

**TEMPORARY SERVICE AGREEMENT FOR CONSTRUCTION WATER**

This Temporary Service Agreement for Construction Water (“Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between [\_\_\_\_\_] (“Applicant”), [\_\_\_\_\_] (“Owner”) and Liberty Utilities (Litchfield Park Water & Sewer) Corp., (“Company”) for the provision of water to Applicant on a temporary basis for construction purposes, including, but not limited to, excavation, grading, paving, construction, testing and other construction related purposes on the project known as [\_\_\_\_\_] Project address at [\_\_\_\_\_]. Applicant, Owner and Company may be referred to individually as a Party or collectively as Parties under this Agreement.

The Parties understand and agree that temporary water service will be provided to Applicant for construction purposes under this Agreement from the fire hydrant located at [\_\_\_\_\_]. The owner of the Project is [\_\_\_\_\_] and Applicant is Owner’s general contractor for the Project. Applicant, Owner and Company agree and understand that Company shall provide construction water to Applicant under the following terms and conditions.

Applicant’s Field Supervisor is \_\_\_\_\_ and can be contacted at  
Phone \_\_\_\_\_ Email \_\_\_\_\_

1. **TERM.** The initial term of this Agreement shall be for a period of sixty (60) days from the “First Date of Service” set forth below. In the event that Applicant begins construction of the Project within that sixty (60) day initial term, and Applicant has used at least ten percent (10%) of the estimated monthly water usage set forth in paragraph 2 below, then the term of this Agreement shall be extended for another sixty (60) days, or until access to construction water is no longer required by Applicant, unless otherwise terminated by Company pursuant to this Agreement. If Applicant does not use at least ten percent (10%) of that estimated monthly usage within any succeeding sixty (60) day term, this Agreement shall automatically terminate and Company shall have the right to remove any meter(s) being utilized by Applicant.

2. **METER(S).** Applicant shall be entitled to one (1) meter at the location identified above. Company reserves the right to allow for more than one (1) meter in the event the construction project warrants additional meter locations. Applicant acknowledges that all such additional meters will be provided at Company’s sole discretion.

3. **WATER SUPPLY.** The Company presently has sufficient water production capacity to provide Applicant with the amount of construction water set forth in this Agreement. The Parties understand and agree, however, that the amount of construction water available to Applicant under this Agreement may be decreased by Company depending on demands for water by customers within the Company’s service area. Applicant estimates that it will need construction water service as follows:

First Date of Service: \_\_\_\_\_

Last Date of Service: \_\_\_\_\_

Total Gallons to be used on the Project: \_\_\_\_\_

Typical Daily Gallons Delivered: \_\_\_\_\_

Maximum Hour Demand, in Gallons: \_\_\_\_\_

Average Monthly Usage, in Gallons: \_\_\_\_\_

The above figures are Applicant's best estimates. In the event Applicant subsequently has better estimates of its water requirements, Applicant shall immediately notify Company of such revised estimates. The Company shall provide such water amounts to Applicant under this Agreement subject to the availability of water, peak flow rates and the deliverability of water to Applicant in a given month under this Agreement as determined solely by the Company.

3. **PAYMENT FOR CONSTRUCTION WATER.** Applicant shall pay all rates and charges set forth in the Company's tariff approved by the Arizona Corporation Commission ("Commission") for water service under this Agreement. Applicant understands and agrees that the charges for construction water service shall be at the applicable rates of Liberty that are currently on file with and approved by the Commission. Construction water shall be supplied to Applicant for the Project by Company through a 3-inch hydrant meter(s) installed at mutually agreed upon and specified location(s) at existing fire hydrants within the service area of Company, which locations are described in more detail on attached exhibit A [Area Map]. The current Construction Water – Hydrants commodity rate is \$3.456 per thousand gallons. These rates may be changed from time as requested by Liberty Litchfield Park and approved by the Commission and such revised rates shall apply to this Agreement upon their effective date. Applicant shall be responsible for a \$20.00 establishment service charge for each installed meter. Company may secure the meter to the fire hydrant. Applicant may request relocation of such meter by Company by providing Company with no less than twenty-four (24) hours advance notice of such change in location, which relocation must be approved by Company. Applicant and Owner shall not move or relocate such meter. Company must approve a meter relocation in advance of the water meter being relocated. A \$50 meter relocation fee shall be applied for each relocation of the fire hydrant meter by Company and Applicant shall be responsible for the cost of any necessary fire hydrant repairs. In the event the fire hydrant water meter is moved prior to approval of Company, Company may terminate this Agreement. The Company shall invoice Applicant monthly for all water delivered under this Agreement and Applicant shall pay such invoices within 15 days. Applicant's billing address is [\_\_\_\_\_].

