



W-03513A-01-0727

**Water Facilities Agreement**

This Water Facilities Agreement ("Agreement") entered into this 12<sup>th</sup> day of May 2004, by and between Brooke Utilities, Inc. ("Brooke") with primary business offices located at 3101 State Rd., Bakersfield, California 93308 and Hardscrabble Mesa Homeowners Association ("Applicant") with its principal mailing address at 1501 E. Granite Dells Rd., Payson, Arizona 85541 (hereafter collectively referred to as the "Parties"). The Parties contemplate the conveyance of existing water utility infrastructure and facilities for the purpose of Strawberry Water Co., Inc. providing domestic water utility service to the Applicant. For the purposes of this Agreement all further references made herein to the conveyed water utility system are referred to as "the Improvements".

Arizona Corporation Commission

DOCKETED

MAY 24 2004

**Section I: Recitals**

RECEIVED  
MAY 24 2004  
ARIZONA CORPORATION COMMISSION  
DOCUMENT CONTROL

DOCKETED BY WHEREAS, Brooke is a properly organized Arizona corporation in good standing with corporate offices at that location first set forth above; and,

2. WHEREAS, Brooke, as of the date of this Memorandum, is the exclusive owner of United Utilities, Inc. ("UU"), E&R Water Company, Inc. ("E&R"), Williamson Waterworks, Inc. ("WWW"), C&S Water Company, Inc. ("C&S"), Pine Water Co., Inc. ("Pine Water"), Strawberry Water Co., Inc. ("Strawberry Water"), and Payson Water Co., Inc. ("Payson Water"), all of which are Arizona corporations in good standing operating in Gila and Pinal Counties, Arizona; and, Brooke Water L.L.C. ("BWLLC"), and Circle City Water Co., L.L.C. ("CCWCo."), Arizona organized limited liability companies in good standing operating in La Paz and Maricopa Counties, Arizona respectively; and, High Desert Water Company, Inc. ("HDWCo."), Pine-Oak Water Company, Inc. ("P-O"), Desert Utilities, Inc. ("DUP"), and Navajo Water Co., Inc. ("Navajo Water") all Arizona corporations in good standing operating in Navajo County, Arizona; and, all of Brooke's water companies are hereafter collectively referred to as "Water Subsidiaries"; and
3. WHEREAS, Water Subsidiaries operate individual water systems ("Water Systems") pursuant to various regulatory authorities in areas determined by the valid issuance, from the Arizona Corporation Commission ("ACC"), of Certificates of Convenience and Necessity ("CC&N") throughout all of the aforementioned Arizona counties and presently serving approximately eight thousand domestic residential and commercial water customers; and,
4. WHEREAS, Water Subsidiaries are considered public service corporations within the meaning of Article XV of the Arizona Constitution, Arizona Revised Statutes ("A.R.S.") § 40-202 et. seq. and Arizona Administrative Code ("AAC") § 14-2-406 and are, therefore, subject to the various joint and several jurisdictions of ACC, Arizona Department of Environmental Quality ("ADEQ"), Arizona Department of Water Resources ("ADWR") and other regulatory authorities, not expressly described

by this section, which may have jurisdiction over the operations of the Water Subsidiaries and are hereafter collectively referred to as "Regulatory Authorities"; and,

