

September 5, 2001

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TRANSACTION FORMS  
TO THE  
SERVICE AGREEMENT FOR THE  
DESIGN, CONSTRUCTION AND OPERATION  
OF THE  
LAKE PLEASANT WATER TREATMENT PLANT PROJECT  
(PROJECT NO. WS85350004)

between

THE CITY OF PHOENIX, ARIZONA

and

[PROJECT COMPANY]

Dated

\_\_\_\_\_, 2003

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TRANSACTION FORM A  
FORM OF GUARANTY AGREEMENT

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GUARANTY AGREEMENT

from

[GUARANTOR]

to

THE CITY OF PHOENIX, ARIZONA

Dated

\_\_\_\_\_, 2003

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GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT is made and dated as of \_\_\_\_\_, 2003, between [GUARANTOR], a [ corporation ] organized and existing under the laws of [ the State of \_\_\_\_\_ ] (together with any permitted successors and assigns hereunder, the "Guarantor"), and the City of Phoenix, Arizona, a municipal corporation organized and existing under and by virtue of the laws of the State of Arizona (the "City").

RECITALS

The City and the \_\_\_\_\_, a [ company ] organized and existing under the laws of the State of \_\_\_\_\_ (the "Company"), have entered into a Service Agreement for the Design, Construction and Operation of the Lake Pleasant Water Treatment Plant Project, Project No. WS85350004, dated \_\_\_\_\_, 2003, as amended from time to time (the "Service Agreement"), whereby the Company has agreed to obtain governmental approvals for, design, construct, start up, acceptance test, operate, maintain, repair, replace and manage a water treatment plant, the intake and raw water pumping station and its raw water transmission line, all as more particularly described therein.

[The Company is a direct or indirect subsidiary of the Guarantor.]

The City will enter into the Service Agreement only if the Guarantor guarantees the performance by the Company of all of the Company's responsibilities and obligations under the Service Agreement as set forth in this Guaranty Agreement (the "Guaranty").

In order to induce the execution and delivery of the Service Agreement by the City and in consideration thereof, the Guarantor agrees as follows:

ARTICLE I  
DEFINITIONS AND INTERPRETATION

SECTION 1.1. DEFINITIONS. For the purposes of this Guaranty, the following words and terms shall have the respective meanings set forth as follows. Any other capitalized word or term used but not defined herein is used as defined in the Service Agreement.

"Obligations" means the amounts payable by, and the covenants and agreements of, the Company pursuant to the terms of the Service Agreement.

"Transaction Agreement" means any agreement entered into by the Company or the City in connection with the transactions contemplated by the Service Agreement, including the Service Agreement, and any supplements thereto.

SECTION 1.2. INTERPRETATION. In this Guaranty, unless the context otherwise requires:

(A) References Hereto. The terms "hereby", "hereof", "herein", "hereunder" and any similar terms refer to this Guaranty, and the term "hereafter" means after, and the term "heretofore" means before, the date of execution and delivery of this Guaranty.

(B) Gender and Plurality. Words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.

(C) Persons. Words importing persons include firms, companies, associations, general partnerships, limited partnerships, trusts, business trusts, corporations and other legal entities, including public bodies, as well as individuals.

(D) Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Guaranty shall be solely for convenience of reference and shall not constitute a part of this Guaranty, nor shall they affect its meaning, construction or effect.

(E) Entire Agreement; Authority. This Guaranty constitutes the entire agreement between the parties hereto with respect to the transactions contemplated by this Guaranty. Nothing in this Guaranty is intended to confer on any person other than the Guarantor, the City and their permitted successors and assigns hereunder any rights or remedies under or by reason of this Guaranty.

(F) Counterparts. This Guaranty may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Guaranty.

(G) Applicable Law. This Guaranty shall be governed by and construed in accordance with the applicable laws of the State of Arizona.

(H) Severability. If any clause, provision, subsection, Section or Article of this Guaranty shall be ruled invalid by any court of competent jurisdiction, the invalidity of any such

clause, provisions, subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Guaranty shall be construed and enforced as if such invalid portion did not exist provided that such construction and enforcement shall not increase the Guarantor's liability beyond that expressly set forth herein.

(I) Approvals. All approvals, consents and acceptances required to be given or made by any party hereto shall be at the sole discretion of the party whose approval, consent or acceptance is required.

(J) Payments. All payments required to be made by the Guarantor hereunder shall be made in lawful money of the United States of America.

ARTICLE II  
REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR

SECTION 2.1. REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR. The Guarantor hereby represents and warrants that:

(1) Existence and Powers. The Guarantor is a [ corporation ] duly organized, validly existing and in good standing under the laws of the [ State of \_\_\_\_\_ ], with the full legal right, power and authority to enter into and perform its obligations under this Guaranty.

