

RESOLUTION NO. 7-2009

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, APPROVING AND AUTHORIZING THE EXECUTION OF AN AGREEMENT BETWEEN THE CITY OF BENSON ("CITY") AND CHESTER C. ANTONICK, DBA SUE JUAN WATER COMPANY ("SELLER") FOR THE PURCHASE AND SALE OF A PORTION OF THE BUSINESS ASSETS OF SELLER; APPROVING EXECUTION OF THE AGREEMENT AND ALL RELATED DOCUMENTS; AND EXPENDITURE OF THE FUNDS REQUIRED THEREFOR.

WHEREAS, Seller is the present owner of a water works plant and distribution system and domestic water company known as Sue Juan Water Company, situated within and without the City of Benson, Arizona; and

WHEREAS, Seller is the owner and holder of a Certificate of Convenience and Necessity issued by the Arizona Corporation Commission, which franchise and certificate authorize Seller to engage as a public service corporation in the sale of water for commercial and domestic uses in its Certificated Area; and

WHEREAS, the City desires to acquire certain assets of Seller located within the Certificated Area of Seller that is located within and without the City limits of the City of Benson; and

WHEREAS, the City has the legal authority to acquire water utility systems pursuant to A.R.S. § 9-511, *et seq.*; and

WHEREAS, Seller and the City have developed a Purchase Agreement (the "Agreement"), which is attached hereto as Exhibit "A" and incorporated herein by this reference, for the purchase and sale of a portion of the business assets of Seller; and

WHEREAS, the Mayor and Council of the City of Benson have reviewed the terms and conditions of the Agreement and determined that approval of the Agreement is in the best interests of the City and its residents.

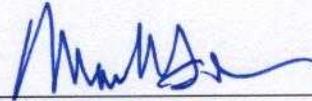
NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of Benson:

Section 1. That the City hereby approves the Agreement attached hereto as Exhibit "A".

Section 2. Either one of Mayor Mark M. Fenn OR the Interim City Manager Glenn Nichols (each an Authorized Representative) acting on behalf of the City is hereby authorized to execute the Agreement. Each Authorized Representative acting on behalf of the City is hereby authorized to enter into, execute, and deliver such other documents relating to the Agreement as the Authorized Representative deems necessary and appropriate, including all closing, escrow and title documents necessary and proper to effectuate transfer of good title and acceptance of the property.

Section 3. Payment of all closing costs, escrow and title fees, title insurance premiums, and any other associated fees, costs and expenses, are hereby authorized and approved.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BENSON, ARIZONA, this 26th day of January, 2009.



MARK M. FENN, Mayor

ATTEST:



VICKI L. VIVIAN, City Clerk

APPROVED AS TO FORM:



THOMAS A. BENAVIDEZ, City Attorney

19.3 Meter Readings.

Closing of this Agreement is intended to occur at the end of a meter reading cycle with the Seller reading meters the day before Closing. Seller shall render its final bills and be responsible for collecting all accounts receivable therefrom. City of Benson shall cooperate with Seller in collection of accounts receivable.

19.4 Other Transitional Matters.

Other transitional matters shall be resolved between Buyer and Seller via written documentation approved by the City Manager and the Seller. In the event any order of the Arizona Corporation Commission conflicts with any agreement between Buyer and Seller regarding performance requirements of Seller, the order of the Arizona Corporation Commission shall supersede the provision of this Agreement in conflict. It is expressly understood and agreed that Buyer is not subject to the jurisdiction of the Arizona Corporation Commission, and this Agreement does not confer any jurisdiction of the Arizona Corporation Commission over Buyer.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date set forth above.

BUYER:
CITY OF BENSON
an Arizona municipal corporation



By Mark M. Fenn, Mayor

ATTEST:



Vicki L. Vivian, City Clerk

APPROVED AS TO FORM:



Thomas A. Benavidez, City Attorney

SELLER:
CHESTER C. ANTONICK
A single man

EXHIBIT A
[The Assets to be sold by Seller and purchased Buyer]

EXHIBIT B

[The legal descriptions of the real property to be sold by Seller and purchased by Buyer]

EXHIBIT C
[The form of the bill of sale]

Exhibit "A"
Purchase Agreement

AGREEMENT FOR PURCHASE AND SALE
OF A PORTION OF THE BUSINESS ASSETS OF
CHESTER C. ANTONICK

THIS AGREEMENT FOR PURCHASE AND SALE OF CERTAIN BUSINESS ASSETS (this "Agreement") is entered into this 16th day of January, 2009, by and between CHESTER C. ANTONICK, an unmarried individual person, DBA Sue Juan Water Company ("Seller"), and the CITY OF BENSON, an Arizona municipal corporation ("Buyer").

