

Purchase and Sale Agreement for Long-term Storage Credits

This agreement ("Agreement") is made this 3rd day of December, 2009 between Rocking K Acquisitions, LLC, formed and existing under the laws of the State of Arizona ("Seller") and the Central Arizona Water Conservation District ("CAWCD"), a multi-county water conservation district organized and existing under the laws of the State of Arizona ("Buyer").

Recitals

1. Buyer operates the Central Arizona Project ("CAP"). Buyer also provides replenishment services to member lands and member service areas under authorities provided in Title 48, Chapter 22, Article 4 of the Arizona Revised Statutes ("A.R.S."). These replenishment authorities are commonly referred to as the Central Arizona Groundwater Replenishment District or CAGR. CAGR is not a separate legal entity, but functions within and is operated by Buyer CAWCD.
2. "Long-term storage credit" shall have the meaning as defined in A.R.S. Section 45-802.01-11.
3. Buyer desires to purchase long-term storage credits developed by Seller pursuant to A.R.S. Title 45, Chapter 3.1, for the benefit of CAGR member lands and member service areas.
4. Seller is willing to sell and transfer certain long-term storage credits in the amounts, at the delivery times and for the prices specified below.

Agreement

In consideration of the promises and undertakings contained herein, the adequacy of which is agreed by both Seller and Buyer to be sufficient, Seller agrees to sell, transfer and assign and Buyer agrees to purchase, accept and pay for the following described property and/or rights, whether real, personal, or contractual (consisting of long-term storage credits), and all rights appurtenant thereto:

Four Thousand (4,000) acre-feet of long-term storage credits for delivery during January 2010

Such long-term storage credits shall be sold, transferred, assigned and delivered by Seller and purchased, accepted and paid for by Buyer pursuant to the following terms and conditions.

A. Type of Water. Seller covenants that all of the long-term storage credits to be sold pursuant to this Agreement were accrued through storage of water from the source identified in Section B.4 of this Agreement. It is the intent of the parties that all credits purchased and sold hereunder shall retain such identity.

B. Source of Credits. The long-term storage credits to be sold by Seller are from:

1. Arizona Department of Water Resources ("ADWR") Long-Term Storage Account ("LTSA")
No. 70-411410.0000

2. ADWR Facility Permit Number:

- o 72-538100.0004, such facility being located in the Tucson Active Management Area

3. ADWR Water Storage Permit Number

- o 73-538100.01

4. Source of water used to generate long-term storage credits - CAP

C. Number and Year of Credits. The number of long-term storage credits to be transferred and year credits were earned are as follows:

1. 4,000 acre-feet of long-term storage credits credited to Seller's LTSA No. 70-411410.0000, earned in calendar year 1999.

D. Purchase Price.

1. $\$135/\text{acre-foot} \times 4,000 \text{ acre-feet} = \$540,000$

E. Time and Manner of Transfer of Credits. Seller and Buyer shall complete and sign the ADWR's "Long-Term Storage Credit Transfer Form A.R.S. § 45.854.01", a copy of which is attached as Exhibit A, or if that form is no longer used by ADWR, a successor ADWR form or other form that is satisfactory to Buyer in its reasonably exercised discretion, no later than January 15, 2010.

After Seller has executed and delivered a credit transfer form to Buyer, Buyer shall promptly deliver the fully executed credit transfer form to ADWR.

If Buyer determines, prior to completion of delivery as provided in Section F of this Agreement, that a separate deed and/or bill of sale is necessary or advisable for the transfer of the long-term storage credits, Buyer may request that Seller execute a deed and/or bill of sale that is satisfactory to Buyer in its reasonably exercised discretion. Buyer's request shall inform Seller of any form or format requirements needed for such deed and/or bill of sale to meet with Buyer's satisfaction. Seller shall execute, process, and deliver such a conveyancing document at no cost to Buyer. 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.

F. Delivery Complete - Payment. Delivery of the long-term storage credits in 2010 shall be deemed complete when the ADWR has transferred the credits from Seller's Long-Term Storage Account specified in Section B.1. into Buyer's Long-Term Storage Account. Seller and Buyer shall cooperate with each other and with the ADWR to facilitate completion of such transfers by ADWR. Buyer shall pay the amounts specified in Section D. of this Agreement no later than twenty (20) business days after receiving adequate evidence that ADWR has completed the transfer of credits to Buyer's account. In the event that ADWR has not transferred the credits to Buyer's account within six (6) months after submission of the transfer form, pursuant to paragraph E above, either Buyer or Seller may terminate this Agreement by

giving ten (10) days' written notice to the other party. In the event that prior to the completion of delivery, as specified in this Section, the long-term storage credits are transferred out of Seller's account by ADWR, but Buyer is unable to obtain approval, for any reason, of a transfer of the credits into the Buyer's account, Buyer shall cooperate with and assist the Seller in efforts to obtain approval of a transfer of the credits back into Seller's account.

G. Rejection or Invalidation of the Transfer of Credits by ADWR. If ADWR, pursuant to A.R.S. § 45-854.01(C), rejects or invalidates any transfer and assignment of long-term storage credits made hereunder prior to any payment by Buyer, Buyer shall not be obligated to pay for the number of credits affected by such rejection or invalidation. If such rejection or invalidation occurs after payment has been made by Buyer, Seller shall refund an amount equal to the number of credits affected by such rejection or invalidation times the price per acre-foot for the affected credits within twenty (20) business days after either Buyer or Seller receives any notice of rejection or invalidation from ADWR. Buyer shall transfer and assign back to Seller the number of credits affected by any such rejection or invalidation if necessary. Seller's obligation to refund any payments under this paragraph 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 Buyer's Long-Term Storage Account.

H. CAWCD Board Approval. This Agreement is subject to and expressly conditioned upon approval by the CAWCD Board. Such Board approval shall be completed within sixty (60) days of execution of the Agreement by Seller and shall apply to all transfers of credits identified in Section C of this Agreement.

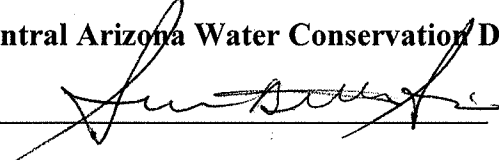
I. Miscellaneous.

1. This Agreement shall be governed by and construed pursuant 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.
2. Time is of the essence in the performance of this Agreement
3. Seller warrants that it has good and marketable title to the long-term storage credits that are the subject of this Agreement and agrees to convey marketable title to such long-term storage credits free and clear of all liens and encumbrances. Seller shall warrant and defend the title against all persons whomsoever.
4. The parties agree that if a party fails to perform its obligations under this Agreement, other remedies will not be sufficient and the parties agree that, in addition to other available remedies, the remedy of specific performance shall be available to the aggrieved party.
5. This Agreement may not be amended except by written instrument signed by the parties.
6. This Agreement constitutes the entire agreement of the parties with respect to the subject matter thereof and supersedes all prior written and oral agreements, understandings and negotiations between the parties with respect to the subject matter hereof.

- 7. No delay in exercising any right or remedy shall constitute a waiver unless such right or remedy is waived in writing signed by the waiving party. A waiver by any party of any right or remedy hereunder shall not be construed as a waiver of any other right or remedy, whether pursuant to the same or a different term, condition or covenant.
- 8. The provisions of Sections I.1., I.2., I.3. and I.4. shall survive the completion or termination of this Agreement.

In Witness Whereof, the authorized representatives of Buyer and Seller have executed this Agreement, as set forth below.

Central Arizona Water Conservation District

By 

Print Name: Susan Bitter Smith

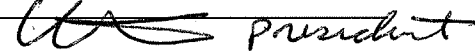
Title: President

Date: 12/03/09

Rocking K Acquisitions, LLC

BY: ROCKING K HOLDINGS LIMITED PARTNERSHIP, MANAGED BY

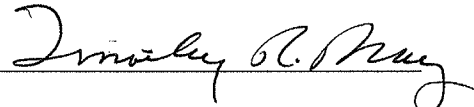
BY: Diamond Ventures, Inc. General Partner

By  president

Print Name: David Goldstein

Title: President

Date: 11/23/09

Attest 

Print Name: Timothy R. Bray

Title: Secretary

Date: 12/03/09