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MEETING DATE: November 3, 2016

AGENDA ITEM: Consideration of Action to Approve a CAGR D Member Service Area Agreement Between CAWCD and Southwest Environmental Utilities, L.L.C.

RECOMMENDATION:

Staff recommends that the Board approve the attached Member Service Area Agreement Between CAWCD and Southwest Environmental Utilities, L.L.C. ("Southwest").

FINANCIAL IMPLICATIONS:

None

LINKAGE TO STRATEGIC PLAN, POLICY, STATUTE OR GUIDING PRINCIPLE:

- CAWCD Board of Directors 2016 Strategic Plan
 - Replenishment: Water Supply; Long-term Role of the CAGR D
- A.R.S. §48-3780 – Qualifications as a Member Service Area

PREVIOUS BOARD ACTION/ACTIVITY:

None

ISSUE SUMMARY/DESCRIPTION:

Southwest Environmental Utilities, L.L.C., ("Southwest") is engaged in the business of providing water utility service in the Pinal AMA, just southeast of Florence, along Highway 79. The service area is approximately 1,750 acres and is expected to serve approximately 1,320 customers by the end of the first five years in operation. Southwest has applied to enroll its water service area as a Member Service Area of the Central Arizona Groundwater Replenishment District (CAGR D) and simultaneously has applied to Arizona Department of Water Resources ("ADWR") to obtain a Designation of Assured Water Supply.

Attached is the proposed Member Service Area Agreement ("Agreement") Between CAWCD and Southwest Environmental Utilities, L.L.C., an Arizona limited liability company. The Agreement needs to be executed to complete enrollment of the new service area as a Member Service Area in CAGR D and shall become effective on the date Southwest receives the Designation of Assured

Water Supply from ADWR. Southwest will also start to receive an Annual Replenishment Tax bill and will pay Annual Membership Dues as a Member Service Area.

As has been done for all Member Service Areas that have enrolled in the CAGR D since 2001, a provision is included in the Agreement establishing a maximum volume that can be reported as Excess Groundwater in any given year, thereby limiting CAGR D's replenishment commitment. Paragraph 1.7.2 of the Agreement establishes the maximum annual volume of 2,072.30 acre-feet for the Southwest service area. If Southwest chooses to apply with ADWR for an extension of its Designation based on additional CAGR D replenishment in the future, to the utility must request that CAGR D modify this Member Service Area Agreement.

SUGGESTED MOTION:

I move that the Board of Directors approve the Member Service Area Agreement Between CAWCD and Southwest Environmental Utilities, L.L.C.

Attachment.

**MEMBER SERVICE AREA AGREEMENT
BETWEEN
CENTRAL ARIZONA WATER CONSERVATION DISTRICT
AND
SOUTHWEST ENVIRONMENTAL UTILITIES, L.L.C.,
AN ARIZONA LIMITED LIABILITY COMPANY**

This Member Service Area Agreement is made this ____ day of _____, 2016, between the Central Arizona Water Conservation District, a political subdivision of the State of Arizona, and Southwest Environmental Utilities, L.L.C., an Arizona limited liability company.

RECITALS

A. The Municipal Provider is engaged in the business of providing water utility service within the Service Area.

B. The Municipal Provider applied to the Department for a designation of an assured water supply for the Service Area pursuant to Arizona Revised Statutes Title 45, Chapter 2, Article 9.

C. As permitted by Arizona Revised Statutes § 45-576.01(B), the Municipal Provider desires to satisfy one requirement for obtaining a designation of assured water supply by qualifying the Service Area as a Member Service Area pursuant to the Groundwater Replenishment Statute. As a Member Service Area, the Municipal Provider will be a member of the Central Arizona Groundwater Replenishment District, an operating subdivision of CAWCD.

D. To qualify the Service Area as a Member Service Area, the Groundwater Replenishment Statute requires the Municipal Provider to execute and deliver this Agreement in accordance with Arizona Revised Statutes § 48-3780.

