

EXCHANGE AGREEMENT

This Exchange Agreement (“**Agreement**”) by and among Action Zone Business 17, LLC, a Utah limited liability company f/k/a Power 17, LLC (“**AZB**”) and [City of Mesa] (“**Mesa**”) summarizes and memorializes an agreement between AZB and Mesa made this ____ day of July, 2021 (“Effective Date”).

RECITALS

WHEREAS, AZB and its affiliates are the owner of real property consisting of approximately thirty-seven (37) acres of land located southeast of the intersection of Power Road and Warner Road with Parcel Number 304-30-009X;

WHEREAS, AZB entered into an arrangement whereby Vidler Water Company prepared that certain Long-Term Storage Credit Transfer Form in accordance with A.R.S. §45-854.01 dated June 28, 2021 transferring five hundred (500) acre feet of Central Arizona Project (“CAP”) based long-term storage credits earned in 2005 (“CAP Credits”) to AZB;

WHEREAS, on July 8, 2021, the Arizona Department of Water Resources (“ADWR”) provided notice that the CAP Credits were transferred from Vidler Water Company to AZB;

WHEREAS, Mesa has 500 acre-feet of long-term storage credits based on effluent stored within the boundaries of the Roosevelt Water Conservation District (“Effluent Credits”)

WHEREAS, AZB and Mesa desire to effect an exchange of the 500 acre-feet of CAP Credits for five hundred (500) of Effluent Credits, as more fully set forth below; and

WHEREAS, AZB and Mesa desire to set forth further understandings in this Agreement regarding the exchange of Credits.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing Recitals, the mutual promises contained herein, and other consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Recitals. The above recitals serve as the basis for this Agreement and are incorporated herein and made a part hereof for all purposes. The Parties each hereby acknowledge the above recitals to be true and correct as of the date hereof.
2. Transfer.
 - a. Forms and Filing. The exchange of the CAP Credits for Effluent Credits between AZB and Mesa shall be undertaken via appropriate filings with ADWR as follows: within thirty days of the Effective Date, AZB will complete and execute an ADWR

Long-Term Storage Credit Transfer Form (the “Form”) indicating the volume of 500 acre-feet of CAP Credits to be transferred to Mesa and shall transmit the Form to Mesa for its review and counter signature, along with a check in the amount of the transfer fee as established by ADWR. Within ten days of its receipt of the properly completed Form, Mesa will then complete and execute a Form transferring the corresponding volume of Effluent Credits to AZB, and shall transmit the Form to AZB. Thereafter, each party shall file the respective completed Forms with ADWR. Each Party represents that the respective long-term storage credits to be exchanged are unencumbered and freely assignable in accordance with the Groundwater Code.

- b. Fees. AZB shall be responsible for payment of all transfer fees as established by ADWR as necessary to effectuate the exchange.
3. Documentation. The Parties agree to work in good faith, collaborate, and complete any further documentation and filings necessary to effectuate the transfers and assignments anticipated by this Agreement.
4. Representation of Authority. The undersigned represent that they are duly authorized to act on behalf of the Parties in all matters related to this Agreement.
5. Counterparts. This Agreement may be executed in one or more counterparts, each of which may be executed by one or more of the signatory parties hereto. Signature pages may be detached from the counterparts and attached to a single copy of this Amendment to physically form one legally effective document. Electronic or facsimile signatures on any counterpart of this Agreement shall be acceptable and shall constitute conclusive evidence of execution.
6. Attorney Fees. The prevailing party in an action brought to enforce the terms of this Agreement shall be entitled to its attorney’s fees, costs, and expenses incurred in bringing such action.
7. Governing Law. This Agreement shall be governed by the laws of the state of Arizona. Notice is hereby given of ARS §§ 38-511, 23-214, 41-4401, and 42-17106.
8. Miscellaneous. Each Party agrees that the understanding set forth herein is not based on any implied or expressed conditions or terms other than those specifically set forth herein. Nothing in this Letter Agreement shall be construed as creating a joint venture, partnership, or any other cooperative or joint arrangement between the Parties. Nothing herein shall be construed as creating any third-party beneficiaries. Each Party shall be responsible for its own acts and omissions. Neither Party shall assign or delegate any right or duty under this Agreement without the prior written approval of the other.
9. Severability. If and to the extent that any court of competent jurisdiction holds any provision or any part thereof of this Agreement to be invalid or unenforceable, such holding shall in no way affect the validity of the remainder of this Agreement. This Agreement and

the understanding set forth herein is the result of negotiation between the parties and at their own expense, and shall not be interpreted against either party.

SIGNED AND DATED AS OF THE EFFECTIVE DATE.

Action Zone Business 17, LLC

By:

Its:

City of Mesa

By:

Its: