



Staff Report

Agenda Item: REIMBURSEMENT AGREEMENT WITH VERDE VALLEY CHRISTIAN CHURCH – Discussion and consideration of a Reimbursement Agreement for the extension of Water and Sewer lines with the Verde Valley Christian Church (VVCC).

Staff Contact: Sherry Bailey, Community Development Director

Meeting Date: June 10, 2008

Background: Old business, Council directed staff to address proposed changes in the agreement and return it to council at the earliest possible date. The proposed Development Agreement would not protect the Town or VVCC. To accomplish this agreement the Town Attorney, VVCC and staff have created a reimbursement agreement with VVCC.

The Verde Valley Christian Church has been working with staff for the past nine months on their new church. They appeared before the Design Review Board in May of 2007 and received approval of their 20,000 square foot church which will accommodate a congregation of 500 people and allow for expansion in the future.

Originally the applicant intended to drill a well and construct a package plant for the treatment of wastewater. Staff worked with them and asked that they evaluate the cost of extending both the water and sewer lines from the Centerville Road and Broadway to their property rather than follow through on their original intention. When talking with VVCC it was anticipated that the water line would be extended by the town from the Mountain Gate property line to Broadway. However, the cost estimate received at the time Mountain Gate was prepared to move forward was greater than the town was prepared to spend. The cost estimate for the Centerville Road waterline extension was \$100,424.63 and is enclosed.

Recently the Verde Valley Christian Church looked at the cost of extending the water and sewer lines from the Mountain Gate property line to their property and upgrading the lines to the 8 inch lines necessary for both sewer and water mains. They are willing to design and construct the project, but are asking participation by the town. The applicant has proposed the town be responsible for the project materials as stated in the engineers estimate attached to this staff report. Staff has prepared a reimbursement agreement for the line extension for council consideration that would limit the town's participation to the \$97, 588.71 as stated in the engineer's estimate. The material cost to the town is reflective of the current downturn in construction prices and below the public works project threshold. The council should be aware that the water line extension going to the church only goes to the driveway of the church and does not comply with Section 19-3-3 of the new water code requiring extension along the full property frontage. The Code provides for an exemption to the requirement if approved by the Water Division Director. The exemption is being recommended in this case because the Code was not in place when then plans were made for this project. If the Council wishes, it can require the waterline extension along the full property frontage and should

anticipate the materials cost to increase (est. 15% - 20%). This requirement will also increase the church's cost and they may decide to stay with the well and on-site treatment.

This project would provide water and sewer availability to an area of the town that presently is not served. The Future Land Use as specified by the General Plan for much of the area along Broadway is Neighborhood Commercial. Having sewer and water available to that area makes it much more attractive to development.

Recommendation:

Staff recommends approving the reimbursement agreement with Verde Valley Christian Church for the town's participation in the extension of water and sewer lines along Broadway and Centerville Road.

TOWN OF CLARKDALE REIMBURSEMENT AGREEMENT

THIS REIMBURSEMENT AGREEMENT (the "Agreement"), dated this ___ day of _____, 200 __, is entered into by and between the TOWN OF CLARKDALE, an Arizona municipality hereinafter known as the "Town", and the Verde Valley Christian Church, a non-profit organization, which is the owner of certain real property in Clarkdale, Arizona, hereinafter known as the "Owner".

Recitals

WHEREAS, the Owner is desirous of having the Town's water/sewer lines extended to the Owner's real property, as legally described in Exhibit "A" hereto (the "Property"), for the purposes of providing water/sewer service to said Property; and

WHEREAS, the Town has determined that extension of its water/sewer distribution lines to the Property would be in the best interest of the Town in order to service an area not presently served by the Town's water and sewer distribution system; and

WHEREAS, the Town and Owner are agreeable to the extension of said water/sewer distribution systems to service the Property, on the terms and conditions set forth below; and

WHEREAS, the Owner, as set forth herein, will extend said water/sewer lines, or a portion thereof, as set forth below, at the Owner's expense; and

WHEREAS, the Town and the Owner have negotiated a fair and reasonable reimbursement amount from the Town to the Owner for the cost of said extension at Owner's expense.

NOW, THEREFORE, the parties agree as follows:

Section 1. Initial Requirements. The Owner has submitted a plan to the Town for the water/sewer lines and system improvements, prepared by an engineer licensed by the State of Arizona, in accordance with State licensing requirements. The Owner has complied with all applicable Town standards and Ordinances, including, but not limited to, Chapter 21 entitled Reimbursement Agreements, of the Code of the Town of Clarkdale, Arizona. The Owner has obtained prior approval of the plan from Town staff. The Owner shall obtain all other approvals as may be required by the Town, or by any other governmental entity.

