 acre-feet (\$10,000/\$2,547). Similarly, if the project costs total \$5,980,000 and LIBERTY incurs \$25,000 in attorney's fees and legal costs, then the total project costs would be \$6,005,000 under this section. In that example, if the \$4,800,000 deposited in escrow earned \$20,000 in interest, then \$5,000 of that interest would be used to reimburse LIBERTY for the added costs above \$6,000,000 and CAWCD would be entitled to retain the remaining \$15,000 in interest.

3.1.3 **CAWCD's Storage Capacity Entitlement.** In exchange for CAWCD's payment pursuant to Section 3.1.2 above and subject to the terms and conditions set forth in this Agreement, LIBERTY hereby grants CAWCD an annual entitlement to 2,400 acre-feet of the Effluent Recharge Project's storage capacity ("CAWCD's Storage Capacity Entitlement"), subject to any adjustments made pursuant to Section 3.1.2.3.2, and subject to any terms, conditions and limitations pursuant to Section 4.1.6 below. CAWCD's Storage Capacity

Entitlement shall be for a period of 100 years commencing on the date of issuance of the Notice of Substantial Completion. Except as provided in Section 3.1.2.3.2, the Parties understand and agree that CAWCD's Storage Capacity Entitlement of 2,400 acre-feet is not subject to increase under this Agreement.

3.1.4 **LIBERTY's Storage Capacity Entitlement.** LIBERTY's annual entitlement to the Effluent Recharge Project's storage capacity shall be the Effluent Recharge Project's total storage capacity minus the CAWCD Storage Capacity ("LIBERTY's Storage Capacity Entitlement").

3.1.5 **Ownership of the Effluent Recharge Project.** LIBERTY shall own and operate the Effluent Recharge Project, including any and all land on which the Project is located. The Parties understand and agree that the Project site shall include additional land for location of offices and/or other buildings that may be constructed by LIBERTY for use in operation of the Effluent Recharge Project or other business purposes.

3.1.6 **Execution of Effluent Recharge Project Operating Agreement.** Within sixty (60) days of ADWR's issuance of a final underground storage facility permit for the Effluent Recharge Project, the Parties shall execute the Effluent Recharge Project Operating Agreement, which shall be substantially in the form as Exhibit A, attached hereto. The Effluent Recharge Project Operating Agreement is subject to the terms and conditions set forth in this Agreement and to the extent any conflict exists between this Agreement and the Effluent Recharge Project Operating Agreement, the terms of this Agreement shall take precedence and control. Further, in the event that this Development Agreement is terminated for any reason, the Operating Agreement also will terminate and will no longer be in force or effect between the Parties.

3.1.7 **Ordinary O&M Costs.** Each Party will be responsible for annual costs for Ordinary O&M Costs at the Effluent Recharge Project based on each Party's proportionate share of storage capacity utilized during the year divided by the total Effluent delivered to the Effluent Recharge Project. By way of example only, if 3,000 acre-feet of Effluent is delivered to the Effluent Recharge Project in a given year, and CAWCD uses 2,400 acre-feet of storage capacity and LIBERTY uses 600 acre-feet of storage capacity, then CAWCD shall be responsible for 80% (2400/3000) of the Ordinary O&M Costs and LIBERTY shall be responsible for 20% (600/3000) of the Ordinary O&M Costs. At least six months before the first delivery of Effluent to the Effluent Recharge Project, LIBERTY and CAWCD will jointly develop an estimate of the total annual Ordinary O&M Costs and an estimate of CAWCD's share of annual Ordinary O&M Costs based on CAWCD's proportionate share of storage capacity to be utilized during the following year. The Parties anticipate that the estimated cost will initially be in the range of \$20 per acre foot. On or before November 15<sup>th</sup> of the initial year of delivery of Effluent to the Effluent Recharge Project and each year thereafter, LIBERTY shall provide to CAWCD an estimate of the total annual Ordinary O&M Costs and an estimate of CAWCD's share of annual Ordinary O&M Costs based on CAWCD's proportionate share of storage capacity to be utilized during the following year. On or before the 15<sup>th</sup> of each month, LIBERTY will bill CAWCD one-twelfth (1/12) of the annual estimated Ordinary O&M Costs. CAWCD shall pay LIBERTY within thirty days of receipt of the bill. Differences between

actual Ordinary O&M Costs and estimated O&M Costs shall be determined by LIBERTY and shall be adjusted in the next succeeding annual estimate of Ordinary O&M Costs.

3.1.8 **Extraordinary O&M Costs.** LIBERTY and CAWCD shall share Extraordinary O&M Costs related to the Effluent Recharge Project based on each Party's annual entitlement to the Effluent Recharge Project's storage capacity. To the extent practicable, before LIBERTY incurs any Extraordinary O&M Costs, the Parties shall meet and confer regarding the need to incur such costs.

3.1.9 **Effluent Pipeline Capacity Reservation.** LIBERTY owns and operates the Effluent Pipeline that conveys or will convey Effluent produced at PVWRF to the Effluent Recharge Project for reuse and discharge. CAWCD seeks dedicated capacity in the Effluent Pipeline for transport of the Effluent Entitlement to the Effluent Recharge Facility. Subject to any adjustment made pursuant to Section 3.1.2.3.2 and subject to CAWCD's compliance with its obligations under this Agreement, LIBERTY hereby grants CAWCD an entitlement to use that capacity of the Effluent Pipeline sufficient to transport 2,400 acre-feet of Effluent to the Project during the course of a year. LIBERTY grants CAWCD this Effluent Pipeline Capacity Reservation for a period of 100 years commencing on the date of issuance of the Notice of Substantial Completion. CAWCD shall pay LIBERTY \$1,313,100 for the Effluent Pipeline Capacity Reservation. The amount due under this Section 3.1.9 shall be due and payable by CAWCD to LIBERTY when the total amount of Escrow Funds withdrawn from the Escrow Account equals or exceeds \$4,000,000. Upon such payment, LIBERTY shall reserve to CAWCD the necessary capacity in the Effluent Pipeline sufficient to transport 2,400 acre-feet of Effluent per annum to the Effluent Recharge Project.

3.1.10 **Effluent Delivery Charge.** CAWCD shall pay LIBERTY a per acre-foot delivery charge for transportation, delivery and disposal of CAWCD's Effluent Entitlement through the Effluent Pipeline to the Effluent Recharge Project. Such charge will be based on LIBERTY's actual cost for delivery and disposal, including pumping energy and pipeline operation and maintenance costs for Ordinary O&M. The per acre-foot delivery charge is estimated to be \$27.16 per acre foot of Effluent delivered to the Effluent Recharge Project based on an actual historical (prior year) cost for power of \$19.16 per acre-foot and an agreed upon pipeline maintenance fee of \$8.00 per acre-foot. LIBERTY shall bill CAWCD on a monthly basis for such charges subject to reconciliation for actual power costs at the end of the year. The pipeline maintenance fee was agreed by the Parties to be \$8.00 per acre-foot for 2011 with adjustments for CPI-U in future years. Using 2013 as the base year, the billed pipeline maintenance fee for future years will be based on the CPI-U index as of December 31 of the previous year using December 31, 2013 as the base year with an annual true-up to be completed using the actual CPI-U at December 31 of the current year completed as the measuring factor. CAWCD shall be responsible for its pro-rata share of Extraordinary O&M Costs of the Effluent Pipeline. CAWCD's pro-rata share of Extraordinary O&M Costs of the Effluent Pipeline shall be determined by dividing CAWCD's entitlement to use the Effluent Pipeline Capacity by the total Effluent Pipeline Capacity.