(2) Due Authorization and Binding Obligation. This Guaranty has been duly authorized, executed and delivered by all necessary corporate action of the Guarantor and constitutes the legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application.

(3) No Conflict. To the best of its knowledge, neither the execution nor delivery by the Guarantor of this Guaranty nor the performance by the Guarantor of its obligations in connection with the transaction contemplated hereby or the fulfillment by the Guarantor of the terms and conditions hereof: (a) conflicts with, violates or results in a breach of any law or governmental regulation applicable to the Guarantor; (b) conflicts with, violates or results in a breach of any term or condition of the Guarantor's corporate charter or by-laws or any order, judgment or decree, or any contract, agreement or instrument to which the Guarantor is a party or by which the Guarantor or any of its properties or assets are bound, or constitutes a default under any of the foregoing; or (c) will result in the creation or imposition of any material encumbrance of any nature whatsoever upon any of the properties or assets of the Guarantor except as permitted hereby.

(4) No Approvals Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body is required for the valid execution and delivery of this Guaranty by the Guarantor or the performance of its payment or other obligations hereunder, except as such shall have been duly obtained or made.

(5) No Litigation. Except as disclosed in the Guarantor's filings with the Securities and Exchange Commission pursuant to the requirements of the Securities Exchange Act of 1934, as amended, there is no Legal Proceeding, at law or in equity, before or by any Governmental Body pending or, to the best of the Guarantor's knowledge, overtly threatened or publicly announced against the Guarantor, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the validity, legality or enforceability of this Guaranty against the Guarantor, or on the ability of the Guarantor to perform its obligations hereunder.

(6) No Legal Prohibition. The Guarantor has no knowledge of any Applicable Law in effect on the date as of which this representation is being made which would prohibit the performance by the Guarantor of this Guaranty and the transactions contemplated by this Guaranty.

(7) Consent to Agreements. The Guarantor is fully aware of the terms and conditions of the Service Agreement.

(8) Consideration. This Guaranty is made in furtherance of the purposes for which the Guarantor has been organized, and the assumption by the Guarantor of its obligations hereunder will result in a material benefit to the Guarantor.

ARTICLE III  
GUARANTY COVENANTS

SECTION 3.1. GUARANTY TO THE CITY. The Guarantor hereby absolutely, presently, irrevocably and unconditionally guarantees to the City for the benefit of the City (1) the full and prompt payment when due of each and all of the payments required to be credited or made by the Company under the Service Agreement (including all amendments and supplements thereto) to, or for the account of, the City, when the same shall become due and payable pursuant to this Guaranty, and (2) the full and prompt performance and observance of each and all of the Obligations. Notwithstanding the unconditional nature of the Guarantor's obligations as set forth herein, the Guarantor shall have the right to assert the defenses provided in Section 3.4 hereof against claims made under this Guaranty.

SECTION 3.2. RIGHT OF CITY TO PROCEED AGAINST GUARANTOR. This Guaranty shall constitute a guaranty of payment and of performance and not of collection, and the Guarantor specifically agrees that in the event of a failure by the Company to pay or perform any Obligation guaranteed hereunder, the City shall have the right to proceed first and directly against the Guarantor under this Guaranty and without proceeding against the Company or exhausting any other remedies against the Company which the City may have. Without limiting the foregoing, the Guarantor agrees that it shall not be necessary, and that the Guarantor shall not be entitled to require, as a condition of enforcing the liability of the Guarantor hereunder, that the City: (1) file suit or proceed to obtain a personal judgment against the Company or any other person that may be liable for the Obligations or any part of the Obligations; (2) make any other effort to obtain payment or performance of the Obligations from the Company other than providing the Company with any notice of such payment or performance as may be required by the terms of the Service Agreement or required to be given to the Company under Applicable Law; (3) foreclose against or seek to realize upon any security for the Obligations; or (4) exercise any other right or remedy to which the City is or may be entitled in connection with the Obligations or any security therefor or any other guarantee thereof, except to the extent that any such exercise of such other right or remedy may be a condition to the Obligations of the Company or to the enforcement of remedies under the Service Agreement. Upon any unexcused failure by the Company in the payment or performance of any Obligation and the giving of such notice or demand, if any, to the Company and the Guarantor as may be required in connection with such Obligation and this Guaranty, the liability of the Guarantor shall be effective and shall immediately be paid or performed. Notwithstanding the City's right to proceed directly against the Guarantor, the City (or any successor) shall not be entitled to more than a single full performance of the Obligations in regard to any breach or non-performance thereof.

