

AGREEMENT FOR NON-POTABLE WATER SERVICE

This AGREEMENT FOR NON-POTABLE WATER SERVICE (“**Agreement**”) is made this ___ day of _____, 2024 by and between the FRIENDS OF ELKHORN, LLC, a California limited liability company (“**Landowner**”) and STOCKTON EAST WATER DISTRICT, organized and existing under and by virtue of Enabling Legislation of the California State Legislature (“**District**”). Landowner and District are each individually referred to in this Agreement as a “**Party**” and collectively as the “**Parties.**”

1. RECITALS.

A. Landowner is the owner of that real property located near 1050 ELKHORN ROAD, STOCKTON, and identified as San Joaquin County Assessor Parcel Nos. 070-090-300 and -310 (“**Property**”), which Property is within the boundaries of District. The Property is operated by Landowner as a golf course, requiring non-potable water for irrigation.

B. Landowner has requested non-potable municipal water service (“**Water**”) from District for irrigation of the Property.

C. District does not have physical improvements in place that can provide Water to the Property, but has entered into a water transfer agreement with Woodbridge Irrigation District (“**WID**”) to supply the Water to the Property dated _____, 2024 (“**Transfer Agreement**”).

D. The Parties intend by this Agreement to confirm the terms and conditions under which Water may be provided to the Property.

NOW THEREFORE, the Parties agree as follows:

2. WATER.

A. Water Service. Provided Water is available and provided WID continues to agree to deliver Water to the Property, District will provide Water to the Property, upon the same terms and conditions that it provides irrigation water to properties within the District boundaries.

B. Water Availability. The Transfer Agreement makes Water available for use by Landowner only under certain circumstances. Landowner has received a copy of the Transfer Agreement, and is familiar with its terms. District shall provide Landowner with advance notice when Water is available for diversion under the Transfer Agreement and this Agreement. Landowner acknowledges that it has no legal right to divert water from Pixley Slough during the irrigation season without authorization by District. The Parties acknowledge that while the Property uses Water for municipal purposes as defined by the District’s governing legislation, even in years when Water is available in Pixley Slough for diversion by Landowner, the Water available under this Agreement is available only during the irrigation season as determined annually by WID and the District (ordinarily March through October of each year).

C. Water Measurement. The District will install, maintain, and replace, as necessary, a flow meter with a volumetric totalizer for measurement of all water diverted by Landowner.

Landowner will assist to facilitate installation of the flow meter to the meter manufacturer's specifications.

3. **RULES AND REGULATIONS.** Water delivery from DISTRICT is subject to District rules and regulations, as adopted and modified from time to time, including all applicable charges.

4. **WATER USE EFFICIENCY.** Landowner shall demonstrate its overall irrigation efficiency on the Property and be able to achieve efficiency goals established by the District from time to time. The ability to achieve these efficiency goals will be evaluated by the District. The burden shall be on the Applicant(s) to prove that irrigation efficiency goals are maintained.

5. **TERM.** This Agreement shall become Effective on the Effective Date and shall terminate on September 30, 2028. The Parties may renew this Agreement upon mutually agreeable terms provided WID is willing to extend the Transfer Agreement.

6. **RATES.** Landowner agrees to pay to District the rate established annually by the Board of Directors of the District after public hearing.

7. **INSTALLATION AND OPERATION OF CONVEYANCE FACILITIES.** Landowner agrees to install, operate and maintain the facilities necessary to transport Water from Pixley Slough to the Property at Landowner's sole cost and expense.

8. **ACCESS EASEMENT.** Landowner agrees to provide direct ingress and egress, Monday through Friday, during normal business hours, to the District's agents, including WID, vehicles and equipment during the term of this Agreement. The District will coordinate access with the Landowner at least 24 hours in advance.

9. **QUALITY OR FITNESS OF WATER.** District makes no warranty or representations as to the quality or fitness for use of the Water sold and provided to Landowner pursuant to this Agreement. Landowner shall be responsible for all necessary measures at its own expense for any testing, treatment, and other steps required for Water sold pursuant to this Agreement.

10. **AVAILABILITY & REDUCTION IN WATER.** District makes no representation, guarantee or warranty to Landowner regarding the availability of Water or the quantity, quality, or delivery times of said Water. Water delivered to Landowner under this Agreement may be reduced by District due to it becoming unavailable as determined by the District, drought, failure of facilities, intervening acts, failure of [Woodbridge Irrigation District](#) to [deliver](#) the Water, or any other actions beyond the control of District.

11. **INDEMNIFICATION.** This Agreement is made on the express condition that District shall be free from all liability and claims for damages by reason of any injury to or death of any person, or persons, or damage to property of any kind whatsoever, arising out of or in any manner connected with this Agreement, District's provision of Water pursuant to this Agreement, and/or with Landowner's acts or omissions related to this Agreement. In this regard, Landowner hereby agrees to and shall indemnify and hold harmless District from and against any and all claims, damages, loss, liability and expenses, including court costs and attorneys' fees, arising out of or on account of injury to or death of any person or loss of or damage to any property as hereinabove mentioned.

