

WATER FACILITIES EXTENSION AGREEMENT

This Agreement is made this 17th day of January, 2017 by and between GLOBAL WATER - SANTA CRUZ WATER COMPANY, LLC, an Arizona limited liability company (“Company”), and City of Maricopa, a municipal corporation (“City”).

RECITALS

A. City desires that water utility service be extended to and for its backbone system to support the Estrella Gin commercial real estate development, located generally at the northwest corner of Edison Road and Roosevelt Avenue in the City of Maricopa, Pinal County Arizona (“Edison Road”). A legal description for Edison Road is attached hereto as Exhibit “A” and incorporated herein by this reference. The Development is located within the Company’s Certificate of Convenience and Necessity (“CC&N”).

B. Company is a public service corporation as defined in Article XV, Section 2 of the Arizona Constitution which owns and operates water utility facilities and holds a CC&N from the Commission granting Company the exclusive right to provide water utility service within portions of Pinal County, Arizona.

C. Subject to the terms and conditions set forth hereinafter, City is willing to construct and install facilities within Edison Road necessary to extend water utility service within Edison Road, which facilities shall connect to the Company’s system as generally shown on the map attached hereto as Exhibit “B.” Company is willing to provide water utility service to Edison Road in accordance with relevant law, including the rules and regulations of the Commission on the condition that City fully and timely perform the obligations and satisfy the conditions and requirements set forth below.

COVENANTS AND AGREEMENTS

NOW, THEREFORE, in consideration of the following covenants and agreements, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Construction of Facilities.** City agrees to construct and install water distribution mains and pipelines, valves, booster stations, hydrants, fittings, service lines and all other related facilities and improvements necessary to provide water utility service to Edison Road as more particularly described in Exhibit “C” attached hereto and incorporated herein by this reference (referred to hereinafter as the “Facilities”). The Facilities shall connect to the Company’s system at the point shown on the approved plans as generally depicted on the map attached hereto as Exhibit “B,” and shall be designed and constructed within Edison Road in a manner which allows the provision of safe and reliable water utility service to each lot therein. Subject to the terms and conditions set forth herein (including, without limitation, Company’s rights of plan review and approval and inspection of final construction), City shall be responsible for all construction activities associated with the Facilities, and City shall be liable for and pay when due all costs, expenses, claims and liabilities associated with the construction and installation of the Facilities.

2. **Construction Standards and Requirements.** The Facilities shall meet and comply with Company’s standards and specifications, and all engineering plans and specifications for the Facilities shall be approved by Company and its engineers (“Company’s Engineer”), prior to the commencement of construction. Company and Company’s Engineer shall review the plans and specifications and shall provide any requirements or comments as soon as practicable. City shall require that its contractor be bound by and conform to the plans

and specifications for the Facilities as finally approved by Company. The construction and installation of the Facilities shall be in conformance with the applicable regulations of the Arizona Department of Environmental Quality (“ADEQ”), the Commission, and any other governmental authority having jurisdiction thereover.

3. **Right of Inspection; Corrective Action.** Company shall have the right to have Company’s Engineer inspect and test the Facilities at reasonable times during the course of construction as necessary to ensure conformance with plans and specifications. If at any time before the final acceptance by Company of the Facilities any construction, materials or workmanship are found to be defective or deficient in any way, or the Facilities fail to conform to this Agreement, then Company may reject such defective or deficient construction, materials and/or workmanship and require City to fully pay for all necessary corrective construction efforts (“Corrective Action”). Company reserves the right to withhold approval and to forbid connection of any defective portion of the Facilities to Company’s system unless and until the Facilities have been constructed in accordance with plans and specifications and all applicable regulatory requirements. Further, City shall promptly undertake any Corrective Action required to remedy such defects and deficiencies in construction, materials and workmanship upon receipt of notice by Company. The foregoing notwithstanding, Company shall not unreasonably withhold or delay acceptance of the Facilities.

4. **Transfer of Ownership.** Upon completion and approval of the as-built Facilities by Company and any other governmental authority whose approval is required, City shall transfer all right, title and interest in the Facilities to Company via a bill of sale in a form substantially similar to that set forth in Exhibit “D” hereto. Thereafter, Company shall be the sole owner of the Facilities and be responsible for their operation, maintenance and repair.

