

SECOND AMENDMENT
NONPOTABLE WATER AGREEMENT

This Second Amendment ("Second Amendment") is made this 19 day of July, 2019, by and between the Coachella Valley Water District, a public agency ("CVWD") and Indian Ridge Country Club ("Customer"). CVWD and Customer are collectively referred to herein as "Parties" and singularly as "Party."

RECITALS

WHEREAS, the Parties entered into a Nonpotable Water Agreement, dated July 9, 2015, ("Agreement") for Nonpotable Water irrigation at Indian Ridge Country Club golf course described in the Agreement as "Customer's Property." A copy of the Agreement is attached hereto as Exhibit "A" and incorporated herein by reference. Unless otherwise mentioned, all terms in this Second Amendment shall have the same definition as set forth in the Agreement; and

WHEREAS, the Agreement requires Customer to pay the Nonpotable Water Charge ("NPWC") which is CVWD's charge per acre foot for Nonpotable Water delivered to Customer. The NPWC is further defined in the Agreement; and

WHEREAS, the Agreement currently provides that the NPWC is set at approximately 85% of the reasonable estimated cost of pumping Groundwater. The Agreement currently provides that the NPWC is derived as follows;

NPWC = .85 (RAC + PC) + Booster Pumping Cost

Where:

RAC = Replenishment Assessment Charge; and

PC = Pumping Cost

WHEREAS, pursuant to its authority under the Water Code to revise rates and charges in order to generate funds needed for financial support of the Nonpotable Water Program, the CVWD Board of Directors took action on June 27, 2017 to adopt Resolution No. 2017-23 which established new and adjusted rates for Nonpotable Water Use. Said rates went into effect as of July 1, 2017; and

WHEREAS, the intent of this Second Amendment is to conform the Agreement to the new and adjusted rates for Nonpotable Water Use which went into effect pursuant to Resolution No. 2017-23.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

AGREEMENT

1. Definitions. Section I. Definitions, Subsection K. Pumping Costs of the Agreement is hereby amended, in its entirety, as follows:

K. Pumping Costs ("PC") – The pumping cost is the cost of electrical energy required to pump an acre foot of water through a well.

2. Charges. Section VIII. NONPOTABLE WATER CHARGES, Subsection B. Charges of the Agreement is hereby amended, in its entirety, as follows:

B. Charges:

Customer is considered a Type A Customer since Customer uses nonpotable water in lieu of groundwater or domestic water and Customer's place of business is within the West Whitewater Replenishment Subbasin Area of Benefit. The NPWC will be calculated at 85% of the RAC rate plus PC, where the RAC is the Replenishment Assessment Charge for the West Whitewater Replenishment Subbasin Area of Benefit then in effect on July 1 of each year, and the PC is the average pumping cost established at \$54.57 per acre foot, to be escalated by 3% on July 1 of each year.

3. PC Adjustments. Section VIII. NONPOTABLE WATER CHARGES, Subsection C. PC Adjustments in the Agreement is hereby amended, in its entirety, as follows:

C. PC Adjustments:

The PC will be adjusted annually by CVWD, as appropriate, to account for changes in electrical costs and pumping plant efficiencies.

Customer receives nonpotable water from CVWD directly into the Customer's irrigation system, in lieu of receiving nonpotable water into a lake. Under such a circumstance, CVWD provides nonpotable water at a pressure high enough and consistent enough to directly supply nonpotable water to the customer's irrigation system. A Pressure Surcharge of \$38 per acre foot will be added to the Customer's nonpotable water charge.

4. Balance Of Agreement To Remain In Full Force And Effect Except as expressly modified by this Second Amendment, all of the terms, conditions, agreements and understandings contained in the Agreement shall remain unchanged and in full force and effect, the same are hereby expressly ratified and confirmed by the Parties and any references to the Agreement herein or in the Agreement shall mean the Agreement as amended by this Second Amendment.

5. Severability If any one or more provisions of this Second Amendment should be ruled illegal, wholly or partly invalid or unenforceable by a governmental authority under applicable law, CVWD and Customer shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of the Agreement and this Second Amendment (and in the event that CVWD and Customer cannot agree then such provisions shall be severed from this Second Amendment) and the validity and enforceability of the remaining provisions of this Second Amendment and the Agreement, or portions or applications thereof, shall not be affected by such adjustment and shall remain in full force and effect.

6. Counterparts This Second Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Second Amendment to be executed as of the day and year Second set forth above.

CUSTOMER NAME

Dated: 2/16/19

[Signature]
[Name] General Manager
[Title]

COACHELLA VALLEY WATER DISTRICT

Dated: SEPTEMBER 25, 2019

[Signature]
J.M. Barrett
General Manager

PLEASE ATTACH APPROPRIATE NOTARIAL CERTIFICATES

See attached.

