

**AGREEMENT FOR RECYCLED WATER RETROFIT FUNDING  
BY AND BETWEEN EASTERN MUNICIPAL WATER DISTRICT,**

**(Insert Customer Name)**

This Agreement is made as of \_\_\_\_\_, 2017 (**Effective Date**), by and between **EASTERN MUNICIPAL WATER DISTRICT**, a municipal water district organized and operating pursuant to Division 20 of the California Water Code (**EMWD**), and (**INSERT CUSTOMER NAME**) (**Customer**), whose mailing address is (**INSERT ADDRESS**). EMWD and Customer are sometimes individually referred to herein as the "**Party**" and collectively as the "**Parties**."

**RECITALS**

WHEREAS, EMWD is committed to the efficient use of its valuable water supplies, including maximizing the beneficial use of recycled water in order to offset potable water use;

WHEREAS, Customer owns real property located at (**insert address**) (**Site**). The Site is adjacent to EMWD's recycled water distribution system. Customer currently irrigates the Site with domestic water purchased from EMWD;

WHEREAS, EMWD owns and operates four regional reclamation facilities which generate recycled water and Customer desires to purchase such recycled water from EMWD for allowable, suitable non-potable uses, specifically, for landscape irrigation;

WHEREAS, in order to implement Customer's use of recycled water, Customer must make modifications (retrofits) to its existing on-site irrigation system;

WHEREAS, in recognition that the cost of retrofitting irrigation facilities from domestic to recycled water impedes the ability of some of EMWD's customers to comply with the requirements of EMWD's Recycled Water Guidelines, and in order to encourage conservation of water resources and provide a means for greater control over the use of recycled water, EMWD has established the "EMWD Recycled Water Retrofit Funding Program" (**Program**);

WHEREAS, under the terms of the Program, EMWD will reimburse Customers for approved costs of connecting to EMWD's recycled water distribution facilities and retrofitting its on-site irrigation system(s) as more thoroughly described herein;

WHEREAS, following Customer's construction, Customer agrees to pay 75 percent of EMWD's then current potable water rate for the Site for a period not-to-exceed eight years following connection and Customer's initial billing for recycled water;

WHEREAS, Customer additionally acknowledges and agrees that any grant, or other, funding associated with the Site retrofit to recycled water that is offered or provided by the Metropolitan Water District of Southern California (MWD) shall be assigned to, or otherwise be the property of EMWD;

WHEREAS, Customer desires that EMWD assist in Project completion by providing technical design assistance and the aforementioned funding pursuant to and in accordance with the Program;

WHEREAS, Customer has executed a Notice of Intent dated (insert date) confirming its commitment to construct on-site irrigation modifications for purposes of purchasing EMWD supplied recycled water subject to EMWD's approval; and

WHEREAS, the purpose of this Agreement is to set forth the terms, conditions and financial considerations whereby EMWD will provide funding assistance to Customer; and whereby Customer will construct and install facilities necessary to connect and utilize EMWD supplied recycled water.

**NOW, THEREFORE**, in consideration of the recitals and mutual understanding of the Parties as herein expressed, EMWD and Customer agree as follows:

### **AGREEMENT**

1. The Recitals set forth above are incorporated into and are a part of this Agreement.
2. EMWD, at its own expense, has completed a design and cost estimate, attached hereto and incorporated herein as **Exhibit A**, and Customer hereby acknowledges and agrees that it has reviewed and approved said design and estimate for implementation. EMWD further hereby approves Customer's bid and/or cost proposal for Customer's own construction of Site irrigation modifications for purposes of purchasing and accepting deliveries of EMWD supplied recycled water, attached hereto and incorporated herein as **Exhibit B**.

Customer shall procure all materials and services, where applicable, and complete construction of all required Site retrofits and improvements in accordance with Customer's own rules, regulations and requirements governing such acquisitions and work. Customer shall schedule and ensure completion of the Project such that Customer will initiate the use of recycled water no later than four calendar months following the Effective Date of this Agreement.