4. **METER DEPOSIT.** Prior to the installation of the meters(s), Applicant shall pay to Company a meter deposit of \$1,470.00 for each 3" meter. Applicant also shall provide Company with a list of contractors and subcontractors, and their field contact information, who shall be authorized to take delivery of construction water from assigned meter(s), which list is attached hereto as exhibit B. Applicant shall be

Responsible to ensure that only contractors or subcontractors listed will have access to construction water. NEITHER APPLICANT NOR OWNER NOR ANY CONTRACTOR OR SUBCONTRACTOR SHALL MAKE THE CONSTRUCTION WATER OBTAINED AT INSTALLED METER(S) LOCATIONS AVAILABLE FOR RESALE TO ANOTHER ENTITY. ANY UNAUTHORIZED ACCESS SHALL CONSTITUTE A DEFAULT UNDER THIS AGREEMENT, AND SHALL BE CONSIDERED CAUSE FOR IMMEDIATE TERMINATION AND FURTHER ACTION AS DETERMINED BY COMPANY.

5. **BACKFLOW PREVENTER.** Applicant shall provide at its cost a Reduced Pressure back-flow assembly to be fixed to the fire hydrant meter during the entire time of usage. If the RP and/or meter is removed from the hydrant the RP assembly must be recertified. Applicant shall provide Company with approved backflow assembly information as well as documentation of the backflow testing data results showing the assembly has passed testing. This information shall be submitted to Liberty Utilities (Litchfield Park Water & Sewer) Corp., Attn: Nathan Ellis, Regularity Technician, 14222 W. McDowell Road, Goodyear, Arizona 85395, (623) 298-4859. No usage of the construction water meter shall occur until the Company has approved the passing backflow assembly information and testing data to ensure it is approved for use on the Company's water system. **ALL RP ASSEMBLIES ARE REQUIRED TO HAVE METAL SUPPORT STANDS FOR LEVELING AND MUST BE A MINIMUM OF 12" FROM THE GROUND.**

6. **DELIVERY TIMES/BLACKOUT PERIOD.** Applicant shall obtain construction water only during the hours scheduled under this Agreement due to the demand placed upon the Company system by its regular metered customers, as well as the additional demand by other construction water service customers. **Applicant acknowledges and agrees NOT to take delivery of water under this Agreement between the hours of 5:00 am and 9:00 am Monday through Sunday ("Blackout Period"), unless water access is required to fill elevated storage facilities (i.e. "Client Tower"), or unless otherwise agreed to in writing by Company.** Based upon Company's available capacity, this Blackout Period may be unilaterally revised by Company in its sole discretion upon twenty-four hour (24) written notice to Applicant. Violations of the Blackout Period shall be determined by Company either by observing unauthorized delivery, or other evidence that the water has been pumped from Company's system and applied on the Project during the unauthorized period. This determination shall be made in the sole discretion of Company and may result in immediate termination of this Agreement as determined by Company.

7. **WATER QUALITY.** The Company cannot, and does not, make any warranty or representation as to the quality of the water once delivered to Applicant at the point of delivery. Applicant shall be solely and exclusively responsible for delivery and use of water under this Agreement after Applicant has taken possession of the water from the Company at the point of delivery. Company does not guarantee the potability or quality of the water beyond the point of delivery to Applicant. Applicant shall prominently mark all tanks, water trucks and any other access to the water on the

Project as “NOT SAFE FOR DRINKING.” Such marking shall be in English and Spanish. Applicant agrees to comply with all federal, state and local regulations and ordinances concerning signage.

8. **INDEMNITY.** To the fullest extent permitted by law, Applicant and Owner, and their successors, assigns and guarantors, shall defend, indemnify and hold harmless Company and its partners, members, directors, principals, officers, agents, employees, representatives, parents, subsidiaries, affiliates, consultants, insurers and/or sureties, from and against any and all liabilities, claims, damages, losses, costs, expenses (including but not limited to, attorney’s fees), injuries, causes of action, or judgments occasioned by, contributed to and/or in any way caused, in whole or in part, by Applicant and/or Applicant’s contractors, agents or employees, or any subcontractor, consultant or sub-subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, relating to use of water under this Agreement, including but not limited to any active or passive negligence of Company, and/or any act or omission of Company, unless such negligence, act and/or omission of Company was the sole cause of such liability and/or claim. This indemnity clause shall apply to any claim arising out of or related to use of construction water under this Agreement and/or performance of this Agreement that is sustained or asserted before or after termination of this Agreement. This indemnity clause extends to and includes all claims, just or unjust, based on a tort, strict liability, contract, lien, statute, stop notice, rule, safety regulation, ordinance or other affiliated relief or liability, and whether the injury complained of arises from any death, personal injury, sickness, disease, property damage (including loss of use), economic loss, patent infringement, copyright infringement, or otherwise, even if such claim may have been caused in part by Company as set forth above. Applicant’s obligations under this paragraph shall not apply to any claims or liability arising out of or are caused by Company’s ownership and operation of the facilities following construction of the Project.