SECTION 3.3. GUARANTY ABSOLUTE AND UNCONDITIONAL. The obligations of the Guarantor hereunder are absolute, present, irrevocable and unconditional and shall remain in full force and effect until the Company shall have fully discharged the Obligations in accordance with their respective terms and conditions, and, except as provided in Section 3.4, shall not be subject to any counterclaim, set-off, deduction or defense (other than full and strict compliance with, or release, discharge or satisfaction of, such Obligations) based on any claim that the Guarantor may have against the Company, the City or any other person. Without limiting the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged or in any way modified by reason of any of the following (whether with or without notice to, knowledge by, or further consent, of the Guarantor):

- (1) the extension or renewal of this Guaranty or the Service Agreement up to the specified Terms of each agreement;
- (2) any exercise or failure, omission or delay by the City in the exercise of any right, power or remedy conferred on the City with respect to this Guaranty or the Service Agreement except to the extent such failure, omission or delay gives rise to an applicable statute of limitations defense with respect to a specific claim;
- (3) any permitted transfer or assignment of rights or obligations under the Service Agreement or under any other Transaction Agreement by any party thereto (other than a permitted assignment to a replacement constructor or operator in the event of a termination of the Company pursuant to Article XII of the Service Agreement), or any permitted assignment, conveyance or other transfer of any of their respective interests in the Facilities or in, to or under any of the Transaction Agreements;
- (4) any permitted assignment for the purpose of creating a security interest or mortgage of all or any part of the respective interests of the City or any other person in any Transaction Agreement or in the Facilities;
- (5) any renewal, amendment, change or modification in respect of any of the Obligations or terms or conditions of any Transaction Agreement;
- (6) any failure of title with respect to all or any part of the respective interests of any person in the Sites or the Facilities;
- (7) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, moratorium, arrangement, composition with creditors or readjustment of, or other similar proceedings against the Company or the Guarantor, or any of the property of either of them, or any allegation or contest of the validity of this Guaranty or any other

Transaction Agreement in any such proceeding (it is specifically understood, consented and agreed to that, to the extent permitted by law, this Guaranty shall remain and continue in full force and effect and shall be enforceable against the Guarantor to the same extent and with the same force and effect as if any such proceeding had not been instituted and as if no rejection, stay, termination, assumption or modification has occurred as a result thereof, it being the intent and purpose of this Guaranty that the Guarantor shall and does hereby waive all rights and benefits which might accrue to it by reason of any such proceeding);

(8) except as permitted by Sections 4.1 or 4.2 hereof, any sale or other transfer by the Guarantor or any Affiliate of any of the capital stock or other interest of the Guarantor or any Affiliate in the Company now or hereafter owned, directly or indirectly, by the Guarantor or any Affiliate, or any change in composition of the interests in the Company;

(9) any failure on the part of the Company for any reason to perform or comply with any agreement with the Guarantor;

(10) the failure on the part of the City to provide any notice to the Guarantor which is not required to be given to the Guarantor pursuant to this Guaranty and to the Company as a condition to the enforcement of Obligations pursuant to the Service Agreement;

(11) any failure of any party to the Transaction Agreements to mitigate damages resulting from any default by the Company or the Guarantor under any Transaction Agreement;

(12) the merger or consolidation of any party to the Transaction Agreements into or with any other person, or any sale, lease, transfer, abandonment or other disposition of any or all of the property of any of the foregoing to any person;

(13) any legal disability or incapacity of any party to the Transaction Agreements; or

(14) the fact that entering into any Transaction Agreement by the Company or the Guarantor was invalid or in excess of the powers of such party.

Should any money due or owing under this Guaranty not be recoverable from the Guarantor due to any of the matters specified in subparagraphs (1) through (14) above, then, in any such case, such money, together with all additional sums due hereunder, shall nevertheless be recoverable from the Guarantor as though the Guarantor were principal obligor in place of the Company pursuant to the terms of the Service Agreement and not merely a guarantor and shall be paid by the Guarantor forthwith subject to the terms of this Guaranty. Notwithstanding anything to the

contrary expressed in this Guaranty, nothing in this Guaranty shall be deemed to amend, modify, clarify, expand or reduce the Company's rights, benefits, duties or obligations under the Service Agreement. To the extent that any of the matters specified in subparagraphs (1) through (6) and (8) through (14) would provide a defense to, release, discharge or otherwise affect the Company's Obligations, the Guarantor's obligations under this Guaranty shall be treated the same.

SECTION 3.4. DEFENSES, SET-OFFS AND COUNTERCLAIMS. Notwithstanding any provision contained herein to the contrary, the Guarantor shall be entitled to exercise or assert any and all legal or equitable rights or defenses which the Company may have under the Service Agreement or under Applicable Law (other than bankruptcy or insolvency of the Company and other than any defense which the Company has expressly waived in the Service Agreement or the Guarantor has expressly waived in Section 3.5 hereof or elsewhere hereunder), and the obligations of the Guarantor hereunder are subject to such counterclaims, set-offs or deductions which the Company is permitted to assert pursuant to the Service Agreement, if any.