3.1.11 **Maintenance of Insurance for Effluent Recharge Project and Physical Damage.**

**3.1.11.1 Maintenance of Insurance for Effluent Recharge Project.**

While this Agreement shall remain in effect, LIBERTY shall obtain and cause to be maintained, with financially sound and reputable insurers, property and liability insurance, or its equivalent, with respect to the Effluent Recharge Project (including all improvements now existing or hereafter erected as a part thereof), or any substitute or replacement facility, against all losses, hazards, casualties, liabilities and contingencies as customarily carried or maintained by public services corporations of established reputation engaged in a similar business. The cost of such insurance is an operating cost of the Effluent Recharge Project and shall be included as a part of Ordinary O&M Costs as defined in Section 1.23.

**3.1.11.2 Physical Damage.** In the event of any physical damage to the Effluent Recharge Project or physical loss of the Effluent Recharge Project (collectively, "Physical Damage") that will or is reasonably likely to prevent delivery of CAWCD's Effluent Entitlement, LIBERTY shall give immediate written notice of the same to its insurance carrier and to CAWCD. Subject to the terms and conditions in this paragraph, LIBERTY shall pursue an insurance claim relating to such Physical Damage and LIBERTY shall promptly commence and diligently prosecute to completion the repair and restoration of the Effluent Recharge Project as nearly as possible to the condition of the Effluent Recharge Project immediately prior to the Physical Damage (a "Restoration"). LIBERTY agrees to dedicate all insurance proceeds associated with any Physical Damage to the Restoration of the Effluent Recharge Project. If the insurance proceeds are insufficient to cover 100% of the costs of Restoration, then LIBERTY and CAWCD shall pay those costs of Restoration not covered by the insurance proceeds in proportion to each Party's annual entitlement to the Effluent Recharge Project's storage capacity. At its discretion, LIBERTY may construct a substitute facility at a new location; provided, however, that in such event LIBERTY shall satisfy CAWCD's Effluent Entitlement from such substitute facility on the same terms and conditions as set forth in this Agreement. LIBERTY currently maintains replacement cost property insurance. LIBERTY shall notify CAWCD in writing, if at any time during the term of this Agreement, it will no longer maintain replacement cost property insurance. In such case, CAWCD and LIBERTY shall negotiate in good faith an amendment to this Section 3.1.11.2 addressing how the Parties shall address the risk of Physical Damage and share the costs of any Restoration. If Physical Damage occurs during the term of this Agreement at a point in time where the Parties mutually determine that it would be economically infeasible to rebuild or restore the Effluent Recharge Project, the Parties agree to negotiate in good faith on an alternative resolution.

**3.1.12 Condemnation.** LIBERTY shall promptly notify CAWCD in writing of the actual or threatened commencement of any proceeding to acquire the Effluent Recharge Project or any substitute or replacement facility through condemnation or eminent domain (collectively, "Condemnation"), and shall deliver to CAWCD copies of any and all papers served in connection with such proceedings. If the Effluent Recharge Project or any portion thereof (including any substitute or replacement facility) is taken through Condemnation, LIBERTY agrees to dedicate all proceeds of the Condemnation relating to the Effluent Recharge Project towards the construction of a substitute facility under this Agreement. If the Condemnation proceeds are insufficient to cover 100% of the costs of constructing a substitute facility, then LIBERTY and CAWCD, in their discretion, may pay those costs not covered by the Condemnation proceeds in proportion to each Party's annual entitlement to the Effluent Recharge

Project's storage capacity. In the event that Liberty opts to pay additional capital costs for a replacement facility, then the Parties agree to negotiate a revised Effluent Delivery Charge under Section 3.1.10 to account for such additional capital costs. If either CAWCD or LPSCO opts not to pay for such additional costs of a substitute facility, then the other party may opt to pay the entire amount of such additional costs. If the Parties decide not to build a substitute facility, then the Condemnation proceeds relating to the Effluent Recharge Project shall be used to reimburse CAWCD for its initial investment of \$6,113,100 as adjusted for inflation and as pro-rated based on the use of the Effluent Recharge Project as measured by the total amount of CAWCD's Effluent Entitlement delivered to the Project as of the sale date divided by 240,000 acre-feet of Effluent. Any Condemnation proceeds remaining after repayment of CAWCD's pro-rated investment shall be distributed equally to LIBERTY and CAWCD. CAWCD shall be entitled to the Condemnation proceeds subject to the condition that such payment must be rate-base neutral for LIBERTY and eliminate any Contributions in Aid of Construction on LIBERTY's utility accounts associated with the Effluent Recharge Project for utility ratemaking purposes. As used in this Agreement, the term "Condemnation" shall mean any taking, whether full, partial, permanent or temporary, under the power of eminent domain or any similar power, and any transfer in lieu or in settlement of the assertion of any such right or the threat of such assertion. In the event that a condemning authority condemns all of the assets of LIBERTY, then LIBERTY shall use commercially reasonable efforts to require the condemning authority to assume the obligations of LIBERTY under this Agreement.

## **ARTICLE 4**

### **EFFLUENT DISPOSAL AGREEMENT**

4.1 LIBERTY shall sell/dispose of and deliver to the Effluent Recharge Project the Effluent Entitlement, subject to the terms of this Agreement. This Effluent Disposal Agreement is subject to the following terms and conditions.

#### **4.1.1 CAWCD Effluent Entitlement; Right of First Refusal.**

4.1.1.1 Subject to CAWCD's obligations under this Agreement, LIBERTY hereby grants CAWCD an annual entitlement to 2,400 acre-feet of Effluent for a term of 100 years, commencing on the date of issuance of the Notice of Substantial Completion of the Effluent Recharge Project, subject to any adjustments pursuant to Sections 3.1.2.3.2 and 4.1.7 and subject to Section 4.1.6. Subject to the terms and conditions of this Agreement, throughout this 100-year term, LIBERTY shall deliver the Effluent Entitlement each year to the Delivery Point.

4.1.1.2 LIBERTY agrees to grant CAWCD a right of first refusal to acquire any available Effluent in excess of the Effluent Entitlement proposed to be sold to a water customer outside of LIBERTY's CC&N for use or reuse on the same terms offered or agreed to by such water customer. LIBERTY further agrees that it will not actively market Effluent from PVWRF for sale outside of its CC&N, nor will it sell Effluent from PVWRF to a water user outside of LIBERTY's CC&N for underground storage purposes.

4.1.2 **Metering Device.** LIBERTY shall install a metering device ("Metering Device") to measure the quantity of Effluent delivered to the Delivery Point. The Metering Device shall be the basis for determining whether LIBERTY has met its obligation to deliver the Effluent Entitlement in any year during the term of this Agreement. The Metering Device shall be of a design and type mutually acceptable to LIBERTY and CAWCD. LIBERTY shall calibrate the metering device no less frequently than once every year. Any and all costs for the Metering Device shall be included as part of Development Costs in Section 3.1.2.3 above.

4.1.3 **CAWCD Payment Obligations.** In consideration of the disposal and delivery of the Effluent Entitlement from LIBERTY to the Effluent Recharge Project, CAWCD's Storage Capacity Entitlement and the Effluent Pipeline Capacity Reservation, CAWCD shall make the following payments:

4.1.3.1 The \$4,800,000 to be paid by CAWCD under Section 3.1.2 above;

4.1.3.2 The cost associated with the Effluent Pipeline Capacity Reservation as provided in Section 3.1.9 above;

4.1.3.3 The per acre-foot delivery charges as provided in Section 3.1.10 above; and

4.1.3.4 The Ordinary O&M Costs and Extraordinary O&M Costs as provided in Sections 3.1.7 and 3.1.8 above.

4.1.4 **Replacement or Expansion of PVWRF.** LIBERTY shall operate, maintain, repair and replace PVWRF in compliance with all applicable regulatory requirements. In the event that PVWRF is replaced with another wastewater treatment facility ("Replacement Facility") or LIBERTY expands PVWRF so that it has additional capacity, then the provisions of the Effluent Disposal Agreement set forth herein shall be deemed to include the Effluent produced from either the Replacement Facility or the expanded PVWRF. LIBERTY shall install, operate, and maintain any Replacement Facility constructed at any location other than the PVWRF in such manner that the installation, operation, and maintenance of such new plant will not impair the ability of LIBERTY to sell and deliver 2,400 acre-feet of Effluent annually to the Effluent Recharge Project, regardless of whether the Effluent is produced at PVWRF or the Replacement Facility, subject to any and all regulatory obligations and/or requirements of LIBERTY.

