

**RESOLUTION 73-2009**

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA APPROVING A PURCHASE AGREEMENT FOR UNIMPROVED REAL PROPERTY IN THE CITY OF BENSON WITH PAUL WATTLES AND DAN WATTLES IN THE AMOUNT OF \$10,000.00 TO SECURE PHYSICAL ACCESS TO A CITY WELL SITE

WHEREAS, the City owns a well site adjacent to South Foothills Drive within the limits of the City of Benson; and

WHEREAS, due to the steeply sloping terrain in this area, physical access to the well site is not available immediately off of South Foothills Drive; and

WHEREAS, for many years, access to the well site has been via a dirt road that runs from South Foothills Drive to the well site that passes over the neighboring parcel; and

WHEREAS, such access had been accomplished with permission of the former owner of the neighboring parcel, but the new owners, Paul Wattles and Dan Wattles, are requiring that the City purchase a 65' by 65' portion of the parcel that contains the access road; and

WHEREAS, the owners are willing to sell the proposed new parcel to the City for \$10,000.00 and other consideration, including that the City pay for the required survey, build a fence and not develop the new parcel other than for access purposes, such terms included in the Purchase Agreement attached hereto as Exhibit A.

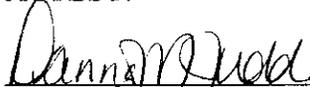
NOW, THEREFORE BE IT RESOLVED by the Mayor and Council of the City of Benson, Arizona that the Purchase Agreement with Paul Wattles and Dan Wattles attached hereto as Exhibit A is hereby approved and the City Manager is authorized to execute said agreement and all other documents necessary to complete this purchase.

PASSED AND ADOPTED by the Mayor and City Council of Benson, Arizona this 23rd day of November, 2009.



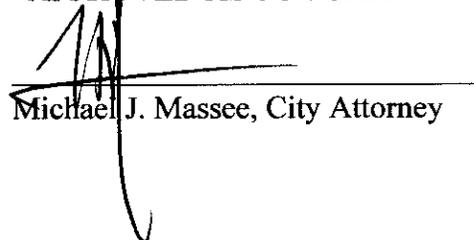
Mark M. Fenn, Mayor

ATTEST:



Vicki L. Vivian, City Clerk

APPROVED AS TO FORM:



Michael J. Massee, City Attorney

**“EXHIBIT A”  
Agreement**

## PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS

This Purchase Agreement and Escrow Instructions ("Agreement") is made and entered into this 23rd day of November, 2009, by and between Paul Wattles and Dan Wattles ("Sellers") and the City of Benson, Arizona, a municipal corporation of the State of Arizona ("Buyer"), in recognition of the following facts and intentions:

- A. Sellers are the fee title owners of the unimproved real property consisting of approximately 4225 square feet of total gross area in Cochise County, Arizona, as depicted in the survey (the "Survey") and described in the legal description attached hereto as Exhibit "A" and incorporated by this reference ("Real Property").
- B. Buyer is a municipal corporation that desires to obtain fee title to the Real Property for the purpose of maintaining unobstructed access to its well site from the public thoroughfare known as South Foothills Drive over and across the Real Property.
- C. Sellers agree to sell and Buyer agrees to buy the Real Property, subject to the terms and conditions herein. As used herein, the term "Sellers" means Paul and Dan Wattles jointly or either of them singly.
  1. Binding Agreement. Upon execution by the Buyer and Sellers ("Execution Date"), and in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by execution of this Agreement, this Agreement shall constitute a binding contract between the Sellers and Buyer for the purchase and sale of the Real Property.
  2. Escrow Instructions. Upon delivery of a counterpart of this Agreement executed by Buyer and Sellers and upon its execution by Pioneer Title Agency, Inc., an Arizona corporation ("Escrow Agent"), this Agreement shall constitute instructions to the Escrow Agent. If required by Escrow Agent, the parties shall execute the printed form escrow instructions used by Escrow Agent, including any mutually acceptable modification thereto ("Escrow Instructions"), to which shall be attached an executed copy of this Agreement and which together shall constitute instructions to Escrow Agent. If any of the provisions of this Agreement conflict with the Escrow Instructions, the provision of this Agreement shall govern and control. No provisions of the Escrow Instructions shall excuse any performance by either party at the times provided in this Agreement, extend the Closing Date provided for herein or provide either party hereto with any grace period not provided in this Agreement, and any such provision in the Escrow Instructions shall be deleted.
  3. Conveyance. Sellers shall duly execute, acknowledge and deliver to Escrow Agent, (a) for recordation upon Close of Escrow, a special warranty deed ("Deed"), on Escrow Agent's standard form, conveying title to the Real Property

