

## CITY OF SURPRISE NON-POTABLE WATER USER AGREEMENT

This Agreement made the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, hereinafter referred to as "User," and the City of Surprise, an Arizona municipal corporation, hereinafter referred to as "City".

**WHEREAS**, the Arizona Department of Environmental Quality (ADEQ) issued Permit No. P102478 ("Permit") for the City's SPA-1 Water Reclamation Facility (WRF) as producing A+ quality reclaimed water and allowing the water from this facility to be distributed and utilized for any applicable Class A+ use as permitted by a reuse permit in accordance with Arizona Administrative Code (AAC) Title 18, Chapter 9, Article 7.

**WHEREAS**, User intends to operate an onsite private reclaimed water system and has read and understands the applicable state, county, and local statutes, standards, rules, regulations, and guidelines associated with the use of reclaimed water.

**NOW THEREFORE**, for and in consideration of the mutual covenants set forth herein, the City hereby agrees to sell and User hereby agrees to purchase reclaimed water under the following terms and conditions:

- 1. Responsible Party and Authorized Signature:** The responsible party is an individual, employee, officer, managing body, trust, firm, joint stock company, consortium, public or private corporation, including a government corporation, partnership, association, state, a political subdivision of this state, or commission or the United States Government or a federal facility, interstate body or other entity. Only authorized representatives for the User can sign this document.

Responsible Party Name: \_\_\_\_\_

Representative Name/Title: \_\_\_\_\_

Responsible Party Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Alternate Contact Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

**2. Location of Use:**

- a. Non-Potable water used pursuant to this Agreement may be stored and used only on the following described Property:

Site Name: \_\_\_\_\_ Site Contact: \_\_\_\_\_

Site Address: \_\_\_\_\_

- b. Intended Use (Circle all that apply)

|                                                                   |                                                     |                                                        |
|-------------------------------------------------------------------|-----------------------------------------------------|--------------------------------------------------------|
| <i>Dust Control</i>                                               | <i>Residential landscape irrigation</i>             | <i>Restricted access landscape irrigation</i>          |
| <i>Irrigation of food crops</i>                                   | <i>Street cleaning</i>                              | <i>Concrete and cement mixing</i>                      |
| <i>Soil Compaction and similar construction activities</i>        | <i>Open access landscape irrigation</i>             | <i>Materials washing and sieving</i>                   |
| <i>Irrigation of sod farms</i>                                    | <i>Recreational impoundments</i>                    | <i>Landscape impoundment</i>                           |
| <i>Fire protection systems</i>                                    | <i>Spray irrigation of an orchard or vineyard</i>   | <i>Commercial closed loop air conditioning systems</i> |
| <i>Drive-thru Vehicle and equipment washing(not self-service)</i> | <i>Surface irrigation of an orchard or vineyard</i> | <i>Golf course irrigation</i>                          |
| <i>Toilet and urinal flushing</i>                                 | <i>Pasture for milking animals</i>                  | <i>Schoolground landscape irrigation</i>               |
| <i>Pasture for non-dairy animals</i>                              | <i>Livestock watering (non-dairy animals)</i>       | <i>Livestock watering (dairy animals)</i>              |

- c. Where there are other sources of water commingled with reclaimed water the City will deliver non-potable water to a meter in accordance with the requirements established in City's ADEQ Reclaimed Permit(s).
- d. Class A+ reclaimed water delivered under this Agreement can be stored and used within the City of Surprise Special Planning Areas one through six. Approval of specific locations under this agreement will be specified in an approved Water Services Application for Use of Non-Potable Water. The application must have two signatures from the Water Services Department: 1) Operations Division for feasibility of service; and 2) Environmental Division for administrative and legal correctness.

3. **Metering:** User shall install \_\_\_\_\_ meter(s) to record the quantity of reclaimed water delivered to the property listed in Item 2 above.
4. **Commodity Rate:** Buyer/User will pay for non-potable water delivered under this Agreement according to the City's adopted rate and fee schedule in effect at the time of delivery unless a different rate is included in a binding agreement between the User and the City. If such binding agreement is applicable provide the title of the agreement, the date executed by the City and the applicable rate:

Alternate Rate/Fee: \_\_\_\_\_

Name of Agreement: \_\_\_\_\_

Date Executed by City: \_\_\_\_\_

|                                                                                            |
|--------------------------------------------------------------------------------------------|
| <i>For internal Use Only:</i><br><i>Alternate rate has been verified _____ (initials).</i> |
|--------------------------------------------------------------------------------------------|

5. **Costs of Buyer/User:** The City's non-potable water distribution system terminates at the City water service meter. User is responsible for safe use of the water from the outlet connection of the meter and beyond, including all requirements by state, federal, and local laws, regulations, and standards. User is solely responsible for any private delivery system costs, including the initial construction cost of valve stations for automated control of storage facilities arising out of User's use of non-potable water and from the construction, maintenance, or operations of the private non-potable water delivery system on User's property.