4.1.5 **Permits and Authorizations.** LIBERTY shall be solely responsible for securing and maintaining in force and effect any and all permits and authorizations required by law for the operation of the Effluent Recharge Project and the delivery of Effluent to CAWCD at the Delivery Point.

4.1.6 **Priority.** During the term of this Agreement, as defined in Section 4.1.1.1, and as set forth in this Section 4.1.6, CAWCD's right to the Effluent Entitlement pursuant to the Effluent Disposal Agreement shall have priority over all other sales of Effluent by LIBERTY, except for the obligation(s) of LIBERTY to provide Effluent (i) to any current customer of LIBERTY which is receiving Effluent as of the Effective Date of this Agreement; or

(ii) to any entity which has a contract with LIBERTY to purchase Effluent as of the Effective Date of this Agreement. Except as provided in the preceding sentence, LIBERTY will not (a) commence or agree to commence delivery of Effluent to any current or future customer of LIBERTY; or (b) enter into any contract to deliver Effluent to any entity if such delivery of Effluent will impair, or is reasonably likely to impair, LIBERTY's ability to deliver the full Effluent Entitlement to CAWCD hereunder; provided, however, that LIBERTY may deliver Effluent to any current customer not receiving Effluent as of the Effective Date of this Agreement or future customer if the ACC issues a final order requiring LIBERTY to deliver Effluent to such customer. Provided, further, that delivery of Effluent pursuant to such a final order of the ACC shall not be deemed a breach of this Agreement. LIBERTY agrees that it will not initiate any proceeding at the ACC requesting an order from the ACC requiring LIBERTY to deliver Effluent to any current or future customer, including any entity seeking to contract with LIBERTY to acquire Effluent. In the event that any proceeding or action is undertaken to request or require that LIBERTY deliver Effluent to any current or future customer, which would impair LIBERTY's ability to deliver the full Effluent Entitlement to CAWCD, LIBERTY agrees that it will take reasonable efforts to defend CAWCD's right to the Effluent Entitlement under this Agreement. In that event, CAWCD also shall intervene in such proceeding and defend the Effluent Entitlement.

#### **4.1.7 Failure to Deliver Full Effluent Entitlement.**

**4.1.7.1 Make Up of Shortfall; Transfer of Long-Term Storage Credits.** If, in any year during the term of the Effluent Disposal Agreement, LIBERTY fails to deliver the full Effluent Entitlement, then LIBERTY shall make up the shortfall in the following year by delivering the full Effluent Entitlement for that year plus an amount equal to 103% of the shortfall from the previous year. For each acre-foot of Effluent delivered under a shortfall pursuant to this Section 4.1.7.1, CAWCD shall pay LIBERTY the same rate that it would have paid LIBERTY for storage at the Effluent Recharge Project in the year of the shortfall, as defined in Sections 3.1.7 and 3.1.10. If LIBERTY is unable to deliver some or all of the additional Effluent to fully offset the shortfall volume in the year following the shortfall year, then LIBERTY shall transfer Long-Term Storage Credits from LIBERTY's Long-Term Storage Account, or LIBERTY may acquire Long-Term Storage Credits to transfer to CAWCD in an amount equal to 103% of the shortfall. If LIBERTY is unable to deliver some or all of the additional Effluent and/or does not transfer Long-Term Storage Credits to fully offset the shortfall, then the shortfall will be addressed pursuant to Section 4.1.7.2. For each acre-foot of Long-Term Storage Credits transferred pursuant to this Section 4.1.7.1, CAWCD shall pay LIBERTY the same rate that it would have paid LIBERTY for storage at the Effluent Recharge Project in the year of the shortfall, as defined in Sections 3.1.7 and 3.1.10.

**4.1.7.2 Five-Year Shortfall Review.** Within 90 days of the fifth anniversary of the date of the Notice of Substantial Completion, and every five years thereafter, the Parties shall meet and review (i) the volume of the Effluent Entitlement delivered during the preceding five years; (ii) the volume of any shortfall in the delivery of the Effluent Entitlement during the previous five years; (iii) the cause of any shortfall in the delivery of the Effluent Entitlement; and (iv) the volume of any Long Term Storage Credits transferred to cover any shortfall. As part of this five year review process, the Parties also shall determine whether and to what extent CAWCD may be entitled to a refund or offset for its capital investment based on

delivery of Effluent and/or transfer of Long-Term Storage Credits pursuant to Section 4.1.7.1 above during each five year period. Under this Agreement, CAWCD is entitled to 12,000 acre-feet of Effluent and/or Long-Term Storage Credits pursuant to Section 4.1.7.1, during each five year period of this Agreement. Within 90 days of the fifth anniversary of the Notice of Substantial Completion, and every five years thereafter, the Parties shall meet and determine the total amount of Effluent and Long-Term Storage Credits delivered during the prior five years. If there is a shortfall in the amount of Effluent and/or Long-Term Storage Credits delivered during that five year period (*i.e.*, if LIBERTY has delivered less than 12,000 acre-feet of Effluent and/or Long-Term Storage Credits to CAWCD), then the Parties shall determine whether LIBERTY can reasonably be expected to make up that shortfall during the next five year period. If the Parties determine that LIBERTY cannot reasonably make up that shortfall during the next five year period, then CAWCD shall be entitled to a refund for the shortfall based on the following formula: (acre-feet of shortfall)/240,000 x \$6,113,100 (as adjusted for depreciation of the Effluent Pipeline) equals refund amount. The refund amount shall be adjusted for inflation using the CPI-U index. For illustration purposes only, if during the years 2020-2025, LIBERTY delivers 10,000 acre-feet of Effluent and no Long-Term Storage Credits, resulting in a 2,000 acre-foot shortfall, the Parties shall assess a potential refund as part of the five year review in 2026. If the Parties determine that LIBERTY cannot reasonably be expected to make up that 2,000 acre-foot shortfall during the 2026-2030 period, then CAWCD shall be entitled to a refund for the period of 2020-2025 calculated as follows:  $2,000/240,000 = .0083$ ;  $.0083 \times \$6,113,100$  (as adjusted for depreciation of the Effluent Pipeline) = \$50,739 (adjusted for inflation using the CPI-U index). Depreciation shall be calculated based on the CAWCD investment price for the Effluent Pipeline Capacity Reservation of \$1,313,100. The Parties understand and agree that any such refund shall be offset against CAWCD's future payment obligations during the next succeeding five-year period under this Agreement; provided, however, that if CAWCD's future payment obligations during the next succeeding five-year period are projected to be insufficient to cover the amount of the refund due, then LIBERTY shall pay CAWCD the amount of the refund that cannot be offset with such future payment obligations.

#### **4.1.8 Maintenance of Insurance for PVWRF and Physical Damage.**

**4.1.8.1 Maintenance of Insurance for PVWRF.** While this Agreement shall remain in effect, LIBERTY shall obtain and cause to be maintained, with financially sound and reputable insurers, property and liability insurance, or its equivalent, with respect to the PVWRF (including all improvements now existing or hereafter erected as a part thereof), or any substitute or replacement facility, against all losses, hazards, casualties, liabilities and contingencies as customarily carried or maintained by public services corporations of established reputation engaged in a similar business.

