

NONPOTABLE WATER AGREEMENT

THIS AGREEMENT ("Agreement") is made this 10 day of OCTOBER, 2022, ("Effective Date") between the COACHELLA VALLEY WATER DISTRICT, a public agency of the State of California (hereinafter denoted "CVWD") and The Palms Golf Club at La Quinta (hereinafter denoted "Customer") located at 57000 Palms Drive, La Quinta, California 92253, for Nonpotable Water irrigation at The Palm's golf course located within a portion of Section 22, Township 6 South, Range 7 East, San Bernardino Meridian ("Customer's Property"). CVWD and Customer are referred to herein individually as "Party" and collectively as "Parties."

RECITALS

- I. It is in the best interest of CVWD and Customer to protect the Coachella Valley's 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.
- II. 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.
- III. 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. Both Recycled water and Canal Water may be beneficially used for golf course and/or landscape irrigation in place of Groundwater, as such terms are defined herein.
- IV. California Water Code Section 32600-32603 requires the use of Nonpotable Water source(s), 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.
- V. Customer desires to use such Nonpotable Water provided by CVWD for golf course and landscape irrigation. Irrigation water shall be from the following sources in the indicated order of priority and up to the available amounts of each: 1) Canal Water; and 2) Groundwater, to the extent available and subject to the terms of this Agreement.
- VI. The Parties understand and agree that Nonpotable Water is an interruptible water supply.
- VII. Customer's Property lies inside CVWD's existing irrigation service area, Improvement District No. 1; and Canal Water delivery may be available through the Mid-Valley Pipeline Project or the canal water distribution system for golf course and landscape irrigation at the Customer's Property.

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/or 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. CVWD Facilities – All pipelines, floats, valves, levels, pumping equipment and vault located at the Canal and to the POC, as defined below, including the flow meter, but shall not include the Customer Facilities.
- E. Days – Calendar days unless otherwise specified herein.
- F. Default – Defined as set forth in Section XI.
- G. Groundwater – Water produced through wells from any aquifer underlying the Coachella Valley.
- H. Nonpotable Water – Either Canal Water provided by the canal water distribution system or the Mid-Valley Pipeline Project.
- I. Nonpotable Water Charge ("NPWC") – CVWD's charge per acre foot for Nonpotable Water delivered as defined in Section VIII (B) herein
- J. Point of Connection ("POC") – The point of delivery of Nonpotable Water from CVWD Facilities to Customer Facilities, which for this Agreement shall be the flow meter vault.
- K. Pumping Costs ("PC") – The pumping cost is the cost of electrical energy required to pump an acre foot of water through a well.
- L. 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 annual adjustment of the RAC will be reflected in the NPWC, as described in Section VIII below.

II. FACILITIES

- B. CVWD owns, operates, maintains and repairs all CVWD Facilities up to the POC.

- C. Customer owns, operates, maintains and repairs all Customer Facilities from and after the POC.
- D. Customer grants to CVWD, a perpetual non-exclusive easement to operate, inspect, maintain, repair, improve CVWD Facilities including the POC 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.

### III. SOURCES OF 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's 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 Eighty Percent (80%) 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 Eighty Percent (80%) Nonpotable Water recognizes that the Customer may use up to Twenty Percent (20%) potable and or Groundwater for purposes determined necessary by the Customer. If the Customer meets the Eighty Percent (80%) Nonpotable requirement, CVWD will consider Customer to have met the condition set forth above regarding the use of Nonpotable Water as the Customer's primary source of irrigation water to the maximum extent practical.

- C. In the event of a shortage of available Canal Water, irrigation water use shall conform with CVWD's Colorado River Water Shortage Contingency Plan.
- D. Prior to the initiation of water service, Customer shall execute a Well Metering Agreement which is attached as Exhibit A.

### IV. WATER QUALITY, REGULATORY APPROVALS, VIOLATIONS

#### A. Regulatory Compliance

- 1. Customer understands, acknowledges and agrees that Canal Water may not be used for potable purposes.

2. CVWD will provide Nonpotable Water to Customer in accordance with CVWD's Rules and Regulations Governing Canal Water And Drainage Service as said Rules And Regulations may be amended, revised or re-named from time to time.
3. 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 unreasonably withheld.
4. This Agreement is subject to U.S. Bureau of Reclamation rules and regulations, as the same may be revised from time to time, in regard to CVWD Facilities.