12. **NOTICE.** Any notice or communication required or permitted hereunder shall be in writing and shall be delivered personally, delivered by nationally recognized overnight courier service or sent by certified or registered mail, postage prepaid, or, if an email address is provided, sent by electronic transmission, subject to confirmation of such electronic transmission. Any such notice or communication shall be deemed to have been given (i) when delivered, if personally delivered, (ii) one (1) Business Day after it is deposited with a nationally recognized overnight courier service, if sent by nationally recognized overnight courier service, (iii) the day of sending, if sent by email prior to 5:00 p.m. (PT) on any Business Day or the next succeeding Business Day if sent by email after 5:00 p.m. (PT) on any Business Day or on any day other than a Business Day or (iv) five (5) Business Days after the date of mailing, if mailed by certified or registered mail, postage prepaid, in each case, to the following address or email address, or to such other address or addresses as such Party may subsequently designate to the other Party by notice given hereunder:

To Landowner: Friends of Elkhorn, LLC
5637 N. Pershing Ave, Suite A-1
Stockton, CA 95207
Phone: 209-473-0394
Email: patcurry2539@sbcglobal.net

To District : Stockton East Water District
Attention: General Manager
Post Office Box 5157
6767 East Main Street
Stockton, CA 95215
Phone: 209-948-0333
Email: jhopkins@sewd.net

“**Business Day**” means any day other than a Saturday, Sunday or any other day on which banking institutions in the State of California are authorized by law or executive action to close.

13. MISCELLANEOUS.

A. Amendments. This Agreement supersedes all prior negotiations of the Parties and contains the entire Agreement of the Parties on the matters covered hereby. This Agreement may not be modified orally, or in any other manner, other than by an Agreement in writing signed by all of the Parties.

B. Permits and Government Approvals. Landowner shall obtain all necessary permits and governmental approvals required for their performance under this Agreement.

C. Attorney’s Fees. In the event of any controversy, claim, or dispute, relating to this Agreement or the breach thereof, the prevailing Party shall be entitled to recover from the losing Party reasonable expenses, attorney's fees and costs.

D. Counterparts and Electronic Signatures. This Agreement may be executed in two or more counterparts and when so executed shall have the same force and affect as though

all signatures appeared in one document. An electronic signature of this Agreement shall be considered an original signature of this Agreement for all purposes.

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

LANDOWNER

FRIENDS OF ELKHORN, LLC, a
California limited liability company

By _____
_____, President

DISTRICT

STOCKTON EAST WATER DISTRICT

By **DRAFT** _____
Richard Atkins, President

ATTEST:

By **DRAFT** _____
Justin M. Hopkins, General Manager

RBM Handout: 08/13/24

Weekly Water Report	As of: August 6, 2024	As of: August 13, 2024	
New Hogan (NHG) TOC	317,100	317,100	AF
Storage:	204,943	201,282*	AF
Net Storage Change:	-3,229	-3,661	AF
Inflow:	23	32*	CFS
Release:	235	281*	CFS
New Melones (NML) Allocation	75,000	75,000	AF
Storage:	1,921,409	1,907,402*	AF
Net Storage change:	-16,246	-14,007	AF
Inflow:	813	614**	CFS
Release:	1,873	1,873***	CFS
Source: CDEC Daily Reports			

Goodwin Diversion (GDW)			
Inflow (Tulloch Dam):	1,870	1,722	CFS
Release to Stanislaus River (S-98):	314	303	CFS
Release to OID (JT Main):	883	920	CFS
Release to SSJID (SO Main):	347	407	CFS
Release to SEWD & CSJWCD:	<u>245</u>	<u>211</u>	CFS
Total Release	1,789	1,841	CFS
Source: Tri-Dam Operations Daily Report			
Farmington Dam (FRM)			
Diverted to SEWD:	110	50	CFS
Diverted to CSJWCD:	170	160	CFS

Surface Water Used			
Irrigators on New Hogan:	14	17	
Irrigators on New Melones:	4	5	
Out-Of-District Irrigators:	2	1	
DJWWTP Production:	56	40	MGD
North Stockton:	16	13	MGD
South Stockton:	9	7	MGD
Cal Water:	26	18	MGD
City of Stockton DWSP Production:	16	20	MGD

District Ground Water Extraction			
74-01	0	0	GPM
74-02	0	0	GPM
North	0	0	GPM
South	0	0	GPM
Extraction Well # 1	<u>0</u>	<u>0</u>	GPM
Total Well Water Extraction	0	0	GPM
Total Ground Water Production	0	0	MGD

Note: *The data reported here is available as of 07/27/24**

****The data reported here is available as of 08/11/24**

***The data reported here is available as of 08/12/24**

All other flow data reported here is preliminary, as of 9:00 a.m. on 08/13/24