

WATER USE & LICENSE AGREEMENT

This Water Use and License Agreement ("Agreement") is made this ____ day of _____, 2023 ("Effective Date"), by and between the County of Yolo, a political subdivision of the State of California, on behalf of and for the benefit of the El Macero County Service Area, ("CSA"), and the El Macero Country Club, a California non-profit, mutual benefit corporation, ("EMCC").

RECITALS

1. EMCC owns and operates a club house and golf course within the CSA, which are accessed via CSA streets. EMCC receives potable water, sanitary sewer and stormwater sewer services via the CSA. EMCC also participates in maintenance of CSA streets, including their various medians, all of which are landscaped.
2. CSA owns a groundwater well, referred to as EM3 and more fully described below, which is located on a CSA-owned parcel of land that abuts EMCC's golf course. EM3 was constructed in 1991 at CSA expense and for many years was used to supply potable water to the CSA until the CSA began receiving water from other sources via the City of Davis, and to provide an emergency backup water source for the EMCC golf course via a connection to the irrigation supply lake at hole No.12. *Because EM3 was no longer needed to supply potable water to the CSA, EMCC and the CSA entered Well Use Agreement No. 16-184 in November 2016 to make EM3 available for EMCC use on a daily basis, in tandem with EMCC's Well No. 4, for non-potable water purposes, for so long as EMCC maintains and regularly operates EM3 and pays the associated costs of energy.* ~~At that time the CSA replaced the well pump and controls in order to reduce pumping energy costs.~~ The parties agree that in light of experience to date Agreement No. 16-184 needs to be revised to reflect more appropriate schedules for maintenance and reporting.
3. The CSA and EMCC entered Water Use Agreement No. 16-182 in November 2016, whereby four landscaped medians ("*Four Medians*", described below in Definitions) within the CSA may be irrigated with non-potable water via connections to EMCC's golf course irrigation system. The CSA pays a monthly fee to EMCC pursuant to Agreement No. 16-182 that was deemed by the parties to be sufficient to repay EMCC its costs for supplying the non-potable water. The parties agree that the payment provisions *have expired and* need to be extended.
4. When the CSA replaced the landscaping for the two Clubhouse Drive medians in 2008 EMCC agreed informally to maintain it properly at no additional cost to the CSA, and has continued to do so. The parties agree that the informal agreement needs to be formalized.
5. The CSA and EMCC desire to enter this Water Use and License Agreement to replace Well Use Agreement No. 16-184 and Water Use Agreement No. 16-182, and to *address* the long standing informal agreement for maintenance of the landscaping in the Clubhouse Drive medians.

Now, therefore, the parties agree that:

DEFINITIONS

1. "Four Medians" shall mean four of the landscaped medians in the CSA, as follows: one located at the North Entry to the CSA from Mace Boulevard ("North Entry Median"), one located at the intersection of Country Club Drive and Country Club Circle ("Country Club Circle Median") and two, one of which is in a traffic circle, located in Clubhouse Drive ("Clubhouse Drive Medians"). They are highlighted on Attachment A, with the North Entry and Country Club Circle Medians marked in blue and the Clubhouse Drive Medians marked in red.
2. "EM3" shall mean CSA's groundwater production well located at 27069 Mace Boulevard on a CSA-owned parcel (APN 068-114-003-000) abutting the northwest corner of the EMCC golf course including all appurtenant on-site structures, equipment and facilities, which include but are not limited to structures, landscaping, pipes, valves, controls, turnouts and meters.
3. "Well 4" shall mean the groundwater production well located on EMCC golf course adjacent to the fairway on hole No. 8 and owned and operated by EMCC for Club Purposes.
4. "Club Purposes" shall mean the irrigation of EMCC's fairways, tees, greens, landscaping and other vegetation, the maintenance of lakes or ponds on EMCC properties and other miscellaneous purposes associated with golf course operations. Club Purposes shall also include the operation of EM3 on a periodic basis to insure proper maintenance of the pump in question.
5. "CSA Purposes" shall mean the irrigation of landscaping on the Four Medians.
6. "Major Replacements" are defined as any equipment maintenance, repair and replacement expenditures to EM3 or to landscaping at the Clubhouse Drive Medians that are not Minor Replacements.
7. "Minor Replacements" are defined as equipment maintenance, repair and replacement expenditures to EM3 and the landscaping at the Clubhouse Drive Medians not exceeding \$2,500 per expenditure/incident. *(Should there be an annual limit as well?)*

