

WATER RIGHT PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT dated March ____, 2019 (the “Agreement”), is entered into by ARCO Environmental Remediation, L.L.C. (“AERL”) (“Seller”), whose address is 501 Westlake Park Boulevard, Houston, TX 77079, and the City of Gallup (“Buyer”), a New Mexico municipality, whose address is c/o George Kozeliski, 1708 S. Second St., Gallup, NM 87301, (collectively, the “Parties”).

WHEREAS, Seller is the owner of surface water rights in the Bluewater Basin as set forth in License No. 1605, with a diversion right of 1,910.73 acre-feet per year (“afy”) and a consumptive use of 974.47 afy as supplemented by a groundwater right under New Mexico Office of the State Engineer (“OSE”) Declaration Nos. B-3-X-2, B-3-X-3, and B-196, and Seller is also the owner of groundwater rights for industrial purposes as set forth in OSE Declaration Nos. B-3, B-3-X, B-3-X-2, and B-3-X-3, with a diversion right of 2,356.18 afy and a consumptive use of 2,152.47 afy;

WHEREAS, Buyer desires to purchase, and Seller desires to sell, in accordance with the terms of this Agreement, a portion of the surface water and groundwater rights described in the paragraph immediately above to offset at least 11.9 afy of surface water depletion effects on Bluewater Lake that are predicted to occur by the OSE hydrologic model from full groundwater diversions by Buyer under OSE File No. G-22 *et al.*; and

WHEREAS, Buyer desires to purchase, and Seller desires to sell the following: 1) surface water rights appurtenant to 6.0 (six) irrigated acres under License No. 1605, as supplemented by Declaration Nos. B-3-X-2, B-3-X-3, and B-196, which equals 9.18 afy of consumptive use water rights; and 2) 23.82 (twenty-three and eighty-two hundredths) afy of consumptive use groundwater rights as set forth in OSE Declaration Nos. B-3, B-3-X, B-3-X-2, and B-3-X-3 (collectively, the “Water Rights”);

WHEREAS, Buyer has determined that: 1) purchasing and retiring the water rights appurtenant to 6.0 irrigated acres under License No. 1605, as supplemented by Declaration Nos. B-3-X-2, B-3-X-3, and B-196, will provide it with surface water offsets on Bluewater Lake equal to 9.18 afy of consumptive use; and 2) purchasing and retiring 23.82 afy of consumptive use water rights (equivalent to 26.07 afy of diversionary rights at a 91.35% diversion/consumption ratio) under OSE Declaration Nos. B-3, B-3-X, B-3-X-2, and B-3-X-3. will provide it with surface water offsets on Bluewater Lake equal to 3.0 afy of consumptive use (according to the OSE model, a diversion reduction of 8.69 afy and a corresponding consumptive use reduction of 7.94 afy in these wells results in a reduction of depletion from Bluewater Lake of 1.0 afy); and 3) together, the retirement of the Water Rights will provide surface water offsets of 12.18 afy on Bluewater Lake;

NOW THEREFORE, in consideration of the mutual covenants herein, the Parties agree as follows:

1. WATER RIGHTS: Seller agrees to sell and Buyer agrees to purchase all of the right, title and interest in the Water Rights free and clear of any and all liens or encumbrances.

2. DUE DILIGENCE: At Buyer's discretion, it may have a due diligence period of forty-five (45) days to examine relevant documents, maps, etc. related to the Water Rights upon notice to Seller within one week of the execution of this Agreement by Buyer and Seller.

3. CONDITIONS PRECEDENT FOR BUYER'S OBLIGATION TO CLOSE. The obligation of the Buyer and Seller to close the transaction contemplated by this Agreement shall be expressly subject to satisfaction or waiver of each of the following contingencies:
 - A. The Water Rights shall have been approved by the New Mexico Office of State Engineer ("OSE") as offsets for surface water depletion effects on Bluewater Lake that could potentially occur from Gallup's diversions under Permit No. G-22 *et al.* The approval of the administrative retirement of the Water Rights shall be in a manner acceptable to the State Engineer. Any State Engineer approval of the retirement of the Water Rights shall ensure that the Water Rights will no longer be appurtenant to and can no longer be used on Seller's real property identified as the "move from place of use" on Exhibit 1. Seller, at its sole discretion, shall have the right to terminate this Agreement at any time for any reason or no reason. If at any time the OSE places conditions on the retirement of these Water Rights in a manner which is not acceptable to either the Seller or Buyer in their reasonable discretion, both Seller and Buyer acting jointly or independently shall have the right to terminate this Agreement. Buyer will keep Seller reasonably apprised of the status of the retirement of the Water Rights, including copies of applicable documents. Buyer also agrees to notify Seller if any part of the OSE administrative process calls into question the validity of Seller's Water Rights. Buyer shall pay the costs related to obtaining OSE approval for the retirement of the Water Rights. Seller shall be responsible for any survey of the "move from" lands as may be required by the OSE. If necessary, Seller shall cooperate with Buyer to obtain authorization for the sale of rights from License No. 1605 from applicable authority within the Bluewater Toltec Irrigation District, provided that Buyer shall be responsible for all costs in support thereof. Except as otherwise described herein, the Parties shall be responsible for their own costs.