WITNESSETH

WHEREAS, Seller is the present owner of a water works plant and distribution system and domestic water company known as Sue Juan Water Company, situated within and without the City of Benson, Arizona; and

WHEREAS, Seller is the owner and holder of a Certificate of Convenience and Necessity issued by the Arizona Corporation Commission, which franchise and certificate authorize Seller to engage as a public service corporation in the sale of water for commercial and domestic uses in its Certificated Area; and

WHEREAS, Buyer desires to consolidate ownership of water utility systems within and without its city limits; and

WHEREAS, the City desires to acquire certain assets of Seller located within the Certificated Area of Seller that is located within and without the City limits of Buyer, as more specifically described in this Agreement; and

WHEREAS, Buyer has the legal authority to acquire water utility systems; and

WHEREAS, Seller has initiated discussions and negotiations for the sale of Seller's Business Assets to Buyer; and

WHEREAS, the parties have voluntarily bargained and negotiated in good faith to determine the price terms and conditions of such a sale; and

WHEREAS, Seller is desirous of selling certain assets, but excluding therefrom certain cash and Accounts Receivable, to Buyer under the price terms and conditions set forth herein; and

WHEREAS, the Mayor and Council of the City of Benson have, by Resolution No. 7-2009, authorized the execution of this Agreement, to which Resolution this Agreement is an exhibit.

NOW, THEREFORE, in consideration of the foregoing Recitals, and the mutual promises, covenants and agreements hereinafter contained, and each act of the parties hereto, the parties agree as follows:

Section 1. Definitions.

Unless the context clearly indicates the contrary, the following capitalized words used in the Recitals and used below shall have the meanings set forth below:

Accounts Receivable: Any right for the payment to Seller for services or goods provided or rendered, whether or not evidenced by an instrument or chattel paper, arising out of or in any way related to the Business prior to Closing.

Agreement: This Agreement for Purchase and Sale of Business Assets.

Assets: Collectively, the Real Property, all Improvements, Equipment, Inventory, Contract Rights and Records owned and used by Seller in connection with the Business and to be purchased by Buyer pursuant hereto. Assets also mean Business Assets. The Assets to be sold by Seller and purchased by Buyer pursuant to this Agreement are set forth in Exhibits "A" and "B" attached hereto. Assets include all Water Rights in Exhibit "D".

Bill of Sale: That certain document to be given by Seller to Buyer conveying all of its interest in and to the Equipment and Records. The form of the Bill of Sale shall be as depicted on Exhibit C, attached hereto.

Business: That certain business known as Sue Juan Water Company currently owned by Seller and located within Cochise County, Arizona, engaged in the business of a public service corporation in the sale of water for commercial and domestic uses in its Certificated Area pursuant to its Certificate of Convenience and Necessity, and other related services in connection therewith, located within and without the City Limits of Benson.

Buyer: CITY OF BENSON, an Arizona municipal corporation.

Permitted Encumbrances: Those matters of record set forth on Schedule B of the Preliminary Title Report and only such other matters approved in writing by Buyer.

Property or Real Property: All well sites, easements, licenses and other real property interests located in Cochise County, Arizona, and legally described in Exhibit "B" attached hereto, including all Improvements, Fixtures and any other rights and appurtenances pertaining thereto which are used by Seller in the Business located within and without Benson TITLE COMPANY SHALL PROVIDE LEGAL DESCRIPTION PER CENTRALLY ASSESSED TAX RECORDS

Purchase Price: The sum of Thirty THOUSAND DOLLARS (\$30,000.00) which is the total purchase price for the Assets as set forth under Section 3 of this Agreement.

Records: All of Seller's service agreements, service and repair records, water treatment records, Department of Water Resources filings and correspondence, customer data base information (including master file information, billing histories, complaints), meter reading information, and other related documents arising out of or in any way relating to the Assets.

Seller: Chester C. Antonick, a single man, DBA Sue Juan Water Company.

Title Insurer: Pioneer Title Agency, 363 W 4th Street, Benson Arizona 85602 Kim Lockhart, Escrow agent, 520-586-3733

Transfer Instruments: Those instruments customarily required for the transfer of the Assets, including, but not limited to:

- (i) Special Warranty Deed to the Property;
- (ii) Affidavit of Value;
- (iii) Foreign Investment in Real Property Tax Act Affidavit, if applicable; and
- (iv) Bill of Sale to all personal property.
- (v) Any other documents or instruments reasonably required.

