A MEMORANDUM OF THIS AGREEMENT
SHALL BE RECORDED AND RETURNED TO:

City of Mesa
Real Estate Services
Mail Stop 9909
PO Box 1466
Mesa, Arizona 85211-1466

SUSTAINABLE WATER SERVICE AGREEMENT

This Sustainable Water Service Agreement ("**Agreement**") is entered into by and between the CITY OF MESA, Arizona, an Arizona Municipal Corporation and political subdivision of the State of Arizona ("**City**"), and Redale LLC, a Delaware limited liability company ("**Company**"). The City and Company are sometimes collectively identified as the "**Parties**" or individually as a "**Party**."

RECITALS

A. Company owns approximately three hundred ninety-six (396) acres of unimproved real property ("**Property**"), located in Maricopa County, Arizona, legally described in the attached **Exhibit A**. The Property is generally bounded by East Elliot and South Ellsworth Roads, and is located within the City's water utility service area. The Property is the subject of a Development Agreement ("**Development Agreement**") between the Parties which sets forth certain understandings relating to development of the Property, including, consistent with the Zoning as defined in the Development Agreement, the construction of various building and related improvements and facilities for data processing, hosting, and related and similar uses based in the technology sector, which development may occur in three phases with multiple buildings in each phase. Company intends to develop on the Property a multi-year, large-scale project that may include development of up to 3,000,000 square feet of Building Gross Area for data center Buildings and other facilities for the operation, maintenance and replacement, from time to time, of computer systems and associated components, such as telecommunications and storage systems, cooling systems, power supplies and systems for managing property performance (including generators), and related improvements such as equipment used for the distribution and management of electricity, internet-related equipment, data communications connections, environmental controls and security devices, structures and site features, as well as accessory uses or buildings reasonably related to data center(s). All improvements on the Property are collectively referred to herein (both as initially developed and when fully built out and completed) as the "**Project**."

B. The Project and Property are anticipated to have a demand for water utility service that exceeds 500 KGal/day, water use that exceeds 550 acre-feet of water on an annual average basis, and peak demand sufficient to require installation of an 8-inch or larger water meter or the equivalent in multiple meters. Company has therefore applied to be an MLM Customer as required by Mesa City Code Title 8, Chapter 10, Section 8-10-9.

C. The City has determined that Company will be eligible to be an MLM Customer with respect to the Project and Property, subject to Company's acceptance and fulfillment of the acknowledgements, obligations, requirements, terms, conditions and other provisions of this Agreement.

D. The Parties are entering this Agreement for the purposes of establishing Company's MLM Customer status and associated Water Allowance, the terms pursuant to which Company will provide for the transfer of Long-Term Storage Credits to the City in order to maintain the Water Allowance, and the corresponding limitations on water use and demand as to the Project and Property, as well as to establish the designation of exemption under any declared moratorium as provided in A.R.S. 9-463.06 as to such transferred Long-Term Storage Credits.

NOW, THEREFORE, in consideration of the foregoing, and the promises and understandings set forth herein, the Parties hereto state, confirm and agree as follows:

1. <u>Definitions</u>. Capitalized terms not defined below or otherwise defined in this Agreement shall have the meanings assigned to them under the Development Agreement.

1.1 **"Account Balance"** shall have the meaning described in Section 2.2.1.

1.2 **"AFY"** means acre-feet of water per year.

1.3 **"Arizona Department of Water Resources" or "ADWR"** means the Arizona Department of Water Resources, or any successor agency.

1.4 "**Applicable Laws**" means the federal, state, county and City statutes, codes (including the City Charter), ordinances, rules, regulations, permit requirements, judgments, orders, decrees, and other official written requirements and policies, any requirements or rules of common law and any judicial or administrative interpretations thereof, which affect the subject matter of this Agreement or apply to the development of the Property, all as they may now or hereafter be enacted or amended, including but not limited to the Groundwater Code and the Management Plans adopted thereunder, Title 45, Chapter 3.1 of the Arizona Revised Statutes, Title 8 Chapter 10 of the City Code, and other ordinances, rules, regulations and permit requirements of the City, Maricopa County, the ADWR, and the Arizona Department of Environmental Quality.

1.5 **"City"** means the City of Mesa, an Arizona municipal corporation.

1.6 **"City Indemnified Person"** or "**City Indemnified Persons**" means City and its City Council Members, Officers, Officials, agents, volunteers and employees.

1.7 **"City System"** means the City of Mesa's potable water treatment and distribution system.

1.8 **"Company"** means Redale, LLC, a Delaware Corporation, its successors and assigns.

1.9 **"Data Center Building"** means a building of approximately four hundred fifty thousand (450,000) square feet constructed and principally and primarily used to house a group of networked server computers in one physical location for the purposes of storing, processing, managing, and disseminating data and applications, including integrated office space and operational infrastructure.

1.10 **"Effective Date"** means the date on which this Agreement has been signed by duly authorized representatives of City and Company.

1.11 **"Groundwater Code"** means Title 45, Chapter 2 of the Arizona Revised Statutes, as now or hereafter enacted or amended.

1.12 **"KGal"** means one thousand gallons.

1.13 "**Long-Term Storage Credits**" means stored water that meets the requirements of A.R.S. § 45-852.01 and is credited to a long-term storage account, acquired by Company by arrangement with a Seller, subsequently to be assigned to City pursuant to A.R.S. § 45-854.01 and this Agreement, and must further consist of water stored in a managed underground storage facility meeting the requirements of A.R.S. § 45-851.01 located in the East Salt River Sub-basin in the Phoenix Active Management Area.

1.14 **"Maximum Flow Rates"** means the limitations on peak demand for water flow to the Property and the Project (i.e., all uses on the Property) through all water meters connected to the City System, as set forth in Section 3.

1.15 **"Mesa City Code"** means the City Code of the City of Mesa as now or hereafter enacted or amended.

1.16 **"Multiple or Large Meter Customer" or "MLM Customer"** means water utility Customers that meet or exceed any of the following criteria: (i) demand equal to or exceeding 500 KGal per day; (ii) demand equal to or exceeding 550 acre-feet of water on an annual average basis, or (iii) peak demand sufficient to require installation of an 8-inch or larger water meter or its equivalent in multiple meters.

1.17 **"Person"** means and includes natural persons, corporations (including municipal), limited partnerships, general partnerships, joint stock companies, joint venture associations, limited liability companies, limited liability partnerships, trusts, land trusts, business trusts or other organizations, whether or not legal entities.

1.18 **"Term"** shall have the meaning described in Section 14.

1.19 **"Terms and Conditions"** means the City's Terms and Conditions for the Sale of Utilities as now or hereafter enacted or amended.

1.20 **"Third Party"** means any Person other than a Party.

1.21 "**Utility Customer**" means Company, its successors and assigns, sublessees, contractors, or any other person, corporation, company, partnership, firm, association, or society with a City utility account with a point of delivery which is located anywhere on the land constituting the whole of the Property as it is legally described on **Exhibit A** as of the Effective Date, regardless of any subsequent lot split, land subdivision, lease, partition, or other sale, division, conveyance, or any other change in the use of the Property.

1.22 **"Water Allowance"** means the amount of water in AFY that may be used for the Project and the Property (i.e. all uses on the property) calculated as further described and set forth in Section 2.2 of this Agreement.

1.23 "**Water Shortage Management Plan"** or **"WSMP**" means the City plan which authorizes water restrictions, reductions, prohibitions, conservation and other measures based on limitations in the availability of water resources or system capacity due to conditions such as, but not limited to, reductions in the supply of Central Arizona Project water, Salt/Verde system water, limitations on the availability of suitable groundwater, and loss or closure of transmission capacity by either the Salt River Project or Central Arizona Water Conservation District, to be implemented and imposed broadly or on similarly situated customer classes, as now or hereafter enacted or amended.

2. **Water Allowance.** Company acknowledges and agrees that it must limit water use at the Property for the Project and all other uses thereon (through all meters) to the Water Allowance. The Parties agree that the Water Allowance is subject to the following requirements:

2.1 Assignment of Long-Term Storage Credits. The establishment of the Water Allowance (and Company's status as an MLM Customer) is subject to and requires the legal assignment of Long-Term Storage Credits by Company to City. Company shall initially assign (or have assigned on its behalf) to City a total of five thousand five hundred (5,500) acre-feet of Long-Term Storage Credits as authorized by A.R.S. § 45-854.01 (the "**Initial Transfer**") and shall thereafter arrange to assign to City additional Long Term Storage Credits in accordance with the requirements of Section 2.2.

