

**REIMBURSEMENT AGREEMENT  
BETWEEN  
CHAPARRAL CITY WATER COMPANY  
AND  
THE TOWN OF FOUNTAIN HILLS**

THIS REIMBURSEMENT AGREEMENT (this "Agreement") is entered into as of July 2, 2015, between the Town of Fountain Hills, an Arizona municipal corporation (the "Town"), and Chaparral City Water Company, an Arizona corporation ("CCWC").

RECITALS

A. CCWC desires to have the Town construct a driveway entrance to CCWC Well No. 11 on the east side of Saguaro Boulevard north of Kingstree (the "Driveway Construction") in connection with the Town's Saguaro Boulevard Reconstruction Project (the "Project").

B. The Town has agreed, subject to the provisions of this Agreement, to assume all obligations and pay all costs associated with completing the Driveway Construction in connection with the Project. CCWC has agreed to reimburse the Town for all costs incurred by the Town in completing the Driveway Construction.

C. The Town and CCWC desire to enter into this Agreement to establish the parties' rights and responsibilities with respect to (i) the completion of the Driveway Construction and (ii) reimbursement to the Town of all costs associated with the Driveway Construction.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and CCWC hereby agree as follows:

1. Driveway Reconstruction. The Town shall complete the Driveway Construction according to Plan Sheet PL06, revised April 30, 2015, which is attached hereto as Exhibit A and incorporated herein by reference. The Town shall permit CCWC to inspect the Driveway Construction prior to completion of the Project.

2. Project Costs.

2.1 Town's Responsibility for Costs. The Town shall pay for all costs and expenses associated with the completion of the Driveway Construction. Any cost overruns or change orders associated with the Driveway Construction shall be the responsibility of CCWC. The Town shall maintain supporting documentation for all costs incurred and provide such to CCWC for review upon request.

2.2 Change Orders. The Town shall submit all change orders that increase the cost of the Driveway Construction to CCWC for review. CCWC shall be responsible for all change orders or cost overruns associated with the Driveway Construction. CCWC shall timely review and either reject or approve the change orders; provided, however, that CCWC shall not unreasonably condition, delay, withhold or deny such approval. Change orders that are not either approved or disapproved by CCWC within 10 days after submittal by the Town, shall be deemed approved by CCWC. If CCWC rejects a change order, such rejection shall be accompanied by a written statement specifying CCWC's reasons for rejecting the change order. In the event CCWC rejects a change order, the Town shall have the right, but not the obligation, to proceed with the change order at its own cost and expense. If such change order is subsequently determined to have been CCWC's responsibility, CCWC shall be responsible for all cost incurred by the Town in proceeding with the work contemplated in such change order and shall reimburse the Town in accordance with subsection 2.3 below.

2.3 Reimbursement Payment. CCWC shall pay the Town the construction fee in the amount of \$3,459.20, as set forth in the Change Order attached hereto as Exhibit B, upon completion of the Driveway Construction and within 30 days after receiving an invoice from the Town.

3. Further Acts. The parties hereto shall promptly and expeditiously execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

4. Conflict of Interest. This Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511.

5. Agreement Subject to Appropriation. The Town is obligated only to pay its obligations set forth in the Agreement as may lawfully be made from funds appropriated and budgeted for that purpose during the Town's then current fiscal year. The Town's obligations under this Agreement are current expenses subject to the "budget law" and the unfettered legislative discretion of the Town concerning budgeted purposes and appropriation of funds. Should the Town elect not to appropriate and budget funds to pay its Agreement obligations, this Agreement shall be deemed terminated at the end of the then-current fiscal year term for which such funds were appropriated and budgeted for such purpose and the Town shall be relieved of any subsequent obligation under this Agreement. The parties agree that the Town has no obligation or duty of good faith to budget or appropriate the payment of the Town's obligations set forth in this Agreement in any budget in any fiscal year other than the fiscal year in which the Agreement is executed and delivered. The Town shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement. The Town shall keep CCWC informed as to the availability of funds for this Agreement. The obligation of the Town to make any payment pursuant to this Agreement is not a general obligation or indebtedness of the Town. CCWC hereby waives any and all rights to bring any claim against the Town from or relating in any way to the Town's termination of this Agreement pursuant to this section.

5. Miscellaneous.

5.1 Independent Contractor. CCWC acknowledges and agrees that the services provided under this Agreement by the Town are being provided as an independent contractor, not as an employee or agent of CCWC. CCWC does not have the authority to supervise or control the actual Driveway Construction work performed by the Town, its employees or its subcontractors. The Town, and not CCWC, shall determine the time of its performance of the services provided under this Agreement. The Town and CCWC do not intend to combine business operations under this Agreement.

5.2 Applicable Law; Venue. This Agreement shall be governed by the laws of the State of Arizona and suit pertaining to this Agreement may be brought only in courts located in Maricopa County, Arizona.

5.3 Amendments. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of CCWC and the Town.

5.4 Provisions Required by Law. Each and every provision of law and any clause required by law to be in this Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, this Agreement will promptly be physically amended to make such insertion or correction.

5.5 Severability. In the event that any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the remaining terms shall remain effective, provided that the elimination of the invalid provision does not materially prejudice either party with regard to its respective rights and obligations.

5.6 Entire Agreement; Interpretation; Parol Evidence. This Agreement represents the entire agreement of the parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting this Agreement. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of and entry into this Agreement.

5.7 Assignment. Neither party may assign, sublet, mortgage or encumber any right or interest under this Agreement without the prior, written consent of the other party, which either party may withhold in its absolute and sole discretion.