5. WHEREAS, Brooke desires to maintain the exclusive right to assign the benefits and delegate the duties under this Agreement, and subject to the conditions of this Agreement, as it relates to the creation of any third party beneficiaries, to any of its Water Subsidiaries as an assignee of such benefits or delegate of such duties; and,
7. WHEREAS, Brooke anticipation assignment of this Agreement and the benefits, duties, and obligations hereunder to Strawberry Water Co., Inc.; and,
8. WHEREAS, any assignment of the benefits or delegation of the duties of this Agreement by Brooke to any of the Water Subsidiaries may be subject to the advance review, consideration and approval (the "Regulatory Approval Process") by applicable regulatory authorities. In any instance where the Regulatory Approval Process is required, a condition precedent to the effectiveness of this Agreement is created. Therefore, this Agreement shall not become wholly effective nor serve as an obligation of the Parties to perform any of the duties hereunder, except as otherwise may be provided herein, until the Regulatory Approval Process is completed in the form and substance of this Agreement; and,
9. WHEREAS, Applicant is a private party or developer requesting the Improvements within the CC&N of one of the Water Subsidiaries and is more fully described in Exhibit I attached hereto; and,
10. WHEREAS, Applicant has fully considered the construction and development of a private water source exclusively serving its personal requirements and has declined development of same; and,
11. WHEREAS, Applicant has requested, pursuant to its Request for Service letter dated March 21, 2000, that Water Subsidiaries provide potable domestic water service to the Improvements; and,
12. WHEREAS, Brooke has accepted Applicants request to provide potable domestic water service to the Improvements; and,
13. WHEREAS, Water Subsidiaries do not presently operate a water distribution system able to serve potable domestic water to the Improvements without contemplation of this Agreement; and
14. WHEREAS, that AAC statute referenced above permits Brooke or Water Subsidiaries to require Applicant to contribute funds funding necessary to construct Improvements.

NOW, THEREFORE BE IT RESOLVED the Parties to this Agreement do hereby agree as follows:

**Section II: Utility Plant Additions, Cost, Payment, Cost Revisions  
and Developer Cancellation**

1. Brooke will construct, or cause to be constructed, the Improvements sufficient to fully satisfy Applicant's requirements for water utility service as further described by this Agreement.
2. The reconstructed value of the Improvements, more fully described by Exhibit III attached hereto and incorporated herein by reference for all purposes, is One Hundred Eleven Thousand Sixty Dollars and No Cents (\$111,060). This amount shall hereafter be referred to as the "Improvements Cost".
3. All funds payable pursuant to this Agreement, including any adjustments thereto, shall be paid by Applicant to Brooke in the form of certified cashiers check or personal check the validity of which shall be determined only after satisfaction of same by the financial institution upon which it is drawn.
4. In addition to the Improvements Cost, Applicant shall additionally pay to Brooke, if applicable, an amount sufficient to pay for engineering services required by Brooke, in connection with the Improvements, in that amount indicated by Exhibit III attached hereto. At Brooke's expressed option, Applicant may contract, arrange and subscribe to those engineering services described by this section directly with a licensed provider of same subject to Brooke's prior approval of such provider. In every case, the provider of engineering services shall be responsible for providing complete "as built" drawings and related documents more fully describing the Improvements.
5. The complete cost of any revisions and change orders, as provided by this Agreement, shall be payable by Applicant, in a form consistent with Agreement, within five (5) days of Brooke's written notification to Applicant of the necessity of such revisions and change orders as exclusively determined by Brooke.
6. If, for any reason, any balance remains unpaid by Applicant, Brooke shall be paid by Applicant prior to Brooke's final connection of its utility plant to Applicants point of service of the Improvements. **APPLICANT ACKNOWLEDGES AND AGREES THAT IT IS THE EXPRESSED PURPOSE OF THIS SECTION NOT TO PERMIT APPLICANT'S CONNECTION TO BROOKE'S UTILITY PLANT PRIOR TO ALL AMOUNTS BEING FULLY PAID WHICH WERE INCURRED IN CONNECTION WITH THIS AGREEMENT.**
7. If Applicant does not make all payments to Brooke in accordance with this Agreement, Brooke may, at its sole and exclusive option, and without advance notice to Applicant, immediately cease construction of any or all portions of Improvements until the entire balance currently owing, as indicated by Exhibit III attached hereto, is received by Brooke. Any other costs incurred by Brooke or its agents, contractors, or

representatives due to cessation of the Improvements contemplated by this Agreement, including re-mobilization or other related or unrelated costs, shall be paid to Brooke by Applicant prior to Brooke's resumption of the construction of the Improvements.

### **Section III: Conditions of Improvements Costs**

1. The Improvements Costs referenced in Exhibit III are further conditioned upon Applicant's acceptance of each of the following conditions:
  - a) That, in perpetuity, Applicant be allowed connection of not more than twenty (20) water service connections to the property described in Exhibit I.
  - b) That prior to the commencement of construction of Improvements all permits, approvals, licenses and easements required in connection with Improvements shall be obtained, recorded, transferred or otherwise developed in favor of Brooke so as to completely satisfy all authorities having jurisdiction over regulation or approval of Improvements.
  - c) That all easements and rights-of-way shall be free of obstacles which may interfere with construction or subsequent operation of Improvements contemplated by this Agreement, as exclusively determined by Brooke. If Improvements require road, pavement and/or concrete construction, all such development shall be constructed at grade elevations. No pavement or curbs shall be installed prior to completion of Improvements contemplated by this Agreement or otherwise approved in advance of construction by Brooke. If any streets, roads, alleys, or drainage ways are not constructed in accordance with this section, Applicant shall bear all costs of every type and description, on a non-refundable basis, that are incurred by Brooke to relocate Improvements as a result of said facilities not being constructed in accordance with this section.
  - d) That no engineering changes be made, caused, required or incurred by Applicant in connection with any utility construction standards, the Regulatory Authorities or any State or County health department, or any other public agency under whose jurisdiction the construction of the Improvements may be deemed appropriate without the advance written approval of Brooke.
  - e) That, prior to the actual construction of Improvements, Brooke has received responsive bids for the material, labor and related services otherwise referenced in this Agreement and required to construct Improvements.
  - f) That no changes to the Improvements, which in any manner affect the Improvements contemplated by this Agreement, be made by Applicant or any agent or representative of Applicant without first determining any cost impact to Brooke. In the event any cost impact is determined by Brooke to exist,

further construction of the Improvements, contemplated by Agreement, shall immediately be ceased until Applicant has further advanced funds to Brooke necessary for the cost of the changed work.

- g) That Applicant comply with any additional terms and conditions as may be set forth in other sections of this Agreement which may be attached hereto and incorporated by reference for all purposes.

#### **Section IV: Improvements Costs Revisions, Applicant Cancellation**

1. In the event any of the terms or conditions of this Agreement are not completely performed which impact Improvements Costs, as exclusively determined by Brooke, Brooke reserves the right to revise those amounts indicated in Exhibit III. Additional funds will be required to be advanced by Applicant to Brooke, (a) prior to the resumption of construction of Improvements, or (b) any portions of the Improvements not expressly described by Exhibit III. If Applicant determines that Brooke's revised cost estimate is not acceptable, Applicant's exclusive recourse shall be, within three (3) days of the receipt of the written revised cost estimate from Brooke, to advise Brooke in writing of Applicant's cancellation of the request for service. Applicant's proper notice of cancellation to Brooke, in accordance with this section, shall relieve Applicant from further advance obligations; however, all advances made to Brooke as of the date of notice of cancellation, regardless of whether or not such advances are representative of Improvements Cost actually incurred by Brooke, shall be retained on the books and records of Brooke.

#### **Section V: Service, Brooke Liability Limitations, Applicable Rates**

1. Notwithstanding any reference to fire protection facilities contained in this Agreement, the Improvements are being constructed for the purpose of providing domestic water service to the Improvements. However, under certain operating conditions as exclusively determined by Brooke, those facilities may be used, with the prior written approval of Brooke, to provide limited emergency fire protection service to an official fire protection agency which has previously contracted with Brooke for such service.
2. It is understood by Applicant, as evidenced by the execution of this Agreement, that Brooke does not have the responsibility to provide, and shall not construct under this Agreement, facilities capable of providing any fire flow to the Improvements. Therefore, it is expressly agreed and understood by Applicant that **BROOKE DOES NOT GUARANTEE OR INSURE UNINTERRUPTED OR REGULAR WATER SERVICE; NOR DOES BROOKE REPRESENT THE AVAILABILITY OF ADEQUATE PRESSURE, VOLUME OR FIRE FLOW FROM THE SYSTEM BY OFFERING DOMESTIC WATER SERVICE PURSUANT TO THIS AGREEMENT.**<sup>1</sup>

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<sup>1</sup> Please also see Section X: General Conditions, paragraph number 16.

3. It is agreed that in the event of service from a fire hydrant or an interior fire sprinkler system which is used for non-fire protection purposes, or is interrupted or is irregular or defective or fails from causes beyond Brooke's control or through negligence or alleged negligence of its employees, services, agents or other representatives, Brooke shall not be liable for any injuries or damages arising therefrom. Further, Brooke shall have neither the responsibility nor the liability for any use or disposition of fire hydrant or fire protection water, even if such use or disposition is attributable, or is alleged to be attributable to the negligence of Brooke's employees, agents, servants, or other representatives. Applicant, or any other person or entity which succeeds to Applicants interest, **REGARDLESS OF WHETHER SUCH PERSON OR ENTITY HAS KNOWLEDGE OR NOTICE OF THESE TERMS**, shall make no claim against Brooke for any such loss or damage resulting from services provided under this Agreement or the applicable service tariff. Brooke shall be entitled to recover its reasonable attorney's fees should Applicant fail to properly comply with this provision.

### **Section VI: Rates and Tariffs**

1. It is understood and agreed by Applicant, as evidenced by its execution of this Agreement, that all charges for domestic water services to Improvements shall, at all times, be at the currently applicable tariffs of Water Subsidiaries as established by ACC. Water Subsidiaries tariffs are subject to change from time to time upon application by Brooke and as approved by the Commission.

### **Section VII: Permits and Licenses, Easements, Title**

1. Brooke and Applicant agree to obtain all permits and licenses from all authorities having jurisdiction which may be required for the construction of Improvements contemplated under this Agreement.
2. Prior to the commencement of construction, Applicant shall, if applicable, obtain from the owners of the property upon which the Improvements is to be constructed, a perpetual private water utility easement for construction, operation and maintenance of Improvements on the behalf of, and in the name of, Brooke and in a form acceptable to Brooke.
3. All materials, facilities constructed, and water supply equipment provided in connection with construction of Improvements under this Agreement and the completed facilities as installed shall become the sole and exclusive property of Brooke or its assignee or transferee, and full legal and equitable title thereto shall be completely and fully vested in Brooke, free and clear of any liens, without the additional requirement of any written document of transfer or recordation to or by Brooke other than this Agreement. Applicant agrees to execute or caused to be executed promptly all such documents as Brooke or its representatives may request to evidence good and merchantable title to said facilities free and clear of all liens.

## **Section VIII: Performance, Time of Completion**

1. Brooke or its agent, contractor, or designee shall commence construction of Improvements contemplated by this Agreement within thirty (30) days following execution of this Agreement subject to satisfaction of the regulatory requirements described herein. Completion of the contemplated Improvements is expected in not more than one hundred and eighty (180) days from the commencement of construction. The estimated construction schedule is conditioned upon Applicants performance of all conditions hereunder and Brooke encountering no extraordinary or unanticipated construction conditions. It is mutually understood that these commencement and completion dates are estimates only and no liability shall arise from Brooke's failure to complete the Improvements, in whole or part, in accordance with these estimated dates.

## **Section IX: Advance Amount, Refund, Transfer**

1. As described by this Agreement, all contributions shall be made by Applicant as specified hereunder. If the actual Improvements Costs are revised, in accordance with this Agreement, the additional contribution shall be applied thereto and/or adjusted by the same amount.
2. Subject to Appendix 1, attached hereto, the Improvements Costs do not include any amount necessary for the payment of State or federal income taxes in connection therewith.
3. In addition to Improvements Costs all contributions made hereunder by Applicant shall include an amount equal to ten and four/tenths percent (10.4%) of the sum of all amounts contributed, or to be contributed, by Applicant in accordance with this Agreement. This additional amount shall be to reimburse Brooke's for its pecuniary costs incurred in the management, supervision and inspection of Improvements.
4. In accordance with A.A.C. § R14-2-406 (D) Applicant shall be paid annual refunds not to exceed ten percent of the annual water revenues generated from the water connections to the system.
5. Applicant understands, acknowledges and agrees, as evidenced by its execution of this Agreement, that it is solely responsible to notify Brooke of any change of address used in connection with any provision hereunder. All changes of address of Applicant should be forwarded in writing to Brooke's offices as first set forth above.
6. In the event of the sale, conveyance or transfer by Brooke, pursuant to the approval of the Regulatory Authorities, of any portion of its water system, including the facilities serving the Improvements and installed pursuant to the terms of this Agreement, Brooke's obligations under this Agreement shall cease (except to any payment which

may be then due) conditioned upon the transferee assuming, and agreeing to pay Applicant, any sums payable to Applicant thereafter in accordance with any provisions of this Agreement.