6. **Reclaimed Water Delivery Schedule:**

- a. If reclaimed water infrastructure is currently available to deliver reclaimed water to the site, the User must, within 90 days of execution of this Agreement, submit a written schedule to the City estimating their reclaimed water requirements by month and the date the reclaimed water deliveries are requested to commence. The schedule should show the User's requested reclaimed water requirements for each month.
- b. If reclaimed water infrastructure is not currently available to deliver reclaimed water to the site at the time of execution of this Agreement, the User must have an alternative source of water to irrigate until reclaimed water is available and, within 90 days of the receipt of notice of the date that reclaimed water infrastructure will be available to deliver reclaimed water to the site, the User must submit a written schedule to the City estimating their reclaimed water requirements by month and the date the reclaimed water deliveries are requested to commence. The schedule should show the User's requested reclaimed water requirements for each month. Within 30 days of receipt of such schedule, the City will develop a reclaimed water delivery schedule which estimates the monthly quantities of reclaimed water available for the User and

sets the time of the day and the days of the week when the User may take the reclaimed water.

- c. The User must promptly notify the City of any revisions to the User's monthly delivery schedule. This delivery schedule may be adjusted by the City or at the request of the User. However, nothing herein shall obligate the City to deliver reclaimed water in uniformly equal daily or monthly quantities or to increase the reclaimed water to be delivered.

**7. Potential Disruption of Service:**

- a. User acknowledges and accepts the fact that the City may be required to disrupt non-potable water service to User's premises due to emergency conditions, peak demands, and/or planned system maintenance.
- b. User is responsible for any damage that may be caused to User-owned facilities by such disruptions, and User releases City from all liability and claims for damages arising out of disruption in service.
- c. When there is an unforeseen emergency relating to the City's Non-potable Water delivery system, the City may terminate deliveries of non-potable water to User without notice.
- d. When notice of an emergency is given, User agrees to reduce or cease usage of non-potable water service upon the City's request.
- e. In order to accommodate planned maintenance of its non-potable water system, the City will provide User with as much notice practical for the need to cease non-potable water usage altogether, or significantly reduce the volume of non-potable water used. Upon being provided such notice, Buyer/User will alter the allotted non-potable water usage according to the City's request.

- 8. Shortage of Reclaimed Water:** In the event that City determines in City's sole discretion that there is insufficient reclaimed water available to meet the demand of all entities using City reclaimed water, a reduction in reclaimed water deliveries to User may be made by the City.

- 9. Routine Maintenance:** The User shall periodically check and maintain the valves, controllers, sprinklers, etc. and maintain a written record of the maintenance. The maintenance record shall be kept at the User's office for at least three (3) years and be available for inspection by the City during normal business hours.

- 10. Inspection:** User acknowledges and agrees that the City, State, County or other agency with jurisdiction may inspect the premises being served reclaimed water at reasonable times. User specifically acknowledges that it has the responsibility to inform, notify, and/or request inspection and approvals from various agencies, including the City,

Maricopa County Environmental Services Division (MCESD), and ADEQ for certain activities relating to the construction, maintenance, and operation of its private reclaimed water system, including, but not necessarily limited to, materials, construction, facility testing, violations, and emergency situations.