V. SCHEDULING

A. Ordering Nonpotable Water for Golf Course Irrigation

Customer shall order Nonpotable Water five (5) days in advance of the day it will be needed for irrigation. Customer shall call CVWD Water Service at (760) 398-2651 to place their Nonpotable Water order. When placing the order the Customer shall provide their canal meter number, amount to be ordered is preferred to be ordered in cubic feet per second (Please see conversion chart in Exhibit B), and dates for the water to be received.

B. CVWD Interruptions

CVWD shall make 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 make commercially reasonable efforts 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 make 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. The scheduling and advance notice of any maintenance which would interfere or interrupt Nonpotable Water delivery to Customer shall be determined by CVWD pursuant to the applicable rules and regulations and as said scheduling and notice may be revised from time to time.

C. Customer Interruptions

Customer shall provide prior written notice to CVWD if any plans to interrupt delivery of Nonpotable Water from CVWD for a period of longer than 48 hours. Said notice shall include the number of days of the interruption which are in excess of 48 hours and a schedule for restoration of deliveries. The schedule shall be subject to CVWD's approval, which approval shall not be unreasonably delayed or withheld. Customer shall further make every reasonable effort to minimize any interruption in deliveries due to maintenance or any other reason and shall, at all times, make a good faith effort to

facilitate the acceptance of Nonpotable Water deliveries from CVWD pursuant to this Agreement.

## VI. DELIVERY PRESSURE

The manner of delivering Nonpotable Water shall be determined by CVWD pursuant to the applicable rules and regulations as the same may be amended or revised from time to time, and based on pressure and other conditions as determined by CVWD. For example only, it is anticipated that such delivery will be pursuant to determinations within the range of zero to 150 pounds per square inch (psi). CVWD will not be responsible or obligated to provide any particular range of pressurization of the irrigation system beyond the POC. CVWD will not be responsible or obligated to provide the Customers daily irrigation demand in less than twelve hours. The typical rate of delivery will be established to provide a constant flow rate for 24 hours per day.

## 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 beyond said POC.
- B. CVWD agrees to accept full and exclusive responsibility for the management and delivery of the Nonpotable Water served by CVWD up to and including the POC only 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 up to and including the POC. Said obligations of CVWD shall end once Nonpotable Water passes through the POC.

## VIII. NONPOTABLE WATER CHARGES

### A. Invoices

- 1. Invoicing and payment for delivery of Nonpotable Water shall be as follows:
  - a. CVWD shall bill Customer monthly for the delivery of Nonpotable Water to Customer. The Nonpotable Water statement shall include: (1) the Nonpotable Water delivery dates, (2) the water, tolls and charges, (3) the amount of Nonpotable Water consumed in acre-feet, (4) the amount to be paid by Customer to CVWD, and (5) conservation charge, if applicable.
  - b. Customer shall make payment to CVWD upon receipt of invoice and shall be subject to the applicable rules and regulations regarding due dates, late charges and interest charges as said rules and regulations may be revised from time to time. For example, and not by way of limitation, unless otherwise specifically provided for in this Agreement, the terms and conditions for payment shall be pursuant to the Rules and Regulations Governing Canal

Water and Drainage Service. Nonpotable Water will be measured in or converted to acre feet for invoicing.

#### B. Charges

Customer is considered a Type C Customer since Customer is a non-agricultural customer who has a direct connection from the Mid-Valley Pipeline or the canal water distribution system and whose alternate source of water is groundwater in the East Whitewater Replenishment Subbasin Area of Benefit. The Type C NPWC will be calculated at 85% of the RAC rate plus PC, where RAC is the Replenishment Assessment Charge for the East Whitewater River Replenishment Subbasin Area of Benefit then in effect on July 1 of each year, and the PC is the pumping cost established at \$35.70 per acre foot, to be escalated by 3% on July 1 of year, at the Board's discretion. The NPWC shall be subject to change from time to time.

Customer shall also be required to pay "Other Consumptive & Miscellaneous Charges" as the same may apply to Customer's Nonpotable Water service. Said charges are subject to adoption and revision from time to time pursuant to the applicable rules and regulations of CVWD. As of the Effective Date, the said charges are included in Exhibit B.