2.1.1 Long-Term Storage Credits. All water assigned in the form of Long-Term Storage Credits to City must: (i) have been legally permissible for use both at the location of the Property and for the Project prior to storage as allowed by A.R.S. § 45-832.01; (ii) not have been included by any person in an application for a designation or certificate of assured water supply

submitted pursuant to A.R.S. § 45-576; (iii) otherwise be unencumbered and freely assignable in accordance with the Groundwater Code; and (iv) be included by ADWR in the City's Certificate of Assured Water Supply as allowed under A.R.S. § 45-855.01. Company represents and warrants that it has, or has an irrevocable option to provide to City, not less than the number of Long-Term Storage Credits needed to support operation of the Project for at least twenty years. City represents and warrants that it is eligible to receive the Long-Term Storage Credits to be provided on behalf of Company.

2.1.2 Costs and Assignment. Company shall be responsible for all costs of acquisition of the Long-Term Storage Credits, as well as payment of the transfer fee established by ADWR, and shall arrange for the Long-Term Storage Credits to be assigned to City at no cost to City. For each set of Long Term Storage Credits to be assigned to City under this Agreement, Company, through the third-party seller of the Long Term Storage Credits (the "**Storing Party**"), shall provide an authorized signature for the transfer, as required by A.R.S. § 45-854.01(B), on each completed original ADWR Long-Term Storage Credit Transfer Form (the "**Form**"), attached in its current form as **Exhibit B**, and City will thereafter countersign the Form within ten (10) days of receipt and return it to the Company, which will coordinate with the Storing Party to file the Form with ADWR. The Parties shall cooperate with ADWR to facilitate completion of the transfer in accordance with A.R.S. § 45-854.01. The Initial Transfer of Long-Term Storage Credits by Company to City must be completed within one hundred eighty (180) days of the Effective Date.

2.1.3 Right of First Refusal. City acknowledges that Company will be acquiring the Long-Term Storage Credits from a Storing Party; and the Storing Party requires, as a condition of assignment, a right of first refusal in the form attached hereto as **Exhibit C** (the "**ROFR**") to reacquire the Long-Term Storage Credits in the future if City were to seek to resell them. City therefore agrees that the assignment of the Long-Term Storage Credits to City under this Agreement shall be subject to the ROFR. City shall provide the executed ROFR to Company for delivery to the Storing Party prior to or in connection with the executed Form for the Initial Transfer to be delivered under Section 2.1.2. If requested by the Storing Party, City shall provide an additional executed ROFR with the Form for each subsequent assignment of Long-Term Storage Credits. Any delay in the assignment of Long-Term Storage Credits arising from City's delay in executing and returning the Form or the ROFR shall not be attributed to Company as an Event of Default.

2.2 Water Allowance and Calculation. The Water Allowance for each phase of the Project (each a "**Phase**") shall be as follows:

Project Phase	Project Improvements	Water Allowance
Project Phase 1	Construction and operation of up to two Data Center Buildings.	550 AFY
Project Phase 2	Construction and operation of a third and up to a fourth Data Center Building.	1100 AFY
Project Phase 3*	Construction and operation of a fifth and up to a sixth Data Center Building.	1400 AFY

* The construction and operation of Phase 3 and the corresponding increase in the Water Allowance is contingent on completion and operation of the Project Improvements for Phase 2 within ten (10) years of the Effective Date. Additionally, operations of the Phase 3 Project Improvements must not commence earlier than: i) four (4) years and six (6) months from the Effective Date, or, ii) the date the next Signal Butte Water Treatment Plant expansion is completed and operational, whichever occurs first. If the Phase 2 Project Improvements are not completed and operational within ten (10) years of the Effective Date, then Phase 3 of the Project will require an amendment to this Agreement. Any such amendment which includes Phase 3 of the Project and the corresponding increase in the Water Allowance shall be at the City's sole and absolute discretion.

Company shall comply with all applicable City permitting requirements for construction and shall provide at least six (6) months advance notice prior to the anticipated commencement of operation (defined as the functional use of data center equipment or climate control systems, whichever occurs earlier) of the Project Improvements of each additional Phase if such Phases proceed. Prior to the commencement of operation of the Project Improvements of each subsequent Project Phase, Company shall ensure that the requisite number of additional Long-Term Storage Credits are transferred to City as required pursuant to Section 2.2.1 to satisfy and maintain the minimum Account Balance based on the associated increased Water Allowance.

2.2.1 Water Allowance Account Balance and Reconciliation. Company acknowledges and agrees that the Water Allowance and corresponding amount of Long-Term Storage Credits to be assigned on behalf of Company to City pursuant to Section 2.1 are based on an estimate of the water use for the Project and the Property. Not less than every third year, City shall provide Company with a written statement indicating the actual usage of water and the resulting extinguishment of Long-Term Storage Credits since the last statement, and the amount of Long-Term Storage Credits transferred that remain (the "**Account Balance**"). In all but the final two years of the Term of this Agreement, Company shall ensure that the number of Long-Term Storage Credits in the Account Balance is not less than **three times** the annual Water Allowance then in effect. In the event Company fails to timely make such a transfer, the City will reconcile the Water Allowance by dividing the remaining amount of Long-Term Storage Credits by the

number of years remaining in the Term (the "**Reconciliation Allowance**"). In the event the calculated Reconciliation Allowance is less than the Water Allowance as set forth in Section 2.2, the Water Allowance shall be reduced to the amount calculated as the Reconciliation Allowance under this Section, which may be recalculated in each remaining year of the Term. Company must thereafter reduce its water demands at the Property for the Project and all other uses thereon to the Reconciliation Allowance.

2.2.2 Notice Regarding MLM Customer Status. If at any time during the Term all the Long-Term Storage Credits have been used, City will provide Notice to Company providing a one hundred twenty (120) day opportunity to cure by assigning additional Long-Term Storage Credits to City. If sufficient Long-Term Storage Credits are not assigned to City during this period, Company must reduce its water demands at the Property for the Project and all other uses thereon to the flow and use limitations for customers that do not have approved MLM Customer status (less 500 KGal/day and 550 AFY) except that subject to compliance with these limits Company may maintain the existing metering on the Property. Company acknowledges and agrees that in the event of an exceedance of the flow limitation or usage reasonably indicative of annual consumption of 550 AFY or more following the cure period under this Section, City shall be entitled to take all measures available under Section 13.4.4 to ensure Company's compliance with the limitations on non MLM customers unless additional Long-Term Storage Credits have been assigned to City in accordance with this Section. Any such assignment is subject to Section 2.2.1.

2.2.3 Voluntary Assignment of Additional Supplies. Company, after providing Notice to City, can assign additional Long-Term Storage Credits to City for the purposes of: (i) maintaining the Water Allowance, or (ii) increasing the calculated Water Allowance. All assignments under this Section must otherwise comply with the provisions of Sections 2.1.1 and 2.1.2. Additionally, any proposed assignment that would increase the Water Allowance beyond the amounts defined for each Project Phase as set forth in Section 2.2 shall require an amendment to this Agreement and shall be at the sole and absolute discretion of the Mesa City Council.

2.2.4 Adjustment Based on Reduced Consumption. In the event actual water use for the Project and the Property is consistently (at least five (5) years) less than the Water Allowance, whether as a result of improved efficiency, advancements in cooling technology, or other measures implemented by Company, either Party may propose, by providing written notice to the other, a reduction in the Water Allowance to more accurately reflect peak annual historic consumption. In light of the Parties' mutual interest in reducing water use, Company and City will consider in good faith and may approve a reduced Water Allowance. The approval of a reduced Water Allowance must be in writing signed by authorized representatives of each

Party and shall serve to amend the Water Allowance otherwise stated in this Agreement.

2.2.5 Temporary Construction Allowance. In any year in which Company is engaged in active Project construction requiring the use of water to meet applicable dust control or other construction requirements, upon Company's written notice to City a temporary allowance of 60 AFY shall be added to the Water Allowance otherwise applicable at that time (the "**Temporary Construction Allowance**"). The Temporary Construction Allowance shall be available for no more than two years for each Project Phase and shall relate only to the use of water for construction-related purposes and not to the use of water for Project operations. Any Temporary Construction Allowance water used in compliance with this Section will not be accounted for through the extinguishment of Long-Term Storage Credits in accordance with Section 2.5. All Temporary Construction Allowance water shall be metered through hydrant meters specifically provided by City to Company for such purposes, and billed at the applicable rates, fees and charges for Hydrant Service.