The retrofitted system shall comply with all EMWD and regulatory requirements for the delivery and use of recycled water. In the event a change or modification to on-site recycled water system plans or designs is desired, Customer will request approval from EMWD, in writing, prior to any work performed.

2.1 As required by Title 22 of the California Code of Regulations, EMWD will perform cross connection and coverage testing. EMWD shall notify Customer two weeks prior to the cross connection test.

2.2 Customer shall make provisions for coordination between the contractor and EMWD to facilitate GPS asbuilding of the existing irrigation system and newly constructed elements including but not limited to; irrigation mainline, mainline components, irrigated area and point of connection sequence components.

3 **Funding Assistance** EMWD hereby agrees to reimburse Customer for all direct and actual project costs and expenses in accordance with, but not to exceed the project cost estimate and Customer's bid and cost proposal approved by EMWD (**Exhibits A and B**). Customer shall assemble and provide EMWD with evidence of such costs and expenses for reimbursement,

not to exceed once per calendar month, throughout project construction. Such evidence shall include, but not be limited to bills, invoices, vouchers, statements, receipts or other documentation evidencing the amount expended, incurred, or due, and shall not include any costs incurred or payments made for work or material not in conformance with approved specifications or requirements or otherwise authorized by EMWD. Expenditures for reimbursement shall in no way include any costs related to Customer's general administration, management, or overhead. EMWD shall reimburse Customer for all approved project expenditures within thirty calendar days following receipt and approval of Customer's monthly expense submittal.

4 **MWD Funding** Customer hereby acknowledges and agrees that any grant, or other funding associated with the Site retrofit to recycled water contemplated herein that is offered or provided by or through the Metropolitan Water District of Southern California (MWD) shall be assigned to, or otherwise be the property of EMWD.

5 **Recycled Water Rates and Charges** Following Project completion, Customer hereby agrees to initiate receipt of recycled water. For a period not-to-exceed eight years following connection and Customer's initial billing for recycled water, EMWD shall charge Customer a rate for recycled water representing 75 percent of EMWD's then current charges for potable water, currently (insert \$xxxx per acre feet). Upon completion of the aforementioned term EMWD will adjust Customer's charges to the then current recycled water rate, currently (insert \$xxxx per acre feet).

6 **Books and Records** Customer shall keep accurate books and records of the actual direct Project costs, and EMWD may require Customer to verify that the materials and labor for which reimbursements were made have been installed and performed as required by this Agreement. Customer shall allow EMWD's authorized representative(s) to examine and duplicate any records relevant to the verification of the actual direct Project costs, including without limitation all contract bids and invoices. Any changes that occurred during the course of construction shall be properly documented. Customer shall retain all Project records for three years after the completion of the Project and shall provide any Project records to EMWD for its review, upon request

7 **Compliance with Laws** Customer shall comply with all applicable statutes, ordinances, rules and regulations, as may be amended from time to time, of EMWD and all federal, state, and local regulatory agencies pertaining to use of recycled water.

8 **System Maintenance** Customer be solely responsible to own, operate and maintain its on Site irrigation system, including without limitation repairing and maintaining any items necessary to insure proper and ongoing system performance.

9 **Insurance** Customer shall require any contractor performing installation services hereunder to provide and maintain insurance coverage in an amount and type mutually approved by EMWD and Customer, naming EMWD as "additionally insured".

10 **Indemnification** Customer shall indemnify, defend, and hold harmless EMWD and its directors, officers, employees, and agents from and against any and all claims asserted or liability established for damages or injuries of any kind to any person or property, including damages to Customer's property or injury to Customer's directors, officers, employees, agents, or contractors, arising from or related to, or alleged to arise from or relate to, the acts or omissions of EMWD or Customer and its respective directors, officers, employees, agents, or contractors, in performing the work or services herein, including without limitation all expenses of investigating and defending against same.

11 **General Provisions**

11.1 **Notice** Any notice, payment, or instrument required or permitted to be given hereunder shall be deemed received upon personal delivery or 72 hours after deposit in any United States mail depository, first class postage prepaid, and addressed to the Party for whom intended, as follows:

If to EMWD: Eastern Municipal Water District  
2270 Trumble Road  
Perris, CA 92572-8300  
Attention: General Manager

If to Customer: XXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXX

Either Party may change such address by notice given to the other Party as provided in this section.

11.2 **Non-Waiver** EMWD shall not be deemed, by any act of omission or commission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by EMWD, and then only to the extent specifically set forth in writing. A waiver with reference to one event shall not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event.

11.3 **Further Acts** Each Party agrees to perform any further acts and to execute and delivery any documents which may be reasonably necessary to carry out the provisions of this Agreement.

11.4 **Time of the Essence** Time is of the essence in the performance of this Agreement.

11.5 **Neutral Interpretation** The provisions of this Agreement shall be construed as to their fair meaning, and not for or against any Party based upon any attribution to such Party as the source of language in question.

11.6 **Binding Effect** This Agreement is binding upon, and inures to the benefit of, each Party hereto and its respective agents, employees, representatives, officers, directors, affiliates, assigns, and successors.

11.7 **No Third-Party Beneficiaries** This Agreement is made solely for the benefit of the Parties hereto and their respective permitted successors and assigns, and no other person or entity shall have or acquire any right by virtue of this Agreement unless otherwise expressly agreed to by all the Parties hereto.

11.8 **Governing Law** This Agreement shall be construed and interpreted in accordance with the laws of the State of California, excluding any choice of law provisions.

11.9 **Jurisdiction; Venue** Any action taken to enforce this Agreement shall be maintained in the Superior Court of Riverside County, California. The Parties expressly consent to the jurisdiction of said court and agree that said court shall be a proper venue for any such action.

11.10 **Integration** This Agreement contains the entire understanding between the Parties and supersedes any prior understanding and/or written or oral agreements between them respecting the subject matter of this Agreement. There are no representations, agreements, arrangements, or understandings, oral or written, by and between the Parties relating to the subject matter of this Agreement, which are not fully expressed herein. The terms of this Agreement are intended by the Parties as a final expression of their agreement with respect to such terms as are included herein, and may not be contradicted by evidence of any prior agreement or any contemporaneous agreement. The Parties further intend that this Agreement constitutes the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial proceeding involving this Agreement.

11.11 **Severability** If any provision of this Agreement shall be invalid or unenforceable, either in its entirety or by virtue of its scope or application to given circumstances, such provision shall be deemed modified to the extent necessary to render the same valid, or as not applicable to given circumstances, or to be excised from this Agreement, as the situation may require, and this Agreement shall be construed and enforced as if such provision had been included herein as so modified in scope or application, or had not been included herein, as the case may be, it being the stated intention of the parties that had they known of such invalidity or unenforceability at the time of entering into this Agreement, they would have nevertheless contracted upon the terms contained herein, either including such provisions only to the maximum scope and application permitted by law, or excluding such provisions, as the case may be.

11.12 **Counterparts** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same instrument. The signature page of any counterpart may be detached without impairing the legal effect of the signatures thereon, provided such signature page is attached to any other counterpart identical to the first counterpart except having signature pages executed by other parties to this Agreement attached thereto.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed as of the Effective Date.

**EASTERN MUNICIPAL WATER DISTRICT**

By: \_\_\_\_\_  
Paul D. Jones II, P.E.  
General Manager

Dated: \_\_\_\_\_

**CUSTOMER**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

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**EXHIBIT "A"**

**PROJECT DESIGN AND COST ESTIMATE**

This Page to be Completed and Attached to this Agreement Prior to Construction

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**EXHIBIT "B"**

**CUSTOMER'S BID AND/OR COST PROPOSAL**

This Page to be Completed and Attached to this Agreement Prior to Construction

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