Section 2. Reimbursement. The Utilities Director has reviewed said plans as submitted by the Owner. The Utilities Director has caused this Agreement to be

prepared, and has submitted same to the Town Council for consideration and possible approval. In consideration of the Owner's agreement to lay, construct and extend the water/sewer lines and other related facilities improvements, the Town agrees to reimburse to the Owner the sum of \$97,588.71. Said reimbursement shall be paid by the Town upon completion of the line extensions and all work related thereto, and acceptance by the Town. The application for reimbursement from the Owner shall include a diagram of the Property and said line extensions.

Section 3. Encroachment Permit. The Owner shall apply to the Town for a permit to encroach upon the Town's right-of-ways, at least 5 days prior to construction. The Owner shall submit the following to the Town for reimbursement from the Town:

A. A diagram of all properties that will be benefited by the line extensions or improvement or facilities to be installed.

B. A signed statement from the Owner acknowledging that the Town acquires ownership of any line extensions or other improvements of facilities to be installed by the Owner, upon completion and acceptance of the work by the Town. The Owner shall sign a dedication or any other document evidencing the ownership of said line extensions and/or improvements.

Upon completion of the line extensions and other improvements as described herein, and upon acceptance of the dedication of same by Owner to the Town and upon completion by the Owner of all requirements set forth herein, the Town agrees to permit the connection of said lines and other improvements described herein to the distribution system of the Town. Such connections shall be the sole expense of the Owner, and shall be under the supervision and direction of the Town, and subject to the Town's inspection.

Upon completion of said line extensions and other improvements in accordance with the terms and provisions set forth herein, said line extensions and improvements shall become a part of the distribution and collection system of the Town. The Town shall be the sole owner thereof. Thereafter, the Town shall be responsible for future maintenance of said distribution system.

C. A written statement signed by the Owner that the Town's costs of inspecting the work shall be paid by the Owner, as a condition of the right-of-way encroachment permit, with a not to exceed amount of \$10,000.

D. Plans for construction permits, as required by Town Ordinance. Said permits must be issued by the Town, prior to commencement of the work, to install said lines and any other improvements set forth in this Agreement.

Section 4. Easement. The water and sewer line system described herein shall be installed in the Town's right-of-ways.

Upon completion of the installation and construction of the water and sewer lines described herein, the Owner shall convey the completed water and sewer lines to the Town, lien- and debt-free, and shall deliver a Mylar copy of the "as built" plans, sealed by a professional engineer of record, as well as an electronic, unsealed copy of the "as built" plans, to the Town in a form compatible to the Town's computer system. The Owner shall warrant to the Town that the construction of all portions of water and sewer lines described herein, against defective workmanship and/or materials for a period of one (1) year from the date of acceptance by the Town.

The procedure for dedication and acceptance of the water and sewer lines by the Town shall be as follows:

A. The Owner shall give the Town written notice promptly following completion of the water and sewer line extensions.

B. Within thirty (30) days after its receipt of such notice, the Town shall inspect the line extensions identified within the notice, to confirm whether the line extensions and other related improvements have been constructed in accordance with the Town-approved plans and specifications. Within ten days of completion of the inspection, the Town shall promptly deliver written notice to the Owner either: (i) conditionally approving construction and agreeing to schedule formal acceptance by the Town Council to accept conveyance of the improvements and assume maintenance responsibility therefor, (subject to Owner's warranty obligations as set forth herein); or (ii) identifying the specific items that are not in accordance with the Town-approved plans and specifications, and that are required to be corrected by Owner. If the Town fails to provide written notice to the owner within the time set forth herein, the Town shall have been deemed to have conditionally approved construction and agreed to schedule formal acceptance by the Town Council.

C. A one (1) year warranty guaranteeing that the work done pursuant to the terms of this Agreement, shall commence as of the date that the Town Council takes action to formally accept the water and sewer line improvements, and to accept a dedication from Owner to Town. In the event that the Town Council fails to take action on this matter at the first Town Council meeting following completion of the water and sewer line extensions, the warranty shall have been deemed to have been completed as of the date of such first Council meetings. The warranty shall be from the Owner and the Owner's contractor.

Section 5. Ownership of Line Extensions and Appurtenances. All equipment, materials and other materials used to construct said line extensions and related improvements as described herein, shall at all times be and remain the sole property of the Town.

