



City of Flagstaff

Direct Delivered Reclaimed Water Agreement



This agreement ("Agreement") is made and entered into by and between the City of Flagstaff Water Services Director on behalf of the City of Flagstaff ("City"), and

BUYER	Pine Canyon Golf LLC
ADDRESS:	3000 S Clubhouse Circle
CITY - STATE - ZIP:	Flagstaff, AZ 86005

WHEREAS, Buyer is a current reclaimed water customer of the City, and Buyer desires to continue purchasing reclaimed water for purposes that do not require potable water quality under City, State, or Federal regulations; and

WHEREAS, the City has authority under A.R.S. §9-511(A), and Flagstaff City Code Section 7-02-001-0024 to enter into an agreement to sell reclaimed water to Buyer; and

WHEREAS, the City and Buyer had a past agreement, and desire to enter a new agreement of the sale and use reclaimed water; and

WHEREAS, the City owns and operates a treatment and delivery system (Rio de Flag Water Reclamation Plant ("WRP") and/or Wildcat Hill WRP) which is capable of delivering to Buyer reclaimed water that meets quality standards applicable to a landscape irrigation system as set forth in Arizona Administrative Code, Title 18, Chapter 11. Article 3, Reclaimed Water Quality Standards; and

WHEREAS, the City owns and operates a public reclaimed water pipeline from the WRP to the Buyer's Property Line which is the Point of Delivery as referenced throughout this Agreement; and

WHEREAS, Buyer has constructed, owns, operates, and maintains a private reclaimed water distribution system from the Buyer's Meter to the Buyer's property ("Buyer Reclaimed Water Facilities").

NOW THEREFORE, in consideration of the mutual covenants set forth herein, the City hereby agrees to sell and Buyer hereby agrees to purchase reclaimed water from the City, subject to the following terms and conditions:

1. **Place of Use.** Reclaimed water delivered by the City under this Agreement shall be used by Buyer on the following described property ("the Property"), for the use described in paragraph 3 below:

PROPERTY:	Pine Canyon Golf
PROPERTY SITE ADDRESS:	3000 S Clubhouse Circle
CITY - STATE - ZIP:	Flagstaff, AZ 86005
PHONE:	(415) 517-8802
LOCAL CONTACT PERSON: (for notice hereunder)	Josh Clevenger
E-MAIL ADDRESS:	josh@pinecanyon.net
COUNTY ASSESSOR PARCEL #:	105-10-497
LONGITUDE:	35.16496045437557

LATITUDE:	-111.63729846429639
APPROXIMATE ACRES:	600
TYPE OF REUSE:	Landscape Irrigation Snowmaking at 18th hole (Only in Winter)
PEAK MONTHLY WATER DELIVERY SCHEDULE:	30,000,000

2. **Intended Use/Quality Standards.** Buyer intends to use the reclaimed water delivered by the City for the purpose of landscape irrigation ("Intended Use"). If required, the Buyer is responsible for conducting all testing and analysis of the reclaimed water at the Point of Delivery (defined below) to ensure that it meets all applicable standards under City, State, and Federal law and is of adequate quality for Buyer's Intended Use. City is not obligated and shall not be required under this Agreement to meet standards higher than those imposed pursuant to City, State, or Federal requirements.
3. **Point of Delivery/Maintenance Obligations.** The City shall deliver the reclaimed water contemplated by this Agreement to the existing Buyer's Property Line also known as the "Point of Delivery". Buyer agrees that it shall accept, test (if required) and measure the reclaimed water at the Point of Delivery. The Point of Delivery consists of a meter box, meter, valves, and other appurtenances necessary to meter reclaimed water (collectively, the "Meter Box"). The City shall be responsible for maintaining and operating the public reclaimed water system, up to and including the Meter Box. Buyer shall be responsible for maintaining and operating all mechanical items and associated equipment with the Buyer Reclaimed Water Facilities from the Meter Box to the Property, including any and all areas where Buyer directly or indirectly uses reclaimed water (collectively the "Place of Use"). The Parties further agree that the City shall be responsible for meeting all applicable obligations for the reclaimed water while the reclaimed water is within the Meter Box; and that the Buyer shall be responsible for meeting all applicable obligations from the point where the reclaimed water leaves the Meter Box and enters the Buyer Reclaimed Water Facilities, and to any and all Places of Use.
4. **Monthly Rate.** The base monthly service charge applies whether the water meter is active or inactive, as set forth in Title 7 of the Flagstaff City Code. Nothing herein shall excuse Buyer from payment of service or other charges, such as the base monthly service charge, as are applicable to the time, place, or manner of service and delivery.
5. **Costs to Buyer.** All cost and expense arising from or related to the use of reclaimed water by Buyer, including, but not limited to those associated with the construction, maintenance, and operation of the reclaimed water delivery system on the Property, shall be the sole responsibility and obligation of Buyer.
6. **Compliance with Regulations.** In connection with its duties and obligations under this Agreement, Buyer, at its sole cost and expense, shall comply with all Federal, State and local laws, regulations, ordinances, permits and standards that now exist, and as may be enacted in the future, including those that pertain to the use, handling and distribution of reclaimed water. Such laws, regulations, ordinances and standards may include, but not be limited to, requirements and restrictions governing use of reclaimed water; limits on reclaimed water contact with residents, guests, invitees, employees, members of the public, and adjoining properties; control of access to reclaimed water, its delivery system, and the area of storage and use; and warning signs on Buyer's reclaimed water delivery system, and use of reclaimed water on the Property. All deliveries of reclaimed water by the City to the Point of Delivery shall be made in accordance with the City's ordinances, rules, and regulations.
7. **Buyer's Responsibilities.** The Buyer shall comply with all applicable City, State, and Federal standards now or in the future, pertaining to the use of reclaimed water, including but not limited to:
 - a) The Buyer shall provide and install sufficient signage as required by State law for reclaimed water use. Such signs shall be prominently displayed at each reuse site. Said signs shall be placed at a minimum at all logical point of entry to each reuse site,

at the entrance to all lakes and ponds at each reuse site, at all plumbing outlets, and at all hose bibs providing reclaimed water or other locations as required by the City's permits with ADEQ.

- b) The Buyer shall prevent reclaimed water from standing on open access areas during normal periods of use.
 - c) The Buyer shall prevent reclaimed water from coming into contact with drinking fountains, water coolers, or eating areas.
 - d) The Buyer shall secure hose bibs discharging reclaimed water to prevent use by the public.
 - e) The Buyer shall take such other precautions as may be prudent to retain reclaimed water within the Place of Use.
- 8. Continuation of Service.** Continuation of service after the expiration of this Agreement is within the City's sole discretion, and is subject to the City's inspection of Buyer's on-site reclaimed water storage and reuse system in order to verify the installation of proper backflow prevention equipment, signage, and any other applicable requirements for the storage and use of reclaimed water including all applicable City, State, and Federal requirements.
- 9. Duration and Termination of Service.** The duration of this Agreement shall be five (5) years from date approved and executed. Termination of this Agreement prior to its expiration date may occur in the event that the Buyer becomes insolvent or remains in a state of default for a period longer than thirty (30) days, at which point this Agreement will terminate with no further action of the Parties. Additionally, either Party may terminate this Agreement with or without cause by providing the other Party with at least thirty (30) days advance written notice.
- 10. Renewal.** This Agreement may be renewed or extended for up to three (3) additional five (5) year terms by mutual written consent of the parties. The Water Services Director, or their designee shall have authority to approve renewal on behalf of the City.
- 11. Potential Disruption of Service.** Buyer hereby agrees and acknowledges the possibility that the City may be required to permanently or temporarily terminate, in whole or in part, delivery of reclaimed water to the Buyer for any number of reasons, including, but not limited to emergency conditions, water quality or other regulatory issues, peak demands, insufficient water supply, or planned system maintenance. The City will use its best efforts to provide advance notice to Buyer of any permanent or temporary termination of reclaimed water delivery. Buyer shall be solely responsible for any damage that may be caused to Buyer-owned facilities by such permanent or temporary termination in the reclaimed water delivery. In the event of an emergency which requires the City to temporarily suspend or curtail delivery of reclaimed water to Buyer, Buyer understands and agrees that the City will turn off the Meter Valve at the Point of Delivery. In order to accommodate peak demand periods or planned maintenance of the public reclaimed water delivery system, the City shall provide Buyer with at least twenty-four (24) hour notice of the need to completely cease reclaimed water usage, or to reduce the volume of reclaimed water used at the Property. Upon receiving such notice, Buyer shall alter Buyer's reclaimed water usage in accordance with the City's request.
- 12. Resale or Off-Site Use of Reclaimed Water Prohibited.** Buyer shall not, without the express written permission of the Water Services Director, deliver, use, or resell reclaimed water, either directly or indirectly, off-Property or to any other person or entity, or use the reclaimed water for any purpose other than the Intended Use.
- 13. Inspection.** Buyer acknowledges and agrees that, in order to verify compliance with this Agreement and with all applicable laws and regulations, the City, State, County or other agency with jurisdiction may inspect the Property being served with reclaimed water at any reasonable time.