#### **11. Compliance with Regulations:**

- a. User shall abide by Chapter 58, Article IV, Divisions 4 and 5 of Surprise Municipal Code.
- b. User shall design the system in accordance with the City of Surprise Engineering Development Standards, including the installation of a backflow prevention device.
- c. User shall obtain an Approval to Construct from MCESD prior to constructing, connecting to, or extending the City's reclaimed water distribution system.
- d. No reclaimed water will be delivered pursuant to this Agreement unless User has a valid reuse permit (User's Permit) issued by ADEQ in accordance with ACC Title 18, Chapter 9, Article 7 (R18-9-A704). ADEQ reuse permits are valid for five (5) years pursuant to R18-9-A705 and must be renewed for the delivery of reclaimed water to continue. Buyer/User agrees to abide by all state, federal, and local laws, regulations, and standards that may apply to Buyer/User's use of non-potable water during the term of this Agreement. Such laws, regulations, and standards may include, but are not limited to:
  - i. Requirements and restrictions governing use of non-potable water.
  - ii. Application methods that reasonably preclude certain kinds of human contact with non-potable water.
  - iii. Control of access to the non-potable water, the Buyers/User's non-potable water delivery system, and the area of storage and use.
  - iv. Requirements to prevent non-potable water from standing on open access areas during normal periods of use.
  - v. Requirements to prevent non-potable water from coming into contact with drinking fountains, water coolers, or eating areas.
  - vi. Requirements to identify certain components on the delivery system or to provide public notice that non-potable water is used on Buyer/User's premises.
  - vii. Appropriate or specific signage.
- e. Buyer/User acknowledges that the above list of laws, regulations and standards is provided by the City as an example only, and that Buyer/User is solely responsible for determining all applicable laws, regulations and standards.
- f. The following are incorporated by reference:
  - Arizona Administrative Code Title 18, Chapter 9, Article 7. Reclaimed Water Conveyances (R18-9-B702, J and K)  
[https://apps.azsos.gov/public\\_services/Title\\_18/18-09.pdf](https://apps.azsos.gov/public_services/Title_18/18-09.pdf)
  - Arizona Administrative Code Title 18, Chapter 9, Article 7. General Requirements for Reclaimed Water (R18-9-B702, including Table 1, "Signage

and Notification Requirements for Direct Reuse Sites”)

[https://apps.azsos.gov/public\\_services/Title\\_18/18-09.pdf](https://apps.azsos.gov/public_services/Title_18/18-09.pdf)

- Arizona Administrative Code Title 18, Chapter 11, Article 3. Reclaimed Water Quality Standards (R18-11-301 through R18-11-309 including Table A, “Minimum Reclaimed Water Quality Requirements for Direct Reuse”) [https://apps.azsos.gov/public\\_services/Title\\_18/18-11.pdf](https://apps.azsos.gov/public_services/Title_18/18-11.pdf)
- Arizona Department of Environmental Quality – Recycled Water <https://azdeq.gov/recycled-water>
- Arizona Department of Environmental Quality – Type 2 Reclaimed Water General Permit (GP) for Direct Reuse of Class A+ Reclaimed Water <https://azdeq.gov/type-2-reclaimed-water-GP-direct-reuse-class-reclaimed-water>

- g. The City may suspend reclaimed water deliveries if it discovers that the User is not in compliance with ADEQ and/or MCESD regulations. The City will resume reclaimed water deliveries only after compliance is re-established.

**12. Reporting Requirements:** The User must report to the City on an annual basis regarding the operations and maintenance of the User’s system. The report is due by April 30th of each year. The report must include:

- a. A list of any reclaimed water line breaks that occurred in the prior year, including the location of any resulting reclaimed water spills and its approximate volume
- b. Documentation of any changes to the system (beyond like-for-like repairs) and a current site map with changes identified. (Note: extensions of the system require an Approval to Construct from MCESD)
- c. Certification that the water has not been given or sold to another party unless approved by the City prior to certification.

**13. Resale of Non-potable Water:** Unless approved by the City, User may not resell or give non-potable water to any other person or legal entity.

**14. Hose Bibs:** User specifically agrees not to install hose bibs and/or remove existing hose bibs on any component of the private non-potable water delivery system.

**15. Signs:** Upon the commencement of non-potable water service, User will be required to post an appropriate amount of signage to inform the public that non-potable water is used on Buyer/User’s premises. Buyer/User shall post such signs at all entrances to the premises where non-potable water is used. Buyer/User may also be responsible for posting other signage that may be required under the State of Arizona Administrative Code or that may be established in City Municipal Code. Buyer/User will be responsible for the maintenance and replacement of non-potable water signage.

- 16. Plans:** Buyer/User acknowledges that it has the responsibility to maintain a copy of the as- built plans of the onsite non-potable water system at the premises on which non-potable water is being used. These plans will show the locations of the property lines, all structures on the site, non-potable water lines, and turn-off valves. For any changes to the non- potable system configuration, use, or operations of the User's non-potable system the User shall provide documentation and shall require approval from the City of Surprise Water Services Department prior to implementation of such changes.
- 17. Transfer:** Buyer/User agrees that all leases of the premises subject to this Agreement shall be in writing, and must be made expressly subject to this Agreement. Should Buyer/User sell or otherwise transfer ownership or control of the premises described herein to a Third Party, the City of Surprise is not obligated to provide non-potable water to any subsequent owner or user of the premises unless such sale or disposal incorporates this Agreement by reference, and makes any successors and assigns expressly subject to this Agreement, and the City agrees to provide non-potable water under Paragraph 18. If such a third-party disposition does not include such provisions, Buyer/User will close its account with the City of Surprise or its operator and pay any fees or charges incurred by Buyer/User before the disposition of Buyer/User's property is effective.
- 18. Termination of Service:** The City of Surprise reserves the right to terminate non-potable water use upon change of ownership, business type, or any significant changes to the non-potable system that may have an adverse affect of the City of Surprise non-potable water system. Buyer/User acknowledges that non-potable water service also may be discontinued for failure to comply with the terms and conditions of this agreement.
- 19. Indemnification:** User agrees to release, acquit, and forever discharge, the City, its officers, agents and employees of and from any and all claims, actions, causes of action, demands, obligations, liens, rights, damages, costs, future damages, punitive damages, expenses and/or compensation arising out of or connected with reclaimed water or its use after the City delivers reclaimed water to the User at the point of delivery. User further agrees to indemnify and hold the City harmless from breach of its obligation to deliver reclaimed water or a City water system modification from low pressure to high-pressure reclaimed water delivery.
- 20. Excusable Non-Performance:** In the event of a natural catastrophe, war, civil insurrection, accidents, acts of governmental or judicial bodies other than the City, or any unexpected occurrences beyond the control of either party which shall materially interfere with the ability of the City to deliver reclaimed water, or the ability of User to accept, transmit or distribute reclaimed water, the failure of either party to perform its obligation under this Agreement shall be excused so long as the condition interfering with performance continues. The maintenance and operation of the City's sewage system and its water reclamation facilities shall be solely within the discretion of the City; and in the event the City discontinues the reclamation plant operation, all obligations of

either party to perform shall cease without prejudice to any claimed or asserted rights of either.

**21. Attorneys' Fees:** Should litigation be necessary to enforce any term or provision of this Agreement, or to collect any damages claimed or portion of the amount payable under this Agreement, then all reasonable litigation expenses, witness fees, court costs, and attorneys' fees shall be paid to the prevailing party. Nothing herein shall preclude the parties from resolving disputes through non-binding arbitration or any other alternative dispute resolution agreed to by the parties hereto.

**22. User Representations:** User represents and warrants that its execution, delivery and performance of this Agreement are duly authorized.

**23. City Representations:** City represents and warrants that: (a) its execution, delivery and performance of this Agreement has been duly authorized; (b) no further action needs to be taken in connection with such execution and delivery; and (c) subject to a court's equitable powers, this Agreement is valid and enforceable in accordance with its terms.

**24. Notices:** Unless otherwise specifically provided herein, all notices, demands or other communication given hereunder shall be in writing and shall be deemed to have been duly delivered upon personal delivery or as of the second business day after mailing by United States mail, postage prepaid, by certified mail, return receipt requested, addressed as follows:

To: Environmental Manager  
Water Resource Management Department  
City of Surprise  
16000 N. Civic Center Plaza  
Surprise, AZ 85374

Notice of address may be changed by either party by giving notice to the other party in writing of a change of address. Such change shall be deemed to have been effectively noticed five (5) days after being mailed by the party changing address.

**25. Amendments:** This Agreement may be amended only by a written agreement fully executed by the parties hereto.

**26. Governing Law:** This Agreement shall be governed by and construed under the laws of the state of Arizona. This Agreement shall be deemed made and entered into in Maricopa County.

**27. Waiver:** No waiver by either party of a breach of any of the terms, covenants of conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or condition herein contained.

- 28. Severability:** In the event that any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against any public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law, except if the remaining portions of the Agreement do not provide one or both of the parties with the essential consideration for entering into this Agreement.
- 29. Entire Agreement:** Unless expressly stated otherwise, this Agreement constitutes the complete and entire Agreement between the parties.
- 30. Other Agreements:** Unless expressly listed below, this Agreement constitutes the complete and entire Agreement between the parties regarding the use of non-potable water. If applicable, list other Agreements:
- 31. Conflict of Interest:** This Agreement is subject to the terms of A.R.S. § 38-511.

|                                                                                          |                    |               |
|------------------------------------------------------------------------------------------|--------------------|---------------|
| _____<br>City Attorney (Print Name)                                                      | _____<br>Signature | _____<br>Date |
| _____<br>Water Resource Management Director or<br>Authorized Representative (Print Name) | _____<br>Signature | _____<br>Date |
| _____<br>Authorized Agent/User (Print Name)                                              | _____<br>Signature | _____<br>Date |