Section 6. Inspection Fees. The Owner shall pay to the Town all normal inspection fees, as set by Town Ordinance and Codes, due to the Town, for that portion of the

water/sewer line extension constructed by the Owner from Centerville Road termination point to Parcel #400-07-005, as located within the Town of Clarkdale. Said inspection fees due from Owner to the Town shall not exceed Ten Thousand Dollars and no/00 (\$10,000.00). The Town shall conduct all inspections, as necessary to verify compliance with the Town's standards, Ordinances and Codes. The Owner's engineer shall certify in writing to the Town, at the end of the water/sewer line extension, that all work has been accomplished according to the approved plans and specifications identified herein, and that all construction and improvements have passed all required tests required by the Town. If any work done by the Owner or its agents does not conform to the specifications of the Town for said work, shall be removed and redone or replaced, in full compliance with the plans and specifications, and in full compliance with the Town's Ordinances and Codes. Said removal and replacement of said defective work shall be done at the Owner's expense.

At all times during the progress of said construction work, the Town shall have the right, at Owner's cost and expense, to inspect, including coordination and line tests, the materials, workmanship and all parts of the construction of said distribution system. All work done shall be completed to the satisfaction of the Town. Any work that does not conform to the specifications of the Town for said work shall be removed and replaced to the satisfaction of the Town at Owner's expense.

Section 7. Owner's Obligation to Comply with Competitive Bid Requirements of the State of Arizona. The Owner shall use a competitive bid process to purchase materials for any line extension and improvements described herein. The Owner shall comply with all competitive bid requirements applicable to the Town, including A.R.S. §§34-201 and 34-221, including, but not limited to: 1) Publication of Notice of Intention to Bid; and 2) Award of bid to the lowest responsible bidder. The Owner shall provide verification of compliance with the above-referenced statutes to the Town. The Town shall determine whether the Owner has fully complied with statutory requirements as set forth above, at least fourteen (14) working days prior to commencement of the work.

Section 8. Materials. The Owner's engineer shall identify, with specificity, all materials to be purchased for said line extension. The Owner's engineer shall further certify in writing that the Owner has satisfied all competitive bid requirements as set forth. The Town shall verify the accuracy of said submittals within ten days of their delivery to the Town. In the event that the Town does not act within such ten days, it shall be deemed to have verified the accuracy of said submittals. If verified, the Town shall pay for all materials as outlined in the engineer's materials estimate, up to, but not exceeding, Ninety-seven thousand five hundred eighty-eight dollars and seventy-one cents (\$97,588.71). The engineer's materials estimate is set forth in Exhibit "C" attached hereto. Said payment by the Town will occur at the time of acceptance of the improvements. Any materials purchased shall be deemed owned by the Town, as of the date of purchase by the Owner.

Section 9. Commencement. The Owner shall commence work to extend the water/sewer lines as set forth herein, on or before _____, 20___. The

Owner shall complete the work within ____ days thereafter. The Owner shall give notice of commencement of such work to the utilities director of the Town, in writing, at least forty-eight (48) hours prior to the commencement thereof.

Section 10. Post-Construction Requirements. Within sixty (60) days after the Town has accepted any line extension or other improvements set forth herein, the Owner shall provide the following to the Town's Utilities Director, prior to any reimbursement payments being made, as a condition to said payments:

A. A signed letter of acceptance issued by the Town Engineer, stating that the improvements conform to the approved plans and specifications for said line extensions or improvements as described herein.

B. A full-sized original Mylar or equivalent of the Arizona Department of Environmental Quality (or their designated agency), approved "as built" construction drawings indicating the actual facilities installed and the Approval of Construction.

C. The receipts identifying the actual design and construction costs incurred by the Owner, and proof that payment has been made by the Owner of all of said costs. Lien releases signed by all contractors, subcontractors and material suppliers will constitute sufficient proof.

All post-construction requirements shall be completed by the Owner at the Owner's sole expense.

Section 11. Hold Harmless; Indemnification. The Owner shall assume the defense of, and fully indemnify and hold harmless the Town, the Town's employees, elected officials, consultants, from all claims, loss, damage, injury and liability of every kind, nature and description, directly or indirectly arising from Owner's work under the terms of this Agreement, including, but not limited, negligent and wrongful use of equipment, supplies, or personnel, of Owner, or faulty workmanship or other negligent acts, errors or omissions, of Owner or Owner's agents. Each party to this Agreement shall give to the other party, prompt and timely written notice of any claim made, coming to that party's notice, related to this Agreement. This indemnification shall relate to any and all costs incurred by the Town by reason of such claims, including attorneys' fees and court costs, necessary to defend the Town.

Section 12. Performance Bond. The Owner shall furnish a performance bond in a form satisfactory to the Town.