2.3 Failure to Assign Credits. Notwithstanding any other provision of this Agreement, Company acknowledges and agrees that Company shall not be an approved MLM Customer and shall not be entitled to connect to the City System as authorized for MLM Customers unless Company timely provides for the Initial Transfer of Long-Term Storage Credits to City within one hundred eighty (180) days of the Effective Date consistent with Section 2.1.

2.4 Recovery Costs. City will be responsible for the costs associated with recovery of the Long-Term Storage Credits once assigned, including but not limited to payment of applicable recovery fees levied by ADWR under A.R.S. § 45-874.01.

2.5 Usage and Extinguishment of Long-Term Storage Credits. The Water Allowance (and the Maximum Flow Rates as set forth in Section 3) will be effective for water usage at the Property for the Project and all other uses thereon upon the completion of the first metered connection to the City System. The Long-Term Storage Credits shall be separately tracked and accounted for by City and debited from City's long term storage account under A.R.S. § 45-852.01 on a gallon for gallon basis based on water used by Company (and any additional Utility Customers) as measured through the metering, and such calculations shall be included in the Account Balance under Section 2.2.1.

3. Maximum Flow Rates. Company acknowledges and agrees that it must limit its demands for water flow at the Property for the Project and all other uses thereon (through all meters) to the following maximum flow rates: (i) 4,500 gallons per minute (ii) 265,000 gallons per hour, (iii) 4050 Kgal per day (iv) 24 acre-feet in any forty-eight (48) hour period (collectively the "**Maximum Flow Rates**"). The meter size and quantities for the Project and the Property and all other uses thereon shall be as set forth in the Approved Plans.

Company acknowledges and agrees that the subsequent installation of additional metering equipment (which shall be subject to all applicable impact and other fees and charges) is at the sole and absolute discretion of City, and subject to all provisions of this Agreement. Company further acknowledges and agrees that changes or increases to the meter count or meter sizes at the Property for the Project and all other uses thereon will not, and shall not, affect or modify the Maximum Flow Rates as set forth in this Section.

4. **Additional Utility Customers.** If after the Effective Date there is any lot split, land subdivision, lease, or other sale, division, conveyance, or any other change in the ownership or use of the Property that results in the installation of additional meters (subject to Section 3 of this Agreement) or otherwise creates additional Utility Customers with a point of delivery located anywhere on the land constituting the whole of the Property as it exists on the Effective Date (i.e., the entirety of the land legally described on **Exhibit A**), all such meters and Utility Customers shall individually and collectively remain subject to the Water Allowance, Maximum Flow Rates, and other limitations on and requirements of Company set forth in this Agreement, and all such meters and Utility Customer accounts may be consolidated by City for the purposes of determining compliance with this Agreement and the Applicable Laws. In addition, all resulting Utility Customers shall remain jointly and severally liable for compliance hereunder and subject to the remedies set forth herein absent an amendment to this Agreement providing otherwise, provided however that where there is clear and convincing factual evidence that any violation of this Agreement is attributable to a single Utility Customer, the Parties agree that such Utility Customer shall be responsible for such violation. Consistent with Section 2.3 of the Development Agreement, in the event Company sells or transfers all or a portion of the Release Parcel as defined in the Development Agreement, this Agreement shall automatically terminate and be of no further force or effect as it pertains to the Release Parcel, and the Parties shall have no further obligations or liabilities hereunder with respect thereto, except to the extent this Agreement expressly states that an obligation herein shall survive termination. This Agreement, however, shall remain in full force and effect as to the balance of the Property, excluding only the Release Parcel.

5. **Water Quality.** The City shall not have any obligation to provide water quality (chemical, physical, or biological characteristics) beyond the requirements of the Safe Drinking Water Act. Any specialized water treatment desired or needed to change the quality (chemical, physical or biological characteristics) of water provided by the City System (including but not limited to on-site storage as set forth in Section 6 below) is solely the responsibility of Company, at Company's sole cost and expense.

6. **On-site Water Storage.** Company shall take all measures to comply with the Maximum Flow Rates in Section 3, prevent excessive pressure fluctuations and otherwise mitigate impacts on the City System and avoid disrupting utility service to other customers, including but not limited to designing, engineering, constructing, operating, and maintaining sufficient water storage on-site, all at its sole cost and expense. Notwithstanding the preceding, Company acknowledges and agrees that it shall not drill any well on the Property. However, in order to promote the environmentally friendly use of water, and subject to compliance with the Applicable Laws and the other provisions of

this Agreement, Company may collect rainwater on the Property and reuse domestic water for the Project for irrigation, landscaping and other uses which reduce water demand to the extent feasible.

7. **Federal, State and Local Regulation of Water.** Company acknowledges and agrees that the Applicable Laws may limit or restrict both the City's ability to provide water to the Property and Company's ability to use water on the Property for the Project and all other uses thereon. Pursuant to A.R.S. § 45-571.02, the City is not required to comply with any municipal conservation requirement respecting an Individual User provided the Individual User is given written notice of the requirement from the Director of ADWR. Company agrees and acknowledges that to the extent such requirements are adopted and made applicable by ADWR, Company shall be responsible for compliance. Accordingly, the City will provide notice to ADWR, with the assistance of Company, that the Property qualifies as an Individual User pursuant to A.R.S. §§ 45-565, 45-566, 45-567, and 45-568. Thereafter, the Property will be subject to the applicable Individual User requirements under the Management Plans as adopted and administered directly by ADWR under the Groundwater Code. Company acknowledges and agrees that notwithstanding the preceding, the applicable Individual User provisions of the Management Plans can be enforced by the City pursuant to this Agreement in the event not enforced by ADWR. In addition to measures under the WSMP, as provided in Section 8 below, Company agrees to comply with any other conservation or other requirements adopted by City (or otherwise applicable) as required by the Applicable Laws.

8. **Water Shortage Management Plan.** Company acknowledges and agrees that notwithstanding any other provision of this Agreement, resource or capacity limitations under shortage conditions affecting residents and businesses in the City will affect all customers (including but not limited to industrial customers like Company), and accordingly water usage at the Property will be subject to any water reduction and other conservation measures adopted by City under the Water Shortage Management Plan; provided, however, so long as Company is in compliance with this Agreement (including, but not limited to, compliance with the Water Allowance and Maximum Flow Rates) City shall not enforce against Company any reduction in water availability to the Project and Property pursuant to a declared Stage 4 Shortage under the Water Shortage Management Plan (or any reduction of twenty percent (20%) or more regardless of how characterized) that materially, adversely and actually impacts the commercial operations of the Project and Property unless and until City adopts a moratorium pursuant to A.R.S. § 9-463.06. Water reductions or any other measures taken by City under the Water Shortage Management Plan must be implemented with reasonable uniformity as to similarly situated customer classes and in a manner that is not unduly discriminatory to Company. City agrees to provide six (6) months' Notice to Company prior to the adoption under the Water Shortage Management Plan of a Stage 3 Shortage, and one (1) year's Notice to Company prior to adoption of a Stage 4 Shortage, unless there is an emergency declaration by the Mayor of Mesa or Governor of Arizona that relates to water shortages, in which case as much notice as practicable under the circumstances will be provided.

9. **No Conveyance.** Nothing in this Agreement shall constitute a transfer or conveyance of ownership of any water rights by City to Company. Company acknowledges that all Long-Term Storage Credits shall belong to City once assigned, to be tracked and accounted for in accordance with Section 2.5 hereof, and City shall not be obligated to return or refund such transferred Long Term-Storage Credits.

10. **MLM Customer Status and City Utility Service.** Company, upon completing the Initial Transfer of Long-Term Storage Credits pursuant to this Agreement, is approved as an MLM Customer, subject thereafter to its continued compliance with this Agreement and the City's Terms and Conditions, the Mesa City Code, Water Shortage Management Plan, all other Applicable Laws, and the timely payment of applicable rates, fees and charges. Company agrees and acknowledges that City utility service is governed by, and subject to the terms and limitations of, the Terms and Conditions, the Mesa City Code, the Water Shortage Management Plan, and all other Applicable Laws. City utility service will be provided through the regular City System to the Property, in the same manner, and under the same terms and conditions City provides service to other similarly situated customers, without special rights or remedies. Service will be limited to the Water Allowance and Maximum Flow Rates as set forth in this Agreement, provided however that such limitations will not be applicable to water usage during a fire event. Company acknowledges and agrees that it shall not be entitled to any reduction or other adjustment to the otherwise applicable utility rates, fees and charges based on its assignment of Long-Term Storage Credits pursuant to this Agreement, but shall not be charged greater rates, fees and charges than other similarly situated customers as long as it maintains its Account Balance as set forth herein. Notwithstanding any other provision of this Agreement, the annual availability of the Water Allowance is contingent on compliance with the Applicable Laws and the physical and legal availability of water that can be recovered based on the extinguishment of assigned Long-Term Storage Credits.

