

RESOLUTION NO. 06-04-2012

A RESOLUTION OF THE SANTAQUIN CITY COUNCIL, AUTHORIZING A REIMBURSEMENT AGREEMENT BETWEEN THE SUMMIT CREEK IRRIGATION AND CANAL COMPANY AND SANTAQUIN CITY FOR WORK PERFORMED TO MAINTAIN AND/OR REPAIR THE SUMMIT CREEK IRRIGATION SYSTEM.

WHEREAS, Summit Creek Owns and operates certain water rights and a system for the delivery of irrigation water to its shareholders ("The System"); and

WHEREAS, Summit Creek is responsible for the maintenance and repairs to the System; and

WHEREAS, the resources of the City's Public Works Department, include equipment and manpower to repair and maintain its facilities for the delivery of both culinary and irrigation water and said department regularly has excess capacity to provide repair and maintenance services; and

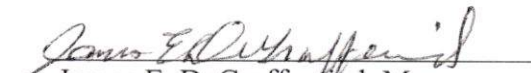
WHEREAS, Summit Creek desires to utilize certain labor, equipment and materials of City as needed to assist in the maintenance and repairs to the System; and

WHEREAS, the City is willing to cooperate with Summit Creek in providing labor, equipment and materials for the maintenance and repairs to the System so long as its costs are reimbursed, and so long as it does not assume any liability with respect to such cooperative efforts;

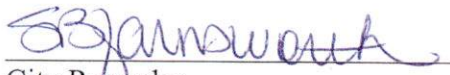
NOW, THEREFORE, BE IT ORDAINED by the City Council of Santaquin City, State of Utah, to authorize the acceptance of the Summit Creek Maintenance "Reimbursement Agreement" (See Attached).

PASSED AND APPROVED this 20th day of June 2012.

SANTAQUIN CITY COUNCIL


James E. DeGraffenried, Mayor

ATTEST:


City Recorder



REIMBURSEMENT AGREEMENT

This reimbursement agreement ("Agreement") is made and entered into by and between Santaquin City, a fifth class city of the State of Utah ("Santaquin" or "City") and Summit Creek Irrigation and Canal Company, ("Summit Creek"), effective as of the date set forth below.

RECITALS:

WHEREAS Summit Creek owns and operates certain water rights and a system for the delivery of irrigation water to its shareholders ("the System"); and

WHEREAS, Summit Creek is responsible for the maintenance and repairs to the System; and

WHEREAS, the resources of the City's Public Works Department include equipment and manpower to repair and maintain its facilities for the delivery of both culinary and irrigation water and said department regularly has excess capacity to provide repair and maintenance services; and

WHEREAS Summit Creek desires to utilize certain labor, equipment and materials of City as needed to assist in the maintenance and repairs to the System; and

WHEREAS the City is willing to cooperate with Summit Creek in providing labor, equipment and materials for maintenance and repairs to the System so long as its costs are reimbursed, and so long as it does not assume any liability with respect to such cooperative efforts,

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants, promises and conditions contained herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

Section 1. PURPOSE

1.1 This Agreement is hereby established and entered into between Santaquin and Summit Creek for the purpose of providing repair and maintenance services on certain facilities owned by Summit Creek in and around the City.

1.2 At such times as Summit Creek is in need of the services of Santaquin in connection with repairs or maintenance of any of its facilities, Summit Creek may request that Santaquin provide such service and such services shall be provided upon the mutual agreement of the parties. Santaquin shall provide the services as described in this section 1 using its labor and equipment and shall perform the same in a reasonable and customary manner.

1.3 Nothing in this Agreement shall obligate Summit Creek to use the services of Santaquin on any particular project for repairs or maintenance. Summit Creek shall be free to utilize the services of other contractors and/or its own resources in connection with repairs and maintenance of its facilities. Neither shall Santaquin be obligated to provide any service requested by Summit Creek.

1.4 All employees of Santaquin shall remain solely employees of the City for purposes of payment of salaries, wages, withholdings, and benefits; personnel policies and procedures; training; and hiring and firing. All employees of Summit Creek shall remain solely employees of Summit Creek for purposes of payment of salaries, wages, withholdings, and benefits; personnel policies and procedures; training; and hiring and firing.

Section 2. REIMBURSEMENT OF COSTS

2.1 Summit Creek shall reimburse Santaquin for the use of equipment pursuant to the rates established by the FEMA Equipment Reimbursement Schedule, as the same may be amended from time to time, which rates currently include those listed below.

2.1.1	Backhoe	\$65/hour
2.1.2	Dump Truck	\$35/hour
2.1.3	Flatbed Truck	\$20/hour
2.1.4	Vac Truck	\$50/hour

2.2 Summit Creek shall reimburse Santaquin for its labor costs at the rate of thirty-two and 50/100 dollars (\$32.50) per hour.