EXHIBIT "A"

COPY OF THE AGREEMENT

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

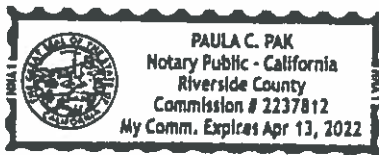
State of California

County of Riverside }

On July 19, 2019 before me, Paula C. Pak
Date Here Insert Name and Title of the Officer

personally appeared William Hall Wade Jr.
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer – Title(s): _____

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian of Conservator

☐ Other: _____

Signer is Representing: _____

Signer's Name: _____

☐ Corporate Officer – Title(s): _____

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian of Conservator

☐ Other: _____

Signer is Representing: _____

ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Riverside

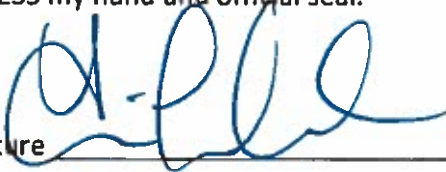
On September 25, 2019, before me, Erica Casarrubias, Notary Public

Personally appeared J.M. Barrett who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

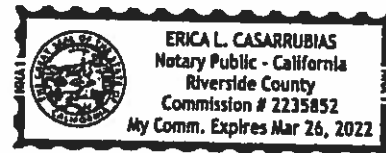
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)



NONPOTABLE WATER AGREEMENT

THIS AGREEMENT ("Agreement") is made this 5th day of June, 2015, ("Effective Date") between the COACHELLA VALLEY WATER DISTRICT, a public agency of the State of California (hereinafter denoted "CVWD") and Indian Ridge Country Club (hereinafter denoted "Customer") located at 76-375 Country Club Drive in Palm Desert, California 92211, for Nonpotable Water irrigation at Indian Ridge Country Club's golf courses located within Section 11, Township 5 South, Range 6 East, San Bernardino Meridian ("Customer's Property"). CVWD and Customer are referred to herein individually as "Party" and collectively as "Parties."

RECITALS

- I. The Coachella Valley's aquifer is in a state of overdraft.
- II. It is in the best interest of CVWD and Customer to protect the aquifer in order to ensure the long term economic health of the region. One way to protect the aquifer is to promote the use of Nonpotable Water sources such as Recycled Water and/or Canal Water in place of Groundwater, as such terms are defined in Section I herein.
- III. CVWD has embarked upon a long-term water management plan that encourages the use of alternative Nonpotable Water sources of water, thus protecting valuable Groundwater resources for domestic consumption.
- IV. CVWD owns and operates three Water Reclamation Plants ("Plants"), capable of producing and providing Recycled Water to customers. In addition, CVWD operates the Coachella Branch of the All American Canal and the Mid-Valley Pipeline, and associated distribution pipelines which serve Canal Water. Recycled Water and Canal Water both may be beneficially used for golf course and/or landscape irrigation in place of Groundwater, as such terms are defined herein.
- V. California Water Code Section 32600-32603 requires the use of Nonpotable Water source(s), including Recycled Water, for irrigation of cemeteries, parks, highway landscaped areas, new industrial facilities, and golf courses if a suitable Nonpotable Water source is available and it is of suitable quality, available at a reasonable cost, and meets all conditions of these foregoing sections and other applicable laws.
- VI. Customer desires to use such Nonpotable Water provided by CVWD for golf course and landscape irrigation at Customer's Property. Irrigation water shall be from the following sources in the indicated order of priority and up to the available amounts of each: 1) Recycled Water 2) Canal Water; and 3) Groundwater, to the extent available and subject to the terms of this Agreement.
- VII. The Parties understand and agree that Nonpotable Water is an interruptible water supply.

VIII. Customer's Property lies outside CVWD's existing irrigation service area, Irrigation CVWD No. 1; and Canal Water delivery may be available through the Mid-Valley Pipeline Project for golf course and landscape irrigation at the Customer's Property as is Recycled Water.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

AGREEMENT

I. DEFINITIONS

- A. Canal Water – Canal Water delivered via the Coachella Branch of the All American Canal and the Mid-Valley Pipeline.
- B. Customer Facilities – All pipelines and pumping equipment located from the POC, as defined below, and throughout the Customer's irrigation system but shall not include CVWD Facilities.
- C. Customer's Property – The Property identified in the Introductory paragraph of this Agreement.
- D. Days – Calendar days unless otherwise specified herein.
- E. Default – Defined as set forth in Section XI.
- F. CVWD Facilities – All pipelines, floats, valves, levels, and pumping equipment located at the Canal and to the POC, as defined below, including the flow meter, but shall not include the Customer Facilities.
- G. Groundwater – Water produced through wells from any aquifer underlying the Coachella Valley.
- H. Nonpotable Water – Either Recycled Water produced by the Plants or Canal Water or a combination of both.
- I. Nonpotable Water Charge ("NPWC") – CVWD's charge per acre foot for Nonpotable Water delivered determined by the formula set forth in Section VIII (B) herein.
- J. Point of Connection ("POC") – The point of delivery of Nonpotable Water from CVWD Facilities to Customer Facilities.
- K. Pumping Costs ("PC") – The pumping cost is the cost of electrical energy required to pump an acre foot of water through a well. The PC is based on kilowatt hours required to pump one acre foot of water multiplied by the cost per kilowatt hour that Southern California Edison publishes annually as their bundled service average rate level for agriculture and pumping groups. Alternatively, and at the discretion of the Customer, the cost per kilowatt hour from a pump analysis conducted on the Customer's golf course irrigation well(s) by Southern California Edison or comparable CVWD approved pump check company will be used to determine the pumping cost. For purposes of establishing the PC, in each alternating every other year the Customer will provide pump

test data, including a cost analysis completed by Southern California Edison or comparable CVWD approved pump check company for the wells that are Customer's alternate water supply for irrigation. If Customer has more than one well to use as the Groundwater supply source, the pumping cost will be prorated based on well capacity and the kilowatt hours required to pump one acre foot of water multiplied by the cost per kilowatt hour as determined by Southern California Edison or comparable CVWD approved pump check company. In the alternate year that the pump test data is not provided to CVWD, a 12 month billing history account overview including the months of July 1st to June 30th will be provided by the Customer to CVWD to provide the average cost per kilowatt hour or if preferred Southern California Edison's bundled service average rate level for agriculture and pumping groups will be incorporated; and the previous year's pump cost analysis' kilowatt hours per acre foot.

For Customers with direct pressurized connections, the pumping cost shall include the cost of electrical energy required to pump an acre foot of water through wells and booster pumps into the irrigation system of the Customer property. Customers with direct pressurized connections will need to provide pump test data and cost analysis completed by Southern California Edison or comparable District-approved pump check company for the wells and the booster pumps.

For Customers without wells, the pumping cost will be the average cost of electrical energy required to pump an acre foot of water through other nonpotable water customers' wells. The total cost analyses of Customers with wells will be averaged and this average cost will be incorporated in the Nonpotable Water Charge as the Pumping Cost.

- L. Recycled Water – Recycled water generated by the Plants meeting the requirements of Section 60301.230 of Title 22 of the California Code of Regulations, including any amendments thereof.
- M. Replenishment Assessment Charge ("RAC") – CVWD has a RAC for Groundwater production in each of three separate areas of benefit within CVWD's service area, an "area of benefit" being that geographic area benefited by recharge of the Groundwater, primarily with imported water. The RAC is a fee charged to producers pumping more than twenty five (25) acre feet annually to raise funds to purchase replacement water supplies to recharge the aquifer or to fund other projects that enhance Groundwater supplies. The RAC is adjusted annually by CVWD by Ordinance adopted by CVWD's Board. The annual adjustment of the RAC will be reflected in the NPWC, as described in Section VIII(D) below.

II. FACILITIES

- A. CVWD owns, operates, maintains and repairs all CVWD Facilities. CVWD shall construct and fund construction and installation of CVWD Facilities connecting the Nonpotable Water Pipeline to the irrigation lake(s) pursuant to a separate Installation Agreement.

- B. Customer owns, operates, maintains and repairs all Customer Facilities. Customer installs and funds lake level control devices, pressure control devices, and filtration system devices.
- C. Customer grants to CVWD, a perpetual non-exclusive easement to operate, inspect, maintain, repair, improve the equipment mentioned above for the points of connection and appurtenances thereto in, on, over, under, along, through and across the Customer's Property with reasonable right of access to and from said easement for the purposes of exercising the rights granted herein.
- D. Customer to have final approval of design plans for construction occurring on Customer's Property as set forth in the applicable separate Installation Agreement.

III. SOURCES OF IRRIGATION WATER

- A. Customer understands that CVWD's Nonpotable Water supply is subject to interruption and that at times Customer may be required to meet its irrigation demands with Groundwater, either solely or in conjunction with CVWD's available supply of Nonpotable Water. For that reason, Customer shall have a backup supply available (Groundwater) equal to One Hundred Percent (100%) of its peak irrigation water demands in "ready" status, and Customer's irrigation system shall be capable of operating in tandem with CVWD Facilities in order to augment CVWD deliveries as and when required. Customer hereby waives and releases CVWD from any claim, loss, damage or action that it may have against CVWD for failure to deliver irrigation water, including, but not limited to, damages, loss of business, loss of profit or inconvenience.
- B. Customer hereby agrees to use Nonpotable Water as the Customer's primary source of irrigation water for the Customer's property and shall be used to the maximum extent practical, subject, however, to the requirement that in the irrigation of golf courses and related landscaping, at least Sixty-Five Percent (65%) of said irrigation shall be with Nonpotable Water. See Section VIII(D) below regarding a surcharge for noncompliance with this requirement.

The requirement to use Sixty-Five percent (65%) Nonpotable Water recognizes that the Customer may use up to Thirty-five Percent (35%) potable and/or Groundwater for purposes determined necessary by the Customer. If the Customer meets the Sixty-Five Percent (65%) Nonpotable requirement, CVWD considers this to have met the maximum extent practical condition.

- C. Subject to Sections III(A) and (B) above, Groundwater shall be the secondary source of irrigation water.
- D. In the event of a shortage of available Canal Water, except as otherwise required by law, regulation or court order, the following irrigation water uses shall have priority to use irrigation water over Customer:
 - 1. Agricultural uses in existence as of the date of this Agreement.

2. Agricultural uses converted to non-agricultural uses prior to the date of this Agreement; and
3. Non-agricultural uses in existence prior to the date of the Agreement.

Only during such periods of shortage, irrigation water for Customer shall be supplied entirely by Recycled Water to the extent available; additional irrigation needs shall be met with Groundwater.

- E. Concurrent with the execution of this Agreement, Customer shall execute a Well Metering Agreement which is attached as Exhibit A.

IV. WATER QUALITY, REGULATORY APPROVALS, VIOLATIONS

A. CVWD's Nonpotable Water

Nonpotable Water source(s) shall be of a suitable quality for the irrigation of landscaping, subject to availability as enumerated in Sections III above and V below.

B. Regulatory Compliance

1. Customer understands, acknowledges and agrees that Canal Water may not be used for potable purposes.
2. The Customer acknowledges that Customer's Property must be irrigated by a method that does not permit unreasonable use or waste of water. Only sprinkler, drip irrigation, or lake level maintenance as presently installed on the Customer's Property will be permitted without CVWD's written approval, which approval shall not be unreasonable withheld.
3. In connection with the use of Nonpotable Water by Customer, Customer shall obtain all necessary authorizations or approvals from regulatory agencies having jurisdiction and shall at all times comply with the provisions of its waste discharge permit or a general permit issued by the California Regional Water Quality Control Board, Colorado River Basin Section, General Order No. 97-700 (Exhibit "B") or subsequent waste discharge permit or a general permit issued by the California Regional Water Quality Control Board, Colorado River Basin Section. In reference to this subparagraph, CVWD agrees to cooperate and make a good faith effort to assist Customer in obtaining all necessary authorizations or approvals from regulatory agencies having jurisdiction over the use of such Nonpotable Water and to conform to all such regulatory requirements.
4. CVWD will provide Nonpotable Water service to the Customer from the Canal in accordance with CVWD's Rules and Regulations Governing Water Service, as may be amended from time to time. This Agreement is subject to U.S. Bureau of Reclamation rules and regulations.

C. Reporting Violations

Customer agrees to notify CVWD and the California Regional Water Quality Control Board, Colorado River Basin Section, of any non-compliance with its California Regional Water Quality Control Board, Colorado River Basin Section, General Order No. 97-700 or subsequent order within 24 hours of becoming aware of the failure. Customer also agrees to notify CVWD prior to making any modifications that would result in a material change in the quality or quantity of Nonpotable Water used, or any material change in the location of the use.

V. SCHEDULING

A. CVWD Interruptions

CVWD shall use commercially reasonable efforts to complete delivery of the Nonpotable Water source(s) as soon as practicable, subject, however, to Nonpotable Water availability. CVWD may cause interruptions of Nonpotable Water service due to scheduled maintenance, equipment malfunctions, and natural disasters creating an emergency condition. CVWD shall use a commercially reasonable effort to give Customer 48 hours' notice of any scheduled maintenance which would interfere or interrupt Nonpotable Water delivery to Customer, but shall not be liable to Customer for any reason whatsoever for failure to give such notice. CVWD shall use commercially reasonable efforts to minimize any interruption relating to maintenance and shall, at all times, make a good-faith effort to facilitate the delivery of Nonpotable Water to Customer.

B. Customer Interruptions

If Customer plans to interrupt delivery of Nonpotable Water from CVWD for a period longer than 48 hours, Customer and CVWD shall agree on a schedule for restoration of deliveries, and Customer shall provide CVWD with notice in writing for each additional day that Nonpotable Water delivery will be interrupted. Customer shall further make every reasonable effort to minimize any interruption relating to maintenance and shall, at all times, make a good faith effort to facilitate the acceptance of Nonpotable Water from CVWD.

VI. DELIVERY PRESSURE

The Nonpotable Water delivery by CVWD shall be delivered within the range of zero to 150 pounds per square inch (psi). CVWD will not be responsible or obligated to provide the pressurization of the irrigation system beyond the POC.

VII. MANAGEMENT, INDEMNIFICATIONS

- A. Customer agrees to accept full and exclusive responsibility for the management and use of all Nonpotable Water delivered by CVWD from and after the POC and shall, except**

for the negligence of CVWD, defend and hold CVWD its officers, employees, and agents free and harmless from any injuries, damages to the real or personal property of Customer and the claims of any third party which may result directly or indirectly from management and use of such Nonpotable Water by Customer from said POC.

- B. CVWD agrees to accept full and exclusive responsibility for the management and delivery of the Nonpotable Water served by CVWD to and including the POC and except for claims and damage directly related to negligence on the part of Customer, shall defend and hold Customer harmless from claims from third parties related to said management and delivery of the Nonpotable Water.

VIII. NONPOTABLE WATER CHARGES

A. Invoices

CVWD will invoice Customer monthly for the use of Nonpotable Water. The amount of the invoice will be the product of the NPWC multiplied by the volume of Nonpotable Water delivered to the POC during the billing period plus any conservation charge (see Section VIII(E) below). Nonpotable Water will be measured in or converted to acre feet for invoicing. The Customer shall make payment to CVWD upon receipt of invoice. Bills are considered past due after twenty five (25) days from the date of the invoice. Any amounts not paid by the applicable due date will accrue interest, compounded daily, at a rate of 1.5% per month.