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**

1.1 "AGREEMENT" means this Member Service Area Agreement Between CAWCD And Southwest Environmental Utilities, L.L.C., an Arizona limited liability company, as amended from time to time.

1.2 "AMA" means the Active Management Area as defined Arizona Revised Statutes § 45-402(2).

1.3 "ANNUAL MEMBERSHIP DUES" means the charge established annually by CAWCD pursuant to Arizona Revised Statutes § 48-3779.

1.4 "CAWCD" means the Central Arizona Water Conservation District, a political subdivision of the State of Arizona, and any successor political subdivision.

1.5 "DEPARTMENT" means the Arizona Department of Water Resources, an agency of the State of Arizona, and any successor agency.

1.6 "DIRECTOR" means the director of the Department.

1.7 "EXCESS GROUNDWATER" means the amount of Groundwater equal to the amount of Groundwater delivered by the Municipal Provider within the Service Area in a calendar year in excess of the amount of Groundwater that may be delivered by the Municipal Provider for use within the Service Area in that calendar year consistent with the applicable Assured and Adequate Water Supply Rules adopted by the Department for the Pinal Active Management Area pursuant to Arizona Revised Statutes § 45-576(H), subject to the following conditions:

1.7.1 In no event shall the amount of Excess Groundwater delivered by the Municipal Provider in a calendar year be less than the amount of Excess Groundwater calculated in accordance with Paragraph 2.4; and

1.7.2 Notwithstanding the minimum reporting requirements of Paragraph 2.4, the amount of Excess Groundwater delivered by the Municipal Provider in a calendar year shall not exceed 2072.30 acre-feet.

1.8 "GROUNDWATER" is as defined in Arizona Revised Statutes § 45-101(5).

1.9 "GROUNDWATER REPLENISHMENT STATUTE" means Arizona Revised Statutes, Title 48, Chapter 22.

1.10 "MEMBER SERVICE AREA" is as defined in Arizona Revised Statutes § 48-3701(11).

1.11 "MUNICIPAL PROVIDER" means Southwest Environmental Utilities, L.L.C., an Arizona limited liability company, and its successors and assigns.

1.12 "REPORT(S)" means the report(s) required to be prepared by the Municipal Provider in accordance with Arizona Revised Statutes § 48-3775(B) and this Agreement.

1.13 "REPLENISHMENT RESERVE CHARGE" means the charge established annually by CAWCD pursuant to Arizona Revised Statutes § 48-3772(E) and included in

the Replenishment Tax.

1.14 "REPLENISHMENT RESERVE FEE" means the fee that must be levied by CAWCD pursuant to Arizona Revised Statutes § 48-3780.01. The fee is equal to twice the Replenishment Reserve Charge multiplied by the Excess Groundwater Increment as defined in Arizona Revised Statutes § 48-3701.

1.15 "REPLENISHMENT TAX" means the annual tax levied by CAWCD against the Municipal Provider in a calendar year based on the Service Area Replenishment Obligation.

1.16 "RESOLUTION" means the Resolution of Southwest Environmental Utilities, L.L.C. Regarding Membership in the Central Arizona Groundwater Replenishment District.

1.17 "SERVICE AREA" means the service area depicted in Exhibit A, attached and incorporated into this Agreement, and any additions to and extensions of the Service Area.

1.18 "SERVICE AREA REPLENISHMENT OBLIGATION" means, with respect to the Service Area, the Excess Groundwater of the Service Area in a particular calendar year reduced by the replenishment credits, if any, applied by the Municipal Provider with respect to the Service Area under Arizona Revised Statutes § 48-3772(H).

ARTICLE 2 REPORTING REQUIREMENTS

2.1 Annual Reports. In accordance with Arizona Revised Statutes § 48-3775(B), on or before March 31 of each year after the publication of the Resolution, the Municipal Provider shall file a Report with CAWCD and with the Director that contains the following information for the preceding calendar year, which is the reporting year:

2.1.1 The amount of Groundwater delivered by the Municipal Provider to all customers within the Service Area, and the basis for the calculation of the amount of Groundwater delivered.

