

RECLAIMED WATER USE AGREEMENT
(FORM)

This Agreement ("Agreement") made the _____ day of _____, 20____, by and between _____ ("User"), and Gilbert, a municipal corporation Gilbert.

WHEREAS, User wishes to become a customer of Gilbert to purchase reclaimed water for the uses set forth in this Agreement; and

WHEREAS, on or about the 14th day of July, 2006, the Arizona Department of Environmental Quality ("ADEQ") issued to Gilbert Wastewater Reuse Permit No. R-105757 ("Permit"), permitting and allowing Gilbert to reuse its reclaimed water and contract with other parties for their use of Gilbert's reclaimed water; and

WHEREAS, Gilbert now owns and operates a delivery system capable of delivering reclaimed water meeting the quality standards set forth below; and

WHEREAS, User intends to construct or has constructed and will operate an onsite private reclaimed water system and has read and understands Gilbert's Reclaimed Water Users' Manual.

NOW THEREFORE, for and in consideration of the mutual covenants set forth herein, including the recitals set forth above, Gilbert hereby agrees to sell and User hereby agrees to purchase reclaimed water on the following terms and conditions:

1. Definitions:

A. "Directly Delivered Reclaimed Water" means reclaimed water that is determined by Gilbert to be available for non-potable uses and produced at Gilbert's wastewater reclamation facilities or, at Gilbert's sole discretion, recovered by Gilbert from recovery wells, and is made available for delivery at User's Point(s) of Delivery through Gilbert's reclaimed water distribution system pursuant to this Agreement, or at Gilbert's sole discretion recovered from users recovery wells.

B. "Effective Date" means the date set forth above.

C. "Point(s) of Delivery" means the place(s) depicted on the map attached as Exhibit A and generally described on Exhibit C indicating where Gilbert is to deliver reclaimed water to User pursuant to this Agreement. The Point(s) of Delivery applicable to Directly Delivered Reclaimed Water and Recovered Reclaimed Water shall be specifically set forth on Exhibits A and C. The Point(s) of Delivery may be modified from time to time by mutual agreement of the Parties and Exhibits A and C shall be amended to reflect any such modification.

- D. "Place of Use" means the Property, or portion thereof designated on the map attached hereto as Exhibit A where reclaimed water delivered pursuant to this Agreement may be used. The Place of Use may be modified from time to time by mutual agreement of the Parties, and Exhibit A shall be amended to reflect such modification.
- E. "Property" means the property depicted on the map attached hereto as Exhibit A and generally described on Exhibit B.
2. Commodity Rate. The rate to be paid by User for Directly Delivered Reclaimed Water shall be the same as is applicable to that type of water as set forth in the Gilbert Code, as may be amended from time to time. If there are additional costs to provide Directly Delivered Reclaimed Water, User shall be charged the appropriate and commensurate fee, proportional to the amount of reclaimed water User is authorized to order under this Agreement.
3. User to Provide Necessary Infrastructure.
- A. User shall, at User's cost, construct, to Gilbert's standards and specifications, all facilities determined necessary by Gilbert to be on the Property ("onsite facilities") to receive and deliver the Directly Delivered Reclaimed Water, including, without limitation, any on-site reservoir required by Gilbert; and
- B. User shall, at User's cost, operate, maintain, replace and repair the onsite facilities in a safe and working condition and, where applicable, the standards and specifications set by Gilbert.
- C. To the extent additional extensions and improvements to Gilbert's reclaimed water delivery system or other non-onsite facilities ("offsite facilities") are necessary in order for Gilbert to provide Directly Delivered Reclaimed Water to the Point(s) of Delivery, User shall construct or pay for the construction of such offsite facilities to Gilbert's standards and specifications in accordance with {Exhibit D attached hereto and incorporated herein by this reference or the {Development} Agreement dated _____ and {Ordinance No. _____, adopted} _____ and this Agreement}.]
- D. Gilbert shall have no obligation to deliver reclaimed water to User pursuant to this Agreement unless all onsite and offsite facilities necessary for Gilbert to deliver and User to receive the Directly Delivered Reclaimed Water scheduled pursuant to Paragraph 9, hereof have been constructed and either accepted or approved by Gilbert in writing and, thereafter, such onsite facilities are being operated and maintained by User so as to comply with all laws and regulations, including those established by the Gilbert. Provision of Directly Delivered Reclaimed Water to User shall not constitute a waiver of User's obligations to construct, operate and maintain the reclaimed water facilities

required by this Paragraph 3. Notwithstanding the foregoing, it is recognized that the onsite facilities will be in built phases as agreed between the Parties.