### **Section X: General Conditions**

1. Before this Agreement shall become effective and binding upon either Brooke, its Water Subsidiaries or Applicant, it must be approved by ACC. This Agreement may also be subject to the review and approval of ADEQ which may issue a Certificate of Approval to Construct prior to the beginning of any construction. In the event this Agreement is not so approved, this Agreement shall be null and void and of no force or effect whatsoever. This Agreement may not be modified or amended except by a writing signed by both parties. This Agreement constitutes the entire Agreement and understanding between the parties, with respect to the subject matter hereof, and expressly supersedes and revokes all prior or contemporaneous promises or representations of any nature whatsoever. The remedies provided for in this Agreement shall not be deemed Brooke's exclusive remedies but shall be in addition all other remedies available to Brooke at law or equity. No waiver by Brooke of any breach by Applicant of any provision of this Agreement shall in any way be construed as a waiver of any future or subsequent breach by Applicant or bar the right of Brooke to insist on strict performance by Applicant of the provisions in this Agreement in the future. Applicant is an independent party and not an agent or employee of Brooke. This Agreement shall inure to the benefit of, be binding upon, and be enforceable by the parties hereto and their respective heirs, assigns, and successors.
2. **Successors and Assigns:** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, assigns and representatives; provided, however, that no assignment or transfer of any of the obligations, powers, duties or rights created in the obligee or assignee by this Agreement shall be binding upon any of the Parties to this Agreement until such assignment or transfer is approved in writing by each of the Parties hereto.
3. **Attorneys' Fees:** If any suit or other action or proceeding is brought to enforce the terms of this Agreement, the prevailing party in such action shall be entitled to recover reasonably attorneys' fees and costs, such amounts as may be established by a court and not a jury.
4. **Entire Agreement:** This Agreement embodies the entire agreement between the Parties and supersedes all prior and contemporaneous oral or written agreements, representations and understandings, if any, relating to the subject matter hereof which shall hereby be superseded and merged. All documents attached to this Agreement shall be read and interpreted as consistent with one another.
5. **Headings:** Section headings are for the convenience of reference only and shall in no way affect the interpretation of this Agreement. This Agreement is the result of good

faith negotiations between the Parties and, accordingly, shall not be construed for or against either Party regardless of which Party drafted this Agreement or any portion thereof.

6. Third Party Beneficiaries: Applicant does not intend the benefits of this Agreement to inure to any third party, nor shall this Agreement be construed to make or render Brooke liable to any creditor, materialman, supplier, tax collector, contractor, subcontractor, broker, purchaser or lessee of the Improvements. Brooke may, at its option, create a third party beneficiary by means of its assignment or transfer of this Agreement to Water Subsidiaries.
7. Further Assurances: Each Party shall execute and deliver all such documents and perform all such acts as reasonably requested by any party from time to time to perform the duties and obligations contemplated by this Agreement.
8. Incorporation of Exhibits: All annexes, schedules and exhibits attached hereto are hereby incorporated into this Agreement by each reference thereto as if fully set forth at each reference.
9. Authority: Each Party acknowledges and warrants that it is fully authorized and empowered to execute this Agreement by and through the individuals executing below.
10. Notices: Any notices or communication required or permitted to be given to any of the Parties to this Agreement must be in writing and shall be effective upon the earlier of (a) the date when received by such party, or (b) the date which is three (3) days after mailing, postage prepaid, by certified or registered mail, return receipt requested, to the address of such party as indicated below, or (c) by telefacsimile delivered or transmitted to the party to whom such notice is required or directed in accordance with that information first set forth above. Any such notices to be personally delivered may be delivered to the principal offices or location of the other party to whom such notice is directed. Any such notice shall be deemed to have been given (whether actually received or not) on the day it is personally delivered as aforesaid. Any party to this Agreement may change its address or delivery location by giving notice to the other party pursuant to this section.
11. Time of Essence: Time is of the essence with regard to each provision of this Agreement as to which time is a factor. If this Agreement provides that any time period expires or date for performance specified in this Agreement falls on a nonbusiness day (i.e. Saturday, Sunday or legal holiday recognized by the State of Arizona), such time period or performance deadline shall be extended to the next business day.
12. Preparation of Documents: Brooke has prepared this Agreement. Applicant and, at its option, its counsel acknowledge the opportunity to review this document.

Accordingly, the Agreement shall not be construed against Brooke or its Water Subsidiaries because the Agreement was drafted by Brooke.

13. **Arizona Law:** This Agreement has been prepared, is being executed and delivered, and is intended to be performed in the State of Arizona. The substantive laws of the State of Arizona and the applicable federal laws of the United States of America shall govern the validity, construction, enforcement and interpretation of this Agreement and all documents related hereto without regard to conflict of the law rules.
14. **Cooperation of Parties:** The Parties hereto agree to do all such things and take all such action, and to make, execute and deliver such documents and instruments, as shall be reasonably requested to carry out the provisions, intent and purpose of this Agreement.
15. **Counterparts:** This Agreement may be executed in multiple counterparts, each of which, when so executed shall be deemed an original but all such counterparts shall constitute but one and the same Agreement.
16. **Brooke's Liability Limitations:** Applicant or developer acknowledges that the facilities are being conveyed for the purpose of providing domestic water service to the property described in Exhibit I. Under certain operating conditions, the facilities may provide limited fire protection service to appropriate fire protection agencies contracting with the Brooke for such service. However, it is expressly understood by Brooke and the Applicant that Brooke, through its Water Subsidiaries, will provide a minimum delivery pressure of 20 pound per square inch at the customer's meter or point of delivery in accordance with A.A.C. R14-2-407.E, but that Brooke does not represent or warrant regular fire protection service. Applicant further acknowledges that Brooke does not represent or warrant that the domestic water utility service provided by Brooke meets any rules, regulations or other standards for fire protection imposed by any governmental entity; nor does Brooke accept or assume any obligation of Applicant, whether express or implied, pertaining to the property described in Exhibit I including, without limitation, assurances of water for fire protection purposes, except as expressly set forth in this Agreement.
17. **Joint and Several Liability:** Applicant, if actually defined to represent more than a single individual, shall be jointly and severally liable for all duties and obligations under this Agreement.

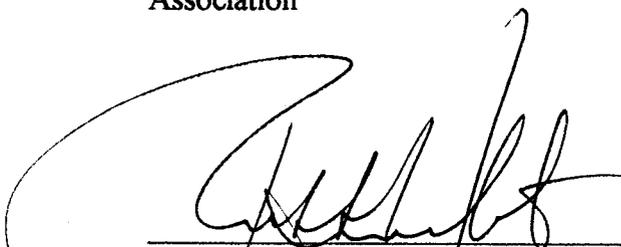
**Section XI: Acceptance**

IN WITNESS HEREOF, the Parties do hereby agree to the foregoing covenants, terms and conditions of the Agreement dated as first set forth above.

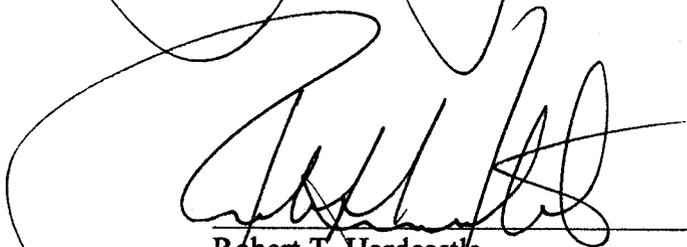
For: Applicant  
By:

  
Richard E. Henry, President  
Hardscrabble Mesa Homeowners  
Association

For: Brooke Utilities, Inc.  
By:  
Its:

  
Robert T. Hardcastle  
President

For: Strawberry Water Co., Inc.  
By:  
Its:

  
Robert T. Hardcastle  
President

## **Exhibit I**

### **Vicinity Map and Legal Description**

**Vicinity Map:**

See attached graphical description provided by ACC.

