

WASTEWATER TREATMENT AGREEMENT
BETWEEN THE TOWN OF PARADISE VALLEY
AND THE CITY OF SCOTTSDALE

THIS INTERGOVERNMENTAL AGREEMENT (this "Agreement") is entered into as of the ____ day of _____, 2016 (the "Effective Date") between the CITY OF SCOTTSDALE, a municipal corporation of the State of Arizona ("City"), and the TOWN OF PARADISE VALLEY, a municipal corporation of the State of Arizona ("Town"). The City and the Town are sometimes referred to collectively in this Agreement as the "Parties," and each individually as a "Party."

RECITALS:

A. The City owns, maintains, has the right to utilize and/or operates, in whole or in part, certain wastewater treatment, collection and transportation facilities, comprised in whole or in part of tangible real or personal property, and located principally within the City. These facilities, as they may be modified, reduced, expanded or otherwise changed in number, type or function from time to time by the City in its sole discretion, are referred to as the "City System".

B. The Town owns certain wastewater collection lines and other related systems (the "Collection Facilities") and allows, and desires to continue to allow, current and future residential and commercial users within the Town's boundaries to connect to the Collection Facilities. The Town further desires to enter into an agreement with the City which allows continued connection of the Collection Facilities to the City System.

C. This Agreement replaces and supersedes IGA No.'s 980154 and 980131.

D. The City and the Town believe that it is in the best interests of both Parties to enter into a new agreement which defines the rights and obligations of the Town and the City with respect to the City System.

E. The City is authorized to enter into this Agreement pursuant to Arizona Revised Statutes ("A.R.S.") § 11-952 and the provisions of Article 1, Sections 3 and 3-1 of the City of Scottsdale Charter, and by City of Scottsdale Resolution No. _____.

F. The Town is authorized to enter into this Agreement pursuant to A.R.S. § 11-952 and the Town of Paradise Valley Resolution No.16-05.

AGREEMENTS:

IN CONSIDERATION of the foregoing recitals, the mutual promises of the Parties, and the benefits to be received by each of the Parties under this Agreement, and for other good and valuable consideration, the receipt and adequacy of which is acknowledged, the Parties agree as follows:

1. Definitions. Unless otherwise specified parenthetically in this Agreement, all capitalized terms used in this Agreement have the definitions ascribed to them in the Scottsdale

Revised Code, Chapter 49, as it may be amended from time to time, and the following terms have the definitions stated below:

- 1.1 “Base User Charge” is a flat fee charged monthly to non-residential customers of the Town System.
- 1.2 “Business Days” means as defined in Section 26.
- 1.3 “City” means the City of Scottsdale, Arizona and their respective councilpersons, employees, successors, assigns, agents, attorneys, and representatives.
- 1.4 “City Direct Connect Users” means those current and future residential or commercial users located within the Town that are directly connected to the City System and billed by the City of Scottsdale directly based upon metered water use. City Direct Connect Customers are not Town System Users.
- 1.5 “City System” has the meaning stated in Recital A of this Agreement.
- 1.6 “CMOM” (Capacity, Management, Operation and Maintenance Program) is a voluntary proactive approach to managing and operating wastewater collection systems as described in the Arizona Administrative Code, Title 18, Chapter 9, Article 3.
- 1.7 “Collection Facilities” has the meaning stated in Recital B of this Agreement.
- 1.8 “Commercial User” means a commercial business connected to the Town System.
- 1.9 “Effective Date” is the date that both the Town Council and the City Council have approved this Agreement and it has been signed by the Party last to sign.
- 1.10 “Event of Default” has the meaning ascribed to the term in Section 14 of this Agreement.
- 1.11 “Flow Map” means the map attached as Exhibit A that designates the area within the Town that discharges wastewater into the City System and which may be modified from time to time by mutual agreement of the Town and City.
- 1.12 “FOG” (Fats, Oils and Greases) means any hydrocarbons, fatty acids, soaps, fats, waxes, oils, and any other material that is extracted by hexane solvent, as specified in 40 CFR Part 136.
- 1.13 “Indirect Administrative Charge” means the charge for citywide indirect benefits and city imposed direct charges.
- 1.14 “Legal Requirements” has the meaning ascribed to the term in Section 9.1.1 of this Agreement.
- 1.15 “Out of City Customer Surcharge” means the charge to all customers located outside of the Scottsdale City Limits who are provided sewer service as described in the Scottsdale Revised Code, Chapter 49.

- 1.16 “Residential User” means a single-family residence connected to the Town System.
- 1.17 “Service Area” means the area within the Town’s boundaries which discharges wastewater into the City System through the Collection Facilities and which is designated on the Flow Map as the Service Area.
- 1.18 “Sewer Connection” means any approved connection (or “sewer tap”) to the City System through the Collection Facilities.
- 1.19 “SROG” (Sub-Regional Operating Group) has the meaning ascribed to the term in Section 9.1 of this Agreement.
- 1.20 “Total Commercial User Charge” means the charges billed by the City to the Town for all commercial users that discharge wastewater into the Collection Facilities to be treated by the City.
- 1.21 “Total Residential User Charge” means the charges billed by the City to the Town for all residential users that discharge wastewater into the Collection Facilities to be treated by the City.
- 1.22 “Town System” means the Collection Facilities within the Service Area that discharge into the Scottsdale City System.
- 1.23 “Total System Capacity” means the volume of wastewater as measured in million gallons per day that is purchased by the Town and flows from the Service Area through the Collection Facilities to the City for treatment.
- 1.24 “Total System Flow” means the daily wastewater flow by the Town System Users expressed in million gallons per day but excludes City Direct Connect User.
- 1.25 “Town” means the Town of Paradise Valley, Arizona and their respective councilpersons, employees, successors, assigns, agents, attorneys, and representatives.
- 1.26 “Town System Users” means all current and future residential and commercial users of the Town System connected to the City System through the Collection Facilities.
- 1.27 “User Category Charge” is that rate charged to customers of the Town System that includes those factors described in Section 49-141 of the Scottsdale Revised Code.
- 1.28 “Wastewater Connection Fee” means the fees paid or to be paid by the Town to the City in accordance with Section 3.2.1 of this Agreement, which fees will be used by the City at the time and in the manner as the City, in the exercise of its sole discretion, considers appropriate to operate the City System.

1.29 “Water Campus” means the City wastewater treatment plant located at 8787 East Hualapai Drive, Scottsdale, Arizona 85255, as this plant may be modified, expanded, contracted, or relocated from time-to-time by the City in its sole discretion.

2 The Town’s Right to Use the System. Subject to the terms and conditions of this Agreement (including, without limitation, Sections 12 and 14) and absent an Event of Default by the Town, the Town has the right, in perpetuity, to connect the Collection Facilities to and use the City System within the Total System Capacity or for future system capacity expansion upon the Town’s payment of any applicable Wastewater Connection Fees and compliance with all other requirements of this Agreement.

2.1 Residual Authority of City. Except as expressly provided in this Agreement, the Town has no right to use all or any part of the City System. All decisions regarding operation, administration, maintenance, expansion, contraction, modification or enhancement of the City System will be made by the City in its sole discretion. Nothing in this Agreement will be construed to grant to the Town or to any Town System User any ownership in the City System or any rights or interests other than those expressly granted in this Agreement.

2.2 Limitation on Agreement. The Parties acknowledge that there are residents and businesses within the Town utilizing septic wastewater treatment, City of Phoenix services or otherwise obtaining wastewater treatment services without connection, directly or indirectly, to the Town System. The Parties further acknowledge that there are (and will be) wastewater collection and/or transportation facilities in the Town that do not connect to the City System. This Agreement does not, and will not be construed as applying, in any manner, to these residents, businesses or facilities and that the City has no obligations to provide wastewater collection, transportation or treatment services or to assist in the provision of any services to these residents or businesses or to otherwise provide any service with respect to these other facilities. Providing that sewer capacity exists within the Service Area and that a sewer is available that is a part of the Town System, residents and commercial businesses within the Town will receive service.

2.3 Non-Applicability of A.R.S. § 9-516. The Town acknowledges and agrees that the City is not providing public utility services to the Town or to Town System Users in accordance with A.R.S. § 9-516 and that the Town is the municipal corporation providing wastewater treatment services to the Town System Users. By signing this Agreement, the Town waives and relinquishes any rights it may have under A.R.S. § 9-516 in the absence of this Agreement. Upon termination of this Agreement in accordance with its terms, the City will have no continuing obligation to provide wastewater treatment or any related service to the Town or to any Town System User.

3 Consideration for City System Use Rights. As partial consideration for City System use and other rights granted in this Agreement and for the services to be rendered by the City, the Town must pay the following to the City at the time, in the manner, and on the terms and conditions stated in this Section 3.

3.1 Town’s Total System Capacity.

3.1.1 Town's Existing Total System Capacity. At the time of execution of this Agreement, the Town's Total System Capacity is one million twenty six thousand four hundred seventy-nine (1,026,479) gallons per day.

3.2 Conditions of the Purchase of Additional Town System Capacity.

3.2.1 Amount of the Wastewater Connection Fee. To increase the Town's Total System Capacity, the Town must pay a Wastewater Connection Fee, as defined in Section 1.20, to the City at the time determined by the City or at the time the Town requests, in accordance with this Section 3.2. The Wastewater Connection Fee will be computed by the City based upon the rate of the Net Water System Cost Per Gallon Per Day of Capacity contained in the most current Development Fee Report in effect at the time for new connections within the City as defined in City Code Section 49-84.1. By way of example, the City's Wastewater Connection Fee Schedule as of the effective date of this Agreement can be referenced in Exhibit B, attached hereto.

3.2.2 Billing and Payment of the Wastewater Connection Fees. The City will notify the Town that the purchase of additional Total System Capacity is required, and as soon as is practicable, provide the Town a statement for the Wastewater Connection Fees then due to increase the Town's Total System Capacity. The Town will pay the Wastewater Connection Fee, in full, within one hundred twenty (120) calendar days after it receives the City's notification.

3.2.3 Town's Purchase of Additional Total System Capacity. At any time during this Agreement, the Town may purchase, in increments of no less than fifty thousand (50,000) gallons per day, additional Total System Capacity according to the then-current Wastewater Connection Fee schedule, provided, however, that if the Wastewater Connection Fee at the time of any purchase of Total System Capacity is less than ten dollars (\$10.00) per gallon per day, the Water Connection Fee shall be ten dollars (\$10.00) per gallon per day.

3.2.4 Reduction in Capacity Usage. Unless requested by the Town and agreed upon by the City, in the event of the Town's reduction in the Town's Total System Flow the Town will not be entitled to a refund of any Wastewater Connection Fee or any other sum paid to the City in accordance with the terms of this Agreement.

3.3 Determination of Town's Total System Flow.

3.3.1 As determined in the May, 2015 Wastewater Master Plan for the Town, the existing Town Total System Flow upon approval of this Agreement is four hundred sixty thousand (460,000) gallons per day discharged into the Town System.

- 3.3.2 The Town will be responsible for determining its Total System Flow in the future, at a frequency not less than five (5) years from the approval date of this Agreement or as agreed upon by both parties, by installing flow monitors at each point of discharge from the Service Area into the City System. The location of each flow monitor, the type of flow monitor, and the accuracy of the meter shall be approved by the City.
- 3.3.3 Flow monitoring in accordance with Section 3.3.2 will be conducted during the month of March for a minimum of a nine (9) day period and includes two (2) or more weekends. Either the Town or the City may extend the monitoring period.
- 3.3.4 Results of the flow monitoring from each point of discharge from the Town System will be provided to the City within thirty (30) calendar days following completion of the monitoring.
- 3.3.5 The Town's Total System Flow will be determined by averaging the sum of the daily wastewater flow at each point of discharge from the Town System during the monitoring period.
- 3.3.6 From time to time, there may be instances where interferences impact the total recorded flow during the monitoring period. In these cases, each event will be reviewed by both the Town and City to arrive at the flow. The City will have the final decision.

4 Total User Charges.

- 4.1 Total Residential User Charge. The Total Residential User Charge is to be paid monthly by the Town to the City and is a flat charge calculated by dividing the Annual Revenue – Residential Users by twelve (12).
 - 4.1.1 Residential User Charge Defined. The Town Residential User Charge (based on the current Annual Revenue – Residential Users, see Exhibit C) at the time of execution of this Agreement is one million six hundred forty-four thousand dollars) (\$1,644,000.00) annually.
 - 4.1.2 Town Payment Obligation. The Total Residential User Charge is to be paid by the Town. Under no circumstances will the City bill any Residential Town System User or compute the actual Town System usage by any individual Town System User, nor will the Town be relieved of any payment obligation for Total User Charges, Wastewater Connection Fees or otherwise, because of the Town's inability to collect any sum from any Town System User.
 - 4.1.3 Adjustments of Total Residential User Charge. The Total Residential User Charge may be adjusted by the City from time to time in conformity with any residential sewer user charge adjustment applicable to City System users. Any adjustments are equally applicable to Town System Users. Additionally, the Total Residential User Charge may be adjusted for the number of residential Town System Users as reported in the Annual

Connection Report. The methodology for making future adjustments to Total Residential User Charges can be referenced on Exhibit C.

- 4.1.4 Annual Connection Report. By July 1st, of each year during the Term of this Agreement, the Town must provide the City with a written report indicating the number of new Sewer Connections and previously unidentified Sewer Connections to the Town System through the Collection Facilities, specifying the location of each connection, the type of user (i.e. residential, hotel, office, restaurant), the size (acreage) of each residential property connection, and any other information reasonably requested by the City.
- 4.2 Commercial Town System User Charge. The Commercial Town User Charge is to be paid monthly by the Town to the City and is calculated by water consumption as described in 4.2.1.
 - 4.2.1. For Commercial Town System Users, the charge will be based on 90% of the average monthly water consumption for the preceding consecutive months of December, January, and February as determined by meter readings. If in-building and outdoor consumption are separately metered by the water provider, water consumption will be determined by the in-building metered reading. For each commercial user, the average monthly water consumption will be used to compute the total monthly sewer service charge that would be assessed to a similar commercial user located within the City. By May 1st of each year the Town will provide the City with water consumption for the preceding months of December, January, and February. If water consumption for the preceding months of December, January and February are not provided by May 1st, the prior water consumption used for billings will be increased by five (5) percent.
 - 4.2.2 The Commercial User Charge includes the Base User Charge, a User Category Charge, an Out of City Customer Surcharge and an Indirect Administrative Charge.
 - 4.2.3 The total Commercial User Charge may be adjusted by the City from time to time in conformity with any commercial sewer user charge adjustment applicable to City System users. Any adjustments are equally applicable to Town System Users. An example of how a typical Commercial User Charge is calculated is attached hereto as Exhibit D.
- 4.3 Billing and Payment of Total Residential and Commercial User Charge. On or about the first day of each successive calendar month during the Term of this Agreement (in accordance with the City's standard billing procedures as may vary from time-to-time) the City will send the Town a statement for both the Total Residential and Commercial User Charges for the current calendar month plus all other sums, if any, due from the Town to the City. The Town will pay the amount billed in full within thirty (30) calendar days after the date of the statement. Payment will be made to the City's Financial Services Department. Failure of the City to bill for any amount due from the Town is not a waiver of the charge, but payment by the Town will only be due to the City upon receipt of an appropriate

statement from the City. A late charge of three percent (3%) of the unpaid balance will be assessed on the next month's statement for payments not paid within thirty (30) days.

- 4.4 Exclusions. All City Direct Connect Users will continue to be billed by the City in the same manner after the Effective Date. The wastewater generated by the City Direct Connect Users does not count against the Town's Total System Flow or any other established capacity usage. All new City Direct Connect Users that discharge directly into the City System will pay a City Wastewater Connection Fee per City Code 49-84 to the City. All new Town residential City Direct Connect Users that discharge directly into the City System will pay a City Wastewater Connection Fee to the City per City Code 49.84.

5. Capacity Limitations.

5.1 Town's Obligations. The Town is solely responsible for assuring that its Total System Flow within the Service Area does not exceed the Total System Capacity or, if applicable, any other established capacity usage limitation as determined by the City. The Town will take all actions necessary to assure compliance with these limitations.

5.2 Capacity Exceedance Determination. The flow monitoring results as described in Section 3.3 will be used during the monitoring period to determine the Town's Total System Flow.

5.2.1 When the Town's Total System Flow exceeds ninety percent (90%) of the Total System Capacity, the Town will begin the process of determining whether to purchase additional Total System Capacity as described in Section 3.3. The City will notify the Town of this obligation.

6. Record Maintenance and Reporting Requirements.

6.1 Inventory. The Town must locate and inventory all new Sewer Connections into the Collection Facilities within the Service Area after the effective date of this Agreement and provide to the City this information on a quarterly basis.

6.2 "As-built" Plans for New Construction. After the effective date of this Agreement, the Town must forward to the City within forty-five (45) calendar days of acceptance by the Town copies of all "as-built" plans and drawings of new construction that includes a sewer extension or sewer tap that occurred after the effective date of this Agreement. The Town must also provide to the City videotapes of new construction of the Collection Facilities. The City has no obligation to maintain any sewer lines for which it has not been provided "as-built" plans and/or drawings or satisfactory evidence of video inspection (as required by Section 7.4 of this Agreement). If the Town fails to obtain "as-built" plans/drawings for any connection, line, extension, or subdivision built or installed after the Effective Date of this Agreement, the City may take all actions necessary to obtain the required plans/drawings or to have the plans/drawings prepared. Upon appropriate billing by the City, the Town will reimburse the City for all costs associated with obtaining the required plans/drawings.

- 6.3 Quarterly Reporting Requirements by the Town. No later than forty-five (45) calendar days after each quarter during the Term of this Agreement, the Town will deliver the following to the City as a part of, or in addition to, the report required by Section 6.2:
- 6.3.1 A list containing the results of all Sewer Connection inspections obtained during the quarter, certified by the Town's Engineer;
- 6.3.2 A list of all acceptances by the Town during the quarter of new Sewer Connections to the Collection Facilities within the Service Area; and
- 6.3.3 A "no activity" notice if, during the quarter, no Sewer Connection applications were filed, no connections were made, and/or no Sewer Connection inspections were conducted.
- 6.4 Quarterly Reporting Requirements by the City. No later than seven (7) calendar days after each quarter during the Term of this Agreement, the City will deliver to the Town, in a format acceptable to both the Town and City, a report indicating:
- 6.4.1 Both the location and type of maintenance performed during the previous quarter:
- 6.4.2 Any scheduled maintenance and the location to be performed during the next quarter:
- 6.4.3 Any deficiencies found within the Collection Facilities that need further attention by the Town:
- 6.4.4 Any recommendation by the City or its consultants that requires a replacement or rehabilitation of the Collection Facilities; and
- 6.4.5 Any complaints that the City received from the Town in response to operational issues and the subsequent follow up.
- 6.5 Transactions with Town System Users. Without limiting the provisions of Section 6, the Town will maintain records of all Collection Facilities and Town System transactions involving the Town or the City for a period of not less than five (5) years. The Town will provide for inspection, within two (2) Business Days of any request by the City, together with any records requested by the City which relate in any manner to the Town System, to the Collection Facilities, or to the Town's obligations under this Agreement.
- 6.6 GIS Maps. The Town must provide to the City all available maps of, and base mapping information for the Collection Facilities. The Town will thereafter provide, when available, updated base mapping information to the City for new construction each quarter during the Term of this Agreement. The base mapping information must be compatible with the City's GIS system.

- 6.7 Inspection Rights. At any time the City considers appropriate, the Town, by this Agreement, grants to the City all authority and access rights necessary for the City to conduct periodic inspections of Sewer Connections within the Service Area.
- 6.8 Books and Records. All books, reports, files and other records relating to the performance of either Party under this Agreement will be retained for not less than five (5) years and will be made available upon reasonable request, for inspection and/or copying. Any inspection, copying, review, analysis, audit or other procedure undertaken by a Party with respect to any books, reports, files or other records will be paid for by the Party seeking the books, reports, files and other records without right of reimbursement or recovery from the other Party, unless otherwise specifically provided in this Agreement.

7. Standards and Procedures for New Connections and Extension of the Collection Facilities.

- 7.1 Standards for New Connections. All connections to the Town System and the Collection Facilities must meet the City's design standards. These connections must be constructed and inspected in conformance with MAG Standard Specifications and Details and City of Scottsdale Supplements and the City Sewer Design Standards and Policies Manual.
- 7.2 Procedures for New Connections.
- 7.2.1 Connections to the City System. Other than the existing City Direct Connection Users, no direct connections to the City System will be made within the Service Area, unless mutually agreed upon by both parties. The City's consent to any direct connection may be conditioned or withheld by the City in its sole and absolute discretion. All costs associated with a direct connection to the City System shall be the responsibility of the customer and paid to the City.
- 7.2.2 Connections to the Collection Facilities. Before making or permitting any connections by a City resident into the Collection Facilities, the Town must review and approve each connection and confirm that each connection complies, among other things, with the terms of this Agreement. Any City resident that connects into the Collection Facilities is responsible for all fees required by the Town and paid to the Town.
- 7.3 Cost of New Connections. All costs associated with any new connection to the Collection Facilities will be the sole responsibility of the Town.
- 7.4 Inspections. The Town, at its own expense, must inspect by video camera, utilizing a procedure and videotape format acceptable to the City, all new sewer lines and connections within the Service Area and will not accept any sewer line or connection that does not meet the City's design standards. Copies of video logs must be sent to the City within ten (10) calendar days after acceptance by the Town of any new sewer lines and/or connections. No videotape referred to in this Section will be destroyed or disposed of by the Town without first obtaining the written consent of the City.

7.5 Procedures for Collection Facilities Extension.

7.5.1 Design Reports. Design reports are required for the extension of the Collection Facilities to provide an analysis of the impact that the proposed development will have on both the Town's Collection System and the City's System. These reports are to be reviewed and accepted by both the Town and City. Details of what is required in the design report can be found in the City Sewer Design Standards and Policies Manual.

7.5.2 Approval to Construct. The Town will require any developer to obtain any required permits prior to constructing.

7.5.3 Construction. Any extension must be constructed and inspected in conformance with MAG Standard Specifications and Details and City of Scottsdale Supplements and the City Sewer Design Standards and Policies Manual.

7.5.4 Additional Requirements. As-built plans and videotape of the new construction shall be obtained as described in Section 6.2 and forwarded to the City.

8. General Obligations of the City. Subject to the terms and conditions of this Agreement, and absent an Event of Default by the Town, the City will perform the obligations stated in this Section 8.

8.1 Wastewater Treatment and Disposal. The City will accept and transport for treatment and disposal wastewater conveyed by the Town through the Collection Facilities to the Town System from the Service Area subject to the terms and conditions stated in this Agreement.

8.2 Administration. The City will be responsible for preparing and delivering to the Town all monthly billing statements and for conducting all Town System inspections required under this Agreement.

8.3 Routine Maintenance. Unless otherwise provided in this Agreement, the City will perform all necessary maintenance functions for all future and existing Collection Facilities within the Service Area. This maintenance function includes root control within the collection system, blue staking, roach control, sewer cleaning, response to CMOM issues, conducting FOG inspections where needed, pipe repairs due to outside parties that damaged the pipe, and video records of the existing sewer system. The City's maintenance obligation excludes rehabilitation, expansion, enhancement, or replacement of any Collection Facility component. Maintenance of the Collection System will be performed at a frequency equal to those functions that are performed within the City's System.

8.3.1 FOG Inspections.

8.3.1.1 The Town will authorize the City to perform FOG inspections of all commercial users to enforce the requirements outlined in the Town Code.

The Town will perform public outreach to all commercial users informing them that City staff will have this authority.

8.3.1.2 The City will notify the Town within seven (7) calendar days of the results of the FOG inspection for any commercial user not in compliance. The City will provide an annual summary report of all inspections.

8.3.1.3 The Town will be responsible for working with commercial users to correct any violation found during the FOG inspection.

8.3.1.4 The Town will provide an annual list to the City of any new commercial users.

8.4 Sewer Condition Assessment. At the expense of the Town, the City will conduct a sewer condition assessment program within the Service Area of all Collection Facilities similar to the effort performed within the City; and the City may utilize outside contractors.

8.4.1 Spread over a five (5) year period, this program will include each year approximately twenty percent (20%) of the Service Area.

8.4.2 Once the initial sewer conditional assessment program is completed, the entire program will be repeated at a frequency agreeable to both the Town and City, but shall not be less than once every five (5) years following completion of the previous program.

8.4.3 Tasks within this program may include additional sewer cleaning, videoing, preparation of drawings and tables showing the results of the assessment, and recommendations to resolve any issues.

8.4.4 Within thirty (30) calendar days, the City will provide the Town with the results of the assessment as performed in Section 8.4.3.

8.4.5 The City will invoice the Town for the cost of those services performed at the same rate the City pays for similar services within the City. The Town will pay the amount billed in full within thirty (30) calendar days after the date of the statement.

8.5 Liaison. The City will identify a liaison to receive and resolve complaints relating to wastewater treatment and disposal services provided, directly or indirectly, by the City to the Town and by the Town to the Town System Users. The City will use reasonable efforts to address, in good faith, each concern or complaint within two (2) Business Days of the liaison's receipt of any complaint.

9. General Obligations of the Town. Subject to the terms and conditions of this Agreement, and absent an Event of Default by the City, the Town will comply with the obligations stated in this Section 9.

9.1 Compliance. Within one hundred fifty (150) calendar days after the Effective Date of this Agreement, if the Town has not previously done so, the Town will adopt

appropriate ordinances, resolutions, policies or regulations or take other appropriate Town Council action requiring the following: (i) compliance by all Town System Users with all of the requirements stated in Article IV, Chapter 49 of the Scottsdale Revised Code, the City's Charter, the City Enforcement Response Plan, the City Penalty Policy Plan, the Phoenix-Scottsdale-Paradise Valley Pretreatment Agreement No. 900131, any applicable Sub Regional Operating Group ("SROG") agreements; (ii) permits and the provisions of this Agreement; (iii) assure that all future and existing Sewer Connections and all portions of the Collection Facilities located within the Service Area are approved and accepted by the City; and (iv) provide inspection authority for the City to implement the FOG Program within the Town.

- 9.1.1 Legal Requirements. The Town will implement all measures and take all actions necessary to comply with the provisions of this Section 9 and to comply with all City ordinances, state statutes, regulations and policies, United States Environmental Protection Agency requirements, and all federal laws and requirements relating to the delivery of wastewater to the City for treatment and disposal (collectively, the "Legal Requirements"). If any provisions of this Agreement are affected by changes in any of the Legal Requirements, the Town agrees that this Agreement is to be considered amended to incorporate the changed Legal Requirements, including all requirements of any pretreatment program. The Town further agrees that, in the event the City is fined for any offense that is directly related to activities within the Town's boundaries, the Town will promptly reimburse the City for the fine and for any and all City staff costs and/or outside counsel fees and costs associated with the City's attempts to reduce the fine or the City's defense to the imposition of the fine, unless the fine relates to the City's failure to fulfill any obligation of the City expressly provided for in this Agreement.
- 9.2 Billing Town System Users. Except for the City Direct Connect Users, billed directly by the City in accordance with Section 4.4 of this Agreement, the Town is solely responsible for billing all Town System Users for the wastewater treatment services the Town provides, at the rates determined by the Town, from time to time, in its sole discretion, which rates may be greater than or less than the Total User Charges and other consideration paid by the Town to the City. The Town's obligation to make the payments required by Section 4 of this Agreement is not conditioned upon the Town's ability to collect the amounts which the Town charges to Town System Users.
- 9.3 Cooperation. The Town will cooperate with the City and perform any acts and execute, acknowledge, and deliver any instruments and documents necessary to effectuate the purposes of this Agreement. Without limiting the generality of the foregoing, the Town will assist and cooperate with the City to the extent necessary for the City to perform its maintenance functions in accordance with Section 8.3 of this Agreement and will make its engineers and consultants available, without charge to the City, to assist the City upon request.
- 9.4 Damages and Repairs. The Town is responsible for any and all damages to, or that result from, all future and existing portions of the Collection Facilities

(including, but not limited to, all future and existing Sewer Connections), which fail to meet the City's design standards, which are otherwise improperly constructed, detected as a result of the sewer condition assessment program, or not accepted by the City. The Town will, within a reasonable time after notice or discovery, at the Town's expense, make all necessary repairs and replacements to any lines and connections in accordance with the standards stated in Section 7 of this Agreement for new connections or otherwise take appropriate remedial action. Without limiting the generality of the foregoing, the Town is responsible for necessary remediation of all design problems and other issues that cannot be resolved as a result of the City's maintenance that exist within the Collection Facilities, including, but not limited to, elimination of any existing odor and/or backup problems.

9.5 Claims and Joint Defense Objections.

9.5.1 Claims Defined. The Town will defend any and all claims, demands, alternative dispute resolution ("ADR") proceedings and suits or threats of every description whether instituted or made against the Town, the City, or both, which arise from or which relate in any way to any future Termination Notice or any other notice from the City delaying, precluding or otherwise preventing connection to and/or utilization of the City System by the Town or any property owner or user within the Town, or others, or any other action taken by the Town in connection with the issuance of building and/or construction permits or zoning or other land use approvals which relate in any way to wastewater treatment or transportation obligations of the City, the Collection Facilities, any Termination Notice or the Town System. Defense of all Claims must be provided through counsel acceptable to the City and the City will cooperate with and assist in any defense. Despite the foregoing, the City will control the defense of all cases in which the City but not the Town is a party and will be consulted and kept fully informed in connection with the defense of all other Claims. The City has the right to approve or disapprove any settlement of any Claim; provided, however, that approval will not be unreasonably withheld, conditioned or delayed.

9.5.2. Defense of Claims. Should any claims, demands, ADR proceedings, suits or threats of any description, (1) arise from or relate in any way to any future Termination Notice or any other notice from the City delaying, precluding or otherwise preventing connection to and/or utilization of the City System by the Town or any property owner or user within the Town, or (2) for any other action taken by the Town in connection with the issuance of building and/or construction permits or zoning or other land use approvals which relate in any way to wastewater treatment or transportation obligations of the City, the Collection Facilities, any Termination Notice or the Town System, then in that event the following will occur:

9.5.2.1 Payment of Costs and Expenses. The Town and the City will work cooperatively to defend their respective interests. The Town and the City will be responsible for paying their respective costs and attorneys' fees and will mutually agree, if necessary, which entity will be the lead party in any defense. The Town and the City will

mutually agree on the split of any costs, including but not limited to, expert witness fees, travel costs, other professional costs and litigation expenses. The Town and the City will regularly consult during the defense and the lead entity will keep the other fully informed in connection with the defense of the Claim. The City has the right to approve or disapprove any settlement of any Claim, provided, however, that approval will not be unreasonably withheld, conditioned or delayed.

9.5.2.2 Payment of Liabilities. Any liabilities will be paid in accordance with the respective interests of the Town and the City and in accordance with their mutual agreement as to any settlement or as may be ordered by a court of competent jurisdiction or an agreed arbitrator(s).

9.5.3 Limitation on City Obligations. The City will reimburse the Town for its share of the foregoing costs, expenses and/or liabilities solely through a credit against the out of City customer surcharges as these out of City customer surcharges become due and payable by the Town to the City. In no event will the City ever be required to refund to the Town any out of city customer surcharge or other charge or fee previously paid by the Town to the City or to pay to the Town any sum under this Section 9 from any source other than accruing out of city customer surcharges.

9.6 Study to Purchase Additional Total System Capacity. If the Town determines its Total System Flow as required in Section 3.3 exceeds ninety percent (90%) of the Total System Capacity, and the Town is notified by the City, a study by the Town shall be initiated to evaluate the reasons for the increased flow.

9.6.1 Results of the Study. If the study concludes that additional flow occurred as a result of population growth within the Service Area, the Town shall purchase additional Total System Capacity as described in Section 3.2.

9.7 Notification of Complaints. The Town will notify the City of any customer complaint pertaining to the maintenance of the Collection Facilities.

9.8 Major Capital Repairs. If maintenance efforts as defined in Section 8.3 indicate that rehabilitation or rebuilding is required, the Town will initiate that effort within one year after notification by the City. The City may request payment for any additional maintenance that is performed by the City until the matter is resolved.

9.9 Meter Station Removal. Within one year after the effective date of this Agreement, the Town will remove all permanent metering stations and the related appurtenances.

9.10 Hold Harmless/Indemnification. The Town shall defend, indemnify and hold harmless the City and its City Council members, officers and employees for, from, and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including attorneys' fees, experts' fees and associated court costs) which arise from or relate in any way to

an Event of Default or an intentional or grossly negligent act by Town, or its employees, contractors, subcontractors, agents or representatives, undertaken in fulfillment of Town's obligations under this Agreement and for any action caused as a result of, but not limited to, operation and maintenance functions, repairs to the Collection Facilities, and response to complaints. To the extent permitted by law, City shall defend, indemnify and hold harmless the Town and its Town Council members, officers and employees for, from, and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including attorneys' fees, experts' fees and associated court costs) which arise from or relate in any way to an Event of Default or an intentional or grossly negligent act by City, or its employees, contractors, subcontractors, agents or representatives, undertaken in fulfillment of City's obligations under this Agreement and for any action caused as a result of, but not limited to, operation and maintenance functions, repairs to the Collection Facilities, and response to complaints.

- 9.11 Additional Town Requirements. If the Town, at any time, desires to expand or enhance any part of the Town System or to utilize any connection to the Town System for any purpose other than facilitating wastewater treatment by the City, or if the Town desires to utilize the Town System to transport wastewater for treatment by another municipality then: (i) any expansion, enhancement or use must first obtain the written approval of the City, which approval may be conditional or withheld by the City in its sole discretion; and (ii) the Town must pay to the City, at the time (or times) and in the manner as the City considers appropriate in its sole discretion, an amount equal to all costs, fees, overhead, general and administrative expenses and other expenses of any kind or nature, which the City determines, in its sole discretion, to be associated with the expansion, enhancement or use. Nothing in this Agreement will be construed to require the City, under any circumstances, to convey any real property to the Town or to grant to the Town any right, title or interest in any property or facility located within, or otherwise owned, used or operated by, the City.

10. Property Rights.

- 10.1 The Town's Rights. This Agreement does not grant, and may not be construed to grant, to the Town any right, title or interest in the City System or related facilities, other than the right to connect the Collection Facilities to the City System, and to use the City System, in accordance with the terms of, and subject to the conditions and limitations stated in, this Agreement.
- 10.2 Wastewater. All wastewater accepted by the City from the Town is the property of the City.
- 10.3 City Rights. This Agreement does not grant, and will not be construed to grant to the City any right, title or interest in the Collection Facilities other than the rights granted to the City in accordance with the terms of, and subject to the conditions and limitations stated in this Agreement.

11. Mutual Representations and Covenants. The City and the Town each represents, warrants and covenants to the other as follows:

- 11.1 Organization. Each Party is an Arizona municipal corporation and a political subdivision of the State of Arizona, duly organized and validly existing under the laws of the State of Arizona, and has all requisite power and authority to enter into this Agreement and into each and every instrument and document to be executed by each Party in accordance with the terms of this Agreement.
- 11.2 Authorization. The execution, delivery and performance by each Party of this Agreement, and of each and every other instrument and document to be executed by each Party in accordance with the terms of this Agreement, have been duly authorized by all necessary persons (and by all required actions) and do not violate its charter, or municipal code or result in the breach of or constitute a default under any agreement or instrument to which each Party (or any of its agencies or subdivisions) is a party or by which each Party (or any of its agencies or subdivisions) may be bound or affected. All consents and approvals of any person required in connection with the execution and delivery of this Agreement by each Party, and of each and every other instrument and document to be executed by each Party in accordance with the terms of this Agreement, have been obtained. Each individual executing this Agreement for each Party is the authorized agent of each Party and has the authority to execute this Agreement and to bind each Party.
- 11.3 Valid and Binding Agreement. This Agreement is valid and binding upon, and enforceable against, each Party and no further governmental consent, approval or ratification is required as a condition to the validity, binding nature, or enforceability of this Agreement or, to the extent required, any consent, approval or ratification has been obtained.
- 11.4 Future Technology and Improvements. The Parties acknowledge that the engineering and design technology relating to the City System and the Collection Facilities and their operation are subject to change. The Town and the City will, from time to time, review current engineering technology relating to the City System and the Collection Facilities and each Party will consider in good faith recommendations made by the other Party as they relate to the City System and/or the Collection Facilities, as applicable, to ensure utilization of current technology and engineering with respect to both the City System and the Collection Facilities.
- 11.5 Challenges to Validity. In the event of any legal action or proceeding instituted by a third party challenging the validity of any provision of this Agreement, the Parties agree to cooperate in diligently defending the action or proceeding.
- 11.6 No Warranties Regarding Repairs or Expansion. The parties agree that nothing in this Agreement will be considered a warranty or guaranty by the City that any repairs to the Collection Facilities or the City System, or that any expansion of the City System and/or the Water Campus, will be completed within any particular time period or that any particular level or quality of service will be provided.
- 11.7 No liability Assumed. Except as expressly provided in this Agreement, no other provision in this Agreement will be construed or interpreted as an assumption by either the City or the Town of liability arising from any act or omission of the other Party.

12. Term. The Term of this Agreement (“Term”) is perpetual, subject to termination only upon the occurrence of an Event of Default in accordance with Section 14.2.3 of this Agreement, upon cessation of City System operations by the City as provided in Section 14.4 of this Agreement, or upon written agreement of the City and the Town. The Parties’ rights to terminate this Agreement are not governed by, and are not subject to, the provisions of A.R.S. § 9-516 and the City has no continuing obligation to permit the Town or Town System User to utilize the City System subsequent to the termination of this Agreement.
13. Limitations on Connections. Despite the terms of Section 12 of this Agreement or of any other provision in this Agreement to the contrary, the City has the right, as permitted by applicable law, to impose, for health, safety or similar purposes, a moratorium upon additional connections to the City System (through the Connection Facilities or otherwise) at any time, provided that this action is non-discriminatory and applies with equal force within the City and the Town to the class or classes of affected users or potential users of the City System.
14. Events of Default; Remedies.
 - 14.1 Events of Default. Each and every one of the following events are considered an “Event of Default” under this Agreement:
 - 14.1.1 False Representations or Warranties. Any representation or warranty made by a Party, or found in any document incorporated in this Agreement, that proves, at any time, to have been incorrect in any material respect as of the time made, and if any Party fails to correct the representation or warranty within 30 days after written notice from the other Party to the defaulting Party that the representation or warranty was incorrect. If it is not reasonably possible to correct the representation or warranty within this 30 day period, the cure period will be extended if, within 30 days after receiving the written notice, the defaulting Party commences diligently to cure, and diligently continues good faith efforts to cure the default and, within a reasonable time, causes the correction of the representation or warranty to become correct.
 - 14.1.2 Monetary Default. If a Party fails to observe or perform any of the covenants, agreements or provisions of this Agreement that are a monetary obligation of the Party and the failure is not cured within 10 Business Days after written notice from the other Party of the non-performance by the defaulting Party.
 - 14.1.3 Non-Monetary Default. If a Party fails to observe or perform any of the other (*i.e.*, non-monetary) covenants, agreements or provisions of this Agreement (excluding obligations referred to in Section 14.1.1 of this Agreement) and the failure is not cured within thirty (30) days after written notice from the other Party to the defaulting Party. If it is not reasonably possible to cure the default within the thirty (30) day cure period, the cure period will be extended if within thirty (30) days after receiving the written notice, the defaulting Party commences diligently to cure, and diligently

continues good faith efforts to cure the default and, within a reasonable time, cures the default.

14.2 Remedies Upon Default. Upon the occurrence of any Event of Default, or at any subsequent time while the Event of Default continues, the non-defaulting Party may, at its option and from time to time, exercise any, all or any combination of the following remedies, in any order and repetitively, at the non-defaulting Party's option, subject to the terms stated below:

14.2.1 Performance by Non-Defaulting Party. The non-defaulting Party may pay or perform, to the extent feasible, for the defaulting Party's account and at the defaulting Party's expense, any or all payments or other obligations to be paid or performed by the defaulting Party, without liability to the defaulting Party for any loss or damage that may occur to the defaulting Party by reason of the payment or performance by the non-defaulting Party, and if the non-defaulting Party makes any payment or performance, the defaulting Party will reimburse the non-defaulting Party for the amounts paid immediately upon receiving demand, together with interest on the unpaid balance at the rate of ten percent (10%) per annum from the date of payment by the non-defaulting Party until repaid in full.

14.2.2 Specific Performance. The non-defaulting Party may elect and will have the right to seek specific performance by the defaulting Party of any obligation which the defaulting Party has allegedly failed to perform. Subject to the provisions of Sections 37 of this Agreement, the Parties agree not to raise as a defense the position that there is an adequate remedy available at law. The Parties stipulate and consent to the jurisdiction of the Court in any action.

14.2.3 Termination of Agreement. A non-defaulting Party may terminate this Agreement by delivery of written notice to the defaulting Party of the election to terminate, which termination will be effective one hundred eighty (180) days after the date of the delivery of notice or any later date stated in the notice.

14.2.4 Additional Remedies. Subject to the limitation of liability stated in Section 14.3 of this Agreement, and in addition to the remedies stated in Sections 3.1.1, 14.2.1, 14.2.2, 14.2.3 and 14.2.6 of this Agreement, a non-defaulting Party may pursue any and all other remedies (legal, equitable or otherwise) to which the non-defaulting Party may be entitled at law, in equity or under the other terms of this Agreement. Nothing in this Agreement will be construed to limit the authority of the City (or the Town) to undertake any lawful action against any person, including the Town (or the City), in response to conditions which may present an imminent and substantial endangerment to the public health, safety or welfare or to the environment.

14.2.5 Cumulative Remedies. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by any Party of one or more of these rights or remedies will not preclude the exercise by it, at the same time or different times, of any other

rights or remedies for the same Event of Default or for any other Event of Default by the other Party.

14.2.6 Special Remedies of City. Nothing in this Section 14.2 will be construed as limiting in any respect any rights or remedies of the City under the terms of Section 3.3.1 of this Agreement, and all remedies available to the City under Section 3.3.1 are also available in case of an Event of Default by the Town.

- 14.3 Limitations on Liability. Despite any other provision of this Agreement to the contrary, in any action or proceeding by a Party (or any other person claiming by, through or as a result of its relationship to that Party) against the other Party which arises from or relates to this Agreement or any alleged breach of this Agreement, the claiming Party will not be entitled to recover consequential, punitive or multiple damages of any kind or nature against the breaching Party (or any other person for whom the breaching Party is vicariously liable) and any right to recovery of damages in the absence of this provision is expressly waived.
- 14.4 Cessation of City System. This Agreement terminates automatically and without further notice if the City, at any time, ceases to operate the City System or an equivalent or similar system which provides wastewater treatment services to residents of the City. Termination in accordance with this Section 14.4 does not constitute a breach or default by any Party. The City has the absolute right during the Term of this Agreement to sell or otherwise deal with the City System or to contract or delegate its responsibilities with respect to the City System to related or unaffiliated persons or entities; provided, however, that any transaction must require that the City System operator assume the City's obligations under this Agreement and/or that the obligations remain the responsibility of the City.
15. Conflict of Interest Statutes. This Agreement is subject to, and may be terminated by, either Party in accordance with the provisions of A.R.S. § 38-511.
16. Time of Essence. Time is of the essence of each and every provision of this Agreement.
17. Nonliability of City and Town Officials. No official, representative, agent, attorney or employee of the City or the Town is personally liable to the other Party or to any successor-in-interest to the other Party in the event of any breach by the City or the Town, as applicable, or for any amount which may become due to the other Party or the other Party's successors, or with respect to any obligation of the City or the Town, as applicable, under the terms of this Agreement.
18. Limited Severability. If any provision of this Agreement is declared void or unenforceable (or is construed as requiring either Party to do any act in violation of any constitutional provision, law, regulation, municipal code or municipal charter), in whole or in part, that provision is considered severed from this Agreement and this Agreement otherwise remains in full force and effect; provided, however, that this Agreement will retroactively be considered reformed to the extent reasonably possible so that the reformed Agreement provides essentially the same rights and benefits (economic and otherwise) to the Parties as if severance and reformation were not required. The Parties further agree, in these 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.

19. Attorneys' Fee. In the event any action, suit or proceeding is brought in a court of law by any Party to enforce compliance with this Agreement, to exercise any rights or remedies under this Agreement, or to declare the rights of the Parties to this Agreement, the non-prevailing Party will pay to the prevailing Party all costs and expenses of the action, suit or proceeding, together with any sum as the court (and not the jury), as applicable, may adjudge reasonable as attorneys' fees to be allowed in the suit, action or proceeding.
20. No Third Party Beneficiaries. No person or entity is a third party beneficiary to this Agreement, except that the officials, councilpersons, employees, successors, assigns, agents, attorneys and representatives of the City and the Town are third-party beneficiaries of the provisions of Sections 9.6 and 17 of this Agreement. Without limiting the foregoing, the Parties expressly agree that the Town System Users are not third-party beneficiaries of this Agreement and have no rights against the City as a consequence of this Agreement.
21. Exhibits; Recitals; Legal Requirements. All Exhibits attached to this Agreement, all of the recitals stated above and all of the Legal Requirements are incorporated into and made an integral part of this Agreement for all purposes by this reference.
22. Integration/Relationship to Existing Agreement. This Agreement (including all Exhibits) constitutes the entire agreement between the Parties with respect to, and supersedes any previous agreement, understanding, negotiation or representation regarding, the subject matter of this Agreement.
23. Further Assurances. Each Party agrees to perform any further acts and to execute and deliver any additional agreements, documents, acknowledgements and instruments as any other Party may reasonably require to consummate, evidence, confirm or carry out this Agreement.
24. Construction; Section Headings. Whenever the context of this Agreement requires, the singular includes the plural, and the masculine, neutral or feminine includes each of the other. This Agreement is the result of negotiations between the Parties and their respective counsel and will not be construed for or against any Party as a consequence of its role or the role of its counsel in the preparation or drafting of this Agreement or of any Exhibit to this Agreement. The Section headings are for convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.
25. Choice of Law. This Agreement is made and is to be performed in the State of Arizona and governed by the internal, substantive laws of the State of Arizona without regard to conflict of law principles. Subject to the provisions of Sections 37 of this Agreement, any action brought to interpret, enforce or construe any provision of this Agreement or to declare the rights of the Parties under this Agreement will be commenced in the Maricopa County Superior Court (or, as may be appropriate, in the Justice Courts of Maricopa County or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over the action). The Parties irrevocably consent to jurisdiction and venue in these courts for these purposes and agree not to seek

transfer or removal of any action commenced in accordance with the terms of this Section 25.

26. Business Days. Where any action in this Agreement is required on a date that is not a Business Day, the party obligated to take the action is entitled to delay the action until the next succeeding Business Day. A business day is a day that is not a Saturday, Sunday, or legal holiday (as defined in the Code of the City of Scottsdale).
27. Relationship of Parties. No partnership, joint venture or other business relationship is established among the Parties to this Agreement. Except as expressly provided in this Agreement, no Party is liable for any acts, omissions or negligence on the part of any other Party or the other Party's employees, agents, independent contractors, or successors-in-interest resulting in either personal injury, economic loss, or property damage to any individual or entity.
28. Consents and Approvals. Wherever this Agreement requires or permits the consent or approval of a Party to any act, document, or other matter, the consent or approval may be given or denied by that Party, in its reasonable discretion, unless this Agreement expressly provides otherwise.
29. Inurement; Assignment. Except as provided in this Agreement to the contrary, all of the terms, covenants and conditions of this Agreement are binding upon, and inure to the benefit of, each Party and the successors and assigns of that Party. The rights and obligations of the Town under this Agreement are non-assignable and non-transferable, in whole or in part, without first obtaining the express, written consent of the City, which consent may be withheld or conditioned by the City in its sole and absolute discretion. Any purported transfer or assignment in violation of this provision is void and vests no rights in the purported transferee or assignee.
30. Amendment. The terms, conditions and representations of the Parties contained in this Agreement may not be orally amended, modified or altered. This Agreement may be modified only if done in writing, signed by the Parties, approved by their respective municipal Councils, and further approved in writing by their respective legal counsel.
31. Notice. All notices, claims, requests, and demands under this Agreement are to be in writing and served in person or via certified (return receipt requested) United States mail, postage prepaid, addressed as follows:

If to the City: City of Scottsdale
 Attn: Water Resources
 Director of Water Resources
 9379 East San Salvador
 Scottsdale, AZ 85258

With copy to: City of Scottsdale
 Attn: Water Resources
 Water Resources Administrator
 8787 East Hualapai Drive
 Scottsdale, Arizona 85255

and

City of Scottsdale
Attn: City Attorney
3939 North Drinkwater Boulevard
Scottsdale, Arizona 85251

If to the Town: Town Manager
Town of Paradise Valley
6401 East Lincoln Drive
Paradise Valley, AZ 85253

With copy to: Town Attorney
Town of Paradise Valley
6401 East Lincoln Drive
Paradise Valley, AZ 85253

or at any other address as is determined in writing by the Parties. Service by mail is considered to occur on the postmark date borne by the return receipt. Routine communications, written or telephonic, between the City and the Town is directed for the City, to the Director of Water Resources ((480) 312-5650) and for the Town, to the Town Engineer ((480) 948-7411). The City and the Town each have the affirmative duty to notify each other in writing when notice is given to a different person or address. No payment required under this Agreement is considered made until actually received by the intended payee.

32. Effectiveness of Agreement. This Agreement is binding on the parties upon the Effective Date.
33. Reserved.
34. Waiver. Waiver by any Party of any Event of Default or exercise of any rights under this Agreement is not considered to be a waiver of similar or other Events of Default or rights or of a future Event of Default with respect to the same duty. The failure of a Party to take any action by reason of any Event of Default or to exercise any right does not deprive any Party of the right to take any action at any time while the Event of Default or condition giving rise to the right continues.
35. Counterparts. This Agreement may be executed in several counterparts, each of which are considered an original, but all of which constitute one and the same instrument.
36. Covenants to Run With the Land. All of the provisions of this Agreement which relate to real property or interests in real property are covenants running with the identified land as long as the land is used for the purposes specified in or contemplated by this Agreement, and are binding upon and inure to the benefit of the Parties, their successors in interest and assigns.
37. Alternative Dispute Resolution.
 - 37.1 Agreement to Use the Procedure. In the event of a dispute between the Parties arising out of this Agreement (the "Dispute"), the Parties agree to utilize the

Alternative Dispute Resolution (“ADR”) procedures specified in this Section (the “ADR” Procedure”). For purposes of this Section 37 of this Agreement, the term “Parties” includes the Persons who are identified in Section 20 of this Agreement as third party beneficiaries.

- 37.2 Initiation of the Procedure. A Party seeking to initiate the ADR Procedure (the “Initiating Party”) must give notice to the other Party or Parties, describing briefly the nature of the Dispute and the Initiating Party’s claim and identifying an individual with authority to settle the Dispute on the Initiating Party’s behalf. The Party or Parties receiving Notice (the “Responding Party”) have 10 calendar days within which to designate, in a Notice given to the Initiating Party, an individual with authority to settle the Dispute on Responding Party’s behalf. The individuals so designated will be known as the “Authorized Individuals.” The settlement authority of the Authorized Individuals may be subject to final approval by the Town Council or the City Council, as appropriate.
- 37.3 Unassisted Settlement. The Authorized Individuals will make any investigations they consider appropriate and will promptly (but in no event later than 15 days from the date of the Initiating Party’s Notice) commence discussions concerning resolution of the Dispute. The Authorized Individuals may in their discretion utilize the services of a third party mediator or facilitator, in which case all associated costs will be paid one-half by the Town and one-half by the City. If the Dispute has not been resolved within thirty (30) calendar days from the commencement of discussions (the 30th day being the “Submission Date”), either Party may seek such remedies as considers appropriate by filing an action in the Maricopa County Superior Court.
38. Recitals. All Recitals are made a part of this Agreement by this reference.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

TOWN OF PARADISE VALLEY, a
municipal corporation

CITY OF SCOTTSDALE a,
municipal corporation

By: _____
Michael Collins, Mayor

By: _____
W. J. "Jim" Lane, Mayor

ATTEST:

ATTEST:

Town Clerk

Carolyn Jagger, City Clerk

Date: _____

Date: _____

The foregoing Agreement has been reviewed by the undersigned Attorneys who have determined that it is in proper form and within the power and authority granted under the laws of the State of Arizona.