to Buyer, and (b) an affidavit ("FIRPTA Affidavit") in compliance with Section 1445 of the Internal Revenue Code, as amended ("Code").

4. No Recordation of Agreement. Neither this Agreement nor any memorandum of this Agreement shall be recorded, and any attempted recordation by Sellers shall constitute a default by Sellers.
5. Risk of Loss. Upon Close of Escrow, Sellers shall deliver possession of the Real Property to Buyer, and all risk of loss of, or damage to, the Real Property from any source shall, at that time, pass to and become the sole responsibility of Buyer.
6. Purchase Price. The purchase price for the Real Property shall be Ten Thousand Dollars (\$10,000.00) ("Purchase Price"), payable upon the Close of Escrow. It is understood that the value of the Real Property is Ten Thousand Dollars for purposes of Title Report (as defined below).
7. Earnest Money. No earnest money shall be required by Sellers.
8. Closing.
  - a. Close of Escrow. The Escrow shall close on or before December 31, 2009, unless the Escrow shall have been canceled in accordance with Sections 10 or 34 below ("Close of Escrow" or "Closing Date").
  - b. Obligations of Sellers at Closing. At Close of Escrow, Sellers shall execute, acknowledge and deliver to Escrow Agent the Deed, the FIRPTA Affidavit and any other usual and customary document required by Escrow Agent to close escrow.
  - c. Obligations of Buyer at Closing. At Close of Escrow, Buyer shall deliver the Purchase Price to Escrow Agent and any other usual and customary document required to close escrow.
  - d. Obligations of Escrow Agent at Closing. At Close of Escrow, Escrow Agent shall:
    - (1) Record the Deed;
    - (2) Deliver to Buyer the FIRPTA Affidavit;
    - (3) Deliver to Sellers the Purchase Price;
    - (4) Apportion the Taxes as set forth in Section 9c below; and
    - (5) Cause the issuance and delivery to Buyer the Owner's Policy, if requested by Buyer.
9. Expenses of Escrow. Title insurance premiums, escrow fees, and all other costs or expense of escrow shall be paid as follows:

- a. The cost of securing a standard owner's title insurance policy ("Owner's Policy") in the amount of the Purchase Price to be issued by or through Escrow Agent shall be paid by Buyer, if Buyer shall elect to receive an Owner's Policy;
  - b. The cost of recording the Deed shall be paid by Sellers;
  - c. Real property taxes and assessments ("Taxes") shall be prorated as of Close of Escrow, provided that, if the Close of Escrow shall occur before the tax rate is fixed for the calendar year in which the Close of Escrow shall occur, the proration shall be based on the tax rate for the prior calendar year applied to the latest valuation of the Real Property; and
  - d. All other expenses of escrow shall be paid in the manner now customary in Cochise County, Arizona.
10. Buyer's Contingencies. Buyer's obligations to consummate the transaction contemplated by this Agreement is subject to satisfaction of the following contingencies ("Contingencies"):
- a. Buyer's Approval of Title Report. Within ten (10) days following opening of Escrow, Sellers shall cause Escrow Agent to deliver by personal delivery to Buyer and Buyer's counsel a current preliminary title report from a title insurance company reasonably satisfactory to Buyer ("Title Insurer") which report shall include matters acceptable to the title insurer (and consistent with Exhibit "A" hereto), leading to the issuance of an extended coverage owner's ALTA policy of title insurance, with all standard printed exceptions deleted, in the amount of \$10,000.00 covering Buyer's interest in the Real Property, together with reasonable copies of all instruments of record referred to therein whether such items are referred to in "Schedule B" or the "Requirements" section thereof (the "Title Report"). Buyer shall have until ten (10) days after delivery of the Title Report to object in writing, by notice to Escrow Agent within such ten (10) day period, matters affecting title shown on the Title Report, it being agreed that the Purchase Price is based upon free and clear title and only such other exceptions thereto as may be approved in writing by Buyer. Buyer's Objection Notice shall set forth its election to grant to Sellers the (10) days to cause to be removed as exceptions to title any matters objected to by Buyer or (ii) terminate this Agreement, whereupon this Agreement shall terminate and neither party shall have any further obligations or liabilities to the other, and all sums paid on account of the Purchase Price, together with interest earned thereon, shall be immediately returned to Buyer. Anything in this Agreement to the contrary notwithstanding, Sellers shall be required to cause all pecuniary encumbrances to be removed of record on or before the Closing. If Buyer grants to Sellers ten (10) days to cure those objections set forth in Buyer's

