**ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY**

**[Permittee Name]**

**Aquifer Protection Program Permit**

**GUARANTEE** [Initial] or [Amendment] [See Cost Estimates and paragraphs 2, 3, 4 for Amendment]

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| **Permittee**:  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:  Legal Name    Business Address          State of Business Entity Filing      Authorized to do business in Arizona on date of execution of the Guarantee 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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| **Guarantor**:  Legal name and business address:        Authorized to do business in Arizona on date of execution of the Guarantee 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 certificate or certificate of registration on file at Arizona Secretary of State and a designated Statutory agency in Arizona for service of process[[7]](#footnote-7) |

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| **Beneficiary:** |
| Arizona Department of Environmental Quality  1110 W. Washington Street  Phoenix, Arizona 85007 |

This Guarantee is made this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_ by [**Guarantor Name]**, herein referred to as “Guarantor.”

**[Permittee Name]** is herein referred to as the “Permittee.”

Guarantor is **[Option 1:** the parent company of Permittee**][Option 2:** Explain other substantial business relationship between Guarantor and Permittee**].** The Arizona Department of Environmental Quality (“ADEQ”), a State of Arizona agency, is herein referred to as the “Beneficiary” of the Guarantee.

**RECITALS**

WHEREAS, No later than the Licensing Time-frame (LTF) deadline applicable pursuant to Title 18, Chapter 1, Article 5 of the Arizona Administrative Code, ADEQ intends to issue to [**PERMITTEE** **NAME]** (hereinafter referred to as the "Permittee"), Aquifer Protection Program Permit (APP) [**NUMBER**] (“Permit”) (incorporated by reference as if stated herein). As a prerequisite for permit issuance, ADEQ requires Permittee to demonstrate financial assurance to meet its facility 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. Permittee has designated that this Guarantee shall be used to fund [or partially fund] 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**].

WHEREAS, Permittee has submitted to the Beneficiary an affidavit certifying that the guarantee arrangement is valid under all applicable federal and state laws[[8]](#footnote-8); and

***[ADD*** *this WHEREAS for a Permittee that is a corporation*:]

WHEREAS, Permittee has submitted to the Beneficiary a certified copy of the corporate resolution authorizing the corporation to enter into an agreement to guarantee the Permittee’s financial assurance obligation[[9]](#footnote-9); and

WHEREAS, Permittee has submitted to the Beneficiary documentation to explain the substantial business relationship between the Guarantor and the Permittee**[[10]](#footnote-10)**; and

WHEREAS, Guarantor has submitted a financial statement, which is not consolidated with that of a parent or sibling company, or has otherwise demonstrated that Guarantor meets or exceeds the financial test for self-assurance criteria in the Arizona Aquifer Protection Permits Rules[[11]](#footnote-11); and

WHEREAS, Guarantor has submitted a letter signed by the Guarantor’s chief financial officer[[12]](#footnote-12) that identifies the criterion in A.A.C. R18-2-A203(C)(1)(a) or (b) used by Guarantor to satisfy the requirements, an explanation of how the Guarantor meets the criterion, and certification of the letter’s accuracy; and

WHEREAS, Guarantor has submitted a statement from an independent certified public accountant verifying that the demonstration submitted is accurate based on a review of the Guarantor’s financial statements for the latest completed fiscal year or more recent financial data and no adjustment to the financial statement is necessary[[13]](#footnote-13); and

WHEREAS, this Guarantee has been submitted to demonstrate financial competence in compliance with A.R.S., Title 49, The Environment; Chapter 2, Water Quality Control; Article 3, Aquifer Protection Permits; Arizona Administrative Code (A.A.C.) R18-9-A201(B)(5) for closure and post-closure; and R18-9-A203(B) and (C)(1), (4) and (8);

WHEREAS, Permittee agrees to comply with the requirements specified in A.A.C. R18-9-A203(E) and (F) concerning financial assurance mechanism substitution and permit amendment; and

WHEREAS, Permittee owns or operates the discharging facility(ies) listed below that are covered by this Guarantee:

Aquifer Protection Permit (APP) Identification Number:

Facility Name:

Facility Address:

The [Amended] cost estimates covered on the date of execution of this [Amended] Guarantee are as follows:

Closure Amount: $

Post-Closure Amount: $

Total Sum of Guarantee: $ ; and

WHEREAS, "Closure plans" and "post-closure plans" as used below refer to the plans maintained as required by Arizona Revised Statutes Title 49, Chapter 2, Article 3, Aquifer Protection Permits, for closure and post-closure care for the facility(ies) identified above;

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor, the Permittee and the Beneficiary agree as follows:

1. Guarantor guarantees to the Arizona Department of Environmental Quality (the “Beneficiary”), a State of Arizona agency, that in the event that Permittee fails to perform closure and post-closure care of the above facility(ies) in accordance with the closure or post-closure plans whenever required to do so, the Guarantor shall take one of the following actions to cover the financial obligation required by A.R.S. § 49-243, as estimated pursuant to A.A.C. R18-9-A201(B)(5):

a. perform the required or post-closure care; or

b. pay a third party to perform the construction, operation, maintenance, required closure or post-closure care; or

c. establish and fully fund a trust fund as specified in A.A.C. R18-9-A203(C)(8) and R18-9-A203(C)(4) in the name of the Beneficiary in the amount not to exceed the Total Sum of the Guarantee.