B. Charges

1. The NPWC is set at approximately 85% of the reasonable estimated cost of the pumping Groundwater. The NPWC is derived as follows;

$$\text{NPWC} = .85 (\text{RAC} + \text{PC})$$

Where:

RAC = Replenishment Assessment Charge, see Definitions. Section I(M) above

PC = Pumping Cost, see Definitions. Section I(K) above

C. PC Adjustments

The PC will be adjusted annually to account for changes in electrical costs and pumping plant efficiencies. See Definitions, Section I(K) above. Customer shall provide new pump test data including a pumping cost analysis that shows the overall plant efficiency and kilowatt hour per acre foot for the wells (and booster pumps, if a direct pressurized connection) used by Customer as its alternate water supply for golf course irrigation every other year prior to May 31, so that the updated NPWC can be calculated. In the alternate year that the pump cost analysis is not provided to CVWD, Southern California Edison's bundled service average rate level for agriculture and pumping groups and the Customer's previous year's kilowatt hour per acre foot from the pump cost analysis shall be incorporated for the pumping cost calculation. If Customer fails to provide an updated pumping cost analysis or billing history report, the PC will be increased 15% over the prior year's cost.

D. NPWC Adjustments

The NPWC will be subject to adjustment on July 1 of each year. CVWD will notify Customer by letter dated on or before June 15 of each year of the NPWC to be used for the twelve-month period beginning on July 1. The updated NPWC will use the updated RAC plus the updated PC as described in Sections I(K) and (M) and VII(C) above.

E. Conservation Charge

There will be a Conservation Charge invoiced to Customer for any year wherein the gross annual water use of Nonpotable Water for golf course and landscape irrigation does not equal or exceed Sixty-five percent (65%) of the total water for golf course and landscape irrigation. This Conservation Charge revenue will be used by CVWD to fund conservation programs designed to protect the aquifer, in keeping with the intent of this Agreement. CVWD will determine the total number of acre feet of Nonpotable Water used below Sixty-five percent (65%) by Customer in the fiscal year. The fiscal year shall be from July 1 to June 30. Monthly CVWD will provide an update on Customer's performance in meeting this Sixty-five percent (65%) requirement. The Conservation Charge will be calculated by multiplying the number of acre feet below Sixty-five percent (65%) by one-half of the NPWC. An invoice will be sent to Customer within sixty (60) days of the end of any fiscal year where Customer used less than Sixty-five percent (65%) Nonpotable Water.

If CVWD interrupts service of Nonpotable Water, as described in Section III (D) above, for example, such interruption will be considered in the calculation to be determined whether or not the requirement to use Sixty-five percent (65%) Nonpotable Water has been met.

IX. SURFACE IMPROVEMENTS

CVWD shall use reasonable and ordinary care in the removal of any surface improvements that CVWD may be required to remove in the future to access the delivery system or CVWD Facilities. If surface improvements are required to be removed by CVWD to access the delivery system or CVWD Facilities, CVWD shall only be responsible for replacing and repairing concrete curb and gutters and asphalt paving. CVWD shall not be responsible for replacing surface improvements other than concrete curb and gutter and asphalt paving, such as, but not limited to, landscaping, stamped concrete or concrete pavers, the repair and replacement of which shall be at Customer's sole expense to the extent of Customer's ownership of, or responsibility for, said surface improvements. Any surface improvements, other than asphalt paving and concrete curb and gutters, installed upon or immediately adjacent to the delivery system or CVWD Improvements shall be at Customer's sole risk to the extent of Customer's ownership of, or responsibility for, said surface improvements.

X. TERM

The Term of this Agreement shall be for a period of five (5) years from the Effective Date subject to the termination provisions in Section XII. This Agreement shall automatically renew for additional five (5) year terms without further action by the Parties until this Agreement is terminated pursuant to Section XII below. Each renewal of this Agreement shall be subject to CVWD's right, in its sole discretion, to unilaterally amend and modify this Agreement at any time, to implement CVWD policy changes applicable to all CVWD Nonpotable Water users, effective immediately upon written notice to Customer. Any changes to this Agreement that are unique to Customer must be by mutual agreement of the Parties.

XI. DEFAULT

Failure on the part of CVWD or Customer to meet any condition or requirement of this Agreement, other than as a result of conditions beyond the control of CVWD and/or Customer, such as force majeure/acts of God, shall constitute a default. The nondefaulting Party shall provide the other Party with written notice of default before taking further action, and the other Party shall have thirty (30) days from the date of the notice of default to commence to cure same. In the absence of cure, the nondefaulting Party may pursue all legal remedies available to it, including the termination of this Agreement or suit to collect damages or outstanding charges due.

XII. TERMINATION

- A. CVWD shall have the right to terminate this Agreement upon giving Customer one hundred twenty (120) days written notice of termination.
 1. In addition, CVWD may terminate delivery of Nonpotable Water in the event of mandatory changes in the requirements of Nonpotable Water from regulatory agencies (other than CVWD) having jurisdiction over Nonpotable Water and/or changes in its water quality which would cause CVWD to expend funds for capital expenditures to such an extent that the delivery of Nonpotable Water to Customer would no longer be economically feasible. Except for negligence of CVWD, Customer hereby waives any claim that it may have against CVWD for damage or economic loss resulting from the termination of Nonpotable Water service for any reason including, but not limited to, interruption of Nonpotable Water service, termination of this Agreement, delivery pressure, and all other conditions to the provision of Nonpotable Water service under this Agreement.
 2. Except for negligence of CVWD, Customer will defend and indemnify CVWD against, any claim by others for damage or economic loss resulting from the termination of Nonpotable Water service pursuant to this agreement for any reason including, but not limited to, interruption of Nonpotable Water service pursuant to this agreement, termination of this Agreement, delivery pressure, and all other conditions to the provision of Nonpotable Water service under this Agreement. CVWD shall give Customer a minimum of one hundred twenty (120) days' notice of its intent to permanently terminate Nonpotable Water service pursuant to this subparagraph.

- B. In the event of termination of this Agreement pursuant to this Section XII, Customer shall be responsible for payment for deliveries of Nonpotable Water up to and including the date of termination as well as any other applicable costs and charges under this Agreement pursuant to the payment provisions of Section VIII (A)(1)(b) herein.

XIII. TRANSFER OF CUSTOMER'S PROPERTY

In the event the Customer transfers or leases Customer's Property, the Customer hereby agrees to deliver a copy of this Agreement to the transferees or lessees on or before the transfer of the Customer's Property. Concurrently with the delivery of the Agreement to the transferees or lessees, the Customer shall obtain a written acknowledgment and acceptance of the terms of this Agreement executed by the transferees or lessees indicating that (a) the transferees or lessees have received a copy of the Agreement, and (b) the transferees or lessees have or shall have, prior to the date the Customer's Property is transferred or leased to the transferees or lessees, acknowledge the terms and provisions contained in the Agreement and (c) expressly agree to assume any and all obligations of the Customer under this Agreement. CVWD shall have the right to approve the proposed assignment of this Agreement, which approval may be withheld in CVWD's reasonable discretion. The Customer shall deliver the executed acknowledgment to CVWD within five (5) business days of receipt.

IVX. GENERAL PROVISIONS

- A. Further Assurances. Each Party shall execute, acknowledge and deliver such other documents and instruments as are reasonably necessary to carry out the intent and purposes of this Agreement.
- B. Counterparts. This Agreement may be executed in two or more counterparts; each counterpart shall be deemed an original instrument as against the Party who signed it.
- A. Binding on Successors. This Agreement is binding and shall inure to the benefit of the Parties hereto and to their respective successors, assigns and representatives.
- B. Attorneys' Fees. In the event that any action, suit or other proceeding is instituted to remedy, prevent or obtain relief from a breach of this Agreement, or arising out of a breach of this Agreement, the prevailing Party shall recover reasonable attorneys' fees incurred in each and every such action, suit or other proceeding, including any and all appeals or petitions.
- E. No Prior Assignment. The Parties to this Agreement hereby warrant and represent that the Parties have not heretofore assigned or transferred, or purported to have assigned or transferred to any person whomsoever, any matter, including claims, released or covered by this Agreement or any part or portion thereof. Further, the Parties hereto agree to indemnify and holds harmless the Parties hereto from any claims resulting from any person or entity asserting any such claim pursuant to any such assignment or transfer by the indemnifying Party.

F. Governing Law. This Agreement shall in all respects be interpreted, enforced and governed by the laws of the State of California. In the event that this Agreement must be enforced by a court of law, the Parties hereby agree that the said action shall be tried by the Superior Court of Riverside County of the State of California, Desert Judicial CVWD.

G. Power to Execute. The Parties represent and warrant that they have carefully read this Agreement and had the contents and legal effect hereof fully explained by legal counsel of their choosing; that the Parties have the sole and exclusive power and authority to execute this Agreement and do so of their own free act.

H. Entire Agreement. This Agreement contains the entire agreement and understanding concerning the subject matter hereof between the Parties, and supersedes and replaces all prior negotiations, proposed agreement and agreements, whether written or oral, expressed or implied, of any type whatsoever. Each of the Parties hereto acknowledges that neither any other Party hereto nor any agent or attorney or any other Party whomsoever has made any promise, representation or warranty whatever, expressed or implied, not contained herein concerning the subject matter hereof to induce it to execute this Agreement, and acknowledges and warrants that this Agreement is not being executed by such Party in reliance on any promise, representation or warranty not contained herein.

I. Severability. In the event that any of the provisions of this Agreement shall be held to be invalid, the same shall not affect, in any respect whatsoever, the validity of the remainder of this Agreement.

J. Notices. All notices provided for hereunder shall be in writing and mailed (registered or certified, postage prepaid, return receipt requested), or by express carrier (return receipt requested) or hand delivered to the Parties at the addresses set forth below or at such other addresses as shall be designated by such Party and a written notice to the other Party in accordance with the provisions of this Section. All such notices shall, if hand delivered, or delivered by express carrier, be deemed received upon delivery and, if mailed, be deemed received three (3) business days after such mailing.

CVWD:
Coachella Valley Water District
Attention: Jim Barrett, General Manager
Post Office Box 1058
Coachella, California 92236

Indian Ridge Country Club
Attention: Hall Wade, General Manager
76-375 Country Club Drive
Palm Desert, California 92211

[Signatures on following page]

IN WITNESS WHEREOF, the Parties hereto have executed this Nonpotable Water Agreement as of Effective Date first above written.