**4.1.8.2. PVWRF Physical Damage.** In the event of any physical damage to the PVWRF or physical loss of the PVWRF ("PVWRF Physical Damage") that will or is reasonably likely to prevent delivery of CAWCD's Effluent Entitlement, LIBERTY shall give immediate written notice of the same to its insurance carrier and to CAWCD. In the event of PVWRF Physical Damage, at its discretion LIBERTY may, but shall not be required to: (i) restore or reconstruct the PVWRF as nearly as possible to the condition of the PVWRF immediately prior to the Physical Damage; or (ii) construct a substitute facility at a new location in such a manner as to permit LIBERTY to satisfy CAWCD's Effluent Entitlement from such

substitute facility on the same terms and conditions as set forth in this Agreement. If LIBERTY elects to neither restore the PVWRF nor construct a substitute facility, then LIBERTY shall use commercially reasonable efforts to deliver Effluent from another facility owned by LIBERTY, if any, to satisfy CAWCD's Effluent Entitlement. If LIBERTY is unable to satisfy CAWCD's Effluent Entitlement on the same terms and conditions as set forth in the Agreement after PVWRF Physical Damage, the Parties agree to sell the Effluent Recharge Project, and CAWCD shall be entitled to a portion of the proceeds from the sale of the Effluent Recharge Project, subject to regulatory requirements, approvals, decisions and/or orders, including any regulatory decisions issued by the ACC. Subject to any such regulatory decisions, CAWCD shall be entitled to a portion of the proceeds of the sale of the Effluent Recharge Project subject to the condition that such payment must be rate-base neutral for LIBERTY and eliminate any Contributions in Aid of Construction on LIBERTY's utility accounts associated with the Project for utility ratemaking purposes. In the event of such sale, this Agreement shall be terminated. The sale proceeds shall be distributed as follows. First, the sale proceeds shall be used to reimburse CAWCD for its initial investment of \$6,113,100 as adjusted for inflation and as pro-rated based on the use of the Effluent Recharge Project as measured by the total amount of CAWCD's Effluent Entitlement delivered to the Project as of the sale date divided by 240,000 acre-feet of Effluent. Second, any sale proceeds remaining after repayment of CAWCD's pro-rated investment shall be distributed equally to LIBERTY and CAWCD.

4.1.9 **Condemnation.** LIBERTY shall promptly notify CAWCD in writing of the actual or threatened commencement of any proceeding to acquire the PVWRF or any substitute or replacement facility through condemnation or eminent domain, and shall deliver to CAWCD copies of any and all papers served in connection with such proceedings. If condemnation of the PVWRF or replacement facility prevents LIBERTY from satisfying its obligations under this Agreement, the Parties agree to sell the Effluent Recharge Project, and CAWCD shall be entitled to a portion of the proceeds from the sale of the Effluent Recharge Project, subject to regulatory requirements, approvals, decisions and/or orders, including any regulatory decisions issued by the ACC. Subject to any such regulatory decisions, CAWCD shall be entitled to a portion of the proceeds of the sale of the Effluent Recharge Project subject to the condition that such payment must be rate-base neutral for LIBERTY and eliminate any Contributions in Aid of Construction on LIBERTY's utility accounts associated with the Project for utility ratemaking purposes. In the event of such sale, this Agreement shall be terminated. The sale proceeds shall be distributed as follows. First, the sale proceeds shall be used to reimburse CAWCD for its initial investment of \$6,113,100 as adjusted for inflation and as pro-rated based on the use of the Effluent Recharge Project as measured by the total amount of CAWCD's Effluent Entitlement delivered to the Project as of the sale date divided by 240,000 acre-feet of Effluent. Second, any sale proceeds remaining after repayment of CAWCD's pro-rated investment shall be distributed equally to LIBERTY and CAWCD. In the event that a condemning authority condemns all of the assets of LIBERTY, then LIBERTY shall use commercially reasonable efforts to require the condemning authority to assume the obligations of LIBERTY under this Agreement.

## **ARTICLE 5**

### **AGREEMENT FOR PURCHASE OF LONG-TERM STORAGE CREDITS**

5.1 Under this Agreement, LIBERTY and CAWCD hereby agree to the following terms and conditions for an Agreement For Purchase of Long-Term Storage Credits:

5.1.1 **Intent of the Parties.** CAWCD desires to purchase Long-Term Storage Credits developed by LIBERTY pursuant to A.R.S., Title 46, Chapter 3.1, for the benefit of member lands and member service areas. LIBERTY has authority and is willing to sell and transfer certain Long-Term Storage Credits in the amounts and for the prices specified below.

5.1.2 **Generation and Sale of Long-Term Storage Credits.** Upon construction and operation of the Effluent Recharge Project, LIBERTY agrees to deliver and dispose of treated wastewater discharged from PVWRF that is not reused by LIBERTY customers within or outside its CC&N service area, or delivered to CAWCD pursuant to this Agreement, to the Effluent Recharge Project. LIBERTY agrees to store such treated wastewater using LIBERTY's Storage Capacity Entitlement to generate Long-Term Storage Credits as authorized by applicable law. LIBERTY covenants that all of the Long-Term Storage Credits to be sold pursuant to this Agreement will be accrued through storage of Effluent at the Effluent Recharge Project, unless otherwise agreed by the Parties. 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.

5.1.2.1 The Long-Term Storage Credits to be sold by LIBERTY under this Agreement will be from LIBERTY's Long-Term Storage Account. The Long-Term Storage Credits to be sold by LIBERTY will be stored at the Effluent Recharge Project pursuant to an ADWR Facility Permit to be obtained by LIBERTY for the Effluent Recharge Project, such facility being located in the Phoenix Active Management Area.

5.1.2.2 The Long-Term Storage Credits to be sold by LIBERTY will be stored pursuant to ADWR Water Storage Permit No. 73-572386.0200.

5.1.2.3 The source of water used to generate the Long-Term Storage Credits to be sold by LIBERTY will be Effluent.

5.1.3 **Purchase of Long-Term Storage Credits.** LIBERTY agrees to sell to CAWCD and CAWCD agrees to purchase from LIBERTY all Long-Term Storage Credits accrued by LIBERTY at the Effluent Recharge Project that are not required for LIBERTY's own water supply purposes by the ACC or any other state, federal or local entity with jurisdiction over LIBERTY. In the event that LIBERTY is prohibited by law from accruing Long-Term Storage Credits using Effluent as a source supply, then LIBERTY shall sell Effluent to CAWCD and CAWCD shall buy Effluent from LIBERTY at the price derived from the formula set forth in Section 5.1.5 below. LIBERTY shall be responsible for storing the Effluent at no additional charge and the Effluent price will be based on the water credits earned. LIBERTY warrants that it will have 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. LIBERTY shall warrant and defend title against all persons whomsoever.

5.1.4 **Term.** The term of this Agreement for Purchase of Long-term Storage Credits will be 100 years, commencing on the date of the issuance of the Notice of Substantial Completion.

5.1.5 **Purchase Price.** The purchase price for Long-Term Storage Credits in excess of CAWCD's Effluent Entitlement shall be based on the standard formula that LIBERTY and CAWCD previously used for Effluent credit purchases. The per acre-foot price for Long-Term Storage Credits in 2013 is \$138.00. For example, the credit purchase price using 2013 CAWCD water rates is calculated as follows:  $(\text{CAP M\&I Recharge Delivery Rate} + \text{Recharge O\&M}) / 0.99 \times 0.9 = (\$144 + 8) / 0.99 \times 0.9 = \$138/\text{acre-foot}$ .

