



WATER EASEMENT

THIS INDENTURE made the ____ day of _____, 20__ between _____, the Grantor, and Metropolitan Domestic Water Improvement District (MDWID), Grantee.

WITNESSETH

That the Grantor _____ for and in the consideration of one (\$ 1.00) Dollar, and other valuable consideration by the METROPOLITAN DOMESTIC WATER IMPROVEMENT DISTRICT, do hereby acknowledge, and hereby convey unto the METROPOLITAN DOMESTIC WATER IMPROVEMENT DISTRICT, its successors and assigns, a perpetual right-of-way, privilege and easement for any water pipe or mains now laid or which hereafter may be laid by the METROPOLITAN DOMESTIC WATER IMPROVEMENT DISTRICT, together with the right to enter into and upon for the purpose of maintaining said pipes and mains, including the right of attaching thereto meters, fire hydrants, valves, regulators, services, and all other items necessary in the construction and maintenance thereof, together with the right to enter into and upon for the purpose of removing the same at the sole discretion of the METROPOLITAN DOMESTIC WATER IMPROVEMENT DISTRICT; said easement being in, on, through, over, across, and under the following described parcel of land situated in the County of Pima, State of Arizona, to-wit:

See Exhibit A for legal description
See Exhibit B for legal drawing

Grantor may use the property for any purpose consistent with the actual use of the easement. However, grantors covenant to keep the property open and free from any obstruction or encroachment at all times.

TO HAVE AND TO HOLD the same unto the METROPOLITAN DOMESTIC WATER IMPROVEMENT DISTRICT, and to its successors and assigns forever.

Grantee (MDWID) Grantor
STATE OF ARIZONA)
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____.

Notary Public

My Commission Expires:

AGREEMENT

BETWEEN

METROPOLITAN DOMESTIC WATER IMPROVEMENT DISTRICT

(MDWID)

AND

AMPHITHEATER SCHOOL DISTRICT NO. 10

FOR CONSTRUCTION OF A PUBLIC WATER SYSTEM

AND PROVISION OF WATER SERVICE

FOR

LULU WALKER ELEMENTARY SCHOOL

PROJECT NO. M-10-012

AGREEMENT FOR CONSTRUCTION
OF PUBLIC WATER DISTRIBUTION SYSTEM

Agreement made this ____ day of _____, 20__, between the Metropolitan Domestic Water Improvement District (MDWID), hereinafter called "District", a political subdivision of the State of Arizona and Hank Bowers, hereinafter called "Applicant."

RECITALS

- A. Applicant is the owner of the following described property or parcel of land (legal description): Section 15, T13S, R13E, Gila and Salt River Meridian, Pima County, Arizona
- B. The District authorizes the construction of a permanent water distribution system under private contract where no existing water is available. Upon completion of the system and its final approval by the District, the District requires the transfer of title to the system to the District.
- C. Applicant intends to construct a water distribution system to serve the development and to transfer title of the system to the District and in consideration the District shall operate, maintain and service the system.

DEFINITIONS

Off-Site Water System: Public water facilities to be constructed under this agreement which are located off the site of the development in dedicated rights-of-way or recorded easements.

On-Site water System: Public water facilities to be constructed under this agreement which are located on the site of the development within public rights-of-way or dedicated easements.

Public Water Distribution System, Water System: Public water facilities which, upon completion by the developer and inspection and acceptance by the District, are deeded to the District for operation and maintenance.

Protected main: A water main installed by private contract in such a manner as to provide water service to any property adjacent to the water main that did not participate in the construction costs of the main.

TERMS

In consideration of the mutual covenants in this Agreement, the parties agree as follows:

ARTICLE 1 Construction:

- 1.1 Applicant shall design and construct, at applicant's own expense, an on-site and off-site water distribution system in accordance with the District's Standard Details and Specifications, which by this reference are made a part of this Agreement.
- 1.2 The water distribution system shall be constructed by a contractor properly licensed by the state of Arizona and in accordance with final construction plans prepared by a qualified registered professional engineer approved by the District.
- 1.3 The public water plans shall be reviewed and approved in writing by the District and the Department of Environmental Quality prior to issuance of any water line construction permits. No work shall commence until District has issued a water line construction permit.
- 1.4 Applicant shall obtain all necessary permits and licenses, pay all fees and comply with all laws, ordinances and regulations related to the work, public health and safety.
- 1.5 The Applicant shall furnish all labor, materials, equipment, supplies and tools required to complete the work herein permitted.
- 1.6 All new public water distribution facilities must be accepted and released for service by the District prior to application for water meter installation.
- 1.7 The Applicant shall, at applicant's expense, make any and all alterations to the existing water system, either on-site or off-site, necessitated by paving, drainage, or other improvements caused by this development.
- 1.8 No permanent structures (i.e., masonry walls, fences, etc.) shall be constructed on or through a water easement without the expressed written consent of the District.

ARTICLE 2 Units to be served:

- 2.1 The water system to be constructed shall serve 1 commercial unit, in accordance with the approved water plans as filed under Project No. M-10-012 in the office of the District.

ARTICLE 3 Assurances:

- 3.1 In accordance with Section 11-806.01 of the Arizona Revised Statutes and Section 18.69.070 of the Pima County Code, this agreement is contingent upon Applicant furnishing Pima County a performance bond, assurances, or such other security as may be appropriate and necessary to assure Pima County that Applicant will perform all of the water system

construction described above, together with all other obligations now existing or accruing under this Agreement.

- 3.2 Applicant has provided security in the form of standard and special covenants, conditions, and restrictions.
- 3.3 If Applicant is seeking water service for a new residential development, this agreement is contingent upon the District's review of the covenants, conditions and restrictions ("CC&Rs") for the property to be served and its determination that the CC&Rs do not require the use of water-intensive landscaping or prohibit the use of low water use landscaping in the development. In the event the District determines either condition exists, the Applicant shall, prior to the District's execution of this water service agreement, revise or arrange for the revision of the CC&Rs to ensure neither condition appears in the CC&Rs. Applicant shall provide the District with a copy of the revised CC&Rs prior to the execution of this water service agreement.
- 3.4 If Applicant is seeking water service for a multi-family development, applicant agrees to adhere to water conserving landscaping standards that include: a) limiting water-intensive landscaping to individual patio areas and those areas used for active recreational purpose; b) use of low water use plants from the Arizona Department of Water Resources' low water use plant list in all other areas, including common areas not used for active recreational purposes; and c) use of efficient irrigation systems. The Applicant shall provide the District a list of low water use plants selected and a description of the efficient irrigation system to be utilized.
- 3.5 If Applicant seeks water service for a non-residential development, Applicant shall, prior to the District executing this water service agreement:
 - a) advise the District in writing whether the development shall use 10 acre-feet or more of water annually, excluding any turf related facilities regulated by the Arizona Department of Water Resources. If the development shall use 10 acre-feet of water or more annually, Applicant shall submit to the District a water use plan for review that shall adhere to the following (where applicable):
 - 1) identify all water uses anticipated at the development;
 - 2) identify all water conservation measures to be utilized;
 - 3) water conservation training programs offered to employees;
 - 4) use of alternative water sources;
 - 5) operating TDS or conductivity for cooling towers and total cooling capacity;

- 6) use of best available technologies in accordance with existing process uses (e.g., recirculating systems for process water, alternative dust control methods, automatic shut-down devices to eliminate continual running of water);
- 7) plans for the reuse of wastewater or process water ; and/or
- 8) type of landscaping and irrigation system.

Based on its review of the water use plan, the District shall recommend the use of effective conservation measures.

- b) advise the District in writing whether the development shall have greater than or equal to 10,000 square feet of landscapable area. For those developments with 10,000 square feet of landscapable area or more, Applicant shall:
 - 1) only use efficient irrigation systems;
 - 2) limit the use of water features and fountains;
 - 3) limit the use of water intensive landscaping to an area equal to 10,000 square feet plus 20 percent of the landscapable area in excess of 10,000 square feet. (This requirement shall not apply to schools, park, cemeteries, golf courses, common areas of housing developments and public recreational facilities water-intensive landscaping greater than or equal to 10 acres).

ARTICLE 4 Service:

- 4.1 After final approval and release by the District and transfer of all of the rights title and interest of the Applicant in and to the water system to the District as evidenced by a "Bill of Sale" prepared by the District, District shall provide service to not more than 1 commercial unit in a development in Pima County as filed under Project No. M-10-012 in the office of the District.

