

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

This Purchase and Sale Agreement is made this 5<sup>th</sup> day of October, 2017, (the "Effective Date"), between and among the Central Arizona Water Conservation District ("CAWCD"), a multi-county water conservation district organized and existing under the laws of the State of Arizona, and the City of Surprise ("Surprise"), a municipal corporation of the State of Arizona (together "Parties")

**RECITALS**

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

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

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

D. WHEREAS, Surprise is authorized to sell Long-Term Storage Credits and enter into this Agreement pursuant to , inter alia, Arizona Revised Statutes Title 9, Chapter 5, Article 2 and Title 45, Chapter 3.1, Article 4.

E. WHEREAS, the Parties desire to explore a potential future water supply partnership beyond this Agreement and intend that this Agreement be a starting point for development of that potential partnership.

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

**ARTICLE 1  
DEFINITIONS**

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

- 1.1 "ADWR" means the Arizona Department of Water Resources.
- 1.2 "Agreement" means this Purchase and Sale Agreement for Long-Term Storage Credits.

1.3 "CAGRDR" means the Central Arizona Groundwater Replenishment District, the replenishment authority operated by CAWCD.

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

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

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

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

1.8 "Surprise" means the City of Surprise.

1.9 "Surprise's Long-Term Storage Account" means the Long-Term Storage account established pursuant to Arizona Revised Statutes § 45-852.01 in Surprise's name, Account No. 70-441155.0000.

## ARTICLE 2 PURCHASE OF LONG-TERM STORAGE CREDITS

2.1 Sale and Purchase. Subject to the terms and conditions of this Agreement, Surprise agrees to sell, transfer and assign and CAWCD agrees to purchase, accept and pay for 9,082.24 acre-feet of Long-Term Storage Credits.

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

2.3 Long-Term Storage Credits. The Long-Term Storage Credits to be sold by Surprise are stored at the underground storage facility, under the ADWR Facility Permit and ADWR Water Storage Permit set forth in Exhibit A hereto.

2.4 Purchase Price. The purchase price for the 9,082.24 acre-feet of Long-Term Storage Credits to be sold by Surprise under this Agreement is \$2,000,000.00 ("Purchase Price"). The Purchase Price was calculated using a per-credit price \$220.21 ( $\$220.21/\text{Long-Term Storage Credit} \times 9,082.24 \text{ acre-feet of Long-Term Storage Credits} = \$2,000,000.00$  (rounded to the nearest dollar)), which is equivalent to the cost of accruing Phoenix AMA Long-Term Storage Credits at a constructed underground storage facility in 2017. The per credit price was calculated using the following formula:  $\text{Per credit price} = [(\text{CAP Long Term M\&I Subcontract Capital Charge} + \text{CAP Fixed OM\&R Charge} + \text{CAP Pumping Energy Rate Charge} + \text{CAP Underground$

Water Storage O&M Charge for the Phoenix AMA) / 0.94]. As expressed in numbers, the formula is as follows:  $[(\$31 + \$87 + \$77 + \$12) / 0.94 = \$220.21$  (rounded to the nearest cent)].

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

3.1 Long-Term Storage Credit Transfer Form. To evidence the transfer of Long-Term Storage Credits, Surprise and CAWCD shall complete, sign and deliver the Long-Term Storage Credit Transfer Form to ADWR within ten (10) business days of the full execution of this Agreement. A copy of the Long-Term Storage Credit Transfer Form is attached as Exhibit B to this Agreement. After Surprise has executed and delivered the Long-Term Storage Credit Transfer Form to CAWCD, CAWCD shall promptly deliver the fully executed Long-Term Storage Credit Transfer Form to ADWR.

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

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

4.1 Completion of Delivery. Delivery of the Long-Term Storage Credits to be transferred pursuant to this Agreement shall be deemed complete when ADWR notifies CAWCD in writing that ADWR has received and accepted the Long-Term Storage Credit Transfer Form and intends to transfer the Long-Term Storage Credits from Surprise's Long-Term Storage Account to CAGR's Account(s) ("ADWR Acceptance"). CAWCD and Surprise shall cooperate with ADWR to facilitate completion of such transfer by ADWR.

4.2 Payment. CAWCD shall pay Surprise the Purchase Price no later than ten (10) business days after ADWR Acceptance.

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

If ADWR, pursuant to Arizona Revised Statutes § 45-854.01(C), rejects or invalidates any transfer or assignment of Long-Term Storage Credits made hereunder before CAWCD has paid for such Long-Term Storage Credits, CAWCD shall not be obligated to pay for the number of Long-Term Storage Credits affected by such rejection or invalidation. If such rejection or invalidation occurs after payment has been made by CAWCD, Surprise shall refund an amount equal to the number of Long-Term Storage Credits affected by such rejection or invalidation times the price per acre-foot for the affected Long-Term Storage Credits, as such price is established in Article 2.4 above. Surprise shall refund such amount within thirty (30) calendar days after either CAWCD or Surprise receives any notice of rejection or invalidation from

ADWR. CAWCD shall transfer and assign back to Surprise the number of credits affected by any such rejection or invalidation. Surprise's obligation to refund any payments under this Article 5 shall expire thirty (30) calendar 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). The Parties' rights and obligations under this Article 5 shall remain in full force and effect, and shall survive termination of this Agreement for purposes of addressing a circumstance where ADWR rejects or invalidates any transfer of Long-Term Storage Credits made hereunder.

## **ARTICLE 6 EFFECTIVE DATE AND TERM**

This Agreement shall be effective as of the date it has been executed by both Parties hereto, which date it set forth in the introductory paragraph of this Agreement (the "Effective Date"), and shall stay in effect until completion of performance by the Parties as contemplated herein unless terminated earlier in accordance with Article 7.

## **ARTICLE 7 DEFAULT AND REMEDIES**

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

7.1.1 The failure of either party to perform any term, covenant, or condition of this Agreement, if that failure continues for fourteen (14) calendar days following the receipt of written notice from the other party.

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

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

## **ARTICLE 8 MISCELLANEOUS PROVISIONS**

8.1 Interpretation. This Agreement is governed by and must be construed and interpreted in accordance with and in reference to the laws of the State of Arizona, without regard to its conflicts of laws provisions. Any action to resolve any dispute regarding this Agreement shall be taken in a state court of competent jurisdiction located in Maricopa County, Arizona.

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

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

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

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

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

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

8.8 Conflicts of Interest. The parties to this Agreement are hereby notified of A.R.S. § 38-511.

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

**CAWCD:**

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

For U.S. Mail use: c/o General Manager  
P.O Box 43020

Phoenix, AZ 85080-3020

**CITY OF SURPRISE:**

For delivery use: City of Surprise  
c/o Terry Lowe  
16000 N. Civic Center Plaza  
Surprise, Arizona 85374

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

8.10 Resolution of Disputes. The Parties may pursue any remedy at law or equity, including but not limited to injunctive relief to enforce this Agreement. The remedy(ies) set forth herein are not exclusive and election of one remedy does not preclude the use of other remedies.

8.11 Indemnification. Each Party to this Agreement is independently responsible in the event of its own negligence. Neither Party agrees to indemnify the other Party.

8.12 Severability. The provisions of this Agreement are severable to the extent that if any provision is held unenforceable under applicable law, the remaining provisions of the Agreement shall remain in effect.

8.13 No Third-Party Beneficiaries. This Agreement is solely for the benefit of the Parties and does not create, nor shall it be construed to create, rights in any third party unless expressly provided herein. No third party may enforce the terms and conditions of this Agreement.

8.14 Permits. The Parties shall obtain and maintain all licenses, permits and authority necessary to perform their obligations pursuant to this Agreement, and shall comply with all applicable state, federal and local laws, including but not limited to those regarding employment insurance, disability insurance and worker's compensation. This Agreement does not relieve either party from any obligation or responsibility imposed upon it by law.

8.15 No Employment. Neither Party shall be considered an officer, employee or agent of the other. No monitoring or supervisory responsibility over the other Party's activities arises on the part of the other or as a result of, or pursuant to, this Agreement other than as expressly provided herein.

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: *Lina A. Atkins*

Its: President

ATTEST: *Sharon B. Meddal*  
Secretary

**SURPRISE: CITY OF SURPRISE**

By: *Sharon K. Wolcott*  
Sharon Wolcott

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

ATTEST: *Sherry Aguilar*  
Sherry Aguilar  
City Council Clerk

APPROVED AS TO FORM:

*[Signature]*  
Robert Wingo, City Attorney

**EXHIBIT A**  
**to**  
**Purchase and Sale Agreement for Long Term Storage Credits**  
**ADWR FACILITY PERMIT and ADWR WATER STORAGE PERMIT**

<b>Facility Name</b>	<b>ADWR Facility Permit No.</b>	<b>ADWR Water Storage Permit No.</b>	<b>ADWR Long-Term Storage Account No.</b>	<b>Credits (AF)</b>	<b>Water Source</b>
Surprise SPA-1 Water Reclamation Facility	71-562521	73-562521.0002	71-441155.0000	9082.24	Effluent



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

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

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

For Official Use Only

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

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

[FOR SELLER]

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

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

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

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

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

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

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

\_\_\_\_\_  
Email

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

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

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

[FOR BUYER]

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

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

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

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

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

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

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

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

\_\_\_\_\_  
Email

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

*Required Signature Block is on Page 2*

---

---

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

---

---

**NOTICE**

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

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

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

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

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