**ASSIGNMENT OF CERTIFICATE OF DEPOSIT AGREEMENT**

 **AQUIFER PROTECTION PROGRAM (APP) PERMIT**

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| **Assignor**: Legal name and business address of the person required to obtain an aquifer protection permit under Arizona Revised Statutes (A.R.S.) § 49-241 and to demonstrate financial assurance under A.R.S. § 49-243: PERMITTEE NAME BUSINESS ADDRESS  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_PERMIT NO. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ State of incorporation: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Authorized to do business in Arizona on date of execution of Certificate of Deposit as:□ Domestic or Foreign Corporation must have an A.R.S. § 10-128 Certificate of Good Standing and a designated Statutory agent in Arizona for service of process[[1]](#footnote-1)□ Limited Liability Company must have an A.R.S. § 29-614 Certificate of Good Standing (Member Managed or Manager Managed) and a designated Statutory agent in Arizona for service of process[[2]](#footnote-2) □ Limited Partnership, Limited Liability Partnership, or Limited Liability Limited Partnership must have a certificate or certificate of registration on file at Arizona Secretary of State and a designated Statutory agent in Arizona for service of process[[3]](#footnote-3)□ Individual or Sole Proprietorship doing business under a Certificate of Trade Name registered at Secretary of State[[4]](#footnote-4)  |

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| **Financial Institution**:Legal name and business address:    Authorized to do business in Arizona on date of execution of Certificate of Deposit as:□ Domestic or Foreign Corporation must have an A.R.S. § 10-128 Certificate of Good Standing and a designated Statutory agent in Arizona for service of process[[5]](#footnote-5)□ Limited Liability Company must have an A.R.S. § 29-614 Certificate of Good Standing (Member Managed or Manager Managed) and a designated Statutory agent in Arizona for service of process[[6]](#footnote-6)□ Limited Partnership, Limited Liability Partnership, or Limited Liability Limited Partnership must have a certificate or certificate of registration on file at Arizona Secretary of State and a designated Statutory agent in Arizona for service of process[[7]](#footnote-7) ***And***Date of issuance of current A.R.S. § 6-851 *et seq.*, certificate to engage in trust business from the Superintendent of the Arizona Department of Financial Institutions: *[Month/Date/YEAR]****Or***□ National banking association authorized by Office of the Comptroller of the Currency pursuant to 12 U.S.C. § 1 *et seq*.□ International bank with U.S. operations regularly examined by the Federal Reserve pursuant to the Federal Reserve Act, 12 U.S.C. §§ 221 to 522. |

1. No later than the Licensing Time-frame (LTF) deadline applicable pursuant to Title 18, Chapter 1, Article 5 of the Arizona Administrative Code, **[DATE if Known]**, the Arizona Department of Environmental Quality (“ADEQ”) intends to issue to **[PERMITTEE** **NAME]** (hereinafter referred to as the "Assignor"), Aquifer Protection Program Permit (APP) **[NUMBER]** (“Permit”) (incorporated by reference as if stated herein). As a prerequisite for permit issuance, ADEQ requires Assignor to demonstrate financial assurance to meet its closure and post-closure obligations in Arizona Revised Statutes (“A.R.S.”) § 49-243(N) and Arizona Administrative Code (“A.A.C.”) R18-9-A201(B)(5) and R18-9-A203. Assignor has designated that this assignment of Certificate of Deposit (CD) shall be used to fund **[or partially fund if multiple mechanisms are used]** its facility closure and post closure financial assurance obligations. Approval of the financial assurance demonstration does not constitute issuance of Aquifer Protection Program Permit **[NUMBER]**.

 The terms of financial assurance are stated in APP Permit **[NUMBER],** incorporated by reference herein. Assignor’s financial assurance obligation estimate for calendar year \*\*\*\* of **[NUMBER]** dollars ($ **NUMBER**), is for estimated closure and post-closure costs. These estimated costs shall be updated at the frequency required in A.R.S. § 49-243(N) and the permit issued thereunder.