5.1.6 **Price Adjustment.** The purchase price of Long-Term Storage Credits after 2013 will be escalated annually by the CPI-U index, which is currently estimated to be approximately 3% annually. Any Long-Term Storage Credits stored or purchased by CAWCD from LIBERTY pursuant to this Agreement shall be used to meet replenishment obligations including establishment and maintenance of the replenishment reserve. Every five years, either party may request that the Long-Term Storage Credit purchase price identified under this section be adjusted. The rate adjustment would be negotiated and could take into consideration the sale price of Long-Term Storage Credits in the Phoenix Active Management Area during the previous 18 months or by an alternative method that is mutually agreeable to the Parties.

5.1.7 **Long-Term Storage Credit Transfer Form.** For each year of this Agreement during which CAWCD purchases Long-Term Storage Credits from LIBERTY, LIBERTY and CAWCD shall complete, sign and deliver the Long-Term Storage Credit Transfer Form as prescribed below to evidence the transfer of Long-Term Storage Credits pursuant to this Agreement. A copy of the Long-Term Storage Credit Transfer Form is attached as Exhibit B to this Agreement. The Parties understand that the necessary form may change from time to time during the term of this Agreement, and the Parties agree to execute the necessary transfer forms as appropriate during the term of this Agreement. 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. Commencing on the one-year anniversary after the Effluent Recharge Project begins operations (the "Transfer Date"), CAWCD and LIBERTY shall complete, sign and deliver the Long-Term Storage Credit Transfer Form to evidence the transfer of Long-Term Storage Credits during that initial year of the Agreement. After LIBERTY 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. To evidence the transfer of Long-Term Storage Credits for each successive year of this Agreement, CAWCD and LIBERTY shall complete, sign and deliver the necessary Long-Term Storage Credit Transfer Form no later than the Transfer Date on each successive year of this Agreement.

5.1.8 **Completion of Delivery.** Delivery(ies) of the Long-Term Storage Credits to be transferred pursuant to this Agreement shall be deemed complete when ADWR notifies LIBERTY or CAWCD in writing that it has received and accepted the Long-Term Storage Credit Transfer Form(s) or as otherwise reflected in ADWR's records ("ADWR Acceptance"). CAWCD and LIBERTY shall cooperate with ADWR to facilitate completion of such transfer by ADWR.

5.1.9 **Timing of Payment.** For each year of this Agreement, CAWCD shall pay the amounts specified in Section 5.1.5 above no later than twenty (20) business days after ADWR Acceptance of credits transferred pursuant to this Agreement. In the event that ADWR Acceptance has not occurred within sixty (60) days after submission of the Long-Term Storage Credit Transfer Form(s), either CAWCD or LIBERTY may void the transfer transaction for that year. In that event, the Parties understand and agree that neither Party will be in violation or breach of this Agreement. In the event that the Long-Term Storage Credits are transferred out of LIBERTY's account by ADWR, but CAWCD is unable to obtain approval, for any reason, of a transfer of the credits into CAGRD's Account(s), CAWCD shall cooperate with and assist LIBERTY in efforts to obtain approval of a transfer of the Long-Term Storage Credits back into LIBERTY's Long-Term Storage Account.

5.1.10 **Rejection or Invalidation of Transfer.** If ADWR, pursuant to A.R.S. § 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, LIBERTY 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 prices are established above. Before such refund is payable, CAWCD shall exhaust all administrative remedies to achieve transfer or assignment of the Long Term Storage Credits unless the Parties mutually agree otherwise. CAWCD shall pursue such administrative remedies for transfer or assignment of Long Term Storage Credits as a condition prerequisite to seeking any refunds under Section 4.1.7.2 above to the extent such Long Term Storage Credits impact any shortfall in the delivery of the Effluent Entitlement. Upon exhaustion of such administrative remedies, LIBERTY shall refund such amount within twenty (20) business days after either CAWCD or LIBERTY receives any notice of rejection or invalidation from ADWR. CAWCD shall transfer and assign back to LIBERTY the number of credits affected by any such rejection or invalidation. LIBERTY's obligation to refund any payments under this section shall expire thirty (30) days after ADWR has issued a non-appealable final agency decision approving the transfer and assignment of the Long-Term Storage Credits into CAGRD's Account(s).

## ARTICLE 6

### MISCELLANEOUS

6.1 **ACC Approval.** LIBERTY and CAWCD seek assurances from the ACC that LIBERTY has the right and authority to commit the Effluent Entitlement to CAWCD for 100 years as provided in this Agreement. In addition, CAWCD and LIBERTY seek assurances from the ACC that the mechanisms for establishing rates and rate adjustments for the Effluent Entitlement and purchase of Long-Term Storage Credits which will remain in effect during the 100-year term of this Agreement are in accordance with the ACC's rules, policies and decisions and the tariffs of LIBERTY. As a result, CAWCD seeks ACC approval of the Effluent Entitlement and ACC approval of the agreed upon rates and rate-adjustment mechanisms for

delivery and disposal of Effluent to the Effluent Recharge Project and purchase of Long-Term Storage Credits set forth in this Agreement between LIBERTY and CAWCD.

6.1.1 Upon execution of this Agreement, LIBERTY shall prepare (in consultation with CAWCD) and file an application with the ACC seeking approval of the Effluent Entitlement and the agreed upon rates and rate adjustment mechanisms for delivery and disposal of Effluent to the Effluent Recharge Project and purchase of Long-Term Storage Credits as set forth herein. In seeking ACC approval, the Parties will notify the ACC that upon CAWCD's payment of the amounts set forth above, any additional costs incurred by LIBERTY to deliver the Effluent Entitlement to the Effluent Recharge Project during the term of the Effluent Delivery Agreement shall be a utility expense subject to inclusion in future rate base or expenses in the event that the ACC issues a future decision modifying or changing the terms of the Effluent Delivery Agreement and resulting in LIBERTY incurring such additional costs to provide the Effluent Entitlement to CAWCD. In seeking ACC approval, the Parties pledge to support and defend any agreements submitted to the ACC for approval, including, but not limited to, appearing at hearings, providing testimony, and attending Open Meetings of the ACC. If the ACC fails to enter a final order that is satisfactory to both Parties, in their reasonable discretion, then either Party may cancel this Agreement by providing written notice of cancellation ("Notice of Cancellation") to the other Party within 30 days after the date of a final order of the ACC, and this Agreement (including the Effluent Disposal Agreement and the Agreement for Purchase of Long-Term Storage Credits) shall thereafter be of no further force or effect. In that event, any Escrow Funds shall be used to pay for any unpaid land acquisition, development, design and/or construction costs incurred and payable by LIBERTY as of the date of the Notice of Cancellation, and any remaining Escrow Funds shall be refunded to CAWCD within 30 days of the date of the Notice of Cancellation subject to a determination by the Parties that there are no outstanding land, development, design and/or construction costs due by LIBERTY. If either party elects to cancel this Agreement under this section and LIBERTY has purchased or contracted to purchase property for the Effluent Recharge Project as of the date of the Notice of Cancellation, then within 15 days of cancellation of this Agreement, LIBERTY shall transfer title to such property to CAWCD in the same condition of the property when it was purchased or contracted by LIBERTY.

6.1.2 In the event that the ACC does not issue a decision approving the Effluent Entitlement and the agreed upon rates for delivery and disposal of Effluent to the Effluent Recharge Project and purchase of Long-Term Storage Credits set forth in this Agreement between LIBERTY and CAWCD that is satisfactory to both Parties, in their reasonable discretion, then in lieu of cancelling the agreements pursuant to Section 6.1.1, the Parties may meet and confer to determine whether additional terms could be included in this Agreement to ensure that the benefits of the Effluent Entitlement and the Effluent Recharge Project for each of the Parties are achieved.