 - B. The OSE will have provided Buyer with written confirmation, in a manner acceptable to the Buyer and Seller, that the Water Rights are acceptable to offset Gallup's surface water depletion effects on Bluewater Lake that result from Gallup's full groundwater diversions under Permit No. G-22 *et al.* in 40 years according to the OSE model and the time for any appeal of such decision shall have lapsed.

 - C. The Water Rights are free and clear of all liens and encumbrances, assessments, or other operational obligations as well as any and all financial liens, encumbrances, and obligations.

4. PURCHASE PRICE FOR THE WATER RIGHTS: If the conditions precedent are satisfied, the purchase price for the Water Rights shall be \$45,654.00, paid by Buyer to Seller in funds acceptable to Seller at Closing. The purchase price has been calculated as follows:
 - A. The Parties agree that the purchase and sales price is based upon a unit of afy of consumptive use water right.
 - B. License No. 1605, as supplemented by OSE Declaration Nos. B-3-X-2, B-3-X-3, and B-196, AERL will cease irrigation on 6.0 acres of irrigated land with appurtenant surface water rights, as supplemented by groundwater rights. The move-from place of use is identified in Exhibit No. 1, attached hereto. The OSE calculates the consumptive irrigation requirement in this area to be 1.53 afy/acre, meaning a total of 9.18 afy of consumptive use water rights would be conveyed under this file. The Parties have agreed on a purchase and sales price of \$1,600.00/afy of consumptive use for these rights or a total of \$14,688.00.
 - C. OSE Declaration Nos. B-3, B-3-X, B-3-X-2, and B-3-X-3. AERL will cease diversions of 26.07 afy from groundwater wells associated with this right, which the OSE calculates would reduce the consumptive use from these wells by 23.82 afy. The Parties have agreed on a purchase and sales price of \$1,300.00/afy of consumptive use for these rights or a total of \$30,966.00.
 - D. The Buyer shall only be obligated to purchase the amount of the Water Rights approved by the OSE in accordance with Paragraph No. 3.A, above. If less than the total consumptive use Water Rights set forth herein are approved by the OSE, the purchase price shall be adjusted pro rata to the amount actually approved.
5. "AS-IS", "WHERE-IS" CONDITION: Buyer shall accept a conveyance of Seller's interest in the Water Rights in "AS-IS", "WHERE-IS" condition with all known and unknown faults and conditions (including but not limited to any environmental conditions or contaminants), and shall assume all liability arising after Closing for damages, claims, fines, penalties, and remediation arising from Buyer's use of the Water Rights without representation or warranty by Seller of any kind or nature except as set forth in this Agreement. Buyer has had the opportunity to conduct its own due diligence and any physical testing at its sole and absolute discretion and has determined that the quality and environmental condition of the Water Rights acquired hereunder is satisfactory and acceptable with regard to Buyer's intended use and assumes all responsibility and liability for any such use.
6. LIQUIDATED DAMAGES: Because damages for any breach of this Agreement are uncertain and difficult to ascertain, the Parties agree that the liquidated damages described herein shall be the limit of damages under this Agreement. If for whatever reason, Buyer terminates this Agreement AFTER all conditions precedent are timely satisfied, the Seller shall be entitled to a payment of \$5,000.00 as liquidated damages and

this Agreement shall be deemed terminated as to the rights and obligations of the Parties hereto other than Seller's right to liquidated damages.

7. CLOSING AND PAYMENT: Closing shall occur no later than 60 days after the satisfaction of all conditions precedent to Closing contained herein. At Closing, Buyer shall pay to Seller the total purchase price for the Water Rights as calculated in Paragraph No. 4, above. At or before Closing, Seller shall deliver to Buyer a Special Warranty Deed for the Water Rights in a form mutually acceptable to the Parties
8. SELLER'S REPRESENTATIONS, COVENANTS, WARRANTIES AND OBLIGATIONS:
 - A. Seller warrants lien free, unencumbered, and marketable title to the Water Rights at the time of execution of this Agreement and which shall continue and survive the Closing for a period of two years. The Water Rights are free and clear of all liens, security interests, mortgages, pledges, encumbrances, ditch fees, taxes and assessments and charges or claims of whatever nature. If any such claims or charges are discovered after the execution of this Agreement, Seller shall notify Buyer immediately and shall expedite, at Seller's expense corrective action and obtain a release of such claims and/or charges.
 - B. Seller represents and warrants that to the best of its actual knowledge the Water Rights are in good standing and in compliance with the requirements of all New Mexico laws.
 - C. Seller has no knowledge of any outstanding judgments against Seller that would in any manner affect the consummation of this transaction or constitute any cloud upon the title to the Water Rights. Seller has no actual knowledge of any litigation, proceedings, pending investigations, or any threats of litigation, proceedings, or investigations or claims of forfeiture or abandonment, which might result in any cloud upon the title to the Water Rights, or in any material change in the value of the Water Rights. Both Parties acknowledge and accept that the Water Rights are subject to the *State of New Mexico ex rel. State Engineer v. Kerr-McGee Corp. et al.*, (Thirteenth Judicial District Court, Consolidated, CB-83-190-CV) adjudication and expressly except the *Kerr-McGee* adjudication from this paragraph.
 - D. Seller agrees to cooperate in effecting the closing of this transaction by signing all necessary and appropriate documents required for Buyer to complete, file, and process all documents necessary to convey the Water Rights to Buyer for Buyer's use.
 - E. Seller represents to Buyer that Seller has full power, authority and legal right to (i) execute and deliver this Agreement, (ii) comply with the terms of this Agreement, and (iii) complete the transactions contemplated by this Agreement hereto.