Water Rights: Means all well registrations, certificates of water rights, service area rights, and Gila Adjudication Statements of Claim filed by Seller on behalf of the wells subject to transfer by this Agreement. The Water Rights shall be transferred by assignment of all water rights, together with completion and filing of all forms required by the Arizona Department of Water Resources. The Water Rights subject to transfer by this Agreement are listed on Exhibit "D" attached hereto.

Section 2. Conveyance of Assets.

Subject to the conditions and limitations set forth herein, Seller hereby agrees to sell and Buyer hereby agrees to purchase the Assets. Seller agrees to provide Buyer with good and marketable title to the Assets, and, at Closing, to convey such title with a warranty by Seller that the Assets are not subject to any security interests, liens or encumbrances except Permitted Encumbrances.

2.1 Equipment, Inventory and Records.

The Equipment, Inventory, and Records shall be conveyed at Closing by the execution and delivery by Seller of the Bill of Sale.

The Bill of Sale shall include a list identifying all Equipment and shall be in the form of Exhibit "C", attached hereto.

2.2 Contract Rights.

To the extent that any person shall be required to consent to the transfer of Contract Rights, then Seller shall obtain that consent in writing as a condition of Closing.

2.3 Real Property.

Conveyance of the Real Property shall be by special warranty deed, subject only to Permitted Encumbrances. The conveyance shall also be subject to the standard exceptions contained in the final policy to be given by Seller to Buyer and free and clear of all other liens and encumbrances.

2.3.1 Title Insurance. Seller shall furnish Buyer at Closing with a standard owner's title insurance policy in the amount up to \$30,000 insuring Buyer's interest in the Real Property, subject only to those exceptions described in section 2.3 above. The cost of the title insurance shall be divided equally between the Buyer and the Seller.

2.3.2 Title Defects. In the event the Title Insurer is unable or otherwise refuses to issue said title insurance policy to Buyer as of the of Closing, subject only to the matters described and approved, then and in such event, Escrow Agent shall withhold from the Closing proceeds such amounts of money up to but not exceeding \$1,000.00 as are sufficient to remove any impediment to the issuance of such policy. If the policy still cannot be issued by the application of Closing proceeds to remove a lien or impediment, then Buyer shall have the right, at Buyer's sole election, to terminate this Agreement and receive a full refund of all money on deposit, with any accrued interest hereon, and Buyer shall have no further obligation hereunder. In the alternative, Buyer may elect to close this transaction and waive the objectionable item, provided Buyer closes within fifteen (15) days of the original Closing Date.

2.3.3 Condition of Title. Seller shall preserve title to the Real Property and at the time of Closing shall deliver the Real Property in substantially as good condition with respect to title as of the date of the Preliminary Title Report, except to remove an objectionable item.

2.4 Limitations.

The purchase of the Assets pursuant hereto shall not constitute a purchase of Seller or the Business by Buyer nor render Buyer a successor in interest to Seller or the Business. This Agreement is limited to the purchase and sale of Assets only, and Buyer is not assuming any liabilities of Seller or the Business with respect to the Assets which may exist at any time prior to the Closing Date hereunder.

Section 3. Purchase Price.

3.1 Total Purchase Price.

Buyer agrees to pay Seller as the total Purchase Price for Seller's interest in the Property, the sum of Thirty THOUSAND DOLLARS (\$30,000.00), payable as follows:

3.1.1 Cash at Closing. Buyer shall deposit the sum of \$30,000 THOUSAND DOLLARS (\$30,000.00), in cash or other certified funds, at Closing (subject to adjustment for costs and prorations as set forth herein).

Section 4. Regulatory Contingency.

4.1 Contingencies

Buyer's obligations under this Agreement are contingent upon Seller obtaining the consent of any regulatory agencies who have the right to consent to the transaction contemplated hereunder. Buyer agrees to apply and do what ever is required to obtain the consent to release Seller from all its responsibilities under the Certificate of Convenience and Necessity issued by the Arizona Corporation Commission, Buyer shall have the right to close this transaction without all regulatory contingencies being resolved, provided that the Buyer can take possession of the assets and operate them for the benefit of the Buyer without such regulatory contingency being resolved. Seller shall provide documentation post-closing that may reasonably be required to carry out the intent of the Agreement; and Seller shall cooperate with the Buyer and any regulatory agency to facilitate the purposes of the Agreement, either before closing or following.

Section 5. Representations and Warranties by Seller.