11. **Moratorium.** Subject to Company's compliance with this Agreement, for any moratorium adopted pursuant to A.R.S. § 9-463.06, Company, during the Term, is entitled to a waiver under A.R.S. § 9-463.06(D) to develop the Property and use any Long-Term Storage Credits (as transferred by Company to City pursuant to this Agreement) that remain unused prior to such moratorium's adoption, which unused Long-Term Storage Credits shall be considered and deemed to be the water resources committed to the development of the Project and the Property under A.R.S. § 9-463.06.

12. **Semi-Annual Meetings, Designated Representatives**. In spring and fall of each year, designated representatives of Company and City shall meet to discuss the Project and associated utility service for the next six months, with topics shall include (but not be limited to): i.) billing and utility rates, ii.) construction progress on any pending Phases and possible commencement of additional Phases, iii.) ongoing compliance with the Maximum Flow Rates and Water Allowance, iv.) planned SRP or CAP canal dry-up events v.) anticipated treatment plant and other City System maintenance events, and other matters related to Company's status as an MLM Customer. The Parties may meet more frequently upon request. Within ten (10) business days of the Effective Date, each Party will provide Notice of the name and contact information for their designated representative for the

purposes of this Section and shall update such Notice in the event of a change. Either Party may provide Notice to the designated representative of the other Party of the desire to meet, and such meeting shall occur within ten (10) business days after Notice is received unless the designated representatives agree on an alternative date. In the event of unanticipated service interruptions or other significant events affecting MLM Customer service to the Property, the Parties designated representatives shall maintain communication and share information as may be necessary to understand, monitor and respond to such events.

13. Events of Default; Remedies.

13.1 Events of Default by Company. The occurrence of one or more of the following, subject to notice and cure provisions of Section 13.3 if applicable, shall constitute an event of default ("**Event of Default**") by Company (and any additional Utility Customers as provided in Section 4) under this Agreement (and may also constitute a separate violation of applicable provisions of the Mesa City Code):

(a) Intentionally Omitted.

(b) Company exceeds the Water Allowance by more than five percent (5%) but less than (or equal to) ten percent (10%) in any year, and the excess is not eliminated by commensurate water use reductions in the following year.

(c) Company exceeds the Water Allowance by more than ten percent (10%) but less than twenty percent (20%) in any year.

(d) Company exceeds the Water Allowance by amounts of twenty percent (20%) or more in any year.

(e) Company's water demand, on a per day basis, exceeds the Maximum Flow Rates by amounts of less than five percent (5%).

(f) Company's water demand, on a per day basis, exceeds the Maximum Flow Rates by amounts of five percent (5%) or more.

(g) Company's material failure to comply with Section 6, including but not limited to the failure to have and maintain adequate on-site storage.

(h) Company's material failure to comply with the Individual User requirements or any measures adopted by City under the WSMP under Sections 7 and 8.

(i) Company fails to timely transfer additional Long-Term Storage Credits under Section 2.2.2 so long as such failure is not due to City's nonperformance regarding its obligation to deliver executed Forms and the ROFR.

(j) Any other failure by Company to observe or perform a material obligation under this Agreement by Company.

13.2 Events of Default by City. The occurrence of a failure by City to observe or perform any material covenant or obligation required of it under this Agreement shall constitute an Event of Default by City under this Agreement.

13.3 Grace Periods; Notice and Cure. Upon the occurrence of an Event of Default by any Party, such Party will, upon written Notice from the other Party, proceed immediately to cure or remedy such Default and, in any event, such Default must be cured within thirty (30) days after receipt of such Notice; or, if such Default is of a nature that with reasonable diligence is not capable of being cured within thirty (30) days, the cure must be commenced within such period and diligently pursued to completion, but not to exceed ninety (90) days in total if capable of being cured within that time. Notwithstanding the preceding, Company acknowledges and agrees that any Event of Default under Sections 13.1(c), 13.1(d), 13.1(e), or 13.1(f) (or any other breach regarding the Water Allowance and Maximum Flow Rates except under Section 13.1(b)) shall constitute an Event of Default on occurrence and is not subject to any grace period or requirement of notice or opportunity to cure under this Section. However, for any Event of Default under Section 13.1(b) Company shall have the following year to cure and eliminate exceedances of between five (5) and ten (10) percent of the Water Allowance by making water use reductions commensurate with the exceedance and achieving a two-year average that is under the Water Allowance.

13.4 Remedies of City for Company Default. For any Event of Default by Company, in addition to all remedies and penalties available to the City under the City Code (including but not limited to Section 8-10-10 of the Mesa City Code) and the Terms and Conditions, the following additional remedies shall be available to City:

13.4.1 Intentionally Omitted.

13.4.2 For any Event of Default under Section 13.1(b), 13.1(c) or 13.1(d):

(a) Company acknowledges and agrees that actual damages for such failure to comply with the requirements and limitations of this Agreement would be difficult to determine, and therefore liquidated damages will be payable in the following amounts for each Event of Default:

1) 13.1(b) fifty thousand dollars ($50,000.00).
2) 13.1(c) one hundred thousand dollars ($100,000.00).
3) 13.1(d) two hundred thousand dollars ($200,000.00).

(b) The amounts set forth in Section 13.4.2 (a) shall be adjusted every year during the Term based on any increases in the Consumer Price

Index (as indexed for All Urban Consumers in the Phoenix Arizona, metropolitan area, with 2021 as the Base Year).

(c) Furthermore, if another Event of Default under Sections 13.1(b), 13.1(c), or 13.1(d) occurs within five (5) years, the above amounts shall be doubled. On a third or succeeding Event of Default within (5) five years, the amounts shall be tripled.

13.4.3 For any Event of Default under Section 13.1(e) and 13.1(f):

(a) Company acknowledges and agrees that actual damages for such failure to comply with the requirements and limitations of this Agreement would be difficult to determine, and therefore liquidated damages will be payable in the following amounts for each Event of Default:

1) 13.1(e) ten thousand dollars ($10,000.00).
2) 13.1(f) one hundred thousand dollars ($100,000.00).

(b) The amounts set forth in Section 13.4.3 (a) shall be adjusted every year during the Term based on any increases in the Consumer Price Index (as indexed for All Urban Consumers in the Phoenix Arizona, metropolitan area, with 2021 as the Base Year).

13.4.4 For any Event of Default under Sections 13.1(d), 13.1(f) 13.1(g) or 13.1(h):

(a) Subject to the (b) below, Company acknowledges and agrees that in addition to the required payments by Company of liquidated damages described in Sections 13.4.2 and 13.4.3, City may also, subject to the provisions of Section 13.4.4(b), take or require Company to take the following measures to limit water use and demand at the Project and Property (i.e., all uses on the Property) if necessary in order for Company to return to compliance with this Agreement:

1) Xeriscape all landscaping on the Property.
2) Assignment of Additional Long-Term Storage Credits and corresponding adjustment of the Water Allowance.
3) Reductions in meter sizing and meter count.
4) Implementation of valving, flow control, or other devices or other measures which limit flow.
5) Mandatory Company installation of additional on-site storage and pumping capacity.
6) Recalculation of the Water Allowance.
7) Further assurance from Company regarding its continued performance related to compliance with the Water

Allowance or Maximum Flow Rates, including but not limited to, operating plans, capital improvements project plans, and the provision of additional monetary deposits or other credit assurance to City.

(b) Prior to taking any measures under Section 13.4.4(a), City shall initiate good faith negotiations with Company, by holding an initial meeting between local Company staff and staff from the City's Water Resources Department. If after such a meeting between staff, held in good faith and aimed at reaching an amicable solution as to additional measures to be taken by City or Company to ensure compliance by Company with this Agreement and the Water Allowance and Maximum Flow Rate, the issue cannot be resolved, the dispute shall be escalated to the City Manager or Deputy City Manager and a corporate representative of Company with decision making authority. The representatives will again meet in good faith to attempt to resolve the measures to be taken. In each case, the meetings will occur within fifteen (15) days of a written request by either Party. Alternatively, Company may initiate mediation by providing notice thereof to City, whereupon the Parties will within 15 days select a mutually acceptable third-party mediator who is acquainted with dispute resolution methods and utility related issues. The Parties will participate in good faith in the mediation and in the mediation process. The mediation shall be nonbinding, and the costs of mediation, including any mediator's fees, and costs for the use of the facilities during the meetings, shall be borne equally by the Parties. Each Party's other costs and expenses under this Section will also be borne by the Party incurring them. If after such a meeting, the nature and extent of additional measures to be taken under Section 14.4.4(a) remain unresolved, the City may nonetheless proceed to take all actions authorized in this Section.