4. Quality Standards. Reclaimed water delivered to User for use on the Property shall meet federal and state standards set for open access landscape irrigation, as amended from time to time. User shall not be obligated to accept reclaimed water that does not meet this standard.

5. Use. Directly Delivered Reclaimed Water delivered under this Agreement shall be stored and used only at the Place of Use and shall be used solely for the following purpose:

[List permitted uses, usually limited to Common Area Landscaping, but may include lakes or other specific use permitted by a particular Development Agreement and Ordinance approving the Development Agreement.]

No other use shall be permitted of the Directly Delivered Reclaimed Water and Gilbert shall not be liable for such use.

6. Delivery. Gilbert shall make delivery of reclaimed water only to the Point(s) of Delivery. User shall be responsible for and accepts all liability related to use of reclaimed water beyond the Point(s) of Delivery.

7. Metering. User shall pay for and install as many meters as Gilbert determines are necessary to record the quantity of Directly Delivered Reclaimed Water delivered to the Place(s) of Use. The meter(s) shall meet standard Gilbert specifications and be placed at location(s) acceptable to Gilbert. Gilbert shall own and be responsible for operation and maintenance of all meters installed pursuant to this Paragraph. User shall provide, in a form acceptable to Gilbert, easements or rights-of-way for ingress and egress to all meters installed pursuant to this Paragraph and shall be responsible for providing Gilbert safe and unobstructed access to such meters.

8. Quantity.

A. To the extent Gilbert determines Directly Delivered Reclaimed Water is available and there are no operational problems precluding delivery of such reclaimed water to the Point(s) of Delivery, Gilbert shall deliver to User up to _____ acre feet annually, up to a maximum of _____ gallons per day for use only at the Place of Use (the "Maximum") and, to the extent scheduled by and delivered to User, User shall purchase all such Directly Delivered Reclaimed Water. When made available by the Gilbert, User shall take and use Directly Delivered Reclaimed Water for the uses specified in Paragraph 5 above before any other water, unless otherwise agreed in writing.

B. To the extent Gilbert determines Directly Delivered Reclaimed Water is available, then, commencing with the eleventh anniversary after the execution of this Agreement, User shall schedule and take delivery of not less than 57.3% of the annual Maximum (or _____ acre feet) of Directly Delivered Reclaimed Water, subject to: (i) any adjustment pursuant to subparagraph [C] hereof, and (ii) any restrictions placed on the amount of use by ADEQ (the "Minimum").

C. Gilbert reserves the right to alter the Maximum quantity of reclaimed water to be delivered under this Agreement, after the ten year anniversary of the execution of this Agreement, and thereafter once every five years, to an amount equal to the highest annual usage during the immediately preceding five calendar years (the "Adjusted Maximum").

D. In the event of a shortage of Directly Delivered Reclaimed Water available for delivery to the reclaimed water users in Gilbert, priority in delivery shall be given to users based on the date of their Reclaimed Water Use Agreements, with the earlier agreements having priority over later agreements for the delivery of the respective contract amounts.

E. User has the sole responsibility to secure reclaimed water on the Property to the extent Directly Delivered Reclaimed Water is unavailable under this Agreement.