5.1 Seller's Representations.

Except as otherwise set forth in this Agreement, and in addition to all other covenants, warranties and representations of Seller herein, Seller hereby represents and warrants to Buyer the following:

5.1.1 Seller and Buyer hereby agree that all personal property items and Equipment are being transferred to Buyer in "**AS IS**" Condition: Buyer understands and accepts personal property items being sold "as is, where is, and with all faults". However, this provision is subject to

claims arising due to Seller's use of the wells and all of the Assets prior to the Closing Date. Seller shall disclose any claims, notices or demands, made by any person or governmental entities, relating to the condition of the wells, and all of the Assets prior to the Closing Date. Buyer shall have twenty-five days after the Closing Date to terminate this Agreement, and Buyer shall have the right, at any time after the Closing Date, to terminate this Agreement and receive a full refund of all money on account of interest hereon, and Buyer shall have no further obligation hereunder.

Seller is the owner of and has good and marketable title to the Assets to be conveyed

is responsible for any claims arising out of the Assets prior to the Closing Date. Seller shall disclose any claims, notices or demands, made by any person or governmental entities, relating to the condition of the wells, and all of the Assets at least thirty days prior to the Closing Date. Buyer shall have twenty-five days after receipt of these disclosures to terminate this Agreement, at Buyer's sole election, to receive a full refund of all money on deposit, with any accrued interest.

Seisin. Seller is the owner of and has good and marketable title to the Assets to be conveyed hereunder.

5.1.2 Disclosed Agreements. Except for this Agreement, Seller has entered into no agreement currently in effect to sell the Assets.

5.1.3 Liabilities. Seller has no actual knowledge of any notices, demands, claims, judgments, liens, actions or proceedings of any nature pending against Seller or the Assets which would adversely affect this transaction or the title which Buyer will receive, other than as set forth in the Preliminary Title Report, and as disclosed pursuant to section 5.1.1, above.

5.1.4 Liens. No judgments, liens, security interest or other monetary obligations against the Assets will be outstanding at the time of Closing, except Permitted Encumbrances and current real estate taxes which are not yet due and payable.

5.1.5 Labor Materials. All bills and invoices for labor and materials furnished to or on behalf of the Assets which have been incurred by Seller prior to the time of conveyance and transfer to Buyer, if any, will be paid and acknowledged in writing as paid by the laborer or supplier, as the case may be.

5.1.6 Proceedings. Seller does not have actual knowledge of any actions or proceedings by any governmental entity or any other facts or circumstances, including any causes of action, lawsuits or claims, whether existing or threatened, which might materially and adversely affect the Assets.

5.1.7 No Breach. Neither the execution and delivery of this Agreement nor the consummation of the transaction contemplated by this Agreement will result (either immediately or after the passage of time and/or the giving of notice) in a breach or default by Seller under any agreement or understanding to which Seller is a party or by which Seller may be bound or which would have an effect upon Seller's ability to fully perform its obligations under this Agreement.

5.1.8 No Bankruptcy. Seller has not (a) made a general assignment for the benefit of creditors, (b) filed any voluntary petition or suffered the filing of an involuntary petition by Seller's creditors, (c) suffered the appointment of a receiver to take all, or substantially all, of Seller's assets, (d) suffered the attachment or other judicial seizure of all, or substantially all, of Seller's assets, or (e) admitted in writing its inability to pay its debts as they fall due, and no such action is threatened or contemplated.

5.1.9 Best Actual Knowledge. All information prepared by Seller and provided or to be provided by Seller to Buyer and all representations by Seller are accurate to the best of Seller's actual knowledge without Seller having made any specific investigation thereof; as to all other information provided or to be provided by Seller to Buyer, Seller knows of no inaccuracies.

5.1.10 Regulations. To the best of Seller's actual knowledge, there are currently no violations of any applicable zoning regulation or ordinance or other law, order, ordinance, rule, regulation, or requirement, or of any covenant, condition, or restriction

affecting or relating to the use or occupancy of the Property from any governmental agency having jurisdiction over the Property or from any other person entitled to enforce the same.

5.1.11 Permits. Seller has all permits, licenses, authorizations, and approvals required by law or any governmental agency to conduct the Business.

5.1.12 Condemnation. To the best of Seller's knowledge, there are no pending or threatened condemnation or eminent domain proceedings which would affect the Property.

5.1.13 Disclosure. None of the representations or warranties made by Seller in this Agreement, nor any document, statement, certificate, schedule, or other information furnished or to be furnished to Buyer pursuant to this Agreement or in connection with the transactions contemplated hereunder contains, or will as of the Closing Date contain, any untrue statement or a material fact, or omits, or will as of the Closing Date omit, to state a material fact necessary to make the statements of facts contained therein not misleading.