(c) Company further acknowledges and agrees that City may take or require Company to take all actions authorized in this Section, subject to Section 13.3 (if applicable), without first seeking equitable relief from a court (whether characterized as mandamus, injunctive relief, specific performance, special action or otherwise), provided City complies with Section 13.4.4(b). City may, at its option, pursue the remedies set forth above in a court of competent jurisdiction as provided in Section 17.5.

13.4.5 For an Event of Default under Section 13.1(i), which is not timely cured, Company's approval as an MLM Customer shall be revoked.

13.4.6 For any Event of Default under Section 13.1(j), or any other Event of Default, subject to notice and cure provisions of Section 13.3 if applicable,

City may pursue its actual damages as well as any other remedies available at law or in equity including but not limited to (i) termination of this Agreement, at City's option; and (ii) revocation by City of Company's approval as an MLM Customer but excluding consequential and exemplary damages. The damage limitations in this Section shall not apply to Company's obligations to Indemnify City under this Agreement.

13.4.7 Intentionally Omitted.

13.4.8 Notwithstanding any other provision of this Agreement, Company agrees and acknowledges that for any Event of Default which results in revocation by City of Company's approval as an MLM Customer (with concurrent termination of the Water Allowance and the associated use of water based on assigned Long-Term Storage Credits on the Property), City may reduce the meter size and count at the Property and take any other actions consistent with Company's loss of its status as an MLM Customer, including those remedies identified in Section 13.4.4(a). In the event Company's approval as an MLM Customer is revoked, any Long-Term Storage Credits then remaining in the Account Balance and unapplied shall be forfeited to the City but shall remain subject to the ROFR.

13.5 Remedies of Company and Limitation of City Liability. For any Events of Default which City has failed to cure after receiving Notice thereof from Company in accordance with Section 13.3, Company's exclusive remedy for a Default by City shall be equitable relief (whether characterized as mandamus, injunctive relief, specific performance, special action or otherwise) declaring and requiring City to recognize Company's status as an MLM Customer and that the Water Allowance is committed to the Project and the Property under A.R.S. § 9-463.06 as provided in Section 11 or to otherwise comply with its obligations under this Agreement; provided however, such relief will not require the City to provide a specific level of service at any given time, to acquire water supplies, to drill any well, to construct, expand, or modify a water or wastewater treatment plant, or to construct, expand, or modify any other part of the water or wastewater utility system, including but not limited to, any transmission or distribution lines, pipes, valves, lift stations, pumps or other equipment. In no event shall City be liable to Company for any damages whatsoever as a result of an Event of Default by City, whether such damages are actual, direct, indirect, consequential, punitive or of any other nature.

14. **Term**. This Agreement shall begin on the Effective Date and shall terminate twenty-five (25) years from the Effective Date provided in all cases the Agreement is not terminated sooner pursuant to any early termination provision of this Agreement.

14.1 Early Termination. In addition to any other grounds for early termination stated herein, the Term may be earlier terminated by written notice from either Party if: (i) Company fails to commence construction of the Project by initiating physical site improvements with applicable permits within three (3) years of the Effective Date; (ii)

Company fails to obtain a certificate of occupancy within five (5) years of the Effective Date, or (iii) Company's City utility accounts (or, as applicable, additional Utility Accounts) for the Property are terminated for a period that extends longer than three consecutive months, or if, at any time, (iv) the Parties mutually agree to early termination. If an event permitting early termination under Sections 14.1(i), (ii) or (iii) is caused by circumstances beyond Company's reasonable control and Company has exercised due diligence with respect to such items, grounds for early termination by City under those provisions shall be extended for one additional year after the circumstances prohibiting Company from proceeding are eliminated.

14.2 Five Year Term Extension. At least one year prior to the end of the Term, Company shall provide Notice to City of its intent to maintain MLM Customer status for an additional five (5) years. City shall provide notice to Company of the Account Balance and remaining Long-Term Storage Credits (if any), and thereafter Company shall assign additional Long-Term Storage Credits to City prior to the expiration of the pending Term in accordance with Sections 2.1.1 and 2.1.2 as necessary to maintain the Account Balance and Water Allowance (or alternatively request an adjusted Water Allowance based on a Reconciliation as described in Section 2.2.1). Provided the Account Balance is in good standing as set forth herein, then this Agreement and the Term shall extend for an additional five (5) years.

15. Restriction on Transfers. Company acknowledges and agrees that the transfer of this Agreement by Company is and shall be subject to the same restrictions on transfer set forth in Section 12.7 of the Development Agreement. In addition, upon a transfer of this Agreement to any Person who is not an Affiliate of Company as permitted by Section 12.7(b) of the Development Agreement, Company, through the Storing Party, shall cause to be conveyed to the City all remaining Long-Term Storage Credits acquired by the Company for this Project and not already conveyed to the City.

16. Indemnity of City by Company. Company will pay, defend, indemnify and hold harmless (collectively, "Indemnify") City and its City Council members, officers, officials, agents, volunteers and employees (each, a "City Indemnified Person," and, collectively, "City Indemnified Persons") for, from and against any and all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including attorneys' fees, experts' fees and court costs associated) which may be imposed upon, incurred by or asserted against the City Indemnified Persons by Third Parties ("Claims," or, individually, a "Claim") to the extent such Claims arise from or relate in any way, in whole or in part, to any Default or Event of Default by Company, or its employees, contractors, subcontractors, agents or representatives. Subject to the following paragraph, such obligation to Indemnify shall extend to and encompass all costs incurred by the City Indemnified Person in defending against the Claims, including but not limited to attorney, witness and expert fees, and any other litigation-related expenses. The obligations of Company under this Section 16 shall survive the expiration or earlier termination of this Agreement for a period of two (2) years.

Promptly after City receives written notice or obtains actual knowledge of any pending or threatened Claim against City that may be subject to Company's obligations to Indemnify under this Agreement, City will deliver written notice thereof to Company, and City will tender sole control of the indemnified portion of the legal proceeding to Company (provided that Company accepts such tender), but City shall have the right to approve counsel, which approval shall not be unreasonably withheld, conditioned, or delayed. City's failure to deliver written notice to Company within a reasonable time after Company receives notice of any such Claim shall relieve Company of any liability to the City under this indemnity only if and to the extent that such failure is prejudicial to Company's ability to defend such action. Upon Company's acceptance of a tender from City without a reservation of right, City may not settle, compromise, stipulate to a judgment, or otherwise take any action that would adversely affect Company's right to defend the Claim.

17. General Provisions.

17.1 Delays; Waivers. Except as otherwise expressly provided in this Agreement, any delay by any Party in asserting any right or remedy under this Agreement will not operate as a waiver of any such rights or limit such rights in any way; and any waiver in fact made by such Party with respect to any Default by the other Party will not be considered as a waiver of rights with respect to any other Default by the performing Party or with respect to the particular Default except to the extent specifically waived in writing. It is the intent of the Parties that this provision will enable each Party to avoid the risk of being limited in the exercise of any right or remedy provided in this Agreement by waiver, laches or otherwise at a time when it may still hope to resolve the problems created by the Default involved.

17.2 Force Majeure. Company's obligations under this Agreement to comply with the Water Allowance, Maximum Flow Rates, or measures or reductions implemented under the Water Shortage Management Plan as set forth in Sections 2, 3 and 8 hereof shall not be excused by the provisions of this Section or other circumstances commonly recognized as "Force Majeure". Subject in all cases to the foregoing exceptions, neither City nor Company, as the case may be, will be considered not to have performed its obligations under this Agreement in the event of force majeure ("**Force Majeure**") due to causes beyond its control and without its fault, negligence or failure to comply with Applicable Laws, including, but not restricted to, acts of God, acts of public enemy, litigation concerning the validity and enforceability of this Agreement or relating to transactions contemplated hereby (including the effect of petitions for initiative or referendum), an outbreak of communicable disease, epidemics and pandemics (but only to the extent of the occurrence of implementation of a quarantine, lock-down or other similar governmental exercise of police power), strikes, embargoes, labor disputes, fires, floods, and unusually severe weather, act of a public enemy, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), nuclear radiation, declaration of national emergency or national alert, blockade, insurrection, riot, labor strike or interruption, extortion, sabotage, or similar

occurrence or any exercise of the power of eminent domain, condemnation, or other taking by the action of any governmental body on behalf of any public, quasi-public, or private entity, or declaration of moratorium or similar hiatus directly affecting the Property (whether permanent or temporary) by any public, quasi-public or private entity. In the event of the occurrence of any such Force Majeure, the time or times for performance of the obligations of the Party claiming delay will be extended during the period of the Force Majeure; provided that the Party seeking the benefit of the provisions of this Section, within thirty (30) days after such event, must notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Force Majeure.