 Assignor does hereby assign, transfer, and set over to ADEQ, all right, title, and interest (possessory) in the Assignor's Certificate of Deposit No. **[FILL IN CD NO. HERE]** (hereinafter referred to as "Assigned Certificate of Deposit") with an expiration date of **[DATE].** This Assigned Certificate of Depositshall be automatically renewed on each successive expiration date, until ADEQ provides theFinancial Institutionwith a Release of Funds as described in paragraph 10.Assignor has purchased the Assigned Certificate of Deposit from **[FINANCIAL INSTITUTION NAME]** located at **[ADDRESS]**, and which shall be insured by the Federal Deposit Insurance Corporation (“FDIC") in the amount of up to two hundred and fifty thousand dollars ($250,000) to **[partially][totally]**  comply with a total financial assurance obligation amount of **[$** **NUMBER]**. Assignor agrees and stipulates that this Assignment carries with it ADEQ’s right in and access to any and all insurance of this account by the Federal Deposit Insurance Corporation as is necessary to meet Assignor’s financial responsibility requirements.*[NOTE: FDIC’s “Coverage Limit $250,000 per official custodian” means ADEQ can only accept assignment of one CD of $250,000 from a single institution—Permit Applicant could obtain additional CDs from other institutions, each for no more than the $250,000 FDIC limit.]*

2. Assignor represents and warrants that the Certificate of Deposit evidencing the [**(partial) (total)**] financial assurance obligation amount is delivered herewith to ADEQ to be held by ADEQ in safekeeping for ADEQ and the Assignor. Assignor further declares that the Certificate of Deposit is genuine and in all respects what it is purported to be; that Assignor is the owner thereof free and clear of all liens and encumbrances of whatever kind; that Assignor has the full power, right and authority to execute and deliver this Assignment, and that the original Certificate of Deposit is attached to this document.

3. The Director of ADEQ may, at any time after giving written notice to the Assignor, demand payment from the Financial Institution that issued the assigned Certificate of Deposit. Said demand shall be complete by ADEQ presenting the Certificate of Deposit or, where the Financial Institution holds the Certificate of Deposit, by presenting this Assignment Agreement and the written Administrative Order. The amount paid will be the face value of the Certificate of Deposit, plus accrued interest, less any penalties for early withdrawal. Any interest earned through deposit of the Certificate of Deposit shall accrue to the Certificate account.

4. ADEQ will refund direct to the Certificate of Deposit any funds derived from paragraph 3 above not needed to satisfy the purpose for which this assignment is made. If Assignor has fulfilled all necessary contractual requirements that are guaranteed by the Certificate of Deposit, then ADEQ shall refund any unused funds to Assignor with a Release of Funds as described in paragraph 10 (ten).

5. Facility Covered by Financial Assurance Obligation

 Facility Name:

Facility Address:

6. The Certificate of Deposit No.**[FILL IN CD NO. HERE]**, the Assignment of Certificate of Deposit Agreement, and the Receipt of Deposit shall be physically held by the Office of the Treasurer, 1700 West Washington Street*,* Phoenix, Arizona 85007, or in trust for ADEQ by **[NAME]** located at **[ADDRESS]** which shall not surrender the Certificate of Deposit to the Assignor or to any other person without written direction from the Director of ADEQ.

7. The Assignor authorizes and directs the Financial Institution to pay the negotiable value of the Assigned Certificate of Deposit, as instructed by ADEQ regardless of alleged defenses until the Financial Institution receives the Release as described in paragraph 10 (ten) of this agreement. The Financial Institution is not legally responsible for determining if the Assignor has made payment, performed its obligations or received notice. The Assignor further agrees that it will not permit nor pledge as collateral or withdraw any portion of the deposited amount assigned without the prior written consent of the Director of ADEQ.