Objection Notice as set forth in the preceding sentence, Sellers shall exercise reasonable diligence to cure any other matters objected to by Buyer as set forth in Buyer's Objection Notice within the ten (10) days period. If Sellers do not so cure those matters objected to by Buyer in Buyer's Objection Notice, Buyer may at any time after the expirations of the ten (10) days period elect to waive the matters objected to by written notice to Sellers and Escrow Agent and complete the Closing subject thereto, on or before the date hereinafter provided, or may terminate this Agreement by notice to Sellers and Escrow Agent, whereupon this Agreement shall terminate and neither party shall have any further obligations or liabilities to the other, and all sums paid on account of the Purchase Price and interest earned thereon shall be immediately returned to Buyer. If any amended Title Reports or Surveys are issued prior to the Closing, the foregoing procedures for objection and notice shall again apply, and, at Buyer's election, the Closing shall be extended for a period equal to the time between the issuance of the original Title Report and any amended Title Report and/or Survey. If Sellers fail to cure by the Closing Date any pecuniary encumbrance objected to by Buyer, then in addition to the aforesaid right to waive the objections and complete the Closing or terminate the Agreement, Buyer may instruct Escrow Agent to apply so much of the funds due at Closing to remove the encumbrance and proceed with Closing or may treat such failure as a breach of this Agreement by Sellers and pursue any remedy available at law or in equity. Between the date of this Agreement and the Closing Date Sellers will not cause or permit any matter to arise or be imposed upon the Real Property affecting title thereto. Any title exceptions which have been accepted or waived by Buyer shall be called "Permitted Title Exceptions."

- b. Investigation. Buyer shall have the right until November 30, 2009 ("Investigation Date") to approve the feasibility in Buyer's sole and absolute discretion of the Real Property for the Buyer's intended purposes. Until the Investigation Date, Sellers shall permit access to the Real Property by Buyer and the persons so designated by it and shall afford them the opportunity to inspect and perform any test upon the Real Property that Buyer deems necessary or appropriate to determine the Real Property is suitable for Buyer's purposes. Buyer, in good faith until the Investigation Date, may conduct all such inspections, investigations and tests as it deems appropriate and be responsible to returning the Real Property to substantially the same condition in which it was prior to the time of any entry. In the event Buyer shall not approve the feasibility of the Real Property, Buyer shall elect at any time on or prior to the Investigation Date to cancel this Agreement by written notice to Sellers and Escrow Agent. In such event, this Agreement shall be deemed null and void and neither party shall have any further obligation or liability under this Agreement except liabilities or obligations arising under the indemnity provisions of Section 11. If Buyer fails to give written notice to

Sellers and Escrow Agent of Buyer's disapproval of this contingency on or before the Investigation Date, Buyer shall be deemed to have disapproved this contingency.