2.1.2 The amount of Excess Groundwater delivered by the Municipal Provider to all customers within the Service Area, and the basis for the calculation of the amount of Excess Groundwater delivered.

2.1.3 Such other information as CAWCD may reasonably require.

2.2 Records. In accordance with Arizona Revised Statutes § 48-3775(F), the Municipal Provider shall maintain current and accurate records of the information required to be included in the Reports.

2.3 Form of Reports. In accordance with Arizona Revised Statutes § 48-3777, CAWCD shall determine the form of the Reports to be submitted by the Municipal Provider in order to carry out the purposes of the Groundwater Replenishment Statute.

2.4 Formula for Calculating the Minimum Volume of Excess Groundwater. Except as provided in Paragraph 1.7.2, the Municipal Provider shall report a minimum volume of the Groundwater delivered by the Municipal Provider within the Service Area as Excess Groundwater delivered by the Municipal Provider to all customers within the Service Area in each year during the term of this Agreement. The formula for calculating this minimum volume is as follows:

$$(GW - IR) \times 2/3 = \text{Minimum volume of Groundwater delivered to be reported as Excess Groundwater}$$

Where: GW = Groundwater delivered by the Municipal Provider within the Service Area during the preceding year, which is the reporting year

IR = The volume of incidental recharge awarded to the Municipal Provider for the reporting year as calculated by the Director in accordance with the Assured and Adequate Water Supply Rules adopted by the Department for the Pinal Active Management Area pursuant to Arizona Revised Statutes § 45-576(H)

ARTICLE 3 REPLENISHMENT TAX, REPLENISHMENT RESERVE FEE AND ANNUAL MEMBERSHIP DUES

3.1 Levy of Replenishment Tax and Replenishment Reserve Fee. CAWCD shall levy the Replenishment Tax and any Replenishment Reserve Fee due against the Municipal Provider in accordance with Arizona Revised Statutes § 48-3781.

3.2 Levy of Annual Membership Dues. CAWCD shall levy the Annual Membership Dues in accordance with Arizona Revised Statutes § 48-3779, and the Municipal Provider shall pay the Annual Membership Dues in accordance with Arizona Revised Statutes § 48-3779.

3.3 Annual Statement. On or before the third Monday of August of each year after the publication of the Resolution, CAWCD will transmit a statement to the Municipal Provider stating the amount of the annual Replenishment Tax, including the annual

Replenishment Reserve Charge, the Replenishment Reserve Fee and the Annual Membership Dues. The annual Replenishment Tax shall be equal to the assessment rate per acre-foot of Groundwater fixed by CAWCD for the Pinal Active Management Area, including any applicable Replenishment Reserve Charge, multiplied by the Service Area Replenishment Obligation. The Replenishment Reserve Fee shall be computed as provided in Arizona Revised Statutes § 48-3772(E). The Annual Membership Dues shall be computed as provided in Arizona Revised Statutes § 48-3779.

3.4 Payment of Replenishment Tax, Replenishment Reserve Fee and Annual Membership Dues. On or before October 15 of each year after the publication of the Resolution, the Municipal Provider shall pay to CAWCD an amount equal to the annual Replenishment Tax, the Replenishment Reserve Fee and the Annual Membership Dues levied by CAWCD.

3.5 Interest, Cost and Penalties. If the Replenishment Tax, the Replenishment Reserve Fee and the Annual Membership Dues are not paid when due, CAWCD will be entitled to interest, costs and penalties as provided by Arizona Revised Statutes § 48-3782.

ARTICLE 4 ENFORCEMENT POWERS

4.1 Penalty for Failure to Report. If the Municipal Provider fails to timely file a Report as required by CAWCD, CAWCD may assess a penalty in accordance with Arizona Revised Statutes § 48-3775(G).

4.2 Inspections, Investigations and Audits. The CAWCD has the rights provided under Arizona Revised Statutes § 48-3783 with respect to inspections, investigations and audits.