9. Scheduling. Annually, on or before December 1st of each year, User shall provide Gilbert with a schedule of delivery indicating the quantity of reclaimed water to be delivered each month in the following calendar year, subject to the terms and conditions of this Agreement. User may modify this schedule by providing 24 hours' written notice to the Wastewater Superintendent that the User is unable to accept the scheduled delivery or requires an additional quantity of water. The Wastewater Superintendent will make a good faith effort to accommodate the request for additional reclaimed water based on operational conditions and User's priority established pursuant to this Agreement. The Wastewater Superintendent will make a good faith effort to cancel a delivery upon timely notification that User is unable to accept the scheduled delivery.

10. Cost of User. Any costs arising out of the use of reclaimed water by User and/or from the maintenance or operations of the onsite facilities shall be the sole responsibility of User.

11. Compliance with Regulations. User agrees to comply, at its sole cost, with all state, federal, and local laws, regulations and standards, as now exist, and are later lawfully enacted, relating to the use of reclaimed water. Such laws, regulations and standards may include, but are not limited to, requirements and restrictions governing use of the reclaimed water; limits on reclaimed water contact with employees, members, guests, members of the public and adjoining properties; control of access to the reclaimed water, its delivery system, and the area of storage and use; and warning signs on the

delivery system, and the area of storage and use; and making reports to Gilbert and other governmental agencies.

12. Commencement of Service. In no event shall Service begin prior to the later of fifteen (15) days after the Gilbert provides written notice that Gilbert has reclaimed water available for direct delivery to the Property or (Insert earliest date reclaimed service is to commence. User agrees to give Gilbert not less than 15 days notice prior to the need for initial reclaimed water service under this Agreement and service shall begin on the date service is requested to begin subject to the provisions of this Agreement. User and Gilbert acknowledge reclaimed water service is to be phased in as the Place of Use is developed. User shall provide not less than 60 days notice of the initiation of reclaimed water service to the subsequent phases of the Place of Use and service shall begin on the date service is requested to begin subject to the provisions of this Agreement.]

13. Term. The term of this Agreement shall be coterminous with the term of the Permit and any renewal or replacement thereof; provided, however, that:

- A. Gilbert shall use its best efforts to maintain and renew its Permit.
- B. Gilbert shall notify User within 10 days of receipt of a notice from the ADEQ that the Permit will be terminated or not renewed.

14. Resale of Reclaimed Water; Further Reuse. User shall not resell Directly Delivered Reclaimed Water, except that User may deliver Directly Delivered Reclaimed Water to other property owners on the Property including, but not limited to homeowner associations, community councils, educational institutions and other entities formed to serve uses within the Place of Use and require reimbursement of the costs thereof (a) charged by Gilbert or (b) incurred by User associated with delivery, provided User submits to Gilbert, at least fifteen (15) days before deliveries of reclaimed water is to commence, evidence acceptable to Gilbert that the entity has entered into a written agreement with User in a form acceptable to Gilbert. At a minimum, the entity receiving reclaimed water deliveries from User must agree (a) to comply with all the obligations of User hereunder and b) to indemnify, defend and hold harmless Gilbert against claims for loss or damages which may result from the use of reclaimed water by that entity.

15. Transfer of Property. This Agreement shall be binding upon the heirs, successors and assigns of the Parties, provided no transfer or assignment by User shall be binding upon Gilbert unless and until written notice thereof has been provided to Gilbert and Gilbert has consented thereto in writing. Gilbert shall not unreasonably withhold consent, provided the assignee or transferee has agreed to be bound by this Agreement and has demonstrated financial and technical ability to comply with its terms. This Agreement is intended to run with the Property and the benefits and burdens contained in this Agreement shall run with the Property. User further acknowledges and agrees that all leases, sales, and other disposal or transfer of ownership or control of those portions of the Property that contain a Place of Use shall be in writing, made expressly subject to this Agreement, shall incorporate this Agreement by reference, and shall make all successors

and assigns expressly subject to this Agreement. When User no longer owns any portion of the Property and, in compliance with this Paragraph, has assigned or otherwise transferred all its rights and obligations under this Agreement, User no longer has any obligation associated with this Agreement.

16. Approval. The parties hereby agree to modify this Agreement, in writing, to the extent that such Amendment is necessary in order to comply with ADEQ requirements or regulations promulgated by ADEQ or other state, federal or local laws and regulations relating to the delivery, receipt and use of reclaimed water.