1. **[For an Amendment to Initial Guarantee, add this paragraph:** Subject to the terms of this Amendment, the Guarantee is and shall remain in full force and effect and is hereby ratified and confirmed. The Guarantor hereby confirms to the Beneficiary that the representations and warranties made by the Guarantor that are set forth in the Guarantee are true and correct as of the date hereof with respect to the Guarantor and the Guarantee.]
2. This [Guarantee] [Amendment to Guarantee] shall be governed by and construed according to the laws of the State of Arizona. The parties agree that venue is proper in Maricopa County under A.R.S. §§ 12-123 and 12-401(17).
3. If a dispute that arises out of this Guarantee is based upon an Administrative Order issued by the Director of ADEQ[[14]](#footnote-14), 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*.

b. 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 section 12-133.[[15]](#footnote-15) If a dispute arises out of this Guarantee and the amount in controversy does not exceed the statutory amount as set forth by statute[[16]](#footnote-16), 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.[[17]](#footnote-17)

1. This [Guarantee] [Amendment to Guarantee] may be executed in counterparts, without the necessity that the parties execute the same counterpart, each of which, when so executed and delivered, shall be an original, but all of which shall constitute one and the same instrument. A signature delivered by facsimile or by any other reliable electronic transmission shall be deemed to be an original signature for purposes of this Guarantee and shall be binding upon the party delivering the same as such party’s original signature. Notwithstanding that a party may deliver a signature by facsimile, such party covenants to deliver an originally executed counterpart of this Guarantee to the other party within a reasonable period of time after executing this Guarantee.
2. Notices

All notices, requests, demands or other communications provided for in this Agreement, excluding bankruptcy notices, shall be in writing and shall be deemed to have been given at the time when personally delivered or mailed in a registered or certified prepaid envelope, return receipt requested, or sent by overnight courier who regularly provides receipts and addressed to the addressees below:

PERMITTEE: **[NAME]**

**[Mailing Address]**

**[County][Town] [State] [Zip Code]**

GUARANTOR: **[NAME]** Bank

**[Mailing Address]**

**[County][Town][State][Zip Code]**

BENEFICIARY: Arizona Department of Environmental Quality

Attention: Manager, Aquifer Protection Unit

1110 West Washington Street

Phoenix, Arizona 85007

Arizona Department of Environmental Quality

Attn: Assistant Director of Business and Finance

1110 W. Washington

Phoenix, Arizona 85007

Permittee Bankruptcy Notices

The Permittee shall notify the Director within five (5) days after the filing of a bankruptcy by Permittee.[[18]](#footnote-18) All notices, requests, demands or other communications arising out of PERMITTEE’S bankruptcy shall be in writing and shall be deemed to have been given at the time when personally delivered or mailed in a registered or certified prepaid envelope, return receipt requested, or sent by overnight courier who regularly provides receipts and addressed to:

Arizona Department of Environmental Quality

Attention: Director

1110 West Washington Street

6th Floor

Phoenix, Arizona 85007

Or at such other address as hereafter may be notified in writing by one party to the other. Service by mail shall be deemed complete at the date of delivery as shown by the registered or certified mail receipt.

**SIGNATURE PAGES**

**IN WITNESS WHEREOF**, the parties hereto have caused this [Guarantee] [Amendment to Guarantee] to be executed by their duly authorized representatives, to be effective as of the date first above written.

**GUARANTOR**

**NAME of CORPORATION**

By:

Signature Date Signed

Printed Name

Printed Title

STATE OF ARIZONA )

) ss.

COUNTY OF )

The above document was acknowledged before this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, [**YEAR]**, by

**[Printed Name]** as **[TITLE]** of the **[NAME]**, Arizona.

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

Notary Public

Seal:

**PERMITTEE**

**NAME of CORPORATION, PARTNERSHIP OR SOLE PROPRIETORSHIP**

By: Signature Date Signed

Printed Name

Printed Title

STATE OF ARIZONA )

) ss.

COUNTY OF )

The above document was acknowledged before this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, [**YEAR]**, by

**[Printed Name]** as **[TITLE]** of the **[NAME]**, Arizona.

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

Notary Public

Seal:

**BENEFICIARY**

**ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY**

**Aquifer Protection Program**

By:

Signature Date Signed

Printed Name

Director or Designee, Water Quality Division

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-A203(C)(8)(a)(i) [↑](#footnote-ref-8)
9. *See* A.A.C. R18-9-A203(C)(8)(a)(i) [↑](#footnote-ref-9)
10. *See* A.A.C. R18-9-A203(C)(8)(a)(ii) [↑](#footnote-ref-10)
11. *See* A.A.C. R18-9-A203(C)(1) and R18-9-A203(C)(8)(a)(iii) [↑](#footnote-ref-11)
12. *See* A.A.C. R18-9-A203(C)(1)(c)(i) and R18-9-A203(C)(8)(a)(iii) [↑](#footnote-ref-12)
13. *See* A.A.C. at R18-9-A203(C)(1)(c)(ii) and R18-9-A203(C)(8)(a)(iii) [↑](#footnote-ref-13)
14. .*See* A.R.S. § 49-321 *et seq*. [↑](#footnote-ref-14)
15. *See* A.R.S. § 12-1518 [↑](#footnote-ref-15)
16. *See* A.R.S. § 12-133 (A)(1) [↑](#footnote-ref-16)
17. *See* A.R.S. § 49-133 *et seq*.; *See* also 17 C.A.R.S. Super.Ct.Local Prac.Rules, Maricopa County, Rule 3.10 [↑](#footnote-ref-17)
18. *See* A.A.C. R18-9-A207(C) [↑](#footnote-ref-18)