**Legal Description:**

The SE  $\frac{1}{4}$  of Section 28 and E  $\frac{1}{2}$  of Section 33, Township 12 North, Range 8 East of the Gila and Salt River Base and Meridian, Gila County, Arizona.

The E  $\frac{1}{2}$  of Section 23 and the West  $\frac{1}{2}$  of Section 24, Township 11-1/2 North, Range 8 East of the Gila and Salt River Base and Meridian, Gila County, Arizona.

## **Exhibit II**

### **Other Pertinent Documents**

#### **Table of Contents of Attached Pertinent Documents:**

Not applicable.

## Exhibit III

Page 1

### **Cost Estimate Summary**

Project Name: Hardscrabble Mesa Homeowners Association  
Project Number: 2000-0216  
Estimate Date: Not applicable

Refundable Contribution in Aid of Construction:

|   |                   |
|---|-------------------|
| Development of Hardscrabble Mesa Homeowners Association | \$ 111,060        |
| Engineering   | \$ 0              |
| Other   | \$ 0              |
| Project Subtotal  | \$ 111,060        |
| Plus: BROOKE Management Cost (10.4%)                    | \$ Not applicable |
| <u>Total Estimated Improvements Cost</u>                | \$ 111,060        |
| Less: <u>Engineering Advance</u> (if applicable)        | \$ None           |
| <u>Balance to be Advanced Prior to Construction</u>     | <u>\$ 111,060</u> |

**Exhibit III**

**Page 2**

**Cost Estimate Detail**

**Estimate Cost Details as Appropriate:**

Attached hereto.

**Hardscrabble Mesa Homeowners Association Water System Valuation**  
**ACC Docket No. W-03513A-01-0727**

| <u>Material/Installation Description</u> | <u>Quantity</u> | <u>Unit Cost</u> | <u>Cost</u>       |
|--|-----------------|------------------|-------------------|
| 3" PVC pipe (installed)                  | 2,140           | \$ 8.00          | \$ 17,120         |
| 4" PVC pipe (installed)                  | 750             | \$ 12.00         | \$ 9,000          |
| 6" PVC pipe (installed)                  | 4,340           | \$ 15.00         | \$ 65,100         |
| 5,000 gallon storage tank                | 1               | \$ 8,000         | \$ 8,000          |
| 3hp booster pump                         | 1               | \$ 2,100         | \$ 2,100          |
| Water services                           | 10              | \$ 974           | \$ 9,740          |
|  |                 |                  | <u>\$ 111,060</u> |

Information developed pursuant to description from Richard Henry, President, Hardscrabble Mesa Homeowners Association and confirmed by testimony at ACC Hearing of May 13, 2004

**Exhibit III-A**

**Arizona Department of Environmental Quality  
Approval of Construction**

Attached hereto as File No. 870328 of Public Water System #04-053, pages 1 and 2.

*Proj 5998*

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY  
OFFICE OF WATER QUALITY  
2005 North Central Avenue ■ Phoenix, AZ 85004

APPROVAL OF CONSTRUCTION

Project Description Install approximately 1200 L.F. of 2", 4400 L.F. of 3", and 8,000 L.F. of  
6" PVC pipe, a 22,800 gal. storage tank, pressure booster station, and related  
fittings on a line extension to serve residence of H.E.S. 134 in the SE4, Sec. 33,  
T 12 N, R 8 E, G & SRB & M  
Location H.E.S. 134, Strawberry, Gila County, Arizona  
Project Owner Austin Myers, P. O. Box. 51, Pine, Arizona 85544

Approval to operate the above-described facilities as represented in the approved plan documents on file with the Arizona Department of Environmental Quality is hereby given subject to the following provisions:

This Approval is based on Engineer's Certificate of Completion submitted by Ralph O. Bossert, P.E., Certificate No. 12248, dated June 2, 1988.