INDIAN RIDGE COUNTRY CLUB

By: Will Wade

Dated: 4/05/15

Title: gm / COO

COACHELLA VALLEY WATER DISTRICT

By: J. M. Barrett
J. M. Barrett

Dated: 7.09.15

Title: General Manager

PLEASE ATTACH APPROPRIATE
NOTARIAL CERTIFICATES

Attachments:

Exhibit A: Well Production Metering Agreement

Exhibit B: California Regional Water Quality Control Board, Colorado River Basin Section,
General Order No. 97-700

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Riverside

On 06/05/2015 before me,

A. Palleschi

(Here insert name and title of the officer)

, Notary Public,

personally appeared Hall Wade

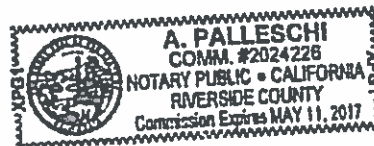
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify, under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

(Notary Seal)



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

Nonpotable water Agreement
(Title or description of attached document)

(File or description of attached document continued)

Number of Pages 12 Document Date 06/05/15

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- ☐ Individual (s)
☐ Corporate Officer

(Title)

- ☐ Partner(s)
☐ Attorney-in-Fact
☐ Trustee(s)
☐ Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section on a separate acknowledgment form must be properly completed and attached to final document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage, it may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the truthfulness of the signers). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document sign(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the sign(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document sign(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural form by crossing off incorrect forms (i.e. he/she/they, is/are) or circling the correct form. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ✦ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ✦ Indicate life or type of attached document, number of pages and date.
 - ✦ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

NOTARY ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

) ss.

County of Riverside)

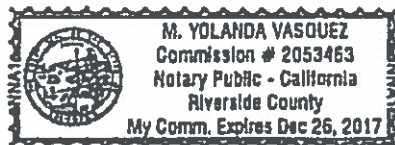
On July 10, 2015, before me, M. Yolanda Vasquez, Notary Public, personally appeared J. M. Barrett, who proved to me on the basis of satisfactory to be the person whose name is subscribed to the within instrument and acknowledgement to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

M. Yolanda Vasquez
M. Yolanda Vasquez, Notary Public

(Seal)



COMMISSION NO. 2053463

MY COMMISSION EXPIRES DECEMBER 26, 2017

CAPACITY CLAIMED BY SIGNER: General Manager

SIGNER IS REPRESENTING: Coachella Valley Water District

**FIRST AMENDMENT
NONPOTABLE WATER AGREEMENT**

This First Amendment ("First Amendment") is made this 21 day of August, 2015, by and between the Coachella Valley Water District, a public agency ("CVWD") and Indian Ridge Country Club ("Customer"). CVWD and Customer are collectively referred to herein as "Parties" and singularly as "Party."

RECITALS

WHEREAS, the Parties entered into a Nonpotable Water Agreement, dated June 2, 2015, ("Agreement") for Nonpotable Water irrigation at Indian Ridge Country Club's golf course described in the Agreement as "Customer's Property." A copy of the Agreement is attached hereto as Exhibit "A" and incorporated herein by reference; and

WHEREAS, the Agreement requires Customer to pay Pumping Costs ("PC") as defined in Section I(K) of the Agreement. PC Adjustments shall be paid by Customer as part of the Nonpotable Water Charges and as set forth in Section VIII(C) of the Agreement. PC Adjustments are imposed in order to account for changes in electrical costs and pumping efficiencies; and

WHEREAS, Indian Ridge has requested that the PC Adjustments be imposed over a certain period of time and in certain percentages which are different than the timing of payments originally set forth in the Agreement. CVWD is willing to permit a revision to the payment of PC Adjustments as set forth in this First Amendment; and

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

AGREEMENT

1. PC Adjustments Section VIII. NONPOTABLE WATER CHARGES, Subsection C. PC Adjustments in the Agreement is hereby amended, in its entirety, as follows:

C. PC Adjustments

The PC will be adjusted annually to account for changes in electrical costs and pumping plant efficiencies. See Definitions, Section I(K) above. Customer shall provide new pump test data including a pumping cost analysis that shows the overall plant efficiency and kilowatt hour per acre foot for the wells (and booster pumps, if a direct pressurized connection) used by Customer as its alternate water supply for golf course irrigation every other year prior to May 31, so that the updated NPWC can be calculated. In the alternate year that the pump cost analysis is not provided to CVWD, Southern California Edison's bundled service average rate level for agriculture and pumping groups and the Customer's previous year's kilowatt hour per acre foot from the pump cost analysis shall be incorporated for the pumping cost calculation. If Customer fails to provide an updated pumping cost analysis or billing history report, the PC will be increased 15% over the prior year's cost.

The pumping cost for the booster pumps will be included in the NPWC at an annual increase of an additional 20% of cost determined by Southern California Edison each year increase per year over the next five (5) years until 100% of the pumping cost is met beginning with 20% the first year, 40% the second year, 60% the third year, 80% the fourth year and 100% the fifth year.