6.2 **Additional Documentation.** Each Party agrees to execute and record any additional documentation that the other may reasonably require to effectuate the intents and purposes of this Agreement.

6.3 **Effective Date.** This Agreement shall be effective upon the date first set forth above.

6.4 **Amendments.** This Agreement may be modified, amended or revoked only by the express written agreement of the Parties hereto.

6.5 **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. The Parties agree to waive all rights to a jury trial.

6.6 **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. The waiver by either Party of a breach of any term, covenant, or condition in this Agreement shall not be deemed a waiver of any other term, covenant, or condition of this Agreement.

6.7 **Representations and Covenants.** CAWCD represents and covenants: (i) that it is fully authorized to enter into this Agreement under Title 48 of the Arizona statutes, and (ii) that CAWCD is statutorily authorized to enter a 100-year contract for purchase of Effluent and Long-Term Storage Credits under A.R.S. § 48-3772.

6.8 **Severability.** Any determination by any court of competent jurisdiction that any provision of this Agreement is invalid or unenforceable does not affect the validity or enforceability of any other provision of this Agreement. To the extent any provision of this Agreement is found to be invalid or unenforceable in the future, the Parties agree to negotiate in good faith an alternative and/or replacement provision in accordance with the original intent of the Parties under this Agreement.

6.9 **Future Regulations Prohibiting Recharge of Effluent.** Except as provided in Section 5.1.3 and so long as LIBERTY'S performance under Section 5.1.3 is allowed by law, if new laws or regulations are enacted that prohibit the underground storage of Effluent, or otherwise prevent LIBERTY from satisfying its obligations under this Agreement, the Parties agree to sell the Effluent Recharge Project (not including land containing any additional buildings that may be constructed by LIBERTY for other business purposes under Section 3.1.5 above, unless otherwise agreed by Liberty), and CAWCD shall be entitled to a portion of the proceeds from the sale of the Effluent Recharge Project, subject to regulatory requirements, approvals, decisions and/or orders, including any regulatory decisions issued by the ACC. Subject to any such regulatory decisions, CAWCD shall be entitled to a portion of the proceeds of the sale of the Effluent Recharge Project subject to the condition that such payment must be rate-base neutral for LIBERTY and eliminate any Contributions in Aid of Construction on LIBERTY's utility accounts associated with the Effluent Recharge Project for utility ratemaking purposes. In the event of such sale, this Agreement shall be terminated. The sale proceeds shall be distributed as follows. First, the sale proceeds shall be used to reimburse CAWCD for its initial investment of \$6,113,100 as adjusted for inflation and as pro-rated based on the use of the Effluent Recharge Project as measured by the total amount of CAWCD's Effluent Entitlement delivered to the Project as of the sale date divided by 240,000 acre-feet of Effluent. Second, any sale proceeds remaining after repayment of CAWCD's pro-rated investment shall be distributed equally to LIBERTY and CAWCD.

6.10 **Uncontrollable Forces.** No Party shall be considered in default in the performance of any of its obligations under this Agreement (other than obligations of said Party to pay costs and expenses) when a failure of performance is due to Uncontrollable Forces. Under this Agreement, Uncontrollable Forces shall mean any cause beyond the control of the Party affected, including but not limited to, the failure or threatened failure of facilities, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority, and action or non-action by or failure to obtain the necessary authorizations or approvals from any governmental agency or authority not a Party to this Agreement, which by exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Nothing contained herein shall be construed to require a Party to settle any strike or labor dispute in which it is involved. Any Party rendered unable to fulfill any of its obligations under this Agreement by reason of an Uncontrollable Force shall give prompt written notice of such fact to the other Party.

6.11 **Time of the Essence.** Time is of the essence in the performance of this Agreement.

6.12 **Entire Agreement.** This Agreement, together with the Effluent Recharge Project Operating Agreement, constitute the entire agreement between the Parties and no understandings or obligations not expressly set forth in this Agreement are binding upon the Parties.

6.13 **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 and/or the ACC under such statutes and all amendment statutes and successor statutes, rules, and regulations to such statutes, rules, and regulations.

6.14 **Notices.**

6.14.1 Notice, demand or request provided for in this Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by registered or certified mail, postage prepaid, to the persons specified below:

**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

**LIBERTY:**

For delivery and  
For U.S. Mail use: c/o General Manager/President  
Liberty Utilities

12725 W. Indian School Road, Suite D101  
Avondale, AZ 85392

6.14.2 A Party may, at any time, by notice to the other Party, designate different or additional persons or different addresses for the giving of notices hereunder.

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

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

By: Pamela Rickard  
President

Attest: Sina A. Atkin  
Secretary

LIBERTY UTILITIES (LITCHFIELD PARK WATER & SEWER)  
CORP.,

an Arizona corporation,

By: Ian Robertson  
Its:

8722538v1

David Bronicheski  
David Bronicheski

**AGREEMENT FOR DEVELOPMENT OF EFFLUENT RECHARGE FACILITY,  
EFFLUENT DISPOSAL  
AND PURCHASE AND SALE OF EFFLUENT**

**Exhibit A**

Effluent Recharge Project Operating Agreement

## **EFFLUENT RECHARGE PROJECT OPERATING AGREEMENT**

### **1. PARTIES:**

This Effluent Recharge Project Operating Agreement ("Operating Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, ("Effective Date"), between Liberty Utilities (Litchfield Park Water & Sewer) Corp. ("LIBERTY") and the Central Arizona Water Conservation District, a political subdivision of the State of Arizona, ("CAWCD").

### **2. RECITALS:**

- 2.1 LIBERTY has developed, designed, permitted, and constructed the Effluent Recharge Project (the "Effluent Recharge Project"), an underground storage facility that is located in the Phoenix Active Management Area. More specifically, the Effluent Recharge Project is located within portions of Sections \_\_\_\_, Township \_\_ North, Range \_\_ West, G&SRB&M, Maricopa County, Arizona. (The Effluent Recharge Project is depicted on the site map attached as Figure 1.)
- 2.2 The Effluent Recharge Project is a constructed underground storage facility pursuant to Arizona Department of Water Resources ("ADWR") permit no. \_\_\_\_, consisting of approximately \_\_\_\_ acres of spreading basins.
- 2.3 ADWR has issued LIBERTY a Constructed Underground Storage Facility Permit for the Effluent Recharge Project. The Permit authorizes the underground storage of a maximum of \_\_\_\_ acre-feet of Effluent water per year at the Effluent Recharge Project.
- 2.4 The Effluent Recharge Project has been developed pursuant to the Agreement for Development of Effluent Recharge Facility, Effluent Disposal and Purchase and Sale of Effluent between LIBERTY and CAWCD ("Development Agreement"), dated \_\_\_\_.
- 2.5 As set forth in the Development Agreement, LIBERTY owns and operates the Effluent Recharge Project, including the Project's storage capacity and associated land. Subject to the terms and conditions set forth in the Development Agreement, CAWCD is entitled to 2,400 acre-feet of the Effluent Recharge Project's Storage Capacity.

### **3. AGREEMENT:**

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 to the following terms and conditions relating to operation of the Effluent Recharge Project. This Operating Agreement is subject to the terms and conditions set forth in the Development Agreement and to the extent any conflict exists between the Development Agreement and this Operating Agreement, the terms of the Development Agreement shall take precedence and control.

### **4. DEFINITIONS:**

- 4.1 "ADWR" means the Arizona Department of Water Resources.