Company's ownership and responsibility shall include all distribution mains and/or related appurtenances within Edison Road up to the point of connection to the service line of Edison Road receiving service. Maintenance and repair of each service line, which lines are not part of the Facilities, shall be City's responsibility. All work performed by or on behalf of City shall be warranted by City for two years from the date of transfer of the Facilities to Company against defects in materials and workmanship. City shall also covenant, at the time of transfer, that the Facilities are free and clear of all liens and encumbrances, and unless the time period for filing lien claims has expired, shall provide evidence in the form of lien waivers that all claims of contractors, subcontractors, mechanics and materialmen have been paid and satisfied.

5. **Final As-Built Drawings and Accounting of Construction Costs**. Immediately following completion and approval of the Facilities, City shall provide Company with three sets of as-built drawings and specifications for the Facilities and a reproducible copy of such drawings. City shall also provide an accounting of the cost of constructing and installing the Facilities, which amount shall be refundable in accordance with paragraph 8, below. Company shall have no obligation to furnish service to Edison Road or to accept the transfer of the Facilities until City has complied with this paragraph.

6. **Easements**. City shall be responsible for obtaining all necessary easements and rights-of-way for the construction and installation, and subsequent operation, maintenance and repair of the Facilities. Such easements and rights-of-way shall be of adequate size, location, and configuration so as to allow Company ready access to the Facilities for maintenance and repairs and other activities necessary to provide safe and reliable water utility service. Such easements and rights-of-way shall be provided to Company by City at the same time as City transfers ownership of the Facilities pursuant to paragraph 4, above. At the time of transfer, all easements

and rights-of-way shall be free of physical encroachments, encumbrances or other obstacles. Company shall have no responsibility to obtain or secure on City's behalf any such easements or rights-of-way.

7. **Reimbursement for Engineering and Other Fees and Expenses.** City shall also reimburse Company for the costs, expenses and fees, including legal fees and costs that are incurred by Company for preparation of this Agreement, for reviewing and approving the plans and specifications for the Facilities to be constructed by City, for inspecting the Facilities during construction and other supervisory activities undertaken by Company, for obtaining any necessary approvals from governmental authorities (collectively the "Administrative Costs"). For such purpose, City will pay to Company the sum of ten percent (10%) of the estimated cost of facilities itemized within Exhibit "C" or Seven Thousand Five Hundred Dollars (\$7,500.00), whichever is greater. City shall provide additional advances to Company, as may be requested by Company in writing from time-to-time, to reimburse Company for any additional Administrative Costs it incurs; such costs shall be approved by both City and Company prior to incurring such costs.

8. **Refunds of Advances.** Company shall refund annually to City an amount equal to seven percent (7%) of the gross annual revenues received by Company from the provision of water utility service to each bona fide customer within Edison Road. Such refunds shall be paid by Company on or before the first day of August, commencing in the fourth calendar year following the calendar year in which title to the Facilities is transferred to and accepted by Company and continuing thereafter in each succeeding calendar year for a total of twenty-two (22) years. No interest shall accrue or be payable on the amounts to be refunded hereunder, and any unpaid balance remaining at the end of such twenty-two year period shall be non-refundable.

In no event shall the total amount of the refunds paid by Company hereunder exceed the total amount of all advances made by City hereunder. For the purposes of this provision, the total amount of City's advances shall be equal to City's actual cost of constructing the Facilities, less the costs of any corrective action as defined in paragraph 3 above, the costs of curing any defects arising during the warranty period, as provided herein, and the costs of any unreasonable overtime incurred in the construction of the Facilities.

9. **Company's Obligation to Serve.** Subject to the condition that City fully perform its obligations under this Agreement, Company shall provide water utility service to all customers within Edison Road in accordance with Company's tariffs and schedule of rates and charges for service, the rules and regulations of the Commission and other regulatory authorities and requirements. However, Company shall have no obligation to accept and operate the Facilities in the event City fails to make any payment provided in this Agreement, fails to construct and install the Facilities in accordance with Company's standards and specifications and in accordance with the applicable rules and regulations of ADEQ, the Commission or any other governmental authority having jurisdiction thereover, or otherwise fails to comply with the terms and conditions of this Agreement. City acknowledges and understands that Company will not establish service to Edison Road until such time as Company has accepted the transfer of the Facilities, and all amounts that City is required to pay Company hereunder have in fact been paid. The foregoing notwithstanding, the Company shall not terminate service to Edison Road where service has been properly established as a consequence of any subsequent breach or nonperformance by City hereunder.