TERMS AND CONDITIONS

1. Termination of Prior Agreements. The parties hereby terminate Well Use Agreement No. 16-184 and Water Use Agreement No. 16-182, effective as of the Effective Date of this Agreement.
2. Water Usage
 - a. EM3 Water for Club Purposes. Non-exclusive of CSA's right to use water from EM3, EMCC may use water from EM3, which water may only be used for Club Purposes. *The total amount of water used for Club Purposes from all sources combined shall not significantly exceed the amount that would have been used absent receipt of water from EM3 under this Agreement.* EMCC acknowledges and agrees that water from EM3 is not suitable to be used for drinking water or any other purpose for which potable water is required. EMCC shall be responsible for the cost of electricity used at EM3, provided that CSA shall have such usage metered and billed separately by the electric utility and

shall submit a *quarterly* invoice to EMCC as soon as practicable following each invoice period. Upon receipt of a timely invoice from CSA, EMCC shall pay such invoice within 30 days. ||

- b. Water for CSA Purposes. CSA may use, for CSA purposes, water from EM3, Well 4, or other *pre-approved* EMCC sources and supplied by EMCC to CSA via connections to the EMCC golf course irrigation system, provided that CSA shall pay to EMCC \$200 per month to compensate EMCC for its ongoing costs to supply such water used for CSA Purposes. (*Meet and confer on monthly rate every two years, beginning in September 2025?*) EMCC shall invoice the CSA quarterly and the County shall remit payment to EMCC within 30 days of CSA's approval of each invoice. CSA shall coordinate its use of water with EMCC irrigation schedules. ||
3. Security. At CSA's sole discretion, CSA may establish and maintain such physical or electronic security measures as CSA, in its sole and exclusive discretion, deems appropriate for EM3 and if so, will provide EMCC the reasonable access required by EMCC personnel in order to carry out EMCC's rights and duties under this Agreement. (*No reason to revise this, per County Counsel.*) ||
4. Operation and Maintenance of EM3. During the term of this Agreement, EMCC will operate and maintain EM3 in accordance with ~~the Operations and Maintenance Plan attached as Attachment B~~, which may be amended from time-to-time upon mutual consent of the parties. ||
5. License to Access the Clubhouse Drive Medians. During the term of this Agreement and subject to the provisions of this Agreement, including Section 12, EMCC is granted a revocable and non-exclusive license to access the Clubhouse Drive Medians for landscape maintenance and replacement, which shall be performed at EMCC's sole cost and expense. *If the license is revoked by the CSA, EMCC's obligation to maintain the Clubhouse Drive Medians expires.* This limited license to access the Clubhouse Drive Medians does not authorize EMCC to install additional signs or fixtures without prior approval by the CSA, *which approval shall be unreasonably withheld.* EMCC shall exercise reasonable care and maintain the Clubhouse Drive medians during the term of this license in a good, safe, and weed-free condition. EMCC further acknowledges that it is responsible for compliance with all federal, state, and local laws, rules and regulations relating to use of toxics or hazardous materials, including applicable licensing and permitting requirements of the California Department of Pesticide Regulation and the Yolo County Agricultural Commissioner related to the use of pesticides and herbicides. ||
6. Minor Replacements. EMCC shall be solely responsible for the cost of Minor Replacements. Subject to the expense limitation, EMCC is responsible for proper care and maintenance of the equipment including both routine and unexpected (even if inevitable), episodic maintenance, repair and replacements, when needed. ||
7. Major Replacements. In the event of the need for a Major Replacement, EMCC will promptly notify CSA. CSA *shall consider in good faith and* may, at CSA's sole discretion, choose to have the Major Replacement made in which case CSA must pay the cost; otherwise, the parties will meet and confer. (*phrase removed per Troon markup*) ||
8. Connection to EMCC's Irrigation System. EMCC is solely responsible for the cost of connecting EMCC's irrigation system to EM3 and for maintaining such connection. Such connections shall not be considered either Major Replacements or Minor Replacements. ||

