

OPTION AGREEMENT
BY AND BETWEEN CITY OF RIDGECREST AND THE INDIAN WELLS VALLEY
GROUNDWATER AUTHORITY FOR AN OPTION TO PURCHASE TREATED
WATER FROM THE WASTEWATER TREATMENT FACILITY

This Agreement for the option to purchase recycled water (“Option Agreement” or “Agreement”) is dated this 19th day of November, 2020 (“Effective Date”), and is entered into by and between City of Ridgecrest, a municipal corporation (“City”) and Indian Wells Valley Groundwater Authority, a Joint Powers Authority (“Authority”). City and Authority shall be the signatories to this Agreement and shall hereinafter be referred to as “Party” or “Parties.”

The City operates a Wastewater Treatment Plant (the “Facilities” operated pursuant to a Grant of Easement on certain real property identified as Naval Air Weapons Station China Lake (the “Installation”) and owned by the United States and represented by the Commanding Officer, Naval Facilities Engineering Command, Southwest, acting by and through the Secretary of the Navy. The City was granted an easement for the construction, installation, uninterrupted operation, maintenance, repair, renovation, and replacement of the “Facilities.” (attached as Exhibit A).

Pursuant to that agreement, the Installation has the right to use 525-acre feet of water each year. 325-acre feet each year of treated water can be used in any manner the Installation deems necessary to support its mission. The additional 200 acre feet of treated water per year can be used to implement the Installation’s obligation to provide mitigation and habitat preservation measures for the protection of the Federally listed endangered species commonly known as the Mojave Tui Chub (“Tui Chub”) or in the alternative for any other Installation use not to include landscaping, unless such landscaping use results in a reduction in the use of groundwater and is approved by the City. All other water produced at the Facility is owned by the City (“Available Treated Water”).

City intends to replace the current Facility with a new Facility and anticipates that such construction will take approximately three years to complete.

The Authority was created in compliance with Sustainable Groundwater Management Act (SGMA”) to create a Groundwater Sustainability Plan for the Indian Wells Valley Groundwater Basin (“Basin”). The purpose of the GSP is to provide a plan that implements projects necessary to allow water to be continued to be extracted from the Basin without suffering undesirable results. One of the projects identified in the GSP is the purchase of treated water from the Facility so that this water can be recycled to supplement native water supplies.

This agreement is adopted in furtherance of the GSP project goals. The Authority desires to purchase the Available Treated Water from the City and use it to mitigate against undesirable results caused by the pumping of groundwater from the Basin pursuant to the Groundwater Sustainability Plan (GSP) approved by the Authority. Doing so will meet the Parties shared objective to optimize the use of the Available Treated Water to mitigate the need for imported water and to maintain the sustainability of the water supply in the region. Through this agreement the City pledges to make its treated water available for purchase by the Authority upon completion of the new Facility.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are acknowledged, the Parties agree as follows:

1. UNDERSTANDING OF THE PARTIES

1.1 **Option and Option Fee.** During the term of this Agreement the City shall provide for sale to the Authority all Available Recycled Water produced at its Wastewater Treatment Plant (as defined below) upon 30-day notice to the City. "Available Recycled Water" shall mean wastewater which has been processed and treated by City's operation of the New Facility and is delivered to any subsequent facilities which may be constructed for delivery of this water. Available Recycled Water shall not include the 525-acre feet produced annually that is owned by the Installation pursuant to its Easement agreement with the City. Water shall not be available under this agreement until completion of construction of the New Treatment Facility which is currently estimated to be within three years from the date of this agreement.