5.8 Rights and Remedies. No provision in this Agreement shall be construed, expressly or by implication, as waiver by the Town of any existing or future right and/or remedy

available by law in the event of any claim of default or breach of this Agreement. The failure of the Town to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the Town's acceptance of payment for services, shall not release CCWC from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of the Town to insist upon the strict performance of this Agreement.

5.9 Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (C) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to CCWC:                   Chaparral City Water Company  
                                      c/o EPCOR Water Arizona, Inc.  
                                      2355 West Pinnacle Peak Road, Suite 300  
                                      Phoenix, Arizona 85027  
                                      Attn: Travis J. Nuttall, P.E.

If to the Town:               Town of Fountain Hills  
                                      16705 East Avenue of the Fountains  
                                      Fountain Hills, Arizona 85268  
                                      Attn: Grady E. Miller, Town Manager

With copy to:                GUST ROSENFELD, P.L.C.  
                                      One East Washington Street, Suite 1600  
                                      Phoenix, Arizona 85004-2553  
                                      Attn: Andrew J. McGuire, Esq.

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (A) when delivered to the party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

5.10 Time is of the Essence. Time is of the essence with regard to the performance of all of the parties' obligations under this Agreement.

5.11 Waivers. No provision of this Agreement may be waived or modified, except by a writing signed by the party against whom such waiver or modification is sought to

be enforced. The terms of this Agreement shall be binding upon and inure to the benefit of the parties' permitted successors and assigns.

5.12 Captions. Captions and section headings used herein are for convenience only and are not a part of this Agreement and shall not be deemed to limit or alter any provisions hereof and shall not be deemed relevant to construing this Agreement.

5.13 Counterparts. This Agreement may be executed in any number of counterparts, all such counterparts shall be deemed to constitute one and the same instrument, and each counterpart shall be deemed an original of this Agreement.

6. Indemnification. To the fullest extent permitted by law, each party shall indemnify and hold harmless the other party and each council member, officer, director, employee or agent thereof (any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims") to the extent that such Claims (or actions in respect thereof) are caused by the negligent acts, recklessness or intentional misconduct of the other party, its officers, directors, employees, agents, or any tier of subcontractor in connection with the work or services in the performance of this Agreement.

[SIGNATURES ON FOLLOWING PAGES]



“CCWC”

CHAPARRAL CITY WATER COMPANY,  
an Arizona corporation

By: 

Name: Eric C. French

Its Title: Engineering Manager, Project Delivery

(ACKNOWLEDGMENT)

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

On August 14, 2015, before me personally appeared Eric C. French, the Engineering Mgr. Proj. Del. of CHAPARRAL CITY WATER COMPANY, an Arizona corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he/she claims to be, and acknowledged that he/she signed the above document on behalf of the corporation.



  
Notary Public

(Affix notary seal here)

EXHIBIT A  
TO  
REIMBURSEMENT AGREEMENT  
BETWEEN  
CHAPARRAL CITY WATER COMPANY  
AND  
THE TOWN OF FOUNTAIN HILLS

[Plan Sheet]

See following pages.



EXHIBIT B  
TO  
REIMBURSEMENT AGREEMENT  
BETWEEN  
CHAPARRAL CITY WATER COMPANY  
AND  
THE TOWN OF FOUNTAIN HILLS

[Change Order]

See following page.



CHANGE ORDER REQUEST  
DATE: May 12, 2015

Project: Saguaro Blvd Reconstruction  
Project No. S6020 & T5011 / Contract No. C2015-144  
Nesbitt Project No: 2015-09  
DESCRIPTION: Added Driveway at Sta 63+11

LABOR	TITLE	HOURS	WAGE RATE	FRINGE 0.20	HOURLY RATE	OVERHEAD 0.50	TOTAL HOURLY	TOTAL
				\$ -	\$ -	\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -	\$ -	\$ -

TOTAL LABOR	\$ -
MARKUP 0.15	\$ -
<b>TOTAL LABOR</b>	<b>\$ -</b>

MATERIAL	QTY	UNIT	PRICE	TOTAL
				\$ -
				\$ -

SUBTOTAL MATERIAL	\$ -
MARKUP 0.15	\$ -
<b>TOTAL MATERIAL</b>	<b>\$ -</b>

UNIT RATES	QTY	UNIT	PRICE	TOTAL
Nesbitt Remove Sidewalk	168	SF	\$ 1.50	\$ 252.00
Nesbitt Remove Curb and Gutter	28	LF	\$ 4.00	\$ 112.00
Nesbitt Driveway per MAG 250-2	292	SF	\$ 10.60	\$ 3,095.20

TOTAL EQUIPMENT	\$ 3,459.20
MARKUP 0	\$ -
<b>TOTAL EQUIPMENT</b>	<b>\$ 3,459.20</b>

SUBCONTRACTORS	QTY	UNIT	PRICE	TOTAL
				\$ -
				\$ -
				\$ -
				\$ -

SUBTOTAL SUBS	\$ -
MARKUP 0.05	\$ -
<b>TOTAL SUBS</b>	<b>\$ -</b>

**SUMMARY**

LABOR	\$ -
MATERIAL	\$ -
UNIT RATES	\$ 3,459.20
SUBCONTRACTORS	\$ -
<b>TOTAL</b>	<b>\$ 3,459.20</b>
BOND	0.000 \$ -
	\$ 3,459.20
TAX	0 \$ -
<b>GRAND TOTAL</b>	<b>\$ 3,459.20</b>

QTY	UNIT	UNIT PRICE