Section 13. Connection to Town's Distribution System. Upon completion of the line extensions and related improvements, in accordance with the terms and provisions hereof, and upon certification by the Town that said extensions and improvements fully comply with all Town Ordinances and Codes, the Town shall permit the connection of said line extensions to the distribution systems of the Town. Said line extensions shall become part of the distribution of the Town, and shall be solely owned by the Town.

After connection of said line extensions, the Town shall assume responsibility for future maintenance of said line extensions and related improvements.

Section 14. Impact Fee Credits. In consideration of the Owner's constructing said water and sewer lines as set forth herein, the Town will credit the applicable water and sewer fee amount to the Owner as against the water and wastewater impact fees otherwise due from the Owner to the Town. The Owner shall pay the remaining balance of development fees owed to the Town in full when a building permit is issued for the Verde Valley Christian Church.

Section 15. Changes and Modifications by Official Action. This Agreement shall at all times be subject to such changes or modification as may be required by State or Federal law.

Section 16. Modification by the Parties. This Agreement may only be modified upon the written consent of both parties.

Section 17. Assignment. The Owner may assign the benefits arising from this Agreement, but such assignment shall not relieve the Owner from the duties herein. Any assignment shall be subject to review and approval by the Town Attorney.

Section 18. Notices. Any notice required by this Agreement shall be deemed sufficient if delivered personally or mailed, post pre-paid, to:

To the Town:

Town of Clarkdale
Community Development
Director
P.O. Box 308
Clarkdale, Arizona 86324

To the Owner:

Verde Valley Christian Church
c/o Matt Fabritz
1371 Old Jerome Highway
Clarkdale, AZ 86524

Copy to:

Town of Clarkdale
Town Manager
P.O. Box 308
Clarkdale, Arizona 86324

Doug Tobler
Hammond & Tobler, P.C.
1400 E. Southern Ave., Ste. 935
Tempe, AZ 85282

Town Attorneys
Boyle, Pecharich, Cline, Whittington
& Stallings, P.L.L.C.
P.O. Box 1191
Prescott, Arizona 86302-1191

Section 19. Mediation. If a dispute arises out of or relates to this Agreement, or breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to settle the dispute through mediation before resorting to arbitration, litigation, or some other dispute resolution procedure. In the event that the parties cannot agree upon the selection of a mediator within ten (10) days, either party may request the Presiding Judge of the Superior Court of Yavapai County to assign a mediator from a list of real estate experienced mediators maintained by the Arizona Municipal Risk Retention Pool.

Section 20. Interpretation. The parties intend that this Agreement is the final expression of their agreement. The Owner has fully consulted with its professional advisors, including, but not limited to, its engineer and attorney. Therefore, any ambiguity in the interpretation of this Agreement shall not be construed as against the Town.

Section 21. Attorneys' Fees. In the event of breach of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs incurred, pursuant to A.R.S. §12-341.01.

Section 22. Governing Law. The laws of the State of Arizona shall govern the interpretation and enforcement of this Agreement. In the event of any dispute arising from this Agreement, the proper venue shall be deemed Yavapai County, Arizona.

Section 23. Entire Agreement. This Agreement constitutes the entire agreement between the parties, and shall not be changed or added to, except as set forth herein. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, other than specifically incorporated herein by reference, are superseded by this Agreement.

Section 24. Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which will otherwise remain in full force and effect, providing that the overall intent of the parties is not materially violated by such severability.

Section 25. Default. Failure or unreasonable delay by any party to perform any term or provision of this Agreement for a period of ten (10) days after written notice thereof from another party shall constitute a default under this Agreement. IF the default is of a nature that is not capable of being cured within ten (10) days, the cure shall be commenced within such period and diligently pursued to completion. The notice shall specify the nature of the alleged default and the manner in which the default may be satisfactorily cured. In the event of a default hereunder by any party, the non-defaulting party shall be entitled to all remedies at both law and in equity, including, without limitation, specific performance and the right to perform the obligations(s) of which the defaulting party is in default and to immediately seek reimbursement from the defaulting party of all sums expended in order to cure such default, together with interest on all

SUBSCRIBED AND SWORN to before me this ___ day of _____,
200___, by _____, Mayor of the Town of Clarkdale, Arizona, an
Arizona municipal corporation, for and on behalf of said Town.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
) ss.
County of Yavapai)

SUBSCRIBED AND SWORN to before me this ___ day of _____,
200___, by _____.

Notary Public

My Commission Expires:

ATTEST:

By: _____
_____, Town Clerk

APPROVED AS TO FORM:

_____, Town Attorney

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RSP/CLARKDALE