17.3 Recordation. A Memorandum of this Agreement in a form mutually agreeable to the Parties shall be executed by the Parties coincident with the execution of this Agreement and recorded in the Maricopa County Recorder's Office not later than ten days after its full execution by the Parties.

17.4 Covenants Running with The Land; Inurement. The covenants, conditions, terms and provisions of this Agreement shall run with the Property and shall be binding upon and shall inure to the benefit of the Parties and their respective permitted successors and assigns with respect to the Property. Wherever the term "Party" or the name of any particular Party is used in this Agreement, such term shall include any such Party's permitted successors and assigns. Any successor or assign taking an interest in the Property (regardless of the status of such party or entity as a Utility Customer) shall be bound by the terms and conditions of this Agreement including, but not limited to, the Water Allowance and the Maximum Flow Rates.

17.5 Governing Law; Choice of Forum, Wavier of Jury Trial. This Agreement will be deemed to be made under, will be construed in accordance with, and will be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this Agreement will be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa (or, as may be appropriate, in the Justice Courts of Maricopa County, Arizona, or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section for reason of diversity or other reason. The waiver by Company of its right to seek transfer or removal of any action commenced under this Agreement to any other court or any other jurisdiction constitutes material consideration to the City for its entering into this Agreement, and without which City would not have entered into this Agreement with Company. Further, each Party hereby waives, to the fullest extent permitted by law, any right to trial by jury of any claim, demand, action, or cause of action arising under or in any way connected with or related to this Agreement. Each Party hereby agrees and consents that any such claim shall be decided by a court without a jury.

17.6 Limited Severability. City and Company each believes that the execution, delivery and performance of this Agreement are in compliance with all Applicable Laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring City to do any act in violation of any Applicable Laws), such provision will be deemed severed from this Agreement and this Agreement will otherwise remain in full force and effect; provided that this Agreement will retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. The Parties further agree, in such circumstances, to do all acts and to execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

17.7 Construction. The terms and provisions of this Agreement represent the results of negotiations between the Parties, each of which has been or has had the opportunity to be represented by counsel of its own choosing, and none of which has acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Agreement will be interpreted and construed in accordance with their usual and customary meanings, and the Parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Agreement that ambiguous or conflicting terms or provisions contained in this Agreement will be interpreted or construed against the Party who prepared or whose attorney prepared the executed Agreement or any earlier draft of the same.

17.8 Notices. Addresses. Except as otherwise required by law and other than for communication among the Parties' designated representatives under Section 12, any notice required or permitted under this Agreement (each, a "**Notice**") will be in writing and will be given by (i) personal delivery, (ii) deposit in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this Subsection, or (iii) any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), delivery charges prepaid:

The City: City of Mesa
20 East Main Street, Suite 750
Mesa, Arizona 85201
Attn: City Manager

With copy to: Mesa City Attorney's Office
20 East Main Street, Suite 850
Mesa, Arizona 85201
Attn: City Attorney

Company Redale LLC
c/o Derek Sorenson
Quarles & Brady LLP
One Renaissance Square
2 North Central Avenue
Phoenix, Arizona 85004-2391

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this Section. Notices shall be deemed received (a) when delivered to the party, or (b) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

17.9 Section Headings and References. The Section headings contained in this Agreement are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement. Any references in this Agreement to a "Section" or a "Subsection" shall include all subsections and paragraphs thereof.

17.10 Third-Party Beneficiaries. No person or entity will be a third-party beneficiary to this Agreement, except for permitted transferees or assignees to the extent that they assume or succeed to the rights and/or obligations of Company under this Agreement.

17.11 Integration. Except to the extent otherwise expressly provided herein, this Agreement and the Development Agreement constitute the entire agreement between the Parties with respect to the subject matters hereof and supersede any prior agreements, understandings, negotiations or representations regarding the subject matters covered by this Agreement and the Development Agreement.

17.12 Further Assurances. Each Party agrees to perform such other and further acts and to execute and deliver such additional agreements, documents, affidavits, certifications, acknowledgments and instruments as any other Party may reasonably require to consummate, evidence, confirm or carry out the matters contemplated by this Agreement or confirm the status of (a) this Agreement as in full force and effect and (b) the performance of the obligations hereunder at any time during its Term.

17.13 Exhibits. The Parties agree that all references to this Agreement include all Exhibits designated in and attached to this Agreement, such Exhibits being incorporated into and made an integral part of this Agreement for all purposes.

17.14 Computation of Time. In computing any period of time under this Agreement, the date of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so completed shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday. The time for performance of any obligation or taking any action under this Agreement shall be deemed to expire at 5:00 p.m. (Arizona time) on the last day of the applicable time period provided herein.

17.15 Consents and Approvals. Wherever this Agreement requires or permits the consent or approval of a Party to any act, document, use or other matter, such consent or approval may be given or denied by such Party in its reasonable discretion, not in an unreasonable manner to be conditioned or delayed, unless this Agreement expressly provides otherwise. Any consent or approval required by this Agreement may be provided by the City Manager (or designee) unless otherwise specified or required by Applicable Laws. In addition, the City Manager (or designee) may amend this Agreement as authorized by the approving Resolution of the City Council.

17.16 Conflict of Interest Statute, Boycotts, Appropriation. This Agreement is subject to, and may be terminated by City in accordance with, the provisions of A.R.S. §38-511. To the extent enforceable under Applicable Laws, Company certifies pursuant to A.R.S. § 35-393.01 that it is not currently engaged in, and for the duration of this Agreement will not engage in, a boycott of Israel. Any obligations of City are subject to the appropriation and availability of funds in accordance with the laws of the State of Arizona, including the Arizona State Constitution and A.R.S. § 42-17106.

17.17 Time of the Essence. Time is of the essence in this Agreement and with respect to the performance required by each Party hereunder.

17.18 Amendments to this Agreement. All amendments to this Agreement must be signed by City and Company and a memorandum thereof shall be recorded in the Official Records of Maricopa County, Arizona within ten (10) days after execution. Upon amendment of this Agreement, references to "Agreement" will mean this Agreement as amended. When the Parties mean to refer to any specific amendment to the Agreement which amendment is unmodified by any subsequent amendments, the Parties will refer to it by the number of the amendment as well as its effective date.

17.19 Good Faith of Parties. Except where any matter is expressly stated to be in the sole discretion of a Party, in performance of this Agreement or in considering any requested extension of time or any assignment hereof, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily or capriciously and

will not unreasonably withhold, delay or condition any requested approval, acknowledgment or consent.

17.20 Proposition 207 Waiver. By executing this Agreement, Company, on behalf of itself and all successors-in-interest to all or any portion of the Property hereby fully, completely and unconditionally waives any right to claim diminution in value or claim for just compensation for diminution in value under A.R.S. § 12-1134, et seq. arising out of any City action permitted to be taken by City pursuant to this Agreement. This waiver constitutes a complete release of any and all claims and causes of action that may arise or may be asserted under A.R.S. § 12-1134, *et seq*. as it exists or may be enacted in the future or that may be amended from time to time with regard to the Property respecting any City actions permitted to be taken by City pursuant to this Agreement.

17.21 Preserve State Shared Revenue. Notwithstanding any other provision of, or limitation in, this Agreement to the contrary, if pursuant to A.R.S. § 41-194.01 the Attorney General determines that this Agreement violates any provision of State law or the Constitution of Arizona and City and Company are not able (after good faith attempts) to modify the Agreement so as to resolve the violation with the Attorney General within thirty (30) days of notice from the Attorney General pursuant to and under the provisions of A.R.S. § 41-194.01(B)(1), this Agreement shall automatically terminate at midnight on the thirtieth day after receiving such notice from the Attorney General, and upon such termination the Parties shall have no further obligations under this Agreement. Additionally, if the Attorney General determines that this Agreement may violate a provision of State law or the Constitution of Arizona under A.R.S. § 41-194.01(B)(2), and the Arizona Supreme Court requires the posting of a bond under A.R.S. § 41-194.01(B)(2), City shall be entitled to terminate this Agreement, except if Company posts such bond; and provided further, that if the Arizona Supreme Court determines that this Agreement violates any provision of State law or the Constitution of Arizona, City may terminate this Agreement and the Parties shall have no further rights, interests, or obligations in this Agreement or claims against the other Party for a breach or Default under this Agreement.