- 14. Successors and Assigns.** The Agreement shall be binding upon the successors and assigns of the City and the Buyer and may be assigned or transferred by either Party with the prior consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. The Party seeking to assign, or transfer shall give the other Party thirty days' written notice of its intent to assign or transfer. If no response is made within the thirty-day period, the lack of a response will be deemed to be consent to the assignment or transfer. The assigning or transferring Party shall be released from any and all liabilities and/or obligations and/or performance arising, accruing or occurring under this Agreement after the time of that assignment or transfer and the other Party shall look solely to the assignee or transferee with respect to any such liabilities and/or obligations and/or performance under this Agreement.
- 15. Cancellation for Conflict of Interest.** This Agreement is subject to the cancellation provisions of A.R.S. §38-511.
- 16. Insurance.** Buyer shall maintain during the term of this Agreement, and during any renewal term of this Agreement, general liability insurance in the minimum amount of Two Million Dollars (\$2,000,000.00) to cover any liability arising from the acts and omissions of Buyer, its officers, employees, or agents. The City shall be identified as an additional insured on any such policy. Buyer shall provide the City with a current certificate of insurance with respect to such coverage and conditions.
- 17. Indemnification.** Buyer agrees to indemnify the City, and its past, present and future officers, officials, agents, representatives, employees, successors and assigns ("City Indemnitees") from all damages, losses, costs and expenses (including reasonable attorneys' fees and litigation expenses) regarding Buyer's use or handling of the reclaimed water purchased pursuant to this Agreement. This indemnity obligation begins following Buyer's acceptance of the water at the Point of Delivery. Buyer's indemnity obligation pursuant to this paragraph shall not include any damages, losses, costs and expenses resulting from the City's failure to comply with any federal, state, or local law, statute, ordinance, rule, regulation or court decree.
- 18. Excusable Non-Performance.** In the event of an act of God, natural catastrophe, war, civil insurrection, accident, act of governmental or judicial bodies other than the City, the failure of either Party to perform its obligation under this Agreement shall be excused for so long as the condition interfering with performance continues. The maintenance and operation of the City's sewage system and of the City's wastewater treatment plants shall be solely within the discretion of the City, and, in the event the City discontinues operation of its sewage treatment plant, or does not retain legal authority to provide reclaimed water or recovered reclaimed water, as the case may be, all obligations of either Party to perform under this Agreement shall terminate without prejudice to any claims or causes of action existing prior to such termination of this Agreement.
- 19. Default.**
- a) **Buyer's Default.** The Buyer shall be in default under this Agreement if the Buyer: (i) fails to pay within ten (10) days of when due any sum or other payment required to be paid to the City by the Buyer under this Agreement; (ii) fails to perform or observe any other covenant, agreement or condition which the Buyer is required to perform or observe or breaches any other provision of this Agreement, and such failure or breach is not cured within thirty (30) days after delivery of written notice to the Buyer of such failure or breach; (iii) is named as a debtor in any voluntary or involuntary bankruptcy proceeding; (iv) places substantially all of the Buyer's assets in receivership or causes or allows substantially all of the Buyer's assets to be subject to attachment or other judiciary seizure; or (v) makes or suffers a general assignment for the benefit of creditors. In the event that the failure or breach cannot be cured within thirty (30) days, the Buyer shall cure such failure or breach expeditiously or shall be in default.
- b) **City's Default.** The City shall be in default under this Agreement if the City fails to perform or observe any covenant, agreement or condition which the City is required to perform or observe, or breaches any other provision of this Agreement, and such failure is not cured within thirty (30) days after delivery of written notice to the City of such failure. In the event that the failure or breach cannot be cured within thirty (30) days, the City shall cure such failure or breach expeditiously or shall be in default.