ARTICLE 5 DEFAULT AND REMEDIES

5.1 Default. The occurrence of any of the following events constitutes an event of default by the Municipal Provider:

5.1.1 The failure of the Municipal Provider to perform any term, covenant or condition of this Agreement, if that failure continues for thirty days following the Municipal Provider's receipt of written notice from CAWCD.

5.1.2 (i) The filing by or against the Municipal Provider of a petition to have the Municipal Provider adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against the Municipal Provider, the same is dismissed within 60 days); (ii) the making by the Municipal Provider of any general assignment for the benefit of creditors; (iii) the appointment of a trustee or receiver to take possession of substantially all of the Municipal

Provider's assets, when possession is not restored to the Municipal Provider within 60 days; or (iv) the attachment, execution or other judicial seizure of substantially all of the Municipal Provider's assets, where such seizure is not discharged within 60 days.

5.2 Remedies. If an event of default occurs, CAWCD may immediately terminate this Agreement by written notice to the Municipal Provider and/or may pursue any other rights available to it in law or equity. The Municipal Provider's obligation to pay any amounts due but unpaid as of the date of termination shall survive termination of this Agreement.

ARTICLE 6 EFFECTIVE DATE

6.1 Effective Date. This Agreement shall become effective on the date that the Department issues an order designating Southwest Environmental Utilities, L.L.C., as having an assured water supply pursuant to Arizona Revised Statutes title 45, Chapter 2, Article 9.

ARTICLE 7 GENERAL PROVISIONS

7.1 Binding Effect. The provisions of this Agreement inure to the benefit of and bind the respective successors and assigns of the parties hereto, provided that no assignment or transfer of this Agreement or any part or interest herein is valid until approved by CAWCD in its sole and absolute discretion.

7.1.1 The Municipal Provider agrees and covenants to CAWCD to execute and record any additional documentation which CAWCD may reasonably require to effectuate the intents and purposes of this Agreement and the Groundwater Replenishment Statute.

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

7.3 Amendments. This Agreement may be modified, amended or revoked only (i) by the express written agreement of the parties hereto with concurrence by the Department; or (ii) by amendment statutes, rules or regulations or successor statutes, rules or regulations, as contemplated by Paragraph 7.5. Notwithstanding the foregoing, this Agreement may be terminated pursuant to the provisions of A.R.S. § 48-3780.B.

7.4 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, including but not limited to the Groundwater Replenishment Statute.

7.5 Rules, Regulations and Successor Statutes. All references in this Agreement to Arizona Revised Statutes include all rules and regulations promulgated by the Department under such statutes and all amendments and successor statutes, rules and regulations to such statutes, rules and regulations.

7.6 Additions to and Extensions of the Service Area. The Municipal Provider shall notify CAWCD in writing of its intent to add to or extend its service area. Such notice shall be provided to CAWCD before final action is taken regarding an addition to or extension of the Service Area. Within 60 days of any action which adds to or extends the Service Area, the Municipal Provider shall submit an amended Service Area map to CAWCD.

7.7 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.

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

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

CAWCD:

For delivery use: Central Arizona Water Conservation District
23636 North 7th Street
Phoenix, Arizona 85024
Attn: Manager, Groundwater Replenishment District

For U.S. Mail use: Central Arizona Water Conservation District
P.O. Box 43020
Phoenix, Arizona 85080-3020
Attn: Manager, Groundwater Replenishment District

Municipal Provider: Southwest Environmental Utilities, L.L.C.
5230 East Shea Blvd, Suite 200
Scottsdale, Arizona 85080-3020

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

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

CAWCD: CENTRAL ARIZONA WATER CONSERVATION DISTRICT

By: _____
Lisa A. Atkins

Its: President

ATTEST:

Sharon B. Megdal, Secretary

MUNICIPAL PROVIDER: SOUTHWEST ENVIRONMENTAL UTILITIES, L.L.C., an Arizona limited liability company

By: _____
George H. Johnson

Its: Manager

EXHIBIT A

PINAL COUNTY