17.22 Attorneys' Fees and Costs. In the event of a breach by any Party and commencement of a subsequent legal action in an appropriate forum, each Party shall bear its own cost for any such dispute and will not be entitled, and hereby waives any right, to reimbursement of any attorney's fees or any costs or fees.

17.23 Survival. The provisions contained in Section 13.4.4 (until all MLM metering is removed from the Property), Section 16, Section 17.5, and Section 17.20 shall survive the rescission, cancellation, expiration or termination of this Agreement.

17.24 Anti-Corruption. Each Party represents and warrants to the other that it has not accepted and shall not accept any bribe nor committed and shall not commit fraud or any other corrupt or criminal act in connection with negotiation or performance of this Agreement.

17.25 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.

(SIGNATURES ON THE FOLLOWING PAGES)

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates written above.

CITY OF MESA, ARIZONA, an Arizona municipal corporation

By: _____

Its: _____

ATTEST:

By: _____
City Clerk

APPROVED BY:

By: _____
Water Resources Director

APPROVED AS TO FORM BY:

By: _____
City Attorney

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by _____ the _____ of the City of Mesa, Arizona, an Arizona municipal corporation, who acknowledged that he/she signed the foregoing instrument on behalf of City.

_____
Notary Public

My Commission Expires: _____

COMPANY:

REDALE LLC, a Delaware limited liability company

By: _____

Name: _____

Title: _____

STATE OF _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2021, on behalf of _____, by, its _____.

_____
Notary Public

My Commission Expires: _____

Exhibit A

Legal Description of Property

THAT PORTION OF SECTION 15, TOWNSHIP 1 SOUTH, RANGE 7 EAST, GILA & SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 15 FROM WHICH THE WEST QUARTER CORNER OF SAID SECTION 15 BEARS NORTH 0°42'08" WEST, A DISTANCE OF 2638.00 FEET;

THENCE ALONG THE WEST LINE OF SAID SECTION 15, NORTH 0°42'08" WEST, A DISTANCE OF 46.49 FEET;

THENCE NORTH 89°17'52" EAST, A DISTANCE OF 65.00 FEET TO THE EAST LINE OF THE WEST 65.00 FEET OF SAID SECTION 15 AND ALSO BEING THE POINT OF BEGINNING;

THENCE ALONG SAID EAST LINE NORTH 0°42'08" WEST, A DISTANCE OF 2591.44 FEET;

THENCE CONTINUING ALONG SAID EAST LINE NORTH 0°35'07" WEST, A DISTANCE OF 2057.13 FEET;

THENCE NORTH 89°24'53" EAST, A DISTANCE OF 10.00 FEET TO THE EAST LINE OF THE WEST 75.00 FEET OF SAID SECTION 15;

THENCE ALONG SAID EAST LINE NORTH 0°35'07" WEST, A DISTANCE OF 484.72 FEET;

THENCE NORTH 44°53'57" EAST, A DISTANCE OF 21.03 FEET TO THE SOUTH LINE OF THE NORTH 65 FEET OF THE NORTHWEST QUARTER OF SAID SECTION 15;

THENCE ALONG SAID SOUTH LINE SOUTH 89°36'59" EAST, A DISTANCE OF 2549.12 FEET;

THENCE ALONG THE SOUTH LINE OF OF THE NORTH 65 FEET OF THE NORTHEAST QUARTER OF SAID SECTION 15, SOUTH 89°38'13" EAST A DISTANCE OF 1366.43 FEET;

THENCE DEPARTING SAID SOUTH LINE, SOUTH 0°43'30" EAST A DISTANCE OF 2431.88 FEET;

THENCE NORTH 89°45'48" WEST A DISTANCE OF 1254.12 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 3859.50 FEET, A CENTRAL ANGLE OF 02°18'33" AND A CHORD THAT BEARS SOUTH 15°05'49" EAST, 155.54 FEET;

THENCE ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 155.55 FEET;

THENCE SOUTH 73°44'54" WEST A DISTANCE OF 81.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 3940.50 FEET, A CENTRAL ANGLE OF 00°55'59" AND A CHORD THAT BEARS SOUTH 16°43'05" EAST, 64.17 FEET;

THENCE ALONG THE ARC OF SAID CURVE A DISTANCE OF 64.17 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 20.00 FEET, A CENTRAL ANGLE OF 89°00'06" AND A CHORD THAT BEARS SOUTH 27°18'58" WEST, 28.04 FEET;

THENCE ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 31.07 FEET;

THENCE SOUTH 71°49'01" WEST A DISTANCE OF 19.43 FEET;

THENCE SOUTH 18°10'59" EAST A DISTANCE OF 24.00 FEET;

THENCE NORTH 71°49'01" EAST A DISTANCE OF 18.83 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 20.00 FEET, A CENTRAL ANGLE OF 90°04'21" AND A CHORD THAT BEARS SOUTH 63°08'48" EAST, 28.30 FEET;

THENCE ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 31.44 FEET TO THE EASTERLY LINE OF TRACT Q ACCORDING TO SAID MINOR LAND DIVISION RECORDED IN BOOK 1542, PAGE 44 AND TO A REVERSE CURVE TO THE LEFT HAVING A RADIUS OF 3940.50 FEET, A CENTRAL ANGLE OF 00°04'20" AND A CHORD THAT BEARS SOUTH 18°08'48" EAST 4.97 FEET;

THENCE ALONG THE EASTERLY LINE OF SAID TRACT Q AND ALONG THE ARC OF SAID CURVE A DISTANCE OF 4.97 FEET TO THE MOST NORTHERLY CORNER OF PARCEL 2 ACCORDING TO SAID MINOR LAND DIVISION RECORDED IN BOOK 1542, PAGE 44, OF THE OFFICIAL RECORDS OF MARICOPA COUNTY;

THENCE ALONG THE NORTHERLY LINE OF SAID PARCEL 2, SOUTH 71°49'01" WEST, A DISTANCE OF 169.00 FEET TO THE NORTHWEST CORNER OF SAID PARCEL 2 AND TO A POINT ON A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 4109.50 FEET, A CENTRAL ANGLE OF 02°10'52" AND A CHORD THAT BEARS SOUTH 19°16'24" EAST 156.43 FEET;

THENCE ALONG THE WESTERLY LINE OF SAID PARCEL 2 AND ALONG THE ARC OF SAID CURVE A DISTANCE OF 156.44 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL 2;

THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL 2, NORTH 69°38'10" EAST, A DISTANCE OF 169.00 FEET TO THE SOUTHEAST CORNER OF SAID PARCEL 2 AND THE EASTERLY LINE OF TRACT Q ACCORDING TO SAID MINOR LAND DIVISION AND TO A POINT ON A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 3940.50 FEET, A CENTRAL ANGLE OF 11°42'22" AND A CHORD THAT BEARS SOUTH 26°13'01" EAST 803.68 FEET;

THENCE ALONG SAID EASTERLY LINE OF SAID TRACT Q AND ALONG THE ARC OF SAID CURVE A DISTANCE OF 805.08 FEET TO A REVERSE CURVE TO THE RIGHT HAVING A RADIUS OF 20.00 FEET, A CENTRAL ANGLE OF 89°32'39" AND A CHORD THAT BEARS SOUTH 12°42'08" WEST 28.17 FEET;

THENCE ALONG THE ARC OF SAID CURVE A DISTANCE OF 31.26 FEET;

THENCE SOUTH 57°28'28" WEST, A DISTANCE OF 19.11 FEET;

THENCE SOUTH 32°31'32" EAST, A DISTANCE OF 23.00 FEET;

THENCE NORTH 57°28'28" EAST, A DISTANCE OF 19.11 FEET TO A CURVE TO THE RIGHT HAVING A RADIUS OF 20.00 FEET, A CENTRAL ANGLE OF 89°32'39" AND A CHORD THAT BEARS SOUTH 77°45'12" EAST, A DISTANCE OF 28.17 FEET;

THENCE ALONG THE ARC OF SAID CURVE A DISTANCE OF 31.26 FEET TO THE EASTERLY LINE OF SAID TRACT Q AND TO A REVERSE CURVE TO THE LEFT HAVING A RADIUS OF 3940.50 FEET, A CENTRAL ANGLE OF 07°46'24" AND A CHORD THAT BEARS SOUTH 36°52'05" EAST 534.19 FEET;

THENCE ALONG THE EASTERLY LINE OF SAID TRACT Q AND ALONG THE ARC OF SAID CURVE A DISTANCE OF 534.60 FEET;