- 20. Entire Agreement.** This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement, and all prior and contemporaneous agreements, representations, negotiations and understandings of the Parties, oral or written, are hereby superseded and replaced by this Agreement.
- 21. Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Arizona, and venue for any action under this Agreement shall be Coconino County, Arizona.
- 22. Waiver.** Any waiver granted by either Party shall not be deemed effective except when specified in the waiver, in writing, and executed by the Party against whom enforcement of the waiver is sought. No waiver by any Party of a breach of any of the terms, covenants or conditions of this Agreement shall be construed or held to be a waiver of any other breach of this Agreement or any other term, covenant or condition contained in this Agreement.
- 23. No Third-Party Beneficiaries.** The Parties acknowledge and agree that the terms, provisions and conditions of this Agreement are for the sole benefit of, and may be enforceable solely by, the Parties to this Agreement, and none of the terms, provisions, conditions and obligations of this Agreement are for the benefit of, or may be forced by, any person not a party to this Agreement.
- 24. Severability.** In the event that any phrase, clause, sentence, paragraph, section or other portion of this Agreement becomes illegal, invalid or against public policy for any reason, or is held by any court of competent jurisdiction to be illegal, invalid or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in force and effect to the fullest extent permitted by law.
- 25. Venue and Attorneys' Fees.** Except as otherwise agreed by the Parties, any litigation brought by either Party against the other to enforce the provisions of this Agreement must be filed in the Coconino County Superior Court. In the event any action at law or in equity is instituted between the Parties in connection with this Agreement, the prevailing Party in the action will be entitled to its costs including reasonable attorneys' fees and court costs from the non-prevailing Party, as well as expenses incurred in connection with the prosecution or defense of such action.
- 26. Modification of Agreement.** This Agreement may be amended at any time by written amendment executed by both Parties. No modification of this Agreement shall be deemed effective unless in writing and signed by the Parties.
- 27. Dispute Resolution.** In the event that a dispute arises out of or relates to this Agreement and such dispute cannot be settled through negotiation, the Parties shall first attempt to resolve the dispute in good faith by mediation before resorting to litigation or some other dispute resolution procedure. Mediation shall be self-administered and conducted under the CPR Mediation Procedures established by the CPR Institute for Dispute Resolution, 366 Madison Avenue, New York, NY 10017, (212) 949-6490, www.cpradr.org, with the exception of the mediator selection provisions, unless other procedures are agreed upon by the Parties. Unless the Parties agree otherwise, the mediator(s) shall be selected from panels of mediators trained under the Alternative Dispute Resolution Program of the Coconino County Superior Court. Each Party shall bear its own costs in mediation. The Parties shall not be obligated to mediate if an indispensable Party is unwilling to join the mediation. This mediation provision shall not constitute a waiver of the Parties' right to initiate legal action if a dispute is not resolved through good faith negotiation or mediation.
- 28. Authorization.** The Parties to this Agreement represent and warrant that the persons executing this Agreement have full authority to bind the respective Parties to all of the terms and provisions of this Agreement.
- 29. Captions.** The captions used in this Agreement are for convenience only, are not a part of this Agreement and do not in any way limit or amplify this Agreement's terms and provisions.
- 30. Construction of Agreement.** This Agreement has been arrived at by fair negotiation and shall not be construed against either Party.

- 31. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from the counterparts and attached to a single instrument so that the signatures of all Parties may be physically attached to a single document.
- 32. **Notice.** Notice to be given to either party to the other relative to this agreement shall be hand-delivered or delivered by postage prepaid first-class U.S. mail to the "Local Contact Person". The "Local Contact Person" for the Buyer is listed under paragraph 1, Place of Use, above. The "Local Contact Person" for the City is:

Water Services Director
 City of Flagstaff
 2323 N. Walgreens Street, Suite 1
 Flagstaff, AZ 86004

Notice shall be effective upon actual receipt by the Local Contact Person.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date approved and executed below.

CITY OF FLAGSTAFF

Pine Canyon Golf LLC

BY: [Signature]
 Title: Water Services Director

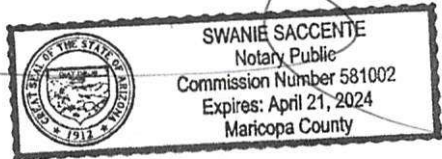
BY: [Signature]
 Title: Authorized Agent

Attest:

Witness:

Stacy Fobar for
 City Clerk
Digitally signed by Stacy Fobar for
 DN: cn=Stacy Fobar for, o=City of Flagstaff, ou=City Clerk's Office, email=stacy.fobar@flagstaffaz.gov, c=US
 Date: 2023.03.16 11:50:13 -07'00'

[Signature]



Approved as to form:

Sterling T. Solomon
 City Attorney
Digitally signed by Sterling T. Solomon
 Date: 2023.03.07 13:34:24 -07'00'

APPROVED and EXECUTED this _____ day of _____, 2022.

Handwritten signature
A. J. ...

Handwritten signature
...