5.1.14 Creditors. Except as set forth in Section 7, all bills and invoices for goods and services related to or which are a part of the Assets, if any, shall be paid; all Creditors shall be paid; all employees, if any, and salaries, wages, bonuses, vacation pay, and benefits accrued up to the date of Closing; all withholdings, payroll taxes, unemployment insurance, worker's compensation benefits, and all other similar payments shall be paid current to the date of Closing; and no claims by Creditors shall exist which may encumber the Assets.

5.1.15 Organization. Seller has the full right and authority to enter into this Agreement, to consummate the sale contemplated herein and to observe and perform all of its covenants and obligations hereunder. The person executing this Agreement and any other document required hereby has full authority to act on behalf of and to bind the Seller in and to the obligations imposed upon it by this Agreement.

5.1.16 Commissions. Seller shall be responsible for any real estate commissions or brokerage fees in connection herewith.

5.1.17 Department of Water Resources ("DWR"). Buyer shall have no responsibility for any liability of Seller assessed by DWR or any other entity.

5.1.18 Environmental Regulations. In addition to all other covenants, warranties, and representations of Seller herein, Seller hereby represents and warrants to the Buyer that the Assets to be conveyed hereunder are, to the knowledge and belief of Seller, not in compliance with all current applicable environmental health and safety laws and regulations. Seller shall disclose all notices received and all of Seller's actual knowledge of non-compliance to Buyer, as required pursuant to section 5.1.1, above.

5.2 Buyer's Representations.

Buyer hereby represents to Seller as follows:

5.2.1 Authority. Buyer has been duly formed and presently exists as a municipal corporation under the laws of the State of Arizona, and the entering into of this Agreement and the performance of Buyer's obligations hereunder have been duly authorized by all proper and necessary actions, and do not violate any applicable governmental statute, rule, regulation, ordinance, contract, or other restriction. The person executing this Agreement and any other documents required hereby has full authority to act on behalf of and to bind the Buyer in and to the obligations imposed on it by this Agreement.

5.2.2 Commissions. Buyer has made no agreements respecting commissions or brokerage fees in connection herewith.

Section 6. Indemnification.

6.1 Seller.

Seller shall indemnify, defend and hold Buyer harmless against and in respect of:

6.1.1 All liabilities and obligations of or claims against the Assets not expressly assumed by the Buyer herein.

6.1.2 Any damage or deficiency prior to Closing resulting from any misrepresentation, breach of warranty or nonfulfillment of any agreement on the part of the Seller hereunder or from any misrepresentation in or omission from any certificate or other instrument furnished or to be furnished to the Buyer under this Agreement; and

6.1.3 All claims, actions, suits, proceedings, demands, assessments, judgments, costs and expenses incident to any of the foregoing or any obligations, claims or liabilities of Seller in connection with the Assets transferred hereunder arising out of the Business prior to the date of Closing.

Buyer shall promptly notify Seller in writing of any claim, act or notice which could give rise to a claim of indemnification under this Agreement. Buyer shall not settle, pay or confess judgment with regard to such claim if Buyer receives from Seller within fifteen (15) days after the aforesaid notice of such claim a statement in writing by Seller that Seller will diligently defend the claim. If Seller desires to contest the claim, it shall do so at its sole cost and expense without reimbursement of the defense as reasonably required by Buyer. If Seller shall fail to successfully contest a claim as provided for above; pay a claim or final judgment rendered against it; or remove any lien or attachment within ten (10) days after imposition, then Buyer may, but shall not be obligated to, pay any such claim, judgment or lien. In the event of such payment by Buyer, Buyer shall be entitled to an offset in the amount so paid by Buyer, plus costs, actual attorneys' fees and costs,

and interest at the legal rate in connection therewith. In the event Buyer claims any such offset hereunder, Buyer shall so notify Seller in writing. This provision shall survive Closing.

6.2 Buyer.

Buyer shall indemnify, defend and hold Seller harmless against and in respect of:

6.2.1 Any costs, expenses, damages or deficiencies resulting from any misrepresentation, breach or warranty or nonfulfillment of any Agreement on the part of Buyer hereunder or from any misrepresentation in or omission from any certificate or other instrument furnished or to be furnished to Seller under this Agreement; and

Seller shall promptly notify Buyer in writing of any claim, act or notice which could give rise to a claim of indemnification under this Agreement. Seller shall not settle, pay or confess judgment with regard to such claim if Seller receives from Buyer within fifteen (15) days after the aforesaid notice of such claim a statement in writing by Buyer that Buyer will diligently defend the claim. If Buyer desires to contest the claim, it shall do so at its sole cost and expense without reimbursement from Seller and shall keep Seller advised as to the status of the defense as reasonably required by Seller. If Buyer shall fail to successfully contest a claim as provided for above; pay a claim or final judgment rendered against it; or remove any lien or attachment within ten (10) days after imposition, then Seller may, but shall not be obligated to, pay any such claim, judgment or lien. This provision shall survive Closing.