ARTICLE 5 Connection Fee:

- 5.1 Applicant shall pay all fees as required by the District at the time of application for water service or at the time of construction permit issuance where project location may necessitate additional fees.

ARTICLE 6 Inspections:

- 6.1 Inspection fees will be 2.5% of the estimated construction cost of the proposed water distribution system. Fees are due and payable at the time of water construction permit issuance.

6.2 An authorized District inspector shall have full inspection authority over the work performed herein. Applicant shall provide inspector with reasonable facilities for obtaining full information concerning the work. Work shall be subject to District inspection at all times. Defective work shall be corrected in a manner satisfactory to the inspector. Inspection by the District is for the purpose of ensuring compliance with approved plans and District specifications only. The District makes no guaranty as to the safety or engineering soundness of plans prepared by applicant or any contractor.

ARTICLE 7 Terms of Agreement

7.1 In the event applicant does not complete all of the water system construction described in Article 1, prior to two years from the date of this agreement, this agreement shall be null and void, canceled and of no further force and effect.

7.2 To become binding all water service agreements must receive approval from the District Board of Directors.

7.3 All executed agreements shall remain on file in the District offices and shall be made available for public review upon request.

ARTICLE 8 Severability:

8.1 In the event any portion of this agreement shall be determined to be invalid, such invalidity shall not render void any remaining portions of this agreement which can be given effect, and they shall remain in force and effect.

ARTICLE 9 Miscellaneous:

9.1 This agreement shall be binding on and inure to the benefit of the successor and assigns of the parties. Applicant may not assign this agreement without prior written approval by the District.

9.2 This instrument contains the sole and only agreement of the parties relating to this Agreement and correctly sets forth the rights, duties and obligations of each to the other as of its date. Any prior agreements, promises, negotiations or representations not expressly set forth in this Agreement are of no force and effect. This instrument contains the entire agreement between the parties, and it shall not be amended, altered or changed, except by written agreement signed by the parties.

9.3 The applicant shall and does, hereby grant, bargain, sell, convey, transfer and deliver to the District, said water facilities to be installed pursuant to this Agreement free and clear of all liens, claims, charges or encumbrances, upon final acceptance of said work by the District. The applicant guarantees the work to be free from all failures due to poor workmanship or material for a period of one year from the final acceptance date by the District.

9.4 This Agreement is entered into under and shall be governed by the laws of the State of Arizona.

9.5 This Agreement has been arrived at by negotiation and shall not be construed against any party to it or against the party who prepared the last draft.

9.6 Captions and headings are for index purposes only and shall not be used in construing this Agreement.

9.7 The applicant shall indemnify, defend and hold harmless the District, its governing board, officers, and employees from and against any and all suits, actions, legal or administrative proceedings, claims, demands or damages of any kind or nature arising out of this agreement which are attributed to any act or omission of applicant, its agents, employees, or any one acting under its direction, control or on its behalf, whether intentionally or negligent, in connection with or incident to this Agreement.

ARTICLE 10 Cancellations:

10.1 The District pursuant to A.R.S. 38-511 may cancel this contract within three years after its execution, without penalty or further obligation, due to the following conditions:

10.1.1 If any person significantly involved in initiating, securing, drafting or creating the contract is, at any time while the contract or any extension of the contract is in effect, an employee or agent to any party of the contract in any capacity or consultant to any other party of the contract with respect to the subject matter of the contract. Cancellation under this section by the District shall be effective when written notice from the District is received by all other parties to the contract unless the notice specified a later time. In addition to the right to cancel as provided herein, the District may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the District from any other party to the contract arising as the result of this contract.

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IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

Applicant: Amphitheater School District No. 10

By: _____
Name (Print/type)

Signature Title

Mailing Address

STATE OF ARIZONA) TITLE: _____
) ss.
COUNTY OF PIMA)

This instrument was acknowledged before me this _____ day of _____, 20__.

By: _____

My Commission Expires: _____

Metropolitan Domestic Water
Improvement District

Chairman, Board of Directors

ATTEST:

Metropolitan Domestic Water
Improvement District
Legal Counsel