9. BUYER'S REPRESENTATIONS, COVENANTS, WARRANTIES AND OBLIGATIONS: Buyer represents to Seller that Buyer has full power, authority and legal right to (i) execute and deliver this Agreement, (ii) comply with the terms of this Agreement, and (iii) complete the transactions contemplated by this Agreement.
10. CLOSING DOCUMENTS: On or before the closing date, Seller shall draft, execute, acknowledge (as appropriate) and deliver the following documents: (a) a Special Warranty Deed for the Water Rights, in a form mutually acceptable to the Parties; and (b) such other documents as may reasonably be required by Buyer to consummate the transaction which is the subject matter of this Agreement.
11. APPLICABLE LAW: This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico.
12. BINDING EFFECT: This Agreement, including all representations and warranties, shall bind and inure to the benefit of the respective heirs, representatives, successors and permitted assigns of Buyer and Seller.
13. NOTICES: No notice, request, demand, instruction or other document to be given hereunder to any Party shall be effective for any purpose unless delivered, in writing, to all Parties at the appropriate addresses set forth below:

Buyer: City of Gallup
c/o George Kozeliski, Esq.
1708 S. Second St.
Gallup, NM 87301

With Copy to: Curtis Hayes, Esq.
City Attorney
City of Gallup
P.O. Box 1270
Gallup, NM 87305

Seller: ARCO Environmental Remediation, L.L.C
c/o John Skance
Commercial Programs Manager
BP Remediation Management
201 Helios Way
Houston, TX 77079

With Copy to: James L. Lucari
Managing Counsel
BP Legal

501 Westlake Park Boulevard
MC WL1-LR3.668A
Houston, TX 77079

14. AMENDMENT: This Agreement shall not be amended except by the signatures of both Buyer and Seller.
15. TIME: Time is of the essence for each provision of this Agreement of which time is a factor.
16. INDEMNIFICATION: Seller and Buyer indemnify and hold each other harmless from and against any and all claims, demands, causes of action, debts or liabilities arising out of or on account of either party's breach of any provision of this Agreement including, without limitation, the intentional making of a false representation or breach of any covenant or warranty contained herein, with the exception of the circumstances set forth in Paragraph No.8.
17. ENFORCEMENT: Any claim, controversy or dispute arising out of this Agreement shall first attempt to be settled by non-binding mediation. The mediator shall be chosen by mutual agreement of the Parties. In the event that any claim, controversy or dispute arising out of this Agreement cannot be resolved by mediation, then any dispute arising hereunder shall be resolved by binding arbitration as governed by the Commercial Arbitration Rules of the American Arbitration Association.
18. INTERPRETATION: The Parties hereto acknowledge and agree that each has been given the opportunity to review this Agreement with legal counsel independently, and/or has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof.
19. SURVIVABILITY: All covenants of Buyer or Seller which are intended hereunder to be performed in whole or in part after close of escrow and all representations and warranties by either Party to the other, shall survive the close of escrow and delivery of the deed, and be binding upon and inure to the benefit of the respective Parties.
20. AUTHORITY OF PARTIES: Any corporation signing this Agreement, and each agent, officer, director, or employee signing on behalf of such corporation, but in his individual capacity, represents and warrants that said Agreement is duly authorized by and binding upon said corporation.
21. COUNTERPART: This Agreement and any other agreement, or document, delivered pursuant hereto may be executed in one or more separate counterparts. All of such counterparts shall when taken together constitute one and the same agreement.
22. ENTIRE AGREEMENT: This Agreement merges all previous negotiations between the Parties hereto and constitutes the entire agreement and understanding between the Parties

with respect to the subject matter hereof. No alteration, modification, or amendment hereto shall be valid except when in writing and when signed by the Parties.

“SELLER”

“BUYER”

By _____
Patricia Gallery

By _____
Jackie McKinney

Its President _____

Its Mayor _____

Attest: _____
Alfred Abeita II
City Clerk