SECTION 3.5. WAIVERS BY THE GUARANTOR. The Guarantor hereby unconditionally and irrevocably waives:

- (1) notice from the City of its acceptance of this Guaranty;
- (2) notice of any of the events referred to in Section 3.3 hereof, except to the extent that notice is required to be given as a condition to the enforcement of the Obligations;
- (3) to the fullest extent lawfully possible, all notices which may be required by statute, rule of law or otherwise to preserve intact any rights against the Guarantor, except any notice to the Company required pursuant to the Service Agreement or Applicable Law as a condition to the performance of any Obligation;
- (4) to the fullest extent lawfully possible, any statute of limitations defense based on a statute of limitations period which may be applicable to guarantors (or parties in similar relationships) which would be shorter than the applicable statute of limitations period for the underlying claim;
- (5) any right to require a proceeding first against the Company;
- (6) any right to require a proceeding first against any person or the security provided by or under any Transaction Agreement except to the extent such Transaction Agreement specifically requires a proceeding first against any person (except the Company) or security;
- (7) any requirement that the Company be joined as a party to any proceeding for the enforcement of any term of any Transaction Agreement;

(8) the requirement of, or the notice of, the filing of claims by the City in the event of the receivership or bankruptcy of the Company; and

(9) all demands upon the Company or any other person and all other formalities the omission of any of which, or delay in performance of which, might, but for the provisions of this Section 3.5, by rule of law or otherwise, constitute grounds for relieving or discharging the Guarantor in whole or in part from its absolute, present, irrevocable, unconditional and continuing obligations hereunder.

SECTION 3.6. PAYMENT OF COSTS AND EXPENSES. The Guarantor agrees to pay the City on demand all Fees and Costs, incurred by or on behalf of the City in successfully enforcing by Legal Proceeding observance of the covenants, agreements and obligations contained in this Guaranty against the Guarantor, other than the Fees and Costs that the City incurs in performing any of its obligations under the Service Agreement, or other applicable Transaction Agreement where such obligations are a condition to performance by the Company of its Obligations.

SECTION 3.7. SUBORDINATION OF RIGHTS. The Guarantor agrees that any right of subrogation or contribution which it may have against the Company as a result of any payment or performance hereunder is hereby fully subordinated to the rights of the City hereunder and under the Transaction Agreements and that the Guarantor shall not recover or seek to recover any payment made by it hereunder from the Company until the Company and the Guarantor shall have fully and satisfactorily paid or performed and discharged the Obligations giving rise to a claim under this Guaranty.

SECTION 3.8. SEPARATE OBLIGATIONS; REINSTATEMENT. The obligations of the Guarantor to make any payment or to perform and discharge any other duties, agreements, covenants, undertakings or obligations hereunder shall: (1) to the extent permitted by Applicable Law, constitute separate and independent obligations of the Guarantor from its other obligations under this Guaranty; (2) give rise to separate and independent causes of action against the Guarantor; and (3) apply irrespective of any indulgence granted from time to time by the City. The Guarantor agrees that this Guaranty shall be automatically reinstated if and to the extent that for any reason any payment or performance by or on behalf of the Company is rescinded or must be otherwise restored by the City, whether as a result of any proceedings in bankruptcy, reorganization or similar proceeding, unless such rescission or restoration is pursuant to the terms of the Service Agreement, or any applicable Transaction Agreement or the Company's enforcement of such terms under Applicable Law.

SECTION 3.9. TERM. This Guaranty shall remain in full force and effect from the date of execution and delivery hereof until all of the Obligations of the Company have been fully paid and performed.

ARTICLE IV  
GENERAL COVENANTS

SECTION 4.1. MAINTENANCE OF CORPORATE EXISTENCE. (A) Consolidation, Merger, Sale or Transfer. The Guarantor covenants that during the term of this Guaranty it will maintain its corporate existence, will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it unless the successor is the Guarantor and the conditions contained in clause (2) below are satisfied; provided, however, that the Guarantor may consolidate with or merge into another entity, or permit one or more other entities to consolidate with or merge into it, or sell or otherwise transfer to another entity all or substantially all of its assets as an entirety and thereafter dissolve if: (1) the successor entity (if other than the Guarantor) (a) assumes in writing all the obligations of the Guarantor hereunder and, if required by law, is duly qualified to do business in the State of Arizona, and (b) delivers to the City an opinion of counsel to the effect that its obligations under this Guaranty are legal, valid, binding and enforceable subject to applicable bankruptcy and similar insolvency or moratorium laws; and (2) any such transaction does not result in a Material Decline in Guarantor's Credit Standing, as defined in Section 14.1 of the Service Agreement or if such transaction results in a Material Decline in Guarantor's Credit Standing, as defined in Section 14.1 of the Service Agreement, the successor Guarantor provides credit enhancement as required by Section 14.1 of the Service Agreement.