Section 7. Escrow Agent.

7.1 Closing Agent.

The Escrow Agent shall serve as the Closing Agent for this transaction.

7.2 Delivery of Transfer Instruments.

The Transfer Instruments and any other documents required by this Agreement or applicable laws shall be placed by the parties into escrow with the Escrow Agent and shall be delivered to the appropriate party upon Closing. In addition, Seller shall provide documentation post-closing that may reasonably be required to carry out the intent of the Agreement; and Seller shall cooperate with the Buyer and any regulatory agency to facilitate the purposes of the Agreement, either before closing or following.

7.3. Other.

The Escrow Agent agrees to do all things reasonably required by the terms of this Agreement to close this transaction.

Section 8. Closing Date.

The Closing of this sale shall take place on or before the 17th day of February, 2009. In the event all regulatory approvals have not been obtained before the Closing Date, then the Closing Date and the proration date shall be extended to a date mutually agreeable to the parties which date must be within five (5) business days after such approvals are obtained. At the Buyer's sole option, it may waive the requirement of approval by the Arizona Corporation Commission as a precondition to closing this transaction.

Section 9. Closing Documents.

9.1. Seller's Deposits.

Prior to Closing, Seller shall deposit in escrow for delivery to Buyer the following:

9.1.1 The Transfer Instruments required by this Agreement.

9.1.2 Any other documents or instruments required by this Agreement.

9.2 Buyer's Deposits.

Prior to Closing, Buyer shall deposit into escrow for delivery to Seller the following:

9.2.1 All sums required of Buyer to close this transaction.

9.2.2 Such Transfer Instruments as are required of Buyer.

9.2.3 Any other instruments necessary to or reasonably required by Seller to effectuate the transaction contemplated herein.

Section 10. Costs

Costs of Closing and/or expenses connected with the transfer of the property and the sale thereof shall be divided between Buyer and Seller, and paid through escrow as follows:

10.1 Attorneys Fees.

Each party shall pay its own attorneys fees and costs.

10.2 Escrow Fees.

The escrow fee and all filing and recording fees shall be divided equally between Buyer and Seller, to the extent that such recording fees or filing fees are for the Transfer Instruments. If any recording fees or filing fees are necessary as a result of recordings required to clear title, they shall be paid by Seller.

10.3 Title Insurance.

The premium for the standard title insurance policies required to be provided by this Agreement shall be divided equally between the Parties. Buyer shall pay the difference between the standard premium and an extended premium, if any.

Section 11. Prorations.

All of the following in 11.1 and 11.2 shall be prorated as of date of Closing.

11.1. Taxes.

All current real estate and personal property taxes against the Property. Any delinquent taxes, penalties and interest thereon for the Property shall be paid by Seller on or before Closing.

11.2 Assessments.

All current assessments, both principal and interest, against the Property. Any delinquent amounts shall be paid by Seller on or before Closing.

Section 12. Risk of Loss.

12.1 Prior to Closing.

The risk of loss or damage by fire or other casualty, or the taking by eminent domain, until Closing, shall be assumed by and shall be the responsibility of Seller. Upon the happening of any material loss and within ten (10) business days after notification thereof, Buyer may elect in writing to terminate this Agreement or close the sale. If any election to terminate the Agreement is made, any money on deposit shall be returned to Buyer with accrued interest thereon and this Agreement shall thereupon become null and void. In the alternative, if an election to proceed with Closing is made by Buyer, any insurance proceeds and/or condemnation award in connection with the loss shall be given to Buyer, but there shall be no adjustment to the Purchase Price.

12.2 After Closing.

The risk of loss or damage by fire or other casualty, or the taking by eminent domain, shall be assumed by Buyer after the Closing Date.

Section 13. Assignment of Agreement.

The rights of any party under this Agreement are not assignable without the written consent of the other party, which may be withheld with or without cause.

Section 14. Default.

14.1 Non-Monetary Default.

For the purposes of this Section 14, a “Non-Monetary Default” shall mean the failure of Seller to close this transaction after Buyer has tendered full performance, when that failure is the result of any bona fide action by a third party encumbering the Property by creating a cloud on the title which is not practicably susceptible to financial satisfaction prior to Closing and which did not exist when the Preliminary Title Report was received by Buyer.

14.2 Monetary Default.

For the purpose of this Section 14, a “Monetary Default” shall mean the failure of Seller to close this transaction after Buyer has tendered full performance, when that failure is a result of a monetary lien or encumbrance upon the Property, which lien or encumbrance was not disclosed in the Preliminary Title Report when received by Buyer and which can be cured by the application of a portion of the Closing proceeds.