Additional appurtenant facilities may be necessary to make water available from EM3 to EMCC. Such facilities may include, but are not limited to, valves, discharge piping, one or more meters, and other facilities deemed necessary or appropriate by EMCC. Any such facilities shall be designed, constructed and maintained in accordance with EMCC specifications at EMCC's sole cost and expense at a location and manner to be agreed upon by the parties. EMCC shall be solely responsible for any damage to the EMCC irrigation system resulting from the existing or future physical connections with EM3. *(Troon proposed phrase here regarding CSA negligence or willful misconduct not accepted by County Counsel) perhaps limit to "damage caused by the CSA's sole negligence or misconduct?"*

9. Annual Report. EMCC will prepare and provide an annual maintenance report to CSA reflecting the maintenance and monitoring performed on EM3 while under EMCC operation as provided in Attachment B.
10. Water Rights. All groundwater used for Club Purposes pursuant to this Agreement is deemed by the parties to have been used in furtherance of the exercise of EMCC's groundwater rights. All groundwater used for CSA Purposes pursuant to this Agreement will be deemed by the parties to have been used in furtherance of CSA's groundwater rights.
11. No Warranty.
 - a. CSA makes no warranty, express or implied, with respect to the quality or quantity of water produced from EM3 and EMCC takes and utilizes such water at EMCC's sole risk and subject to the terms of this Agreement, and EMCC shall indemnify, hold harmless, and defend CSA with respect to any and all claims, demands, or lawsuits regarding water produced by EMCC from EM3, other than water used for CSA Purposes.
 - b. EMCC makes no warranty, express or implied, with respect to the quality or quantity of water provided to CSA and CSA takes and utilizes such water at CSA's sole risk and subject to the terms of this Agreement. CSA shall indemnify, hold harmless, and defend EMCC with respect to any and all claims, demands, or lawsuits regarding water produced by EMCC and used for CSA purposes.
12. Mutual Indemnity. With the exceptions listed below in this Section, each party shall indemnify, defend, protect, hold harmless and release the other party, its elected bodies, officers, agents and employees) from and against any and all claims, liability, losses, proceedings, damages, causes of action, liability, costs or expense (including attorneys' fees and witness costs) arising from or in connection with, or caused by any negligent act or omission or willful misconduct of the Indemnitor. This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages or compensation payable to or for the indemnifying party under workers' compensation acts, disability benefit acts, or other employee benefit acts.

Notwithstanding the foregoing, EMCC shall not be liable for any Major Replacement or for a complete well failure not caused by a negligent act or omission or the willful misconduct of EMCC and the provisions of Section 7 of this Agreement shall govern.

12. Assignment or Transfer. EMCC may not assign or transfer this Agreement, including to a successor-in-interest of all or a majority of EMCC's assets, without the prior written consent of CSA, which consent shall not be unreasonably withheld.
13. Term of Agreement. This Agreement shall remain in effect until the earliest to occur of:
- Termination by either party for any reason or no reason upon 180 days' advance notice to the other party;
 - Termination by mutual consent of the parties.
 - Written notice of termination by either party if EM3 becomes inoperable, effective as of the date of the notice.*
14. Compliance with Law. EMCC shall comply with all federal, state and local laws and regulations applicable to EMCC's use, operation and maintenance of EM3 and to its rights and performance obligations under this Agreement. CSA shall comply with all federal, state and local laws and regulations applicable to CSA's ownership and control of EM3 *and to its rights and performance obligations under this Agreement.*
15. Independent Contractor. EMCC is an independent contractor and not an agent, officer or employee of CSA. The parties mutually understand that this Agreement is by and between two independent contractors and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association.
16. Survival. The Mutual Indemnity provision of this Agreement shall survive the termination of the Agreement.
17. Notice
- Any notice provided in connection with this Agreement shall be given in writing by personal delivery, by any commercially accepted overnight delivery service or by prepaid first-class mail addressed as follows, *provided that if any party gives notice in writing of a change of name or address, notices to such party shall thereafter be given as requested in that notice:*