(B) Continuance of Obligations. If a consolidation, merger or sale or other transfer is made as permitted by this Section, the provisions of this Section shall continue in full force and effect and no further consolidation, merger or sale or other transfer shall be made except in compliance with the provisions of this Section. No such consolidation, merger or sale or other transfer shall have the effect of releasing the initial Guarantor from its liability hereunder unless a successor entity has assumed responsibility for this Guaranty as provided in this Section, and if such transaction results in a Material Decline in Guarantor's Credit Standing, as defined in Section 14.1 of the Service Agreement, the successor Guarantor shall provide credit enhancement as required by Section 14.1 of the Service Agreement.

SECTION 4.2. ASSIGNMENT. Without the prior written consent of the City, this Guaranty may not be assigned by the Guarantor, except pursuant to Section 4.1.

SECTION 4.3 QUALIFICATION IN ARIZONA. The Guarantor agrees that, so long as this Guaranty is in effect, if required by law, the Guarantor will be duly qualified to do business in the State of Arizona.

SECTION 4.4. CONSENT TO JURISDICTION. The Guarantor irrevocably: (1) agrees that any Legal Proceeding related to this Guaranty or to any rights or relationship between the

parties arising therefrom shall be solely and exclusively initiated and maintained in the State or federal courts located in Maricopa County, Arizona, having appropriate jurisdiction therefor; (2) consents to the jurisdiction of such courts in any such Legal Proceeding; (3) waives any objection which it may have to the laying of the jurisdiction of any such Legal Proceeding in any such court; and (4) waives its right to a trial by jury in any Legal Proceeding in any such court.

SECTION 4.5 BINDING EFFECT. This Guaranty shall inure to the benefit of the City and its permitted successors and assigns and shall be binding upon the Guarantor and its successors and assigns.

SECTION 4.6. AMENDMENTS, CHANGES AND MODIFICATIONS. This Guaranty may not be amended, changed or modified or terminated and none of its provisions may be waived, except with the prior written consent of the City and the Guarantor.

SECTION 4.7 LIABILITY. It is understood and agreed to by the City that nothing contained herein shall create any obligation of, or right to look, to any director, officer, employee or stockholder of the Guarantor (or any Affiliate of the Guarantor) for the satisfaction of any obligations hereunder, and no judgment, order or execution with respect to or in connection with this Guaranty shall be taken against any such director, officer, employee or stockholder.

SECTION 4.8. NOTICES. i. Procedure. All notices, demands or written communications given pursuant to the terms of this Guaranty shall be: (1) in writing and delivered in person; (2) transmitted by certified mail, return, receipt requested, postage prepaid or by overnight courier utilizing the services of a nationally-recognized overnight courier service with signed verification of delivery; or (3) given by facsimile transmission, if a signed original is deposited in the United States mail within two days after transmission. Notices shall be deemed given only when actually received at the address first given below with respect to each party. Either party may, by like notice, designate further or different addresses to which subsequent notices shall be sent.

ii. City Notice Address. Notices required to be given to the City shall be addressed as follows:

Water Services Department  
Phoenix City Hall, Ninth Floor  
200 West Washington Street  
Phoenix, Arizona 85003  
Attn: Water Services Director

With a copy to:

City of Phoenix Law Department  
200 West Washington Street  
Suite 1300  
Phoenix, Arizona 85003  
Attn: City Attorney

iii. Guarantor Notice Address. Notices required to be given to the Guarantor shall be addressed as follows:

[Guarantor's Address]

Attention:

With a copy to:

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed in its name and on its behalf by its duly authorized officer as of the date first above written.

[GUARANTOR],  
as Guarantor

By \_\_\_\_\_  
Printed Name:  
Title:

SEAL  
(IMPRESSED ON  
EXECUTION COPIES)

Accepted and Agreed to by:

THE CITY OF PHOENIX, ARIZONA, a municipal  
corporation, Frank A. Fairbanks, City Manager

By: \_\_\_\_\_  
Printed Name:  
Title:

TRANSACTION FORM B  
FORM OF PERFORMANCE BOND

TRANSACTION FORM B

**FORM OF PERFORMANCE BOND  
PURSUANT TO TITLE 34, CHAPTER 6, ARTICLE 1  
OF THE ARIZONA REVISED STATUTES**

(Penalty of this bond must be 100% of the construction price under the Service Agreement)