- c. Waiver. Buyer, in its sole discretion, may elect to waive any contingency.
11. Indemnity. Buyer agrees to indemnify, defend (at Buyer's expense, but with counsel reasonably acceptable to Sellers) and hold harmless Sellers from all claims and liabilities for personal injury or physical property damage, or mechanics' or material liens, which may be asserted against Sellers as a result of any entry by Buyer, its agents or designees onto the Real Property.
12. Information. In furtherance of the satisfaction of the Contingencies, Sellers shall provide to Buyer within five (5) days after the Opening of Escrow, copies of any and all information which Sellers have or have control over regarding the Real Property, including without limitation, all loan documents pertaining to the existing financing, engineering plans and specifications and plats, site plans, zoning materials, licenses, permits required by law issued by all governmental authorities having jurisdiction, all Environmental Reports and Surveys, and all other contracts and materials with respect to the Real Property. The Investigation Date, Buyer's time period within which to review the Title Report and the Closing Date shall be extended for a period equal to Sellers' delay in delivering to Buyer any of the items required in this Agreement to be furnished to Buyer.
13. Buyer's Representations, Warranties and Covenants. Buyer represents, warrants and covenants (with the understanding that Sellers are relying on said representations, warranties and covenants) that:
  - a. Buyer Inspection. The closing of the subject transaction shall constitute Buyer's acknowledgement that it has independently inspected and investigated the Real Property and has made and entered into this Agreement based upon such inspection and investigation and its own examination of the condition of the Real Property, and Sellers are hereby released from all responsibility regarding the valuation or condition of the Real Property. Buyer agrees to accept the Real Property in its present condition.
  - b. No Representation. Buyer acknowledges that no person acting on behalf of Sellers is authorized to make, and, by execution of this Agreement, Buyer acknowledges that no person acting or purporting to act on behalf of Sellers has made any representation, warranty, guaranty or promise, whether oral or written, except as set forth in this Agreement. Any agreement, statement, representation or promise made by any such person who is not contained in this Agreement shall not be valid or binding upon Sellers.

- c. Buyer agrees that the Real Property shall not be developed other than to grade and improve the roadway surface as reasonably necessary to provide physical access to Buyer's adjoining well site or to maintain or improve any water facilities that may now or in the future be located on the Real Property without prior approval from Sellers.
  - d. Buyer Authority. Upon City Council approval of this Agreement, Buyer has full power, authority and legal capacity to execute, deliver and perform this Agreement and all related documents or instruments.
14. Sellers' Representations, Warranties and Covenants. Sellers represent, warrant and covenant (with the understanding that Buyer is relying on said representations, warranties and covenants) that:
- a. Sellers Authority. Sellers are duly authorized to execute this Agreement and all documents incidental thereto.
  - b. Non-Foreign Persons. Sellers are "United States persons" within the meaning of Section 1445 of the Code, as amended.
  - c. No Further Encumbrances. Prior to the Closing Date, Sellers shall not create or permit to be created any easements, restrictions or leases affecting any portion of the Real Property, nor convey, grant, or otherwise create any mortgage lien, security interest or encumbrance against all or any part of the Real Property, nor modify any Easements without the prior written consent of Buyer.
  - d. Maintenance and Operation of Real Property. Until the Closing Date, Sellers shall cause the Real Property to be maintained in good condition and repair.
  - e. Lease of or Agreements of Sale for Real Property. Until Closing Date, Sellers shall not, without prior written consent of Buyer, enter into any agreement for the sale, transfer, disposition, lease, rental, occupancy or use of any part of the Real Property, or grant any right of first refusal or option to purchase all or any part of the Real Property, or modify, supplement, renew or extend any lease, rental agreements or licenses or make or enter into any other contracts or agreements in respect to the Real Property which are not terminable at will by Buyer upon the Closing.
  - f. Legal, Valid and Binding. This Agreement and all deeds, assignments, certificates or other instruments executed or delivered in connection with the transactions contemplated hereby, each constitute legal, valid and binding obligations of Sellers, enforceable in accordance with their respective terms.