2. Timing Of Payments The timing of payments, and additional information regarding the understanding of the Parties pursuant to this First Amendment, are further described in Exhibit "B" attached hereto and incorporated herein by reference.

3. Balance Of Agreement To Remain In Full Force And Effect - Except as expressly modified by this First Amendment, all of the terms, conditions, agreements and understandings contained in the Agreement shall remain unchanged and in full force and effect, the same are hereby expressly ratified and confirmed by the Parties and any references to the Agreement herein or in the Agreement shall mean the Agreement as amended by this First Amendment.

4. Severability If any one or more provisions of this Amendment should be ruled illegal, wholly or partly invalid or unenforceable by a governmental authority under applicable law, CVWD and Customer shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of the Agreement and this First Amendment (and in the event that CVWD and Customer cannot agree then such provisions shall be severed from this First Amendment) and the validity and enforceability of the remaining provisions of this First Amendment and the Agreement, or portions or applications thereof, shall not be affected by such adjustment and shall remain in full force and effect.

5. Counterparts This First Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this First Amendment to be executed as of the day and year first set forth above.

INDIAN RIDGE COUNTRY CLUB

Dated: 8/21/15

Will Wade gm/coo
[Name]
[Title]

COACHELLA VALLEY WATER DISTRICT

Dated: 8.31.15

J.M. Barrett
J.M. Barrett
General Manager

PLEASE ATTACH APPROPRIATE NOTARIAL CERTIFICATES

EXHIBIT "A"

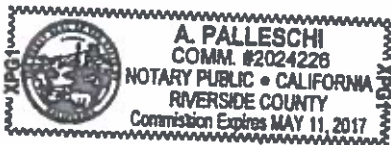
COPY OF THE AGREEMENT

State of California
County of Riverside

Subscribed and sworn to (or affirmed) before me on
this 21st day of August, 2015
by William H. Hales personally known to
me or proved to me on the basis of satisfactory evidence to be the
person who appeared before me.

(Seal)

Signature A. Palleschi



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

) ss.


County of Riverside)

On August 31, 2015, before me, Darlena F. Davis, Notary Public, personally appeared J. M. Barrett, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.




Darlena F. Davis, Notary Public in
and for said County and State

COMMISSION NO. 2040097

MY COMMISSION EXPIRES SEPTEMBER 1, 2017

CAPACITY CLAIMED BY SIGNER: General Manager

SIGNER IS REPRESENTING: Coachella Valley Water District

EXHIBIT "B"

DESCRIPTION OF TIMING OF PAYMENTS

Indian Ridge has one well and four booster pumps. The pumping cost includes the cost to pump an acre foot of water plus the cost to booster the water from the irrigation lake due to being a direct connect.

Customer	RAC	Pump Cost	Total Cost
Indian Ridge	\$112.00	\$75.86	\$159.68

154

With Edison Large Pumping and Adj Bundled rate	506 KWh
IRCC	\$112.00
	\$74.38
	\$158.42

Booster Pumps	Cost	Capacity	capacity weighted cost	with Edison's Lp pump bundled rate
1	\$64.81	1400	\$90,734.00	\$ 84,583.80
2	\$60.49	1500	\$90,735.00	\$ 84,672.00
3	\$84.20	1480	\$95,016.00	\$ 88,546.92
4	\$81.34	1200	\$73,608.00	\$ 69,618.60
Totals		5580	\$350,093.00	\$ 326,422.32

$$\begin{array}{r} \$350,093.00 \\ = \\ \$82.74 \\ 5580 \end{array}$$

Direct Connect:

$$NPWC = (RAC + Pump Cost Well + Pumping Cost Booster) \times 0.85$$

RAC for July 1, 2015 - June 30, 2016 is \$112.

$$NPWC = (112 + 74.38 + 58.50) \times 0.85 = \$208.15$$

KWh/acre	Edison Fall rate (in \$)
411	14.7 \$ 60.42
384	14.7 \$ 56.46
407	14.7 \$ 58.83
388	14.7 \$ 57.18

$$\begin{array}{r} \$326,422.32 \\ = \\ \$ 58.50 \\ 5580 \end{array}$$

Indirect Connect:

$$NPWC = (RAC + Pump Cost Well) \times 0.85$$

RAC for July 1, 2015 - June 30, 2016 is \$112.

$$NPWC = (112 + 74.38) \times 0.85 = \$158.42$$

Fiscal Year	% of PC Booster	PC Booster	Adj. PC Bstr	RAC	PC Well	NPWC
2015-2016	20%	\$ 58.50	\$ 11.70	\$ 112.00	\$ 74.38	\$ 168.37
2016-2017	40%	\$ 58.50	\$ 23.40	\$ 112.00	\$ 74.38	\$ 178.31
2017-2018	60%	\$ 58.50	\$ 35.10	\$ 112.00	\$ 74.38	\$ 188.26
2018-2019	80%	\$ 58.50	\$ 46.80	\$ 112.00	\$ 74.38	\$ 198.20
2019-2020	100%	\$ 58.50	\$ 58.50	\$ 112.00	\$ 74.38	\$ 208.15

The costs in red are subject to the annual review of the Replenishment Assessment Charge and Edison's pump cost analysis and/or billing history report.