KNOW ALL MEN BY THESE PRESENTS:

That, \_\_\_\_\_ (hereinafter called the "Principal"), as Principal, and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, and duly licensed and possessing a certificate of authority to transact surety business in the State of Arizona, with its principal office in the City of \_\_\_\_\_ in the State of \_\_\_\_\_ (hereinafter called the "Surety"), as Surety, are held and firmly bound unto the City of Phoenix, Arizona, a municipal corporation organized and existing under and by virtue of the laws of the State of Arizona (hereinafter called the "Obligee"), in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the \_\_\_\_\_ day of \_\_\_\_\_, 2003, for the **Lake Pleasant Water Treatment Plant Project, Project Number WS85350004**, which contract is hereby referred to and made part hereof as fully and to the same extent as if copied at length in this agreement.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS THAT if the said Principal faithfully performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of the contract during the original term of the contract and any extension of the contract, with or without notice to the Surety, and during the life of any guaranty required under the contract, and also performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of all duly authorized modifications of the contract that may hereafter be made, notice of which modifications to the Surety being hereby waived, the above obligation is void. Otherwise it remains in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title 34, Chapter 6, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of Title 34, Chapter 6, Arizona Revised Statutes, to the extent as if it were copied at length in this agreement.

The prevailing party in a suit on this bond shall recover as a part of the judgment reasonable attorney fees that may be fixed by the court.

The performance under this bond is limited to the construction to be performed under the contract and does not include any design services, preconstruction services, finance services, maintenance services, operations services or any other related services included in the contract.

Witness our hands this \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

**CONTRACTOR AS PRINCIPAL**

Company: \_\_\_\_\_ (Corp. Seal)

Signature: \_\_\_\_\_

Name and Title: \_\_\_\_\_

**SURETY**

Company: \_\_\_\_\_ (Corp. Seal)

A.M. Best Rating: \_\_\_\_\_

Signature: \_\_\_\_\_

Name and Title: \_\_\_\_\_

(Attach Certified Copy of Power of Attorney)

By: \_\_\_\_\_

(Arizona Resident Agent)

TRANSACTION FORM C  
FORM OF PAYMENT BOND

TRANSACTION FORM C

**FORM OF PAYMENT BOND  
PURSUANT TO TITLE 34, CHAPTER 6, ARTICLE 1  
OF THE ARIZONA REVISED STATUTES**

(Penalty of this bond must be 100% of the construction price under the Service Agreement)

KNOW ALL MEN BY THESE PRESENTS:

That, \_\_\_\_\_ (hereinafter called the "Principal"), as Principal, and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, and duly licensed and possessing a certificate of authority to transact surety business in the State of Arizona, with its principal office in the City of \_\_\_\_\_ in the State of \_\_\_\_\_ (hereinafter called the "Surety"), as Surety, are held and firmly bound unto the City of Phoenix, Arizona, a municipal corporation organized and existing under and by virtue of the laws of the State of Arizona (hereinafter called the "Obligee"), in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the \_\_\_\_\_ day of \_\_\_\_\_, 2003, for the **Lake Pleasant Water Treatment Plant Project, Project Number WS85350004**, which contract is hereby referred to and made part hereof as fully and to the same extent as if copied at length in this agreement.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal promptly pays all monies due to all persons supplying labor or materials to the Principal or the Principal's subcontractors in the prosecution of the work provided for in the contract, this obligation is void. Otherwise it remains in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title 34, Chapter 6, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of Title 34, Chapter 6, Arizona Revised Statutes, to the extent as if it were copied at length in this agreement.

The prevailing party in a suit on this bond shall recover as a part of the judgment reasonable attorney fees that may be fixed by the court.

Witness our hands this \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

**CONTRACTOR AS PRINCIPAL**

Company: \_\_\_\_\_ (Corp. Seal)

Signature: \_\_\_\_\_

Name and Title: \_\_\_\_\_

**SURETY**

Company: \_\_\_\_\_ (Corp. Seal)

A.M. Best Rating: \_\_\_\_\_

Signature: \_\_\_\_\_

Name and Title: \_\_\_\_\_

(Attach Certified Copy of Power of Attorney)

By: \_\_\_\_\_

(Arizona Resident Agent)

TRANSACTION FORM D  
FORM OF LETTER OF CREDIT

TRANSACTION FORM D  
FORM OF LETTER OF CREDIT

[Date]

Water Services Department  
Phoenix City Hall, Ninth Floor  
200 West Washington Street  
Phoenix, Arizona 85003  
Attn: Water Services Director

Ladies and Gentlemen:

1. At the request and for the account of \_\_\_\_\_, a \_\_\_\_\_ [ corporation ] (the "Company"), [Name of Bank] (the "Bank") hereby establishes in your favor our direct-pay irrevocable Letter of Credit No. \_\_\_\_\_ (the "Letter of Credit"), in the amount of \$\_\_\_\_\_, [ *Insert for Operation Period Letter of Credit* - as such stated amount is adjusted annually by the CPI ] , and as reduced from time to time in accordance with the provisions hereof (the "Stated Amount"), effective immediately. Capitalized terms used but not defined herein are used as defined in the Service Agreement.