14.3 Seller’s Willful Refusal.

For the purpose of this Section 14, “Seller’s Willful Refusal” shall mean the failure of Seller to close this transaction, without cause, after Buyer has tendered full performance.

14.4 Remedies.

In the event of a Default by Seller, Buyer’s exclusive remedies shall be as follows:

14.4.1 In the event of a Non-Monetary Default, Buyer shall have ten (10) business days following such default in which to elect in writing to terminate this Agreement or waive the Non-Monetary Default and close this transaction. In the event Buyer elects to terminate this Agreement, any money on deposit shall be returned to Buyer with all interest thereon, and this Agreement shall thereupon be null and void. If Buyer elects to waive the Non-Monetary Default and close the transaction, then the sale shall close within ten (10) business days after Buyer’s written notice to close. There shall be no adjustment in the Purchase Price, and Buyer shall accept whatever title Seller may be able to convey. If Seller still refuses or is unable to close, then Buyer may elect to pursue Buyer’s legal and equitable remedies.

14.4.2 In the event of a Monetary Default, the Escrow Agent is hereby instructed to withhold from Seller’s proceeds from the Closing a sufficient amount to cure the Monetary Default.

14.4.3 In addition to the above remedies, or in the event of Seller’s Willful Refusal, Buyer shall be entitled to pursue its other legal and equitable remedies as they may be available at law.

14.5 Buyer's Default.

In the event Buyer fails to close this transaction, Seller shall be entitled to pursue all its rights and remedies at law and in equity. The parties specifically agree that all communications hereunder shall be in writing and shall be given by personal delivery or mailed first class, registered or certified mail, postage prepaid, and shall be deemed received upon the earlier of actual delivery or one hundred twenty (120) hours after deposit in the United States Mail as aforesaid. Notices to Seller or Buyer, as the case may be, shall be delivered or mailed to the addresses set forth below. In addition, a copy of the notice shall be mailed or delivered to the Escrow Agent in care of the address set forth in Section 1.

an, Attorney At Law
l., Ste 124
18-8900

Mr. Chester C. Antonick
10570 S. Nogales Hwy
Tucson, AZ 85756
520-746-0176

Ronald J. Newn
1670 E River R
Tucson, AZ 857
520-323-0980

City of Benson
P.O. Box 2223
Benson, Arizona 85602-2223

16.2 Nature of Agreement.

Agreement represent the results of negotiations between Seller and Buyer, each of which has been represented by counsel or the representation of its own choosing and none of which have acted under duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings and Seller and Buyer hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of the Agreement including (without limitation) any rule of law to the effect that ambiguous or conflicting terms or provisions contained in this Agreement shall be interpreted or construed against the party whose attorney prepared the executed draft

16.2.1 Agreement Negotiated. The terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings and Seller and Buyer hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of the Agreement including (without limitation) any rule of law to the effect that ambiguous or conflicting terms or provisions contained in this Agreement shall be interpreted or construed against the party whose attorney prepared the executed draft

16.2.2 Integration. All understandings and agreements heretofore had between the parties are merged into this Agreement which alone fully and completely expresses their agreement; the same is entered into after full investigation and neither party is relying upon any statements or representations by the other not embodied in this Agreement.

16.2.3 Other Inducements. The parties agree that there are no promises, inducements, representations or agreements in connection with this Agreement, except those specifically set forth herein in writing.

16.2.4 Modification. This Agreement may not be changed orally, but only by an agreement in writing, signed by the parties.

16.2.5 Other Agreements. Seller shall not enter into any contracts, leases, agreements or amendments to existing agreements or encumbrances affecting the Property while this Agreement remains in force or subsequent to Closing of this transaction without the express written consent of Buyer, other than to remove a matter which the Title Insurer required be removed to Close.

16.3 Relation of Parties.

16.3.1 No Agency. It is expressly agreed and understood by the parties hereto that neither party is the agent, partner nor joint venture partner of the other. It is also expressly agreed and understood that neither Seller nor Buyer has any obligations or duties to the other, except as specifically provided for in this Agreement.

16.4 Attorneys' Fees.

If any party defaults hereunder, the defaulting party shall pay the other party's reasonable attorneys' fees, expert witness fees, travel and accommodation expenses, deposition and trial transcript costs, costs of court and other similar costs or fees paid or incurred by the non-defaulting party by reason of or in connection with the default (whether or not legal or other proceedings are instituted). In the event any party hereto finds it necessary to bring an action at law or other proceeding against the other party to enforce any of the terms, covenants or conditions hereof or any instrument executed in pursuant of this Agreement, or by reason of any breach hereunder, the party prevailing in any such action or proceedings shall be paid all costs and reasonable attorneys' fees by the defaulting party, and in the event any judgment is secured by such prevailing party, all such costs and attorneys' fees shall be included in any such judgment with attorneys' fees to be set by the court and not by the jury. In the event the parties elect to arbitrate a dispute, then this section shall also apply to arbitration, except that the provisions referring to a court shall refer to the arbitrator.