DATED this ____ day of _____, 2016

Andrew Miller, Town Attorney

DATED this ____ day of _____, 2016

APPROVED AS TO FORM:

Bruce Washburn, City Attorney
By: Clifford J. Frey
Senior Assistant City Attorney

Exhibit A – Flow Map

Exhibit B - City's Wastewater Connection Fee schedule

Exhibit C - Total Residential User Charges

Exhibit D – Total Commercial User Charges Example

Exhibit A – Flow Map

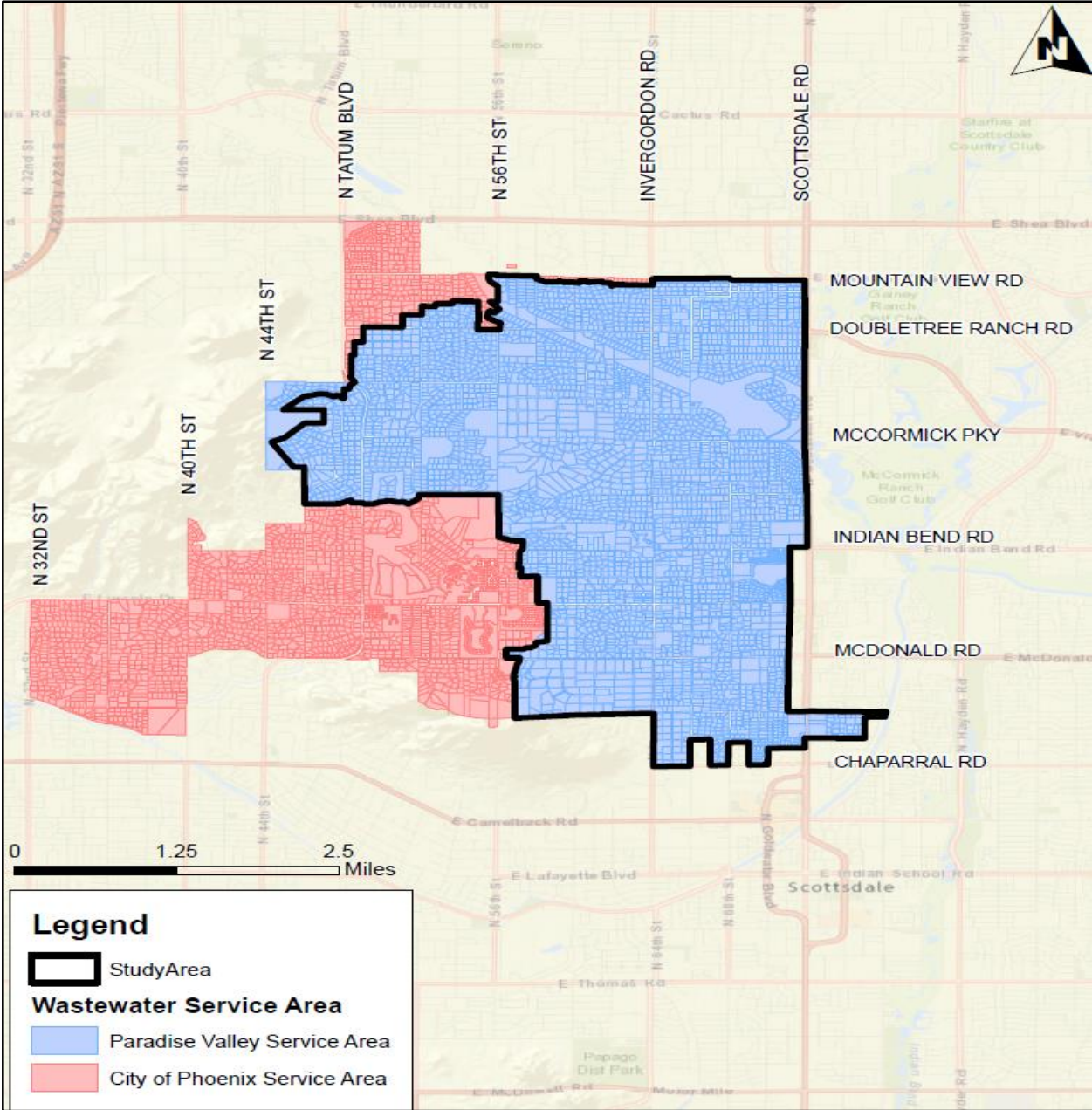


Exhibit B- City's Wastewater Connection Fee Schedule

Schedule 3

**Calculation of Water Impact Fees
 City of Scottsdale Impact Fee Model**

	Total
1 Wastewater Treatment Component	
Buy-In Value of Existing System (RCNLD) ¹	\$ 300,323,601
Growth Related Capital Project (IIP)	0
Total Water Treatment Component	\$ 300,323,601
Component Capacity (MGD) ²	40.00
Cost Per Gallon Per Day of Capacity	\$ 7.508
2 Wastewater Collection Component	
Buy-In Value of Existing System (RCNLD) ¹	\$ 106,855,883
Growth Related Capital Project (IIP) ³	4,970,696
Total Water Distribution Component	\$ 111,826,579
Component Capacity (MGD) ²	40.00
Cost Per Gallon Per Day of Capacity	\$ 2.796
Present Value of Growth Related Interest Expense (gpd) ⁴	\$ 0.990
Total Water System Cost Per Gallon Per Day of Capacity	\$ 11.294
Less:	(\$ 0.877)
Net Water System Cost Per Gallon Per Day of Capacity	\$ 10.417
Demand Factor Per EDU (Gallons Per Day) ⁶	196
Full Cost Water Impact Fee Per EDU	\$ 2,041.82

6 From Section 3.4 Existing Level of Service in the IIP Report.
 6 From Section 3.4 Existing Level of Service in the IIP Report.
 3 From Table 3-5 - Collection System Capital Facilities; in the IIP Report.
 4 From Schedule 4: Calculation of Interest Expense Fee Component.
 5 From Schedule 5: Debt Service Principal Credits Calculation.
 6 From Section 3.4 Existing Level of Service in the IIP Report.

Exhibit C – Total Residential User Charges

Town of Paradise Valley Sewer Rate

Residential Unit Rate

Monthly Average Gallons for Residential*	18,247	
Residential User Charge	\$2.63	^A
Volumetric Charge	\$47.99	
Base User Charge	\$3.00	^A
Subtotal Residential User Charge	\$50.99	
Indirect Administrative Charge	14.68%	
Out of City Customer Surcharge	10.00%	
Total Indirect Rates	24.68%	
Total Residential User Charge	\$63.57	
Number of Residential Town System Users (August 2015 Invoice)	2,155	^A
Annual Revenue - Residential Customers	\$1,644,000.00	
Sewer Condition Assessment**	\$234,200.00	
Net Annual Revenue - Residential Customers	\$1,878,200.00	

*The Town and the City agree to the monthly average gallons amount.
 **Sewer Condition Assessment is estimated to cost \$1,171,000 or \$234,200 annually for five (5) years.
 A These rate components are subject to change annually as described in the Agreement.
 Credit for wastewater source: \$4.08 - \$1.45 = \$2.63 (CAGR FY16 rate per 1K gallons \$1.45)

Exhibit D – Example of a Typical Commercial User Charge Calculation

Town of Paradise Valley Sewer Rate

Commercial Unit Rate

Assumption of a Monthly Average Gallons for a Commercial User*	40,000	
Commercial User Charge (per thousand gallons)**	\$2.70	^A
	<hr/>	
Volumetric Charge	\$108.00	
Base User Charge***	\$3.00	^A
	<hr/>	
Subtotal Commercial User Charge	\$111.00	
	<hr/>	
Indirect Administrative Charge	14.68%	^A
Out of City Customer Surcharge	10.00%	
	<hr/>	
Total Indirect Rates	24.68%	
	<hr/>	
Example of a Total Commercial User Charge	\$138.39	
	<hr/> <hr/>	

*This is an amount assumed for a typical Commercial User, with the actual amount for each actual Commercial User to vary based on water consumption data.

**Based on the applicable User Category code

***Based on the applicable water meter size

These rate components are subject to change annually as described in the Agreement.