2. We hereby irrevocably authorize you to draw drafts on us at sight in accordance with the terms and conditions hereinafter set forth. The aggregate amount drawn hereunder shall not exceed the Stated Amount.

3. This Letter of Credit is effective immediately and will expire on \_\_\_\_\_, \_\_\_\_\_ unless extended in accordance with the rules of ISP98 referred to below (the "Stated Termination Date").

4. Subject to the foregoing and the further provisions of this Letter of Credit, a demand for payment may be made by you by presentation to us of your sight draft, accompanied by your written and completed certificate, signed by you, in substantially the form of Annex A hereto (such certificate being your "Drawing Certificate"), in an amount not exceeding the Stated Amount, representing amounts payable to you by the Company under and pursuant to the Service Agreement for the Design, Construction and Operation of the Lake Pleasant Water Treatment Plant Project, Project No. WS85350004, dated \_\_\_\_\_, 2003, between the Company and the City of Phoenix, Arizona (the "Service Agreement").

5. Each sight draft drawn under this Letter of Credit must bear on its face the clause "Drawn under Irrevocable Letter of Credit No. \_\_\_\_."

6. Demand for payment may be made by you under this Letter of Credit prior to the expiration hereof at any time during the Bank's business hours at its address at [Bank's Address] Attention: \_\_\_\_\_, on a Business Day (as hereinafter defined). As used herein the term "Business Day" means a day on which the Bank at our aforesaid office is opened for the purpose of conducting commercial banking business. We hereby agree that all sight drafts drawn under and in strict conformity with the terms of this Letter of Credit will be duly honored by us upon delivery of the sight drafts and certificates. If we receive any of your sight drafts and certificates, all in strict conformity to the terms of this Letter of Credit, at our aforesaid office not later than

11:00 A.M. (local time) on a Business Day on or before the Stated Termination Date hereof, we will honor the same by 3:00 P.M. (local time) on the same day in accordance with your payment instructions. If we receive any of your sight drafts and certificates, all in strict conformity to the terms of this Letter of Credit at such office after 11:00 A.M. (local time) on a Business Day, on or before the Stated Termination Date hereof, we will honor the same not later than 1:00 P.M. (local time) on the next succeeding Business Day in accordance with your payment instructions. If requested by you, payment under this Letter of Credit may be made by Federal Reserve Wire Transfer of funds to your account in a bank on the Federal Reserve Wire Facility or by deposit of same day funds into a designated account that you maintain with us.

7. The Stated Amount shall be reduced automatically by the amount of each drawing hereunder.

8. This Letter of Credit is transferable in its entirety (but not in part) to your successor which you certify to us has succeeded you as beneficiary and may be successively so transferred. Transfer of this Letter of Credit to such transferee shall be effected upon the presentation to us of this Letter of Credit accompanied by a certificate in the form of Annex B attached hereto.

9. Only you (or a transferee as provided in paragraph 8 hereof) may make a drawing under this Letter of Credit. Upon the payment to you or your account of the amount specified in a sight draft drawn hereunder, we shall be fully discharged of our obligation under this Letter of Credit with regard to that payment, and we shall not thereafter be obligated to make further payments under this Letter of Credit with regard to that payment to you.

10. This Letter of Credit, except as otherwise stated herein, is subject to the International Standby Practices 1998, International Chamber of Commerce Publication 590 1998 (the "ISP98") and shall be governed and construed in accordance with the laws of the State of Arizona and applicable U.S. federal law.

11. Communications with respect to this Letter of Credit shall be in writing and shall be addressed to us at our address at [Bank Address] Attention: \_\_\_\_\_, specifically referring to the number of this Letter of Credit.

12. This Letter of Credit sets forth in full our undertaking and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein (including, without limitation, the Service Agreement), except only the certificates, sight drafts, and the Letter referred to herein and ISP98; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement, except for ISP98, such certificate, sight drafts and Letter.