- g. No Conflict. The execution, delivery and performance of this Agreement by Sellers and all other documents and instruments executed or delivered in connection with the transactions contemplated hereby, do not and will not, violate, conflict with, or contravene any provision of the Articles of Organization, Operating Agreement, Trust Agreement, or other organizational documents of Sellers, or any judgment, order, decree, writ or injunction, or any law, rule or regulation to which Sellers are subject, nor result in any breach of, or constitute a default under, or require separate consent pursuant to, any loan or credit agreement, lease, indenture, mortgage, deed of trust, purchase agreement, guaranty, contract or other instrument which Sellers are a party or which Sellers or any of Sellers' assets are bound.
- h. No Suit or Proceedings; Violation of Statutes. Sellers have not received notice of any threatened or pending suits, legal actions or other proceedings by any governmental authority, or any other person or entity, or otherwise, for the taking of all or any part of the Real Property or which alleges any violation by Sellers of any applicable laws, rules or regulations of any federal, state or local governmental authority pertaining to the Real Property or Sellers' use and operation thereof or which could result in a lien on or lis pendens affecting any of the Real Property, nor are Sellers in violation of any such applicable laws, rule or regulations with respect to the Real Property. If Sellers become aware of any of the foregoing (whether arising before or after the date hereof) after the date hereof, but prior to Closing, Sellers shall give prompt notice thereof to Buyer prior to Closing.
- i. Flood Hazard. The Real Property is not located in an area that has been identified by the Secretary of Housing and Urban Development as an area of special flood hazard.
- j. Other Agreements. There are no agreements, commitments or understandings pursuant to which Sellers or its successors in interest (including Buyer) are required to dedicate any part of the Real Property or to grant any easement, water rights, rights-of-way, road or license for ingress and egress or other use in respect to any part of the Real Property, whether on account of the development of adjacent or nearby real property or otherwise. No person has any easement, license or other right whatsoever with respect to the Real Property.
- k. Documents and Information True, and Accurate. All documents and statements furnished to Buyer by Sellers pursuant to this Agreement with respect to the Real Property are true and complete originals or copies of the originals and have not been modified, amended or revoked.

- l. Title, Liens, and Encumbrances. Sellers hold good and marketable fee simple title to the Real Property, free and clear of all claims, liens, encumbrances, leases, options to purchase, rights of first refusal, contracts for sale, easements, reservations and restrictions except those identified in the Title Report.
- m. No Encroachments. To the best of their knowledge, except as may be shown on the Survey, there are no encroachments on the Real Property and the improvements, if any, situated on the Real Property do not encroach on any adjoining property, easements, public or private streets, and none of the easements included in the Permitted Title Exceptions materially interfere with the use or operation of the Real Property as presently conducted.
- n. Leases. As of the Closing Date, the Real Property will be subject to no leases or occupancy agreements.
- o. No Existing Conditions. Sellers have no actual knowledge of any fact or condition existing which would result or could result in the termination or reduction of the current access from the Real Property to existing public roads and highways, or of any reduction in or to sewer or other utility services presently serving the Real Property. The Real Property currently has direct access to dedicated roads and highways and all utility services to the Real Property are furnished through dedicated or perpetual easements.
- p. No Failure to Disclose. Sellers have not failed to disclose any material conditions of disrepair or other adverse condition or defects with respect to the Real Property or any portion thereof which Sellers have knowledge or which, with the exercise of reasonable diligence, Sellers should have known.
- q. No Assessments. The Real Property is not subject to any assessment nor included within any improvement or assessment district. All improvements for which an assessment can be made have been paid for in full. If any resolution or resolutions of intention have been passed by any governmental authority or if lawful notice has been given or published proposing or creating any improvement or assessment district prior to Closing, or if Sellers have obtained any information prior to Closing which renders it a possibility that an assessment may be levied upon any portion of the Real Property, Sellers shall pay and discharge in full before delinquent any assessments relating to the Real Property arising from said resolution or resolutions of intention, whether said assessment arises prior to Closing or thereafter.

- r. No Improvements. Sellers have no knowledge of any planned public improvement which might result in a special assessment levied against the Real Property. If Sellers becomes aware of any of the foregoing (whether arising before or after the date hereof) after the date hereof, but prior to Closing, Sellers shall give prompt notice thereof to Buyer prior to Closing.
  - s. Indemnification. Sellers shall indemnify, hold harmless and defend Buyer from and against, and shall be responsible for, all costs including, but not limited to, liabilities, claims, actions, causes of actions, judgments, orders and all consequential damages, expenses, fines, penalties or loss, including expert and legal fees, directly or indirectly arising out of or resulting from the breach or inaccuracy of any of the representations and warranties of Sellers as set forth in this Agreement.
  - t. Utilities. Except for a City of Benson water line located on and under the Real Property, there are no electrical wires, conduits and pipes which carry utility services to the Real Property or enter the Real Property through streets, drives or access ways which are contiguous to the Real Property.
  - u. Access. The Real Property has legal and physical access to South Foothills Drive.
15. Survival of Representations, Warranties and Covenants. All representations, warranties and covenants contained in this Agreement (and in any instrument delivered by or on behalf of any party pursuant hereto or in connection with the subject transaction) are true on and as of the date so made, will be true in all material respects on and as of the Closing Date and, together with Buyer's indemnity under Section 11, will survive Close of Escrow and execution, delivery and recordation of the Deed. In the event that any representation or warranty by a party is untrue, the other party shall have all rights and remedies available at law, in equity or as provided in this Agreement.
16. Hazardous Substances.
- a. Definitions. For the purposes of this Agreement, the following terms have the following meanings:
    - i. "Environmental Law" means any federal or state law, statute, ordinance or regulation pertaining to health, industrial hygiene or the environment including, without limitation, CERCLA (Comprehensive Environmental Response, Compensation and Liability Act of 1980) and RCRA (Resources Conservation and Recovery Act of 1976).

- ii. "Hazardous Substance" means asbestos or any substance, material or waste which is or becomes designated, classified or regulated as being "toxic" or "hazardous" or a "pollutant" or which is or becomes similarly designed classified or regulated, under any federal, state or local law, regulation or ordinance.
- b. Sellers' Representations and Warranties. Sellers represent and warrant to Buyer (and on the Closing shall be deemed to represent and warrant) as follows:
  - i. To the best of Sellers' knowledge, and except as disclosed in a Phase I Report, neither Sellers nor the Real Property are in violation of or subject to any existing or pending investigation under any Environmental Law, nor does Seller have any actual knowledge of any threatened investigation under any Environmental Law.
  - ii. To Sellers' actual knowledge, no prior or current use of the Real Property has resulted or will result in the disposal or release of any Hazardous Substance in, on, under or onto the Real Property.
  - iii. To Sellers' actual knowledge, no Hazardous Substance has been disposed of or released or otherwise exists in, on or under the Real Property or in any adjacent property now or previously owned by Seller. In addition, based on Sellers' actual knowledge, there have never been and currently are not any underground storage tanks on the Real Property.
  - iv. To Sellers' actual knowledge, there are no Hazardous Substances in or under or about the Real Property; and
  - v. To Sellers' actual knowledge, Sellers have complied, continue to comply and have required all occupants of the Real Property to comply with all laws, regulations and ordinances governing or applicable to Hazardous Substances.
- c. Indemnity Regarding Hazardous Substances. Sellers shall indemnify, hold harmless and defend Buyer for, from and against any and all costs, including, but not limited to, liabilities, claims, actions, causes of action, judgments, orders and all consequential damages, costs, expenses, fines, penalties or loss including expert and legal fees ("Costs"), directly or indirectly arising out of or resulting from:
  - (a) any Hazardous Substance being present, disposed of, discharged or released in or around any part of the Real Property or in the soil groundwater or soil vapor in or under the Property;

(b) any claim for Costs asserted by any federal, state or local governmental agency, including the United States Environmental Protection Agency, and including any claim that the Buyer is liable for any Costs as any "owner" or "operator" of the Real Property under any law relating to Hazardous Substances which claim related to the presence, disposal, discharge or release of Hazardous Substances in or around any part of the Real Property or in the soil, groundwater or soil vapor on or under the Real Property; and

(c) any Costs claimed against Buyer by any person other than a government agency, including any person who may purchase or lease all or any portion of the Real Property from Buyer, from Sellers, or from any other such purchaser or lessee, and including any person who may at any time (past, present or future) be responsible for any clean-up or other Costs relating to the Real Property, which costs relate to the presence, disposal, discharge or release of Hazardous Substances in or around any part of the Real Property or in the soil, groundwater or soil vapor on or under the Real Property.

17. Condemnation. In the event of the condemnation (or sale in lieu of condemnation) or threatened condemnation of any part of the Real Property prior to Close of Escrow, Buyer shall have the right either:

(a) to cancel this Agreement by written notice to Sellers and Escrow Agent, in which event this Agreement shall be of no further force or effect whatsoever except as provided in Section 11; or

(b) to elect to receive all awards or payments made for the Real Property by the condemning authority and to which Sellers are entitled, and thereupon close escrow as otherwise contemplated in this Agreement and pay the full Purchase Price.

18. Remedies. In the event of default by either party, the remedies of the other party will be to: (a) cancel this Agreement by written notice to the party in default and Escrow Agent; or alternatively (b) enforce all rights and remedies available by law or in equity.

19. Notices. Notices required or permitted hereunder shall be given in writing and personally delivered or sent by certified mail, return receipt requested, postage prepaid, addressed as follows:

To Sellers:

Paul M. Wattles  
140 Tristen Cove  
Liberty Hill, TX 78642

Daniel C. Wattles  
264 Rugged Earth Dr.  
Austin, TX 78737

To Buyer: City of Benson  
Attn: City Manager  
120 West Sixth Street  
Benson, Arizona 85602

With a copy to Buyer's Counsel: Benson City Attorney  
120 West Sixth Street  
Benson, Arizona 85602

To Escrow Agent: Pioneer Title Agency, Inc.  
363 W. 4th Street  
Benson, Arizona 85602

or at any other address designated by Buyer, Seller or Escrow Agent, in writing and any such notice of communication shall be deemed to have been given as of the date of delivery, if hand-delivered, or as of three (3) days after the date of such mailing, if mailed certified, return receipt requested, postage prepaid.

20. Assignment. Any assignment of Buyer's interest herein shall be subject to the prior written approval of Sellers, which approval shall not be unreasonably withheld. Upon any such assignment or designation, the corporation, partnership or other entity to which such rights are assigned shall succeed to all of Buyer's rights and obligations and, from the date of Buyer's written notice to Sellers of such assignment or designation, all references in this Agreement to Buyer shall be deemed thereafter to be references to such corporation, partnership or other entity. Any purported assignment of Buyer's interest in violation of this provision shall constitute a breach of this Agreement; shall be null and void and of no force and effect; and shall vest no rights or interests in assignee. Sellers' consent to assignment to Buyer's interest herein shall not be deemed a consent to any further or additional assignment and may be conditioned upon Buyer's signing an Assumption Agreement to be bound by all terms and conditions of this Agreement, Buyer shall be relieved of any further liability or obligation hereunder, provided that the assignee assumes all of Buyer's obligations.
21. Attorney's Fees. In the event suit is brought to enforce the terms of this Agreement, to collect any money due or to obtain any money damages or equitable relief for breach, the prevailing party shall be entitled to recover, in addition to any other available remedy, reimbursement for reasonable attorneys' fees, court costs, costs of investigation and other related expenses.
22. Intended Agreement. This Agreement is the result of arms-length negotiations between parties of roughly equivalent bargaining power and expresses the

complete, actual and intended agreement of the parties. This agreement shall not be construed for or against either party as a result of its participation, or the participation of its counsel, in the preparation and/or drafting of this Agreement or any exhibits hereto.