The State law, A.R.S. 49-104., B.10, requires that the operation of the project must be in accordance with the rules and regulations of the Arizona Department of Environmental Quality

Date Approved: January 12, 1989

LAW:dp

System Number 04-053

cc: File No. 870328  
OWQ - Tech. Review  
County Health Department - Gila  
Austin Myers  
Burgess & Niple, Inc.  
ADEC/OWQ:140/88/757  
Corp. Commission  
Planning & Zoning

*Robert A. Hollander*  
Robert A. Hollander, P.E., Manager  
Central Regional Office  
Office of Water Quality

Hardscrabble Homeowners Assoc.  
Richard E. Henry, Pres.  
1405 E. Granita Dells  
Payson, Arizona 85541

March 10, 1989

Arizona Department of Environmental Quality  
Technical Review Unit  
2005 N. Central Avenue  
Phoenix, Arizona 85004

Attention: Charles Hains., P. E.

It has come to our attention that there is an error on the "Approval of Construction" notice approved by your office dated January 12, 1989.

Upon consulting with you on March 9, 1989 we were advised to request a change.

This system was engineered for the Hardscrabble Homeowners Association and also completely paid for by the association. Although Austin Myers owns property in this area and is a member of the association he does not own the water system. He does own a water company in Pine, Arizona but it has nothing to do with the system for the Hardscrabble Homeowners. The "Approval of Construction" has been issued in his name and should be corrected and issued in the name of the Hardscrabble Homeowners. This area is not in the certificated area of Myers Water Co.

The approval is based on Engineer's Certificate of Completion submitted by Ralph O. Bossert, P.E., Certificate No. 12248, dated June 2, 1988.

Please advise us as to when this change has been made. If further information is necessary, please contact me at 474-2630 in Payson.

Sincerely,

  
Richard E. Henry, Pres.

  
Robert G. Randall, Sec. Treas.

REH/gh

REMARKS \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

COPY TO \_\_\_\_\_

ROB:sj

SIGNED:

  
Ralph O. Bossert, P.E.

If enclosures are not as noted, kindly notify us at once.

**Exhibit III-B**

**Water Use Data Sheet**

Current copy of the Water Use Data Sheet is attached hereto.



## **Exhibit IV**

### **Additional Conditions**

The additional conditions included under this section are fully and completely incorporated into the Agreement as if they were included within specific sections of the Agreement.

1. Applicant does hereby declare and express that the maximum number of customers or users which will be connected to Improvements referenced hereunder shall be one (1) unless otherwise indicated by this section.
2. Applicant does hereby understand, acknowledge, and agree that fire flow demand is **not** included in the Improvements.

## Appendix 1

On August 20, 1996 President Clinton signed into law the Small Business Job Protection Act (H.R. 344) which contained a provision that repealed a portion of the Tax Reform Act of 1986 ("TRA-86") which states that the "gross income of a corporation shall not include any contribution to the capital of the taxpayer". After January 1, 1987, Internal Revenue Code Section 118 treated contributions in aid of construction ("CIAC") as taxable income of electric, gas, water and sewer utility companies. The effect of such provision eliminates the "gross up" of CIAC's which, heretofore, were to be collected in reimbursement of a utility companies taxes payable from the CIAC. Section 1613 (a) of H.R. 3448 returns the IRC Section 118 to its pre-TRA-86 form regarding a utility companies CIAC taxable obligations. In order to satisfy this condition, H.R. 3448 requires certain criteria must be met by utility companies. Brooke Utilities, Inc. and Brooke Water L.L.C. and the Water Subsidiaries anticipate being able to satisfy the applicable criteria. **H.R. 3448 IS RETROACTIVE TO JUNE 12, 1996 FOR ALL CIAC'S.**

H.R. 3448 required the IRS to develop specific regulations regarding this matter which were expected to be drafted during 1997. Additionally, the Arizona Corporation Commission has not, as of the date first set forth above, yet addressed the affect of H.R. 3448 by drafting new regulations which are expected to follow the IRS regulations.

Absent regulatory direction to the contrary, neither Brooke Utilities, Inc. nor Brooke Water L.L.C. expects to collect customer "gross up taxes" after June 12, 1996. This policy is subject to final IRS regulations and Arizona statute revisions.