Very truly yours,  
[Name of Bank]

By: \_\_\_\_\_  
Authorized Officer

ANNEX A TO LETTER OF CREDIT

CERTIFICATE FOR DRAWING  
IN CONNECTION WITH  
PAYMENT OF AMOUNTS  
UNDER THE SERVICE AGREEMENT

Irrevocable Letter of Credit No. \_\_\_\_\_

The undersigned, a duly authorized representative of the City of Phoenix, Arizona (the "Beneficiary"), hereby certifies to [Name of Bank] (the "Bank"), with reference to Irrevocable Letter of Credit No. \_\_\_\_ (the "Letter of Credit"; terms defined therein and not otherwise defined herein being used herein as therein defined) issued by the Bank in favor of the Beneficiary, as follows:

1. The Beneficiary is a party to the Service Agreement for the Design, Construction and Operation of the Lake Pleasant Water Treatment Plant Project, Project No. WS85350004, dated \_\_\_\_\_, 2003 (the "Service Agreement") by and between the Beneficiary and \_\_\_\_\_ (the "Company") regarding the obtaining governmental approvals for, design, construction, start up, acceptance testing, operation, maintenance, repair, replacement and management of the Beneficiary's Lake Pleasant water treatment plant, the intake and raw water pumping station and its raw water transmission line.

2. The [ *Insert for Design/ Build Period Letter of Credit - Contract Date* ] [ *Insert for Operation Period Letter of Credit - Acceptance Date* ] has occurred.

3. The Beneficiary is making a demand for payment under the Letter of Credit in the amount of \$\_\_\_\_\_ and such amount does not exceed the Stated Amount.

4. The Beneficiary hereby certifies as follows (insert those which are applicable):

(a) The Company has materially breached the Service Agreement and, in accordance with the procedures and requirements of Section 14.3 therein, the Beneficiary has determined that the amount set forth above represents the estimated damages suffered by the Beneficiary, not to exceed the Stated Amount.

(b) The Beneficiary has terminated the Service Agreement pursuant to Section 12.2 of the Service Agreement in accordance with the procedures and requirements of such Section, Section 14.3 and the other applicable provisions of the Service Agreement, and the Beneficiary has determined that the amount set forth above represents the estimated damages suffered by the Beneficiary, not to exceed the Stated Amount.

(c) The Letter of Credit will expire within 30 days, and the Letter of Credit has not been extended, renewed or replaced in accordance with Section 14.3 of the Service Agreement. The amount set forth above represents the full Stated Amount.

(d) The Company or the Guarantor has filed a petition of voluntary bankruptcy under the Bankruptcy Code, the Company or the Guarantor has consented to the filing of any bankruptcy or reorganization petition against the Company or any Guarantor, or the Company or the Guarantor has filed a petition to reorganize the Company or the Guarantor pursuant to the Bankruptcy Code. The amount set forth above represents the full Stated Amount.

(e) A court of competent jurisdiction has issued an order appointing a receiver, liquidator, custodian or trustee of the Company or the Guarantor or of a major part of the Company's or the Guarantor's property, respectively, or a petition to reorganize the Company or the Guarantor pursuant to the Bankruptcy Code has been filed against the Company or the Guarantor, and such order has not been discharged or such filing has not been dismissed within 90 days after such issuance or filing. The amount set forth above represents the full Stated Amount.

5. Payment of the amount described hereby shall be made by wire transfer to the following account: [wire transfer instructions].

IN WITNESS WHEREOF, the Beneficiary has caused this certificate to be executed and delivered by its duly authorized representative as of this \_\_\_ day of \_\_\_\_\_, \_\_\_\_.

THE CITY OF PHOENIX, ARIZONA

By: \_\_\_\_\_  
Title: \_\_\_\_\_

ANNEX B TO LETTER OF CREDIT  
TRANSFER CERTIFICATE

[Bank's Address]

Attention: \_\_\_\_\_

RE: Irrevocable Letter of Credit No. \_\_\_\_\_

Ladies and Gentlemen:

For value received, the undersigned Beneficiary hereby irrevocably transfers to:

[Name of Transferee]  
[Address of Transferee]

all rights of the undersigned Beneficiary to draw under the above Letter of Credit in its entirety.

By this transfer, all rights of the undersigned Beneficiary in such Letter of Credit are transferred to the transferee and the transferee shall have the sole right as the Beneficiary thereof, including sole rights to any amendments whether increases or extensions or other amendments and whether now existing or hereafter made. All amendments are to be advised directly to the transferee without necessity of any consent of or notice to the undersigned beneficiary.

Such transferee is a permitted transferee under such Letter of Credit.

The Letter of Credit is returned herewith, and we ask you to endorse the transfer on the reverse thereof, and forward it directly to the transferee with your customary notice of transfer.

SIGNATURE AUTHENTICATED

THE CITY OF PHOENIX, ARIZONA

\_\_\_\_\_  
(Bank)

By: \_\_\_\_\_

\_\_\_\_\_  
(Authorized Officer)

Title: \_\_\_\_\_