10. **Liability for Income Taxes.** In the event it is determined that all or any portion of City's advances in aid of construction hereunder constituted taxable income to Company as of

the date of this Agreement or at the time Company actually receives such advances hereunder, City will advance funds to Company equal to the income taxes resulting from City's advance hereunder. These funds shall be paid to Company within twenty (20) days following notification to City that a determination has been made that any such advances constitute taxable income, whether by virtue of any determination or notification by a governmental authority, amendment to the Internal Revenue Code, any regulation promulgated by the Internal Revenue Service, or similar change to any statute, rule or regulation relating to this matter. Such notification shall include documentation reasonably necessary to substantiate the Company's liability for income taxes resulting from the City's advances in aid of construction under this Agreement. In the event that additional funds are paid by City under this paragraph, such funds shall also constitute advances in aid of construction. In addition, City shall indemnify and hold Company harmless for, from and against any tax related interest, fines and penalties assessed against Company and other costs and expenses incurred by Company as a consequence of late payment by City of amounts described above.

11. **Notice**. All notices and other written communications required hereunder shall be sent to the parties as follows:

COMPANY:

Global Water - Santa Cruz Water Company, LLC
Attn: Ron Fleming
21410 N. 19th Avenue, Suite 220
Phoenix, Arizona 85027

CITY:

City of Maricopa
Attn: City Manager
39700 W Civic Center Plaza
Maricopa, Arizona 85138

Each party shall advise the other party in writing of any change in the manner in which notice is to be provided hereunder.

12. **Governing Law.** This Agreement, and all rights and obligations hereunder, shall be subject to and governed by the rules and regulations of the Commission relating to domestic water utilities and generally shall be governed by and construed in accordance with the laws of the State of Arizona. City understands and acknowledges that Company's rates and charges, and other terms and conditions applicable to its provision of utility service, may be modified from time-to-time by order of the Commission. Company shall provide City with copies of such orders that may affect City's rights and obligations hereunder.

13. **Time is of the Essence.** Time is and shall be of the essence of this Agreement.

14. **Indemnification: Risk of Loss.** City shall indemnify and hold Company harmless for, from and against any and all claims, demands and other liabilities and expenses (including attorneys' fees and other costs of litigation) arising out of or otherwise relating to City's failure to comply with any of the terms and conditions contained herein, including (without limitation) Company's refusal to serve Edison Road based on City's failure to pay all amounts required hereunder in a timely manner. City's duty to indemnify Company shall extend to all construction activities undertaken by City, its contractors, subcontractors, agents, and employees hereunder.

15. **Successors and Assigns.** This Agreement may be assigned by either of the parties provided that the assignee agrees in writing to be bound by and fully perform all of the assignor's duties and obligations hereunder. This Agreement and all terms and conditions contained herein shall be binding upon and shall inure to the benefit of the successors and assigns of the parties.

16. **Dispute Resolution.** The parties hereto agree that each will use good faith efforts

to resolve, through negotiation, disputes arising hereunder without resorting to mediation, arbitration or litigation.

17. **Integration: One Agreement.** This Agreement supersedes all prior agreements, contracts, representations and understandings concerning its subject matter, whether written or oral.

18. **Attorneys' Fees.** The prevailing party in any litigation or other proceeding concerning or related to this Agreement, or the enforcement thereof, shall be entitled to recover its costs and reasonable attorneys' fees.

19. **Authority to Perform.** Company represents and warrants to City that Company has the right, power and authority to enter into and fully perform this Agreement. City represents and warrants to Company that City has the right, power and authority to enter into and fully perform this Agreement.

20. **Conflict of Interest.** The provisions of A.R.S. §38-511 relating to cancellation of contracts due to conflicts of interest shall apply to this Agreement.

COMPANY:

GLOBAL WATER - SANTA CRUZ WATER COMPANY, LLC
an Arizona limited liability company

By: _____
Ron Fleming
Its: President

CITY:

By: _____
Christian Price
Its: Mayor