8. The Financial Institution and Assignor agree that in the event the Financial Institution closes or is placed in receivership, any FDIC insurance proceeds received for the benefit of the Assignor on any account maintained with the Financial Institution, shall first be applied to cover the assignment to ADEQ. The Financial Institution shall notify the Assignor and the ADEQ Director in writing within 10 (ten) days after its filing for bankruptcy, and Assignor shall demonstrate to the ADEQ Director within 60 (sixty) days after the filing for bankruptcy of the Financial Institution an alternative financial assurance mechanism that complies with A.R.S. § 49-243(N) and A.A.C. R18-9-A203 and shall apply to ADEQ for a Permit Amendment.

9. Bankruptcy Notices

The Assignor shall notify the Director within five (5) days after the filing of a bankruptcy by Assignor or after receiving notice from the Financial Institution of its filing of a bankruptcy, at the following address:[[8]](#footnote-8)

 Arizona Department of Environmental Quality

 Attention: Director

 1110 West Washington Street

 6th Floor

 Phoenix, Arizona 85007

Financial Institution Bankruptcy Notices

The Financial Institution and Assignor agree that in the event the Financial Institution closes or is placed in receivership, any FDIC insurance proceeds received for the benefit of the Assignor on any account maintained with the Financial Institution, shall first be applied to fund the assignment to ADEQ. The Financial Institution shall notify the Assignor and the ADEQ Director in writing within 10 (ten) days after its filing for bankruptcy, and Assignor shall demonstrate to the ADEQ Director within 30 (thirty) days after the filing for bankruptcy of the Financial Institution an alternative financial assurance mechanism. [[9]](#footnote-9)

10. This assignment remains in effect until the date the Assignor signs, dates, and returns the Release of Funds to ADEQ to present to the Financial Institution for Payment. Please note, this agreement contractually binds all parties to its terms. Any violation of the terms of this agreement shall be considered a breach of the agreement subject to all contractual remedies available under law. The financial institution shall not release any or all funds to the Permittee except upon receipt of a signed and dated Release of Funds form signed by ADEQ *and* Permittee.

11. Choice of Law

This Agreement shall be governed, interpreted, and enforced according to the laws of the State of Arizona.  The parties agreed that venue is proper in Maricopa County under A.R.S. § 12-401(17). If a dispute that arises out of this Agreement is based upon an Administrative Order issued by the Director of ADEQ[[10]](#footnote-10), any and all appeals from such an Order are subject to hearing at the Arizona Office of Administrative Hearing, and any and all such appeals shall be determined pursuant to hearing as prescribed by A.R.S. § 41-1092 *et seq.*

A state agency shall include an agreement to make use of arbitration in all contracts which are subject to mandatory arbitration pursuant to rules adopted under A.R.S. § 12-133.[[11]](#footnote-11) If a dispute arises out of this Agreement, and the amount in controversy does not exceed the statutory amount as set forth by statute[[12]](#footnote-12), the matter shall be, upon filing the matter with Maricopa County Superior Court, submitted to and decided by an arbitrator or arbitrators in accordance with the provisions of A.R.S. § 12-133 *et seq*. [including A.R.S. § 12-1518] and Az.R.Civ.Pro.72-76.[[13]](#footnote-13)

If a dispute arises out of this trust agreement and the amount in controversy exceeds the statutory amount[[14]](#footnote-14), the matter shall be filed in Maricopa County Superior Court and litigated pursuant to the appropriate litigation statutes

12. **Assignor**

Signed and dated this day of , 20

Assignor's Signature) Title

(Assignor's Address)

***ASSIGNOR’S NOTARIZATION***

STATE OF )
COUNTY OF )

Before me, the undersigned authority, on this day personally appeared **[NAME]**, known to me to be the person whose name is subscribed to the foregoing instrument, and upon his{her} oath acknowledged to me that he{she} executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS \_\_\_\_\_\_\_ DAY OF \_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_.