16.5 Construction.

16.5.1 Time. Time is of the essence in this Agreement. However, if any action is required to be taken on a Saturday, Sunday or legal holiday, the action shall be deemed timely taken if it is taken on the next regular business day.

16.5.2 Headings. The headings of this Agreement have been inserted for convenience of reference only and are to be ignored in any construction of the provisions hereof. Whenever a personal pronoun is used in any one gender, it shall be deemed to include all other genders as the case may require, and the singular shall include the plural, and vice versa ,unless the context indicates to the contrary.

16.5.3 Adverbs. Whenever the terms “herein”, “hereunder”, “hereof”, “therefore”, “thereover”, or similar terms are used, they shall refer to this entire Agreement as a whole and shall not refer solely to any particular section.

16.5.4 Exhibits. All recitals, schedules and exhibits to this Agreement are fully incorporated herein as though set forth at length herein.

16.5.5 State Law. This offer and the contract and conveyance provided for herein, if it is accepted, shall be governed by the laws of the State of Arizona. Any provision of Law which is required to be included in this Agreement is hereby incorporated herein by this reference.

16.5.6 Counterparts. This Agreement may be executed in counterparts, and the signature of any person required by this Agreement shall be effective if signed on any and/or all counterparts. All counterparts together shall be considered one and the same Agreement.

16.6 Foreign Investment.

Seller shall fully comply with all applicable state and federal laws governing foreign investment, including the Foreign Investment in Real Property Tax Act and Section 1445 of the Internal Revenue Code as amended from time to time, and shall hold Buyer harmless from any claim or action arising therefrom.

Section 17. Bulk Sale Requirements.

In lieu of compliance with Article 6 (Bulk Transfers) of the Arizona Commercial Code, ARS § 47-6101 *et seq.*, the parties agree as follows: N/A.

17.1 Indemnification.

As set forth above, Seller has agreed to convey the Assets free of the Claims of any Creditors. Therefore, in the event that any Creditors make any claim against the proceeds of this transaction or seek to set aside this transaction, then Seller shall indemnify, defend and hold Buyer harmless from any such Claims, as set forth under Section 6.1, above.

17.2 Buyer Not Liable for Seller's Debts.

The parties hereto specifically agree that Buyer shall not be liable or obligated for any of Seller's debt or obligations. Accordingly, all such debts or obligations must be paid in full as of Closing if they arose as a result of the purchase of the Assets to be transferred hereunder.

Section 18. Inspection, Acceptance and Maintenance of Assets.

18.1 Buyer.

Buyer acknowledges that as of five days prior to the Closing Date, it will have inspected the condition of such of the Assets as it deems reasonably necessary, and accepts the Assets in such condition subject to Sections 2.3 and 5 of this Agreement.

18.2 Seller.

Seller agrees to maintain the condition of the Assets in their current condition, ordinary wear excepted, as to the date of Closing.

Section 19. Customer Deposits, Repairs, Meter Reading, other Transitional Matters.

19.1 Customer Deposits.

Seller shall transfer all customer deposit funds (including customer security deposits and meter deposits) to Buyer at Closing and provide Buyer with full and complete records of the names of the parties having made such deposits. Buyer shall assume all responsibilities for customer deposits at Closing.

19.2 Seller's Duty to Make Repairs.

For one-year following the Closing Date, Seller shall be responsible to make certain repairs to the water conveyance system, for the supply side only, portion of the Assets. The intent of this provision is to relieve the Buyer of any responsibility for pipe leaks or breaks that are occasioned by the Buyer's use of the conveyance system to deliver Buyer's water to the Business' former customers, but only for such leaks and breaks as do not require full pipe replacement. The Parties recognize that the cost of pipe replacements could result in Seller forfeiting his consideration under this Agreement, and this subsection 19.2 does not intend that. At Buyer's sole discretion, Seller shall make the repairs to the supply side portion of the water system, upon demand of Buyer, or shall reimburse Buyer for Buyer's actual costs of making the repairs. All repairs shall be performed in a workman like manner. For the purposes of this section only, notice of needed repairs may be given by telephone call or telefax to Seller at the following numbers 520-746-0176; 520-746-0285 Fax.