9. **EXCLUSION FOR FIRE PROTECTION.** This Agreement does not include the provision of water for fire protection services. Company specifically represents, and Applicant acknowledges and agrees, that access to construction water, even during the hours water is available under Paragraph 6 hereof, is not sufficient to meet required fire flows. Applicant further acknowledges that such fire flow will not be available unless and until the on-site facilities for the Project have been installed, tested, and accepted by Company. Applicant shall defend, indemnify and hold Company harmless for all claims resulting from the unavailability of water for fire protection purposes.

10. **NO DAMAGES.** In the event of a water supply shortage or any equipment or operational problem affecting Company’s domestic water customers, Company reserves the right to further limit or periodically totally discontinue supply of water to Applicant, without notice, under the terms of this Agreement. APPLICANT EXPRESSLY HOLDS COMPANY HARMLESS FOR ANY AND ALL DAMAGES THAT RESULT FROM A DELAY IN CONSTRUCTION ACTIVITY DUE TO

LIMITATIONS ON WATER AVAILABILITY OR LIMITATIONS ON WATER DELIVERY UNDER THIS AGREEMENT.

11. **METER READS.** Company will cause the meter(s) to be read at approximately thirty-day intervals, and thereafter cause monthly bills to be rendered to Applicant for the water used. If any invoice statement is not paid within 15 days of billing, Company retains the right to terminate service subject to the Commission's termination notice provisions set forth in A.A.C. R14-2-410, as applicable, remove the meter and deduct the amount owed to Company from the meter deposit. Service shall thereafter not be reinstated until the Applicant has posted an additional meter deposit. In the event that Applicant does not pay or fails to pay all charges due for water under this Agreement, Owner shall be responsible for payment of such charges as a condition of service to the Project.

12. **ADDITIONAL TERMS AND CONDITIONS.**

a. All water for use on the Project shall be delivered from the metered installations of Company as established in this Agreement. Should Company determine that Applicant, Owner, Applicant's contractor and/or subcontractors, or others are taking water from unmetered installations or tampering with any meters installed under this Agreement, Company may (i) immediately terminate service under this Agreement, (ii) bill Applicant for estimated consumption as determined in the sole discretion of Company, and/or (iii) pursue any and all remedies available to the Company under Arizona law.

b. Applicant is solely and exclusively responsible for all water consumed on the Project whether through Company's meters or otherwise and whether drawn by Applicant, Owner, Applicant's contractor, subcontractors or others. Should the meter be damaged, tampered with, stolen or lost, Company retains the right to withhold all or a portion of the meter deposit and bill Applicant for the Company's estimate for water use. Applicant shall be responsible for the cost of a lost meter and shall be responsible for the cost of any and all fire hydrant meter repairs. Applicant shall use all water purchased under this Agreement in accordance with Arizona law.

c. Permanent water service to the Project will require that the Project Developer and/or Owner enter into a main extension agreement with Company under applicable regulations and laws and/or the provisions of Company's tariffs, including Commission Rule A.A.C. R-14-2-406, for the construction of permanent facilities necessary to provide production, treatment, storage, pressure, and distribution of water within the Project.

d. This Agreement may not be modified or amended except in writing signed by both Parties.

e. No waiver by Company of any breach of any provision of this Agreement nor any failure by Company to insist on strict performance provide of any

provision of this Agreement shall in any way be construed to be a waiver of any future or subsequent breach by Applicant or bar the right of Company to insist on strict performance by the Applicant of any provision of this Agreement in the future.

f. This Agreement shall inure to the benefit of, be binding upon, and be enforceable by the Parties hereto and their respective successors and assigns.

g. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the laws of the state of Arizona, without regard to choice of law or conflicts of laws principles thereof. Any action arising out of this Agreement shall be commenced and maintained in the Superior Court of the state of Arizona in and for the county of Maricopa.

**IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.**

**[APPLICANT]**

[\_\_\_\_\_]

**By:** \_\_\_\_\_

**Its:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**[OWNER]**

[\_\_\_\_\_]

**By:** \_\_\_\_\_

**Its:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**LIBERTY UTILITIES (LITCHFIELD PARK WATER & SEWER) CORP.**

**By:** \_\_\_\_\_

**Its:** \_\_\_\_\_

**Date:** \_\_\_\_\_