El Macero County Service Area
County of Yolo, Community Services Dept.
292 Beamer Street
Woodland, CA 95695
Attention: CSA Manager

El Macero Country Club
44571 Clubhouse Drive
El Macero, CA 95618
With a copy to: Jhansen@Troon.com
 - If notice is given by personal delivery, notice is effective as of the date of personal delivery. If notice is given by mail or by overnight delivery service, notice is effective as

ATTACHMENT B
Operation, Maintenance, Records and Reporting

I. Operation.

EMCC may use EM3 as needed to supply water to lakes on EMCC property. Such water may be used for golf course and landscape irrigation and other EMCC purposes as well as for irrigation of landscaped street medians in El Macero pursuant to *appropriate sections of this agreement*. As a minimum EMCC shall exercise the pumping equipment at EM3 at least once every two weeks for at least 15 minutes. At its discretion, EMCC may partially close the above ground valve on the pump discharge line to protect golf course piping.

II. Maintenance

EMCC shall maintain EM3 in good working order in accordance with the recommendations of the May 13, 2016, letter from Dan Morris, Eaton Pump Sales and Service, to Michael Facciuto, EMCC (attached), including any necessary repairs and minor replacements. At least annually EMCC shall have the efficiency of EM3 tested and shall obtain a chemical analysis of water produced from EM3 in order to monitor its continued suitability for irrigation. At least once every seven years EMCC shall obtain, at EMCC expense, a thorough inspection of EM3, including equipment, controls and the condition of the well casing by a qualified independent third party.

III. Records.

EMCC shall maintain a monthly record of acre feet of pumpage and kWh of energy usage at EM3 as well as a record of maintenance, minor repairs and replacements for EM3 and the well site.

IV. Reporting

By not later than March 1 each year the Board of Directors of EMCC shall submit an annual report to the CSA covering the prior Water Year (October 1 through September 30), transmitting (a) the results and any associated recommendations pursuant to efficiency tests, water quality analyses, and any inspection report; (b) monthly acre feet of pumpage and kWh of energy used; and (c) a summary of the maintenance completed and any repairs or replacements made. The annual report shall be provided to:

El Macero County Service Area
County of Yolo
County Administrators Office
625 Court Street, Room 202
Woodland, CA 95695

May 13, 2016

El Macero Country Club
44571 Clubhouse Drive
El Macero, CA 95618

Attn: Michael Facciuto

Eaton Pumps is pleased to present you with the following recommendations on an existing municipal well that will be converted for irrigation use. The well is 50 feet East of Mace Blvd and 200 feet South of El Macero Drive located 800 Mace Blvd. Davis, California.

The existing well and related pumping equipment is currently performing as designed with 1100 gallons per minute output and above ground system pressure of 62psi with an overall plant efficiency of 63.63 %.(see enclosed Efficiency Test Report.)

Eaton Pump Company recommends exercising the pumping equipment at least every two weeks and monitoring the gallons per minute output during operation. We would also recommend performing an efficiency test on yearly bases with an "Ag Suitability" water test. In order to operate the current system for irrigation/golf course pond filling needs, the above ground gate valve on the pump discharge will need to be partially closed to maintain back pressure on the pump to help protect existing underground golf course piping from over pressurizing during operation. This action will result in the current efficiency test estimation cost of \$75.20 dollars per acre feet or \$15.23 dollars per hour.

There are two options for lowering the energy cost on this system. The first option would be to purchase and install a VFD drive, which acts like a throttle lowering speed of the pump using only the required horsepower/energy needed to pump the required water. Unfortunately 125Hp Hitachi motors can't be ran with a VFD drive. (See Sun-Star Electric Data Sheet) The second option would be to redesign the pump bowl to a 75hp designed for 1100 gpm @ 150' tdh (total dynamic head), which will require complete pump removal and some modification to the existing electrical panel. This action will result in the estimation cost of \$37.55 dollars per acre feet or \$7.61dollars per hour.

I've included costs for the second option for you review. Please let us know if you have any questions. Thank you for selecting Eaton Pumps to serve you on this project.

Sincerely,

Dan Morris