- 4.2 "CAWCD's Storage Capacity Entitlement" is as defined in Section 6.1 below.
- 4.3 "Delivery Point" means the delivery point interconnecting the Effluent Pipeline with the turnout for the Effluent Recharge Project.
- 4.4 "Development Agreement" means the Agreement for Development of Effluent Recharge Facility, Effluent Disposal and Purchase and Sale of Effluent between LIBERTY and CAWCD, dated \_\_\_\_.
- 4.5 "Effective Date" is the date set forth in the introductory paragraph of this Agreement on which this Agreement becomes effective.
- 4.6 "Effluent" means wastewater that is treated or reclaimed so that it is suitable for underground storage pursuant to A.R.S. Titles 45 and 49. Effluent includes treated wastewater that is produced now or in the future from the PVWRF, including any future expansions thereof, and Effluent produced at any other wastewater treatment plant that may be owned or controlled by LIBERTY.
- 4.7 "Effluent Pipeline" means the effluent pipeline from the Palm Valley Water Reclamation Facility ("PVWRF") to the boundary of the Effluent Recharge Project that conveys Effluent produced at PVWRF for reuse, disposal and discharge.
- 4.8 "Extraordinary O&M Costs" means those costs that are not Ordinary O&M Costs, including but not limited to non-routine, major maintenance, repair, replacement and capital improvement costs associated with the Effluent Recharge Project that exceed a cost of \$75,000 as set forth in Sections 1.17 and 3.1.8 of the Development Agreement.
- 4.9 "LIBERTY's Storage Capacity Entitlement" is as defined in Section 6.2 below.
- 4.10 "Operating Agreement" means this Effluent Recharge Project Operating Agreement.
- 4.11 "Operating Work" means the furnishing of all labor, materials, equipment, expertise and other incidentals necessary or convenient to the operation, maintenance, monitoring, inspection, repair, replacement, improvement, reconstruction and retirement of the Effluent Recharge Project and to the administration of this Agreement.
- 4.12 "Ordinary O&M Costs" means the annual labor, overhead, and material costs for the routine operation, maintenance, monitoring and regulatory reporting at the Effluent Recharge Project as set forth in Sections 1.23 and 3.1.7 of the Development Agreement. For purposes of this Operating Agreement, the Parties agree that LIBERTY's overhead costs are equal to 10% of the Ordinary O&M Costs directly charged to this Effluent Recharge Project and shall not represent or include profit earned by LIBERTY, as set forth in paragraph 1.23 of the Development Agreement.
- 4.13 "Party/Parties" means one or both of the parties to this Operating Agreement.
- 4.14 "Permit" means the Constructed Underground Storage Facility Permit issued by ADWR for the Effluent Recharge Project, permit no. \_\_\_\_, including any amendments or modifications thereto.
- 4.15 "PVWRF" means the Palm Valley Wastewater Reclamation Facility owned and operated by LIBERTY at 14222 W. McDowell Road in Goodyear, Arizona.

4.16 "Storage Capacity Entitlement" means a Party's right or entitlement to use of the storage capacity of the Effluent Recharge Project.

4.17 "Uncontrollable Forces" means any cause beyond the control of the Party affected, including but not limited to, the failure or threatened failure of facilities, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority, and action or non-action by or failure to obtain the necessary authorizations or approvals from any governmental agency or authority not a Party to this Agreement, which by exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Nothing contained herein shall be construed to require a Party to settle any strike or labor dispute in which it is involved. Any Party rendered unable to fulfill any of its obligations under this Agreement by reason of an Uncontrollable Force shall give prompt written notice of such fact to the other Party and shall exercise due diligence to remove such inability.

5. **TERM:**

Subject to the terms and conditions set forth in the Development Agreement, this Operating Agreement shall become effective when executed by both Parties and shall remain in effect for a period of one-hundred (100) years from the Effective Date, unless sooner terminated pursuant to the provisions of this Operating Agreement or pursuant to the terms of the Development Agreement. In the event that the Development Agreement is terminated for any reason, this Operating Agreement also will terminate and will no longer be in force or effect between the Parties. CAWCD represents and covenants (i) that it is fully authorized to enter into this Agreement under Title 48 of the Arizona statutes, and (ii) that CAWCD is statutorily authorized to enter a 100-year contract for operation of the Effluent Recharge Project.

6. **STORAGE CAPACITY ENTITLEMENTS:**

6.1 Subject to the terms and conditions set forth in Article 3 of the Development Agreement, CAWCD's Storage Capacity Entitlement is equal to 2,400 acre-feet of annual storage capacity of the Effluent Recharge Project.

6.2 Subject to the terms and conditions set forth in Article 3 of the Development Agreement, LIBERTY's Storage Capacity Entitlement shall be the Effluent Recharge Project's total storage capacity minus the CAWCD Storage Capacity Entitlement.

6.3 Subject to the terms and conditions set forth in the Development Agreement, Storage Capacity Entitlement refers to a Party's right or entitlement to use of the Effluent Recharge Project to store Effluent at the Effluent Recharge Project pursuant to its ADWR water storage permit and subject to the terms of the Development Agreement.

7. **WATER STORAGE PERMITS:**

Each Party shall be responsible for obtaining its own water storage permit from ADWR authorizing it to store Effluent at the Effluent Recharge Project.

8. **OPERATION OF THE EFFLUENT RECHARGE PROJECT:**

- 8.1 The Operator of the Effluent Recharge Project shall be LIBERTY. As set forth in the Development Agreement, LIBERTY shall own and operate the Effluent Recharge Project, including any and all land on which the Project is located.
- 8.2 LIBERTY shall perform all Operating Work as determined by LIBERTY in its reasonable discretion.
- 8.3 LIBERTY shall collect, expend and account for all funds required for the Operating Work.
- 8.4 LIBERTY shall deliver Effluent from the Palm Valley Wastewater Reclamation Facility (or "Replacement Facility" as that term is defined in the Development Agreement) to the Effluent Recharge Project, in accordance with the terms and conditions set forth in the Development Agreement.
- 8.5 LIBERTY shall annually, upon request by CAWCD, or when otherwise deemed appropriate by LIBERTY, supply CAWCD with information on any matter, which may substantially affect the operation of the Effluent Recharge Project as determined by LIBERTY.
- 8.6 LIBERTY shall follow generally accepted accounting and engineering practices in performing the Operating Work.
- 8.7 LIBERTY shall at all times comply with the requirements of the Permit, and shall maintain the accuracy of all measuring devices associated with the Effluent Recharge Project within plus or minus 5%.

**9. STORAGE OF EFFLUENT:**

- 9.1 In accordance with Article 4 of the Development Agreement, LIBERTY shall deliver 2,400 acre-feet of Effluent annually to the Effluent Recharge Project through the Effluent Pipeline to the Effluent Recharge Project on behalf of CAWCD and LIBERTY shall store such Effluent utilizing CAWCD's Storage Capacity Entitlement, subject to the terms and conditions set forth in the Development Agreement.
- 9.2 In accordance with Article 5 of the Development Agreement, LIBERTY shall deliver and dispose of treated wastewater discharged from PVWRF that is not reused by LIBERTY customers within or outside LIBERTY's CC&N service area, or delivered to CAWCD pursuant to Article 4 of the Development Agreement and Section 9.1 above, to the Effluent Recharge Project and LIBERTY shall store such Effluent utilizing LIBERTY's Storage Capacity Entitlement.

**10. ORDINARY O&M COSTS:**

- 10.1 In accordance with Article 3 of the Development Agreement, each Party will be responsible for annual costs for Ordinary O&M Costs at the Effluent Recharge Project based on each Party's proportionate share of storage capacity utilized during the year divided by the total Effluent delivered to the Effluent Recharge Project. By way of example only, if 3,000 acre-feet of Effluent is delivered to the Effluent Recharge Project in a given year, and CAWCD uses 2,400 acre-feet of storage capacity and LIBERTY uses 600 acre-feet of storage capacity, then CAWCD shall be responsible for 80% (2400/3000) of the Ordinary O&M Costs and LIBERTY shall be responsible for 20% (600/3000) of the

Ordinary O&M Costs.