2.3 Summit Creek hereby authorizes Santaquin to purchase parts and materials necessary for designated repairs and maintenance on Summit Creek accounts. Where possible, all parts and materials will be billed directly to Summit Creek from the supplier. Where not possible, the actual invoice for parts and materials will be provided by Santaquin directly to Summit Creek for reimbursement.

2.4 All rates set forth herein for labor are subject to annual review based on actual costs. Any such rate changes must be accepted by both parties in writing in advance of the commencement of the work to which such rate changes apply.

Section 3. EFFECTIVE DATE AND TERMINATION

3.1 The parties intend that the effective date of this Agreement shall be the date upon which all parties have duly executed this Agreement. Unless terminated pursuant to the provisions of the section, this Agreement will expire ten (10) years from the effective date. The parties agree that either party may terminate this Agreement at any time upon thirty (30) days prior written notice.

Section 4. LIABILITY FOR LOSS, INSURANCE AND INDEMNIFICATION

4.1 Santaquin shall be responsible for any death, personal injury, loss, or damage of any kind to persons or property arising from its services provided pursuant to this Agreement. Summit Creek shall be responsible for any death, personal injury, loss, or damage of any kind to persons or property arising from its services provided pursuant to this Agreement.

4.2 Santaquin shall procure and maintain in force at its expense during the term of this Agreement property damage and public liability insurance providing liability coverage for the City's provision of services under this Agreement. Summit Creek shall procure and maintain in force at its expense during the term of this Agreement property damage and

public liability insurance providing coverage for its operations. Said insurance shall provide for such coverages, protections, insurable amounts, etc., as deemed advisable by the parties and available through Utah Local Governments Trust, or any other insurance provider utilized by Santaquin or Summit Creek, and which would be standard and reasonable for the uses contemplated hereunder.

4.3 Each of the parties shall indemnify and save harmless the other, including its officers, and employees from all suits, actions, or claims of any character related in any manner to injuries or damage received or sustained by any person, persons, or property arising out of its negligent errors or omissions committed while providing the facilities, equipment and supplies agreed upon herein. Neither party shall indemnify the other for intentional torts committed by its officers or employees. Nothing in this agreement shall be construed to waive or limit the protections provided in the Governmental Immunity Act of Utah. Utah Code Ann. § 63G-7-101 et seq. (1953 as amended).

Section 5. AMENDMENTS

This Agreement is the entire agreement between the parties and does not create a joint venture or agency relationship between the parties. This Agreement may not be amended, changed, modified or altered except by an instrument in writing which shall be (a) approved by the governing body of each of the parties, (b) executed by a duly authorized official of each of the parties, and (c) filed in the official records of each party.

Section 6. SEVERABILITY

If any term or provision of this Agreement or the application thereof shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and shall be enforced to the extent permitted by law. To the extent permitted by applicable law, the parties hereby waive any provision of law which would render any of the terms of this Agreement unenforceable.

Section 7. GOVERNING LAW

The construction of this Agreement, and the rights and liability of the parties hereto, shall be governed by laws of the State of Utah and shall inure to the benefit of, and bind the successors and assigns of the respective parties.

Section 8. WAIVER

8.1 Waiver of any particular duty or condition under this Agreement shall not constitute a waiver for any other duty or condition, regardless of whether it is a like, related, or subsequent duty or condition.

Section 9. COSTS AND ATTORNEYS' FEES.

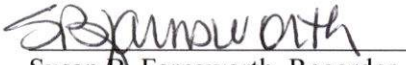
9.1 In the event that this Agreement must be enforced by legal action or the meaning of this Agreement becomes subject to a declaratory judgment, the prevailing party shall be entitled to all costs and expenses of such legal action including but not limited to reasonable attorneys' fees.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed on the respective dates indicated below.

SANTAQUIN CITY:

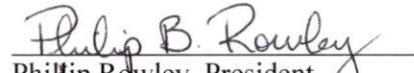

James E. DeGraffenried, Mayor

ATTEST:


Susan B. Farnsworth, Recorder



SUMMIT CREEK IRRIGATION & CANAL COMPANY

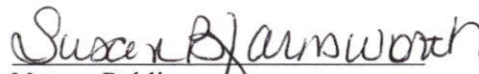

Phillip Rowley, President

ACKNOWLEDGMENT

State of Utah }
 : ss.
County of Utah }

On the 10 day of Sept, 2012, personally appeared before me, Phillip Rowley, who duly acknowledged to me that he executed the foregoing instrument on behalf of Summit Creek Irrigation and Canal Company, and also acknowledged and certified to me that he was and is duly authorized by Summit Creek Irrigation & Canal Company to execute the foregoing instrument to thereby bind said company to its terms.




Notary Public