#### C. PC Adjustments

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

#### D. 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 Eighty percent (80%) of the total water for golf course and landscape irrigation. Revenue from the Conservation Charge is 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 used below Eighty Percent (80%) by Customer in the fiscal year. The fiscal year shall be from July 1 to June 30. CVWD will provide monthly updates on Customer's performance in meeting this Eighty Percent (80%) requirement. The Conservation Charge will be calculated by multiplying the number of acre feet below Eighty Percent (80%) 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 Eighty Percent (80%) Nonpotable Water.

If CVWD interrupts service of Nonpotable Water, as described in Section III(D) above, for example, such interruption will be taken into account in the calculation to determine whether or not the requirement to use Eighty percent (80%) 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 ("Covered Surface Improvements"). CVWD shall not be responsible for replacing any other surface improvements 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 ("Not Covered Surface Improvements"). Any Not Covered Surface Improvements installed upon or immediately adjacent to the delivery system or CVWD Facilities shall be at Customer's sole risk, cost and expense. Therefore, Customer waives all rights it may have under Civil Code Section 1542 to seek damages from CVWD for repair or replacement of Not Covered 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. At all times during the original and any extended terms, this Agreement shall be subject to CVWD's right, in its sole discretion, to unilaterally amend and modify this Agreement at any time and to implement CVWD policy changes applicable to all CVWD Nonpotable Water users. Unless otherwise determined by the CVWD Board of Directors, any such changes shall be effective immediately as of the date of the written notice to Customer. Any changes to this Agreement that are unique to Customer will be documented by way of amendment to this Agreement.

#### 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.
- B. In addition, CVWD may curtail or 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. Customer hereby waives any claim that it may have against and will defend and indemnify CVWD against any claim by others for damage or economic

loss resulting from the termination of Nonpotable Water service for any reason. 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.

- C. 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, or any portion thereof, the Customer hereby agrees to deliver a copy of this Agreement to the transferees or lessees on or before said transfer. 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, acknowledged the terms and provisions contained in this Agreement, and (c) expressly agree to assume any and all obligations of the Customer under this Agreement which apply to the Customer's Property or any portion thereof. CVWD shall have the right to approve the proposed assignment of this Agreement, which approval may be denied in CVWD's reasonable discretion. The Customer shall deliver the executed acknowledgment to CVWD within five (5) business days of receipt

### IX. 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.
- C. 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.
- D. 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



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

**CUSTOMER**

By: Paul D. Brown

Title: COO/GM

Dated: 10-20<sup>th</sup> 22

**COACHELLA VALLEY WATER DISTRICT**

By: Meyssa Lopez

Dated: 10/20/22

Title: notary Public.

PLEASE ATTACH APPROPRIATE  
NOTARIAL CERTIFICATES

**Attachments:**

Exhibit A: Well Production Metering Agreement

Exhibit B: Other Consumptive & Miscellaneous Charges

## 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

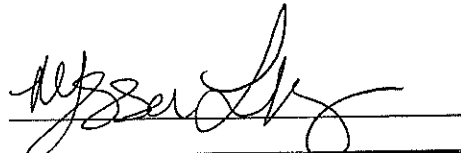
On Oct 20, 2022 before me, Melyssa Lopez Notary Public  
(insert name and title of the officer)

personally appeared Peter David Baucom,  
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.

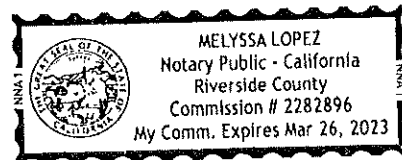
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)



## Exhibit B

### Other Consumptive & Miscellaneous Charges

Other Consumptive & Miscellaneous Charges	
Quagga mussel mitigation surcharge	\$3.18 per acre-foot
Scheduled gate orders	\$19.80 per occurrence
Unscheduled gate orders	\$39.60 per occurrence
Surcharge for deliveries outside the boundaries of Improvement District 1	\$3.92 per acre per month
Irrigation Water Availability Assessment	3.8 x IWCC x number of acres in the parcel
Account Establishment Fee	\$30
Return payment charge	\$25

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 District.
- 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 acknowledge that neither Party, nor any of its employees or agents, has made any promise, representation or warranty whatsoever, expressed or implied, unless specifically contained in this Agreement, to induce a Party to execute this Agreement, and each Party 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 an 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

CUSTOMER:  
The Palms Golf club at La Quinta  
Attention: Name, Title  
P. O. Box 29  
La Quinta, California 92247

*[Signatures on following page]*