17. Inspection. User acknowledges and agrees that in order to verify compliance with this Agreement or with applicable laws and regulations, Gilbert, 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 Gilbert, Maricopa County Health Department, ADEQ, and Gilbert of Gilbert Building Department, 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 as will be outlined by Gilbert.

18. Termination.

A. This Agreement may be terminated by Gilbert if any of the following apply:

- (i) User fails to comply with state, federal and local laws, regulations and standards related to reclaimed water;
- (ii) User fails to comply with any provisions of the Reclaimed Water Users' Manual;
- (iii) User violates any provision of this Agreement;
- (iv) The Agreement violates any state or federal law governing the use of reclaimed water; or
- (v) Upon five (5) years written notice given no earlier than the twentieth (20th) anniversary of the Effective Date.

B. The User may terminate this Agreement if any of the following apply:

- (i) The purpose(s) for the use of reclaimed water, as described in Paragraph 5 of this Agreement, no longer exist;
- (ii) Gilbert materially breaches its obligations to provide reclaimed water under this Agreement; or
- (iii) The Agreement violates any state or federal law governing the use of reclaimed water.

19. Indemnification. Gilbert shall be responsible for delivery of water to the Point(s) of Delivery set forth in Paragraph 1 herein. User shall indemnify, defend and hold harmless Gilbert against claims for loss or damages which may result from the use of reclaimed water and/or the on-site reclaimed water delivery and storage system, except to the extent arising from Gilbert's failure to deliver water fit for the purposes set forth in Paragraph 5 above. Gilbert reserves the right to require User, upon thirty (30) days notice, to post reasonable evidence of User's ability to indemnify and hold Gilbert harmless up to one million dollars. User may post security (e.g., insurance, a letter of credit, a bond, etc.) in a form acceptable to Gilbert to demonstrate its ability to indemnify and hold Gilbert harmless hereunder.

20. Excusable Nonperformance. In the event of an Act of God, natural catastrophe, war, civil insurrection, accidents, acts of governmental or judicial bodies other than Gilbert, or any unexpected occurrences beyond the control of either party which shall materially interfere with the ability of Gilbert to deliver reclaimed water, or the ability of User to accept, transmit to 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 Gilbert's sewerage system and of the Gilbert Wastewater Reclamation Facility(ies) shall be solely within the discretion of Gilbert; and in the event Gilbert discontinues the treatment operations and the treatment operations are not replaced by other Gilbert treatment facilities, all obligations of either party to perform shall cease without prejudice to any claimed or asserted rights of either party existing prior to the execution of this Agreement.

21. Attorneys' Fees. Should litigation, or other form of formal conflict resolution, such as, but without limitation, mediation and arbitration, 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 litigation and collection expenses, witness fees, court costs, and attorneys' fees shall be paid to the prevailing party. Nothing herein shall preclude nonbinding arbitration if the parties so elect in the event of a dispute hereunder.

22. Amendments to Reclaimed Water Users' Manual. No amendment to Gilbert's Reclaimed Water Users' Manual shall amend or modify any express provision of this Agreement except to the extent such amendment to the Manual is necessary in order to comply with Arizona Department of Environmental Quality requirements or regulations promulgated by Arizona Department of Environmental Quality. Amendments and modifications to Gilbert's Reclaimed Water Users' Manual that do not conflict with the express provisions of this Agreement shall be binding on User. Gilbert shall notify User of any revision to the Reclaimed Water Users' Manual within thirty (30) days of the revision becoming binding on User.

23. Billing and Payment. Gilbert shall bill User each month for Directly Delivered Reclaimed Water in the immediately preceding month, at the Commodity Rate and a base charge in effect in the month in which the reclaimed water was delivered to User. Bills

Attest:

Gilbert Clerk

Approved as to Form:

Gilbert Attorney

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____ by _____, the _____ of _____ an [Arizona corporation]on its behalf.

Notary Public

My Commission expires:
