

BOARD OF SUPERVISORS
Yolo County, California

To: Comm. Svcs. ✓

CONSENT CALENDAR

Excerpt of Minute Order No. 23-30 Item No. 6, of the Board of Supervisors' meeting of March 21, 2023.

MOTION: Provenza. SECOND: Barajas. AYES: Frerichs, Sandy, Provenza, Barajas, Villegas.

6.

Approve the El Macero Water Use and License Agreement with the El Macero Country Club on behalf of the El Macero County Service Area. (No general fund impact) (Lindbo/Villa)

Approved **Agreement No. 23-59** on Consent.



County of Yolo

www.yolocounty.org

To: The Chair and Members of the Board of Supervisors

Consent-Community Services 6. County Service Areas

Board of Supervisors

Meeting Date: 03/21/2023
Brief Title: El Macero Water Use Agreement Revision
From: Leslie Lindbo, Interim Director, Department of Community Services
Staff Contact: Kimberly Villa, Community Services Analyst, Community Services, x8431
Supervisorial District Impact: District 4

Subject

Approve the El Macero Water Use and License Agreement with the El Macero Country Club on behalf of the El Macero County Service Area. (No general fund impact) (Lindbo/Villa)

Recommended Action

Approve the El Macero Water Use and License Agreement with the El Macero Country Club on behalf of the El Macero County Service Area.

Strategic Plan Goal(s)



Sustainable Environment

Reason for Recommended Action/Background

In 1991, the El Macero County Service Area (EMCSA), constructed a well at EMCSA expense known as "EM3". At the time of construction, the water produced from this well was for the EMCSA community use and also connected to the El Macero Country Club (EMCC) irrigation supply. The El Macero community is now connected to the City of Davis public water system and receives all potable water through the City connections, therefore, no longer utilizes EM3 to supply drinking water needs. EM3 now operates as an agricultural well to supply irrigation water as a redundancy coverage for EMCC, which only had a single extant well.

On November 22, 2016, the Board of Supervisors approved Well Use and Water Use agreements (Agreement Nos. 16-182 and 16-184), which allowed EMCC access to EM3 well in exchange for routine maintenance and electricity charges, and to provide water to the medians with turf. The original agreements stated staff would negotiate the ongoing operating costs in good faith after five years. The recommended action is a revised agreement as the product of those negotiations, combining the agreements into a single agreement. As with the 2016 agreements, EMCC will maintain and pump the EM3 well, pay maintenance and electricity expense, irrigate certain turf medians, and provide an annual report to the EMCSA on maintenance and use items for the well. EMCSA will pay \$200 per month to EMCC to compensate EMCC for its ongoing costs to supply and irrigate certain EMCSA medians. This use agreement will also serve to keep the EM3 well in good working order, should the CSA have a future need or use for the well. The agreement also includes grant of a revocable and non-exclusive license to EMCC to access and maintain certain EMCSA medians.

EMCC's Board has approved the agreement. Staff supports the recommended action to approve the Water Use and License Agreement (Attachment A).

Collaborations (including Board advisory groups and external partner agencies)

The El Macero County Service Area Advisory Committee and the El Macero County Club Board of Directors approved and recommend this action.

Competitive Bid Process/Vendor Performance

No competitive bid process is required for this agreement.

Fiscal Information

Fiscal impact (see budgetary detail below)

Fiscal Impact of this Expenditure

| | |
|---|---------|
| Total cost of recommended action | \$2,400 |
| Amount budgeted for expenditure | \$2,400 |
| Additional expenditure authority needed | \$0 |
| On-going commitment (annual cost) | \$2,400 |

Source of Funds for this Expenditure

| | |
|------------------------|---------|
| El Macero Streets Fund | \$2,400 |
|------------------------|---------|

Further explanation as needed

This expense has been budgeted for, as it has been an ongoing expense since the 2016 agreement.

Attachments

Att. A Agreement

Form Review

| Inbox | Reviewed By | Date |
|---------------------------------|--------------------|---------------------------------|
| Leslie Lindbo | Leslie Lindbo | 03/09/2023 12:53 PM |
| Financial Services | KauXue Thao | 03/14/2023 08:06 AM |
| County Counsel | Hope Welton | 03/14/2023 09:59 AM |
| John Rowe | John Rowe | 03/15/2023 02:55 PM |
| Form Started By: Kimberly Villa | | Started On: 01/26/2023 10:30 AM |
| Final Approval Date: 03/15/2023 | | |

March 21, 2023

Agreement No. 23-59

BY Paul Higley
DEPUTY CLERK OF THE BOARD

WATER USE & LICENSE AGREEMENT

This Water Use and License Agreement ("Agreement") is made this 21th day of March, 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 nonprofit 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. In 2016 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 Medians, defined 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 for EM3 or for 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.

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. 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.
4. Operation and Maintenance of EM3. During the term of this Agreement, EMCC will operate and maintain EM3 in accordance with Attachment B, which may 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 not 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 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.
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 connection 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 unless caused by the CSA's sole negligence or willful 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:
 - a. Termination by either party for any reason or no reason upon 180 days' advance notice to the other party;


- b. Termination by mutual consent of the parties.
 - c. 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
- a. 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

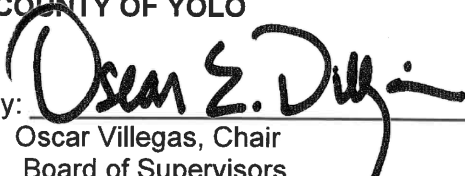
El Macero Country Club
44571 Clubhouse Drive
El Macero, CA 95618
Attention: General Manager
With a copy to: Jhansen@Troon.com
 - b. If notice is given by personal delivery, notice is effective as of the date of personal delivery. If notice is given by mail or by overnight delivery service, notice is effective as of the day following the date of mailing or the date of delivery reflected upon a return receipt, whichever occurs first.
18. Choice of Law. The parties have executed and delivered this Agreement in the County of Yolo, State of California. The laws of the State of California shall govern the validity, enforceability or interpretation of this Agreement. Yolo County shall be the venue for any action or proceeding, in law or equity that may be brought in connection with this Agreement.

19. Entire Agreement. This Agreement, including any attachments referenced, constitutes the entire agreement between the parties and there are no inducements, promises, terms, conditions or obligations made or entered into by CSA or EMCC other than those contained in this Agreement.

EL MACERO COUNTRY CLUB


By: 
Chris Johnson
General Manager

COUNTY OF YOLO

By: 
Oscar Villegas, Chair
Board of Supervisors

Attest:
Julie Dachtler, Senior Deputy Clerk
Board of Supervisors

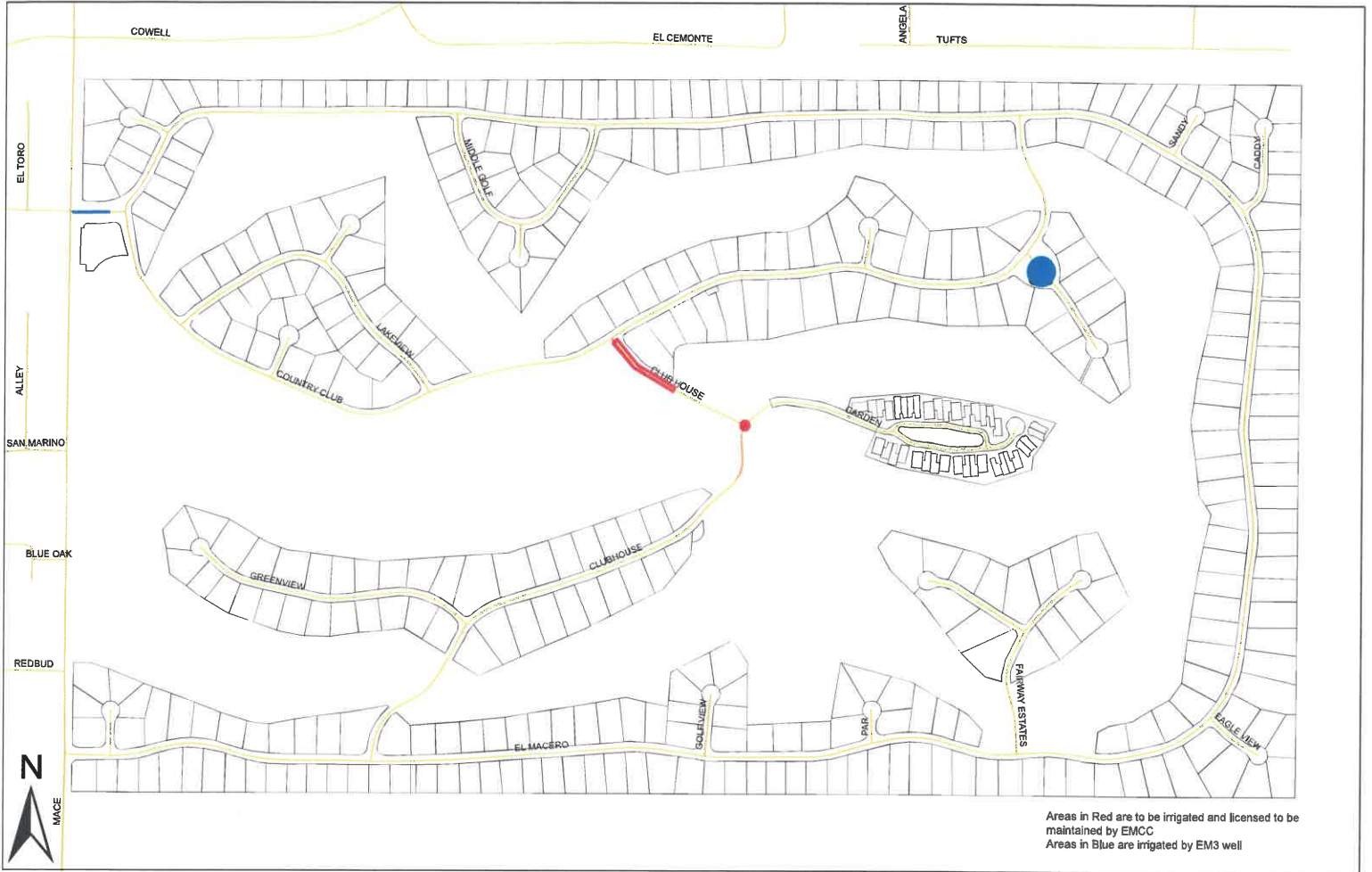
By: 
Deputy



Approved as to Form:
Philip J. Pogledich, County Counsel

By: 
Kimberly Hood
Assistant County Counsel

ATTACHMENT A
[Landscape Medians Map – On Following Page]



Areas in Red are to be irrigated and licensed to be maintained by EMCC
 Areas in Blue are irrigated by EM3 well

ATTACHMENT B

[Operations, Maintenance, Records and Reporting – On Following Page]

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 as provided in the Agreement. At 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, including any necessary repairs and Minor Replacements (as defined in Section 6 of the Agreement). 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 retain a qualified independent third party, reasonably acceptable to the CSA, at EMCC's expense, to perform a thorough inspection of EM3, including equipment, controls and the condition of the well casing and prepare a report regarding the results of the inspection, which report shall be made available to the CSA upon completion.

III. Records

EMCC shall maintain a monthly record of acre feet of water pumped and kWh of energy usage at EM3, as well as a monthly record of maintenance, including minor repairs and Minor Replacements for EM3 and the EM3 site. Upon request by the CSA, these monthly records shall be made promptly available for review and inspection by the CSA.

IV. Reporting

No later than March 1st each year that the Agreement is in effect, 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 required by Section I, above; (b) the monthly water and electric energy use records required pursuant to section III, above; and (c) a summary of the maintenance completed and any repairs or replacements made pursuant to Section II, above. The annual report shall be delivered to EMCSA at the address provided in the Agreement.