- 10.2 In accordance with Section 3.1.7 of the Development Agreement, at least six months before the first delivery of Effluent to the Effluent Recharge Project, LIBERTY and CAWCD will jointly develop an estimate of the total annual Ordinary O&M Costs and an estimate of CAWCD's share of annual Ordinary O&M Costs based on CAWCD's proportionate share of storage capacity to be utilized during the following year. The Parties anticipate that the estimated cost will initially be in the range of \$20 per acre foot.
- 10.3 In accordance with Section 3.1.7 of the Development Agreement, on or before November 15<sup>th</sup> of the initial year of delivery of Effluent to the Effluent Recharge Project and each year thereafter, LIBERTY shall provide to CAWCD an estimate of the total annual Ordinary O&M Costs and an estimate of CAWCD's share of annual Ordinary O&M Costs based on CAWCD's proportionate share of storage capacity to be utilized during the following year. On or before the 15<sup>th</sup> of each month, LIBERTY will bill CAWCD one-twelfth (1/12) of the annual estimated Ordinary O&M Costs. CAWCD shall pay LIBERTY within thirty days of receipt of the bill. Differences between actual Ordinary O&M Costs and estimated O&M Costs shall be determined by LIBERTY and shall be adjusted in the next succeeding annual estimate of Ordinary O&M Costs.

11. **EXTRAORDINARY O&M COSTS:**

In accordance with Section 3.1.8 of the Development Agreement, LIBERTY and CAWCD shall share Extraordinary O&M Costs related to the Effluent Recharge Project based on each Party's proportionate share of the Effluent Recharge Project's storage capacity. To the extent practicable, before LIBERTY incurs any Extraordinary O&M Costs, the Parties shall meet and confer regarding the need to incur such costs as set forth in the Development Agreement.

12. **WATER MEASUREMENT AND ACCOUNTING:**

- 12.1 As the Project Operator, LIBERTY shall base its accounting for Effluent delivered to the Effluent Recharge Project on one or more of the following: (i) actual measurements, (ii) methods required by the Permit, and/or (iii) generally accepted accounting and engineering practices.
- 12.2 In accordance with Section 4.1.2 of the Development Agreement, LIBERTY shall install a metering device ("Metering Device") to measure the quantity of Effluent delivered to the Delivery Point. The Metering Device shall be the basis for determining whether LIBERTY has met its obligation to deliver the Effluent Entitlement in any year during the term of the Development Agreement. LIBERTY shall maintain the accuracy of the Metering Device within plus or minus 5% and shall calibrate the metering device no less frequently than once every year. Any and all costs for the Metering Device shall be included as part of Development Costs under the Development Agreement.
- 12.3 LIBERTY shall determine evaporation losses representative of the conditions at or near the Effluent Recharge Project using the method indicated in the Permit. Any other losses in the Effluent Recharge Project shall be calculated using generally accepted engineering practices. All losses at the Effluent Recharge Project shall be shared

between CAWCD and LIBERTY in proportion to the amount of storage capacity used by such Party during the month when the loss occurred.

- 12.4 Effluent delivered to the Effluent Recharge Project for storage, but which exits the facility other than by infiltration and evaporation, will be calculated using generally accepted engineering practices.
- 12.5 LIBERTY shall prepare a monthly water accounting report of Effluent stored at the Effluent Recharge Project for each Party. The report shall include the daily amount of Effluent delivered to the Effluent Recharge Project, the daily amount of Effluent stored, and the losses calculated as described in this Section.
- 12.6 LIBERTY shall provide ADWR with water accounting reports for the Effluent Recharge Project as required by the Permit.
- 12.7 The water accounting reports prepared pursuant to this Section shall be retained by LIBERTY for at least three (3) years and shall be made available for CAWCD's inspection upon written request.
- 12.8 LIBERTY will provide CAWCD a copy of the annual report submitted by LIBERTY to ADWR for the Effluent Recharge Project.

**13. WATER QUALITY:**

- 13.1 Each Party shall indemnify and hold harmless the other Party from liability associated with water quality degradation resulting from the indemnifying Party's use of the Effluent Recharge Project, due to the commingling of infiltrating Effluent with groundwater or with water flowing above or below the surface. Further, each Party waives any claim on its own behalf against the other Party for water quality degradation arising from such commingling, unless such claim is intended to enforce the indemnification provision of this Section.
- 13.2 LIBERTY shall not be responsible to CAWCD for curtailing or stopping flows into the Effluent Recharge Project in the event that LIBERTY determines that significant degradation of water quality in the underlying aquifer, which is likely to result in substantial liability, is occurring or may occur as a result of the introduction of water into the Effluent Recharge Project.
- 13.3 This Section shall survive expiration or termination of this Agreement, and shall remain in full force and effect.

**14. UNCONTROLLABLE FORCES:**

No Party shall be considered in default in the performance of any of its obligations under the Development Agreement or this Operating Agreement (other than obligations of said Party to pay costs and expenses) when a failure of performance is due to Uncontrollable Forces.

**15. GOVERNING LAW:**

This Agreement shall be governed by the laws of the State of Arizona.

**16. NOTICES:**

16.1 Notice, demand or request provided for in this Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by registered or certified mail, postage prepaid, to the persons specified below:

**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

**LIBERTY:**

For delivery and  
For U.S. Mail use: c/o General Manager/President  
Liberty Utilities  
12725 W. Indian School Road, Suite D101  
Avondale, AZ 85392

16.2 A Party may, at any time, by notice to the other Party, designate different or additional persons or different addresses for the giving of notices hereunder.

**17. THIRD PARTY BENEFICIARIES:**

This Agreement shall not be construed to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, obligation or undertaking established herein.

**18. WAIVER:**

The waiver by a Party of a breach of any term, covenant or condition in this Agreement shall not be deemed a waiver of any other term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition of this Agreement.

**19. HEADINGS:**

Title and paragraph headings are for reference only and are not intended to modify or alter the substance of the underlying provisions.

**20. ENTIRE AGREEMENT:**

This Agreement, together with the Development Agreement, constitute the entire agreement among the Parties and no understandings or agreements not herein expressly set forth shall be binding upon them. This Agreement may not be modified or amended in any manner unless in writing and signed by the Parties.

**21. RULES, REGULATIONS AND AMENDMENT OR SUCCESSOR STATUTES:**

All references in this Agreement to the Arizona Revised Statutes include all rules and regulations promulgated by the Arizona Department of Water Resources under such

statutes and all amendment statutes and successor statutes, rules, and regulations to such statutes, rules, and regulations.

IN WITNESS WHEREOF, this Agreement is executed by the Parties hereto.

**CENTRAL ARIZONA WATER CONSERVATION DISTRICT**

By: \_\_\_\_\_

Attest: \_\_\_\_\_

**LIBERTY UTILITIES (LITCHFIELD PARK WATER & SEWER)  
CORP.**

an Arizona corporation,

By: \_\_\_\_\_

Its: \_\_\_\_\_

**AGREEMENT FOR DEVELOPMENT OF EFFLUENT RECHARGE FACILITY,  
EFFLUENT DISPOSAL  
AND PURCHASE AND SALE OF EFFLUENT**

**Exhibit B**

Long-Term Storage Credit Transfer Form

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

ARIZONA DEPARTMENT OF WATER RESOURCES  
Water Management Section  
3550 North Central Ave, Phoenix, Arizona 85012  
Telephone (602) 771-8585  
Fax (602) 771-8689

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

For Official Use Only

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

### [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 \_\_\_\_\_

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: \_\_\_\_\_

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

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 \_\_\_\_\_