1.2 **Consideration.** As consideration for the Option granted under this Agreement, Authority affirms its agreement to pay City's past administrative costs incurred as a result of formation of the Authority and adoption of the GSP in the amount of \$375,000 as set forth in the materials supplied to support the most recent budget of the Authority ("Prior Costs"). As further consideration, Authority agrees to reimburse the City for its current and future, administrative costs incurred in connection with the operation of the Authority including, but not limited to, the Recycled Water Project ("Future Costs"). Collectively, the Prior Costs and Future Costs constitute the "Option Fee." The payment of Prior Costs portion of the option Fee will occur on or before December 31, 2021. Thereafter the Option Fee will be paid on Quarterly basis within 30 days of invoice being submitted by the City and will continue after the Term Option until terminated by mutual agreement of both Parties

1.3 **Further Consideration.** As further consideration for the Option granted under this Agreement, Authority agrees that recycled water derived from Available Recycled Water shall be put to municipal or industrial uses either located within the City or for the direct benefit of the citizens of the City ("Permitted Uses"). Further, if the Available Recycled Water is recharged into the Basin any pumping credits derived from this recharge shall be granted to Permitted Uses. The application of Available Recycled Water to Permitted Uses in furtherance of the GSP is hereafter referred to the "Project."

1.4 **Further Consideration.** As further consideration for the Option granted under this Agreement, Authority shall require that any party which uses water provided in this agreement shall execute an separate agreement with the Authority that acknowledges the City's overlying right to use native groundwater as reflected in the GSP and waives any such claim to that water.

1.5 **Retention of Option Fee.** The Option Fee paid to the City shall belong to the City and be retained in consideration of granting this Option, whether or not the Authority ultimately exercises the Option and starts buying Available Recycled Water from the City.

1.6 **Pricing of Available Recycled Water.** Upon exercise of the option by the Authority and prior to the delivery of Available Recycled Water by the City, both parties agree to negotiate and execute a contract for such purchase and sale of the Available Recycled Water. The

purchase price and all other terms of sale will be negotiated between the Parties in good faith. City agrees that the price paid for the Available Recycled Water must be set at a level that promotes the use of recycled water to supplement groundwater supplies in the Basin.

1.7 **Option Term.** The term of this Option Agreement (“Option Term”) shall commence on the Execution Date and shall expire or terminate on the earliest of the following dates:

1.7.1 5 years from the execution; or

1.7.2 The date on which a breach or default by Authority remains uncured following notice of the breach or default given in accordance with Section 1.9 hereof and the expiration of the grace period contained in that Section; or

1.7.3 The date that Authority begins buying Available Recycled Water from the City under a purchase agreement; or

1.7.4 Immediately upon a breach or default by Authority under Section 1.9 hereof.

1.8 **Termination.** In the event City terminates this agreement prior to the date identified above in **Section 1.7**, City shall refund the Future Costs portion of the Option Payment.

1.9 **Default and Remedies.**

1.9.1 City will be in default of this Agreement if:

 a) City fails to provide its Available Recycled Water (as set forth above) for purchase by Authority upon 30-day notice from the Authority given during the Option Term;

 b) City fails to comply with any of the other obligations under this Agreement.

1.9.2 In the event of City’s default under this Agreement which remains uncured within 30 days of written notice by the Authority, the Authority will be entitled to termination of the Agreement, to reimbursement of the Future Costs portion of the Option Payment, along with all of the other remedies available under the applicable law.

1.9.3 The Authority will be in default of this Agreement if:

 a) Authority fails to pay any portion of the Option Payment;

 b) Authority fails to diligently pursue the completion of the Project;

 c) Authority makes Project water available to uses other than Permitted Uses;

 d) Authority fails to comply with any of the other obligations under this Agreement.

1.9.4 In the event of Authority's default under this Agreement which remains uncured within 30 days of written notice by the City, the City will be entitled to termination of the Agreement and to all the remedies available under the applicable law.

2. COOPERATION IN CONSTRUCTION OF THE PROJECT

2.1 **Parties will cooperate with each other in creation of the Project.** Parties recognize the significant positive effect that the Project will have on the water supply in the region. During the term of this Option Agreement the Authority shall be responsible for designing and constructing the facilities necessary for the beneficial uses of the Available Recycled Water in furtherance of the Project. The parties agree that the Authority may choose to discharge these obligations by contracting for such services with another public agency such as the Indian Wells Valley Water District as mutually agreed by the Parties. City agrees to cooperate with the Authority and assist in bringing the Project to fruition. This promise to cooperate does not obligate the City to expend funds or commit staff time in connection with the Project except as mutually agreed by the Parties.

2.2 **