THENCE ALONG THE EASTERLY LINE OF SAID TRACT Q, SOUTH 40°45'16" EAST, A DISTANCE OF 4.23 FEET;

THENCE ALONG THE EASTERLY LINE OF SAID TRACT Q, SOUTH 04°14'44" WEST, A DISTANCE OF 28.28 FEET TO THE NORTH LINE OF EAST WARNER ROAD ACCORDING TO THAT CERTAIN FINAL PLAT OF EASTMARK DEVELOPMENT UNITS 3/4 INFRASTRUCTURE FOR COMMERCIAL PARCEL AND RECORDED IN BOOK 1462, PAGE 27 OF THE OFFICIAL RECORDS OF MARICOPA COUNTY;

THENCE ALONG SAID NORTH LINE OF WARNER ROAD THE FOLLOWING EIGHT (8) COURSES TO WIT:

THENCE SOUTH 49°14'44" WEST, A DISTANCE OF 293.67 FEET TO A CURVE TO THE RIGHT HAVING A RADIUS OF 3468.00 FEET, A CENTRAL ANGLE OF 28°51'21"

AND A CHORD THAT BEARS SOUTH 63°40'24" WEST, A DISTANCE OF 1728.19 FEET;

THENCE ALONG THE ARC OF SAID CURVE A DISTANCE OF 1746.59 FEET;

THENCE NORTH 56°14'04" WEST, A DISTANCE OF 28.04 FEET;

THENCE NORTH 10°44'08" WEST, A DISTANCE OF 12.13 FEET;

THENCE SOUTH 79°15'52" WEST, A DISTANCE OF 81.00 FEET;

THENCE SOUTH 10°44'08" EAST, A DISTANCE OF 12.36 FEET;

THENCE SOUTH 34°35'59" WEST, A DISTANCE OF 28.12 FEET TO A POINT ON A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 3468.00 FEET, A CENTRAL ANGLE OF 08°56'40" AND A CHORD THAT BEARS SOUTH 84°34'22" WEST 540.85 FEET;

THENCE ALONG THE ARC OF SAID CURVE A DISTANCE OF 541.40 FEET TO THE EAST LINE OF PARCEL 2 ACCORDING TO THAT CERTAIN MINOR LAND DIVISION RECORDED IN BOOK 1542, PAGE 46 OF THE OFFICIAL RECORDS OF MARICOPA COUNTY;

THENCE ALONG THE EAST LINE OF SAID PARCEL 2, NORTH 0°57'17" WEST, A DISTANCE OF 167.00 FEET TO THE NORTHEAST CORNER OF SAID PARCEL 2 AND TO A POINT ON A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 3301.00 FEET, A CENTRAL ANGLE OF 0°42'05" AND A CHORD THAT BEARS SOUTH 89°23'45" WEST 40.41 FEET;

THENCE ALONG THE NORTH LINE OF SAID PARCEL 2 AND ALONG THE ARC OF SAID CURVE A DISTANCE OF 40.41 FEET;

THENCE CONTINUING ALONG SAID NORTH LINE SOUTH 89°44'47" WEST, A DISTANCE OF 109.60 FEET TO THE NORTHWEST CORNER OF SAID PARCEL 2;

THENCE ALONG THE WEST LINE OF SAID PARCEL 2, SOUTH 0°15'13" EAST, A DISTANCE OF 167.00 FEET TO THE SOUTH LINE OF TRACT N ACCORDING TO SAID MINOR LAND DIVISION RECORDED IN SAID BOOK 1542, PAGE 46 OF THE OFFICIAL RECORDS OF MARICOPA COUNTY;

THENCE ALONG SAID SOUTH LINE SOUTH 89°44'47" WEST, A DISTANCE OF 523.87 FEET;

THENCE CONTINUING ALONG SAID SOUTH LINE NORTH 87°26'50" WEST, A DISTANCE OF 51.06 FEET;

THENCE CONTINUING ALONG SAID SOUTH LINE SOUTH 89°44'47" WEST, A DISTANCE OF 252.52 FEET;

THENCE CONTINUING ALONG SAID SOUTH LINE NORTH 45°28'40" WEST, A DISTANCE OF 17.75 FEET TO THE POINT OF BEGINNING.

CONTAINS 17,239,477 SQUARE FEET OR 395.7639 ACRES, MORE OR LESS.

Exhibit B

Current ADWR Long-Term Storage Credit Transfer Form

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

For Official Use Only

DATE RECEIVED: _____

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

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

[FOR ASSIGNOR]

_____
Name of Assignor

_____
Contact Person/Telephone Number

_____
Mailing Address

_____
City/State/Zip

_____
Email

_____
Long-Term Storage Account No.

_____
Facility Permit Number (where source water was stored)

_____
Water Storage Permit Number (authority to store source water)

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

Type: _____acre-feet_____ year earned_____

Type: _____acre-feet_____ year earned_____

[FOR ASSIGNEE]

_____
Name of Assignee

_____
Contact Person/Telephone Number

_____
Mailing Address

_____
City/State/Zip

_____
Email

_____
Long -Term Storage Account No. (if any)

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

1. The date of Assignee's formation (if Assignee is a legal entity): _____.

2. The amount of groundwater withdrawn by Assignee in the AMA during the calendar year that the credits were earned:
   _____.

   a. The groundwater right number(s) the Assignee withdrew the groundwater pursuant to:
      _____

Required Signature Block is on Page 2

Pursuant to A.R.S. § 45-854.01(C), the director of the Arizona Department of Water Resources may reject and invalidate any assignment of long-term storage credits in which the stored water would not have met the requirements for long-term storage credits as prescribed by A.R.S. § 45-852.01 if the assignee had stored the water.

The undersigned hereby certify, under penalty of perjury, that the information contained in this report is, to the best of their knowledge and belief, correct and complete and that they are authorized to sign on behalf of the party for whom their signature appears.

_____	_____
Authorized Signature for Assignor DATE	Authorized Signature for Assignee DATE
_____	_____
Title	Title

NOTICE

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

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

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

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

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

Exhibit C

Storing Party Credit Recipient Agreement (Right of First Refusal)

David C. Roberts, GRWS Manager
c/o Salt River Project
M/S PAB232 | P.O. Box 52025
Phoenix, AZ 85072-2025

[Date]

[Credit Recipient]

Re: Acknowledgement and Agreement of Conditions of Transfer of Long-Term Storage Credits from Gila River Water Storage, LLC and [Credit Recipient]

Dear [Buyer]:

The [Buyer] and the Gila River Water Storage, LLC. ("GRWS") are parties to an agreement entitled "PURCHASE AND SALE AGREEMENT FOR LONG-TERM STORAGE CREDITS" that will be executed in [Date] ("[Buyer]-GRWS Agreement"). Under the [Buyer]-GRWS Agreement, [Buyer] will purchase Long-Term Storage Credits from GRWS for transfer to a designated recipient ("Credit Recipient") for use by the Credit Recipient. As a condition of the transfer of those credits to the Credit Recipient, GRWS requires that the Credit Recipient shall not resell the Long-Term Storage Credits transferred from GRWS to the Credit Recipient without first offering to sell the Long-Term Storage Credits back to GRWS. In the event the Credit Recipient desires to sell the Long-Term Storage Credits transferred from GRWS, it shall follow the procedures provided in this ("Letter Agreement").

Accordingly, this Letter Agreement is intended to memorialize the agreement between [Credit Recipient] and GRWS that the [Credit Recipient] shall not resell the Long-Term Storage Credits transferred from GRWS to [Credit Recipient] without first offering to sell the Long-Term Storage Credits back to GRWS. In the event [Credit Recipient] desires to sell the Long-Term Storage Credits transferred from GRWS, [Credit Recipient] shall provide GRWS with written notice, which notice shall contain an offer to sell the Long-Term Storage Credits to GRWS for the same price in the [Buyer]-GRWS Agreement ("Offer"). GRWS shall have 30 days from the date of receipt of the Offer to elect to purchase the Long-Term Storage Credits. If GRWS elects to purchase the Long-Term Storage Credits, [Credit Recipient] and GRWS shall promptly enter into a purchase agreement to sell the credits to GRWS at the price provided in the Offer. If GRWS declines to accept the Offer or fails to provide notice to [Credit Recipient] of its election within the 30-day period, [Credit Recipient] shall be free to sell the Long-Term Storage Credits to a third party.

Please sign below to indicate [Credit Recipient] acknowledgement of the above terms and then return the original to me at the address indicated on the top of the page.

Sincerely,

David C. Roberts

Acknowledged: _____ Date: _____

cc (via e-mail):

Patrick B. Sigl, SRP Supervising Attorney, Environmental, Land & Water Rights