(SEAL)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
NOTARY PUBLIC IN AND FOR {county}
COUNTY, {state}

13**. Assignor Corporate Acknowledgement**

I, **[NAME]**, certify that I am the **[TITLE]** of the **[PERMITTEE NAME]**, the corporation named as principal to this assignment, that **[PERMITTEE’s** **NAME]** who signed this agreement on behalf of the principal was the **[PERMITTEE’s** **TITLE]**, that said agreement was duly signed on behalf of the corporation by authority of its governing body and is within the scope of its corporate powers.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Corporate Seal) (Signature)

14. **Financial Institution Acceptance**

The Financial Institution, as witnessed by the signature of its duly authorized officer, recognizes the assignment of the Assigned Certificate of Deposit in the (combined) amount of **[NUMBER]** dollars ($ **NUMBER** ) on this day of

 , 20 .

The Financial Institution agrees that this assignment has been established to protect the interests of ADEQ as required by A.R.S. § 49-243(N) and A.A.C. R18-9-A203 for Aquifer Protection Program Permit No. and waives all rights of offset or lien against the Assigned Certificate of Deposit.

The Financial Institution agrees to pay the face value of the Assigned Certificate of Deposit plus accrued interest on the demand of ADEQ or as soon as permitted under the terms of the Assigned Certificate of Deposit without regard to determining whether there has been performance, payment, or notice given to the Assignor.

The Financial Institution agrees to ignore any attempt by the Assignor, or any third party, to offset a claim against the Assigned Certificate of Deposit. The Financial Institution agrees to rely upon the instructions of ADEQ, executed over the signature of the person, or designee, appearing under Acceptance, without the need to verify the person's authority.

The Financial Institution further agrees that it will not permit the Assignor to pledge as collateral or withdraw any portion of the principal amount assigned without the prior written consent of the Director of ADEQ.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Name of Financial Institution)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Authorized Signature) TITLE

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Assignor's Address)

***FINANCIAL INSTITUTION NOTARIZATION***

STATE OF )
COUNTY OF )

Before me, the undersigned authority, on this day personally appeared **[NAME]**, the **TITLE** of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument, and upon his{her} oath acknowledged to me that he{she} executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS \_\_\_\_\_\_\_ DAY OF \_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_.

(SEAL)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
NOTARY PUBLIC IN AND FOR {county}
COUNTY, {state}

 The Bank’s obligations are set forth in its Certificate of Deposit. Nothing in this Agreement diminishes or modifies the Bank's obligations under its Certificate of Deposit.

15. **ADEQ Acceptance**

ADEQ, an agency of the State of Arizona, accepts the assignment of Assigned Certificate of Deposit No. in the amount of\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ dollars ($ ) this day of , 20 , in accordance with the stipulations of this agreement.

Accepted by:

 (Signature) Director, Water Quality Division, or Designee

16. The provisions hereof shall bind and inure to the benefit of the parties hereto and their heirs, administrators, successors and assigns, jointly and severally.

1. *See* A.R.S. § 10-501 [↑](#footnote-ref-1)
2. *See* A.R.S. § 29-604 [↑](#footnote-ref-2)
3. *See* A.R.S. §§ 29-308 and 29-349 [↑](#footnote-ref-3)
4. *See* A.R.S. § 44-1460.01 [↑](#footnote-ref-4)
5. *See* A.R.S. § 10-501 [↑](#footnote-ref-5)
6. *See* A.R.S. § 29-604 [↑](#footnote-ref-6)
7. *See* A.R.S. §§ 29-308 and 29-349 [↑](#footnote-ref-7)
8. *See* A.A.C. R18-9-A207(C) [↑](#footnote-ref-8)
9. *See* A.R.S. § 49-243(N) and A.A.C. R18-9-A203 [↑](#footnote-ref-9)
10. *See* A.R.S. § 49-321 *et seq*. [↑](#footnote-ref-10)
11. *See* A.R.S. § 12-1518 [↑](#footnote-ref-11)
12. *See* A.R.S. § 12-133(A)(1) [↑](#footnote-ref-12)
13. *See* A.R.S. § 12-133 *et seq*.; *See* also 17 C.A.R.S. Super.Ct.Local Prac.Rules, Maricopa County, Rule 3.10 [↑](#footnote-ref-13)
14. *See* A.R.S. § 12-133(A)(1) [↑](#footnote-ref-14)