23. Relationship. This Agreement shall not be construed as creating a joint venture, partnership or any other cooperative or joint arrangement between Buyer and Sellers, and it shall be construed strictly in accordance with its terms.
24. Successors and Assigns. Subject to Section 20, this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors in interest and permitted assigns.
25. Further Instruments and Documents. Each Party hereto shall, promptly upon the request of the other party or Escrow Agent, acknowledge and deliver to the other party or Escrow Agent any and all further instruments and assurances reasonably requested or appropriate to evidence or give effect to the provisions of this Agreement or to satisfy Escrow Agent's requirements.
26. Integration Clause; No Oral Modification. This Agreement represents the entire agreement of the parties with respect to its subject matter, and all agreements, oral or written, entered into prior to this Agreement are revoked and superseded by this Agreement. No representatives, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in other contemporaneous written Agreements. This Agreement may not be changed, modified or rescinded, except in a writing, signed by all parties hereto, and any attempt at oral modification of this Agreement shall be void and of no effect.
27. Governing Law; Choice of Forum. This Agreement shall be construed in accordance with and shall be governed by the laws of the State of Arizona (without reference to choice of law principals). Any action brought to interpret, enforce or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Cochise.
28. Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be deemed severed from this Agreement, and this Agreement shall otherwise remain in full force and effect.
29. Waiver. Failure of any party to exercise any right, remedy or option arising out of a breach of this Agreement shall not be deemed a waiver of any right, remedy or option with respect to any subsequent or different breach or the continuance of any existing breach.

30. Broker's Commission. Sellers and Buyer
- (1) represent and warrant to each other that neither has engaged the services of any broker, finder, agent or salesperson arising from the sale of the Real Property pursuant to this Agreement, and
- (2) shall indemnify, pay, defend and hold harmless each other from any and all claims, liabilities, damages or expenses, including attorneys' fees and court costs, resulting from claims made by any broker, finder, agent or salesperson arising from the sale of the Real Property pursuant to this Agreement if the foregoing representation and warranty is untrue.
31. Time of Essence. Time is hereby declared to be of the essence for the performance of all conditions and obligations under this Agreement.
32. Construction; Interpretation. The captions and section headings used in this Agreement are for convenience and reference only and are not intended to define, limit or describe the scope or intent of any provision of this Agreement. When used herein, the terms "include" or "including" shall mean without limitation by reason of enumeration. All grammatical usage herein shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons may require. The term "person" shall include an individual, corporation, partnership, trust, estate or any other entity. If the last day of any time period stated herein shall fall on a Saturday, Sunday or legal holiday in the State of Arizona, then the duration of such time period shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday or legal holiday in the State of Arizona.
33. Joint Preparation. Each party has cooperated in the drafting and preparation of this Agreement, no presumptions shall arise against any party by virtue of its participation in the drafting hereof.
34. Miscellaneous. Sellers and Buyer hereby appoint Escrow Agent and Escrow Agent hereto agrees to act, as "the person responsible for closing" the transaction which is the subject of this Agreement (as the same may be amended from time to time) pursuant to Section 6045(e) of the Internal Revenue Code.
35. Condition of Adjacent Property. Buyer agrees to construct a chain-link fence around the perimeter of the Real Property in a manner that does not prevent its use as a means of access to the City's well site. The fence will match as closely as possible the fence currently in place around the City's adjacent well site. Buyer agrees to remove any trash or debris from the Real Property to leave its appearance neat and orderly. Buyer also agrees to remove trash, debris and other alterations to the natural condition of Sellers' adjacent parcel that have arisen from Buyer's prior use of the Real Property as access to its well site to restore it to a reasonably natural and sightly condition. Buyer agrees that any future City of

Benson activity at the Real Property will not disturb or otherwise adversely affect the condition of the Sellers' adjacent property.

IN WITNESS WHEREOF, Buyer and Sellers have executed this Agreement on the dates set forth below.

SELLERS:

\_\_\_\_\_  
Paul Wattles  
Date: \_\_\_\_\_, 2009

\_\_\_\_\_  
Dan Wattles  
Date: \_\_\_\_\_, 2009

BUYER:

City of Benson, Arizona

By \_\_\_\_\_  
Glenn Nichols, City Manager  
Date: \_\_\_\_\_, 2009

Attest: \_\_\_\_\_  
Vicki L. Vivian, City Clerk

Approved as to form:   
Michael J. Masee, Office of City Attorney

ESCROW AGENT:  
Pioneer Title Agency, Inc.

by \_\_\_\_\_  
Name: \_\_\_\_\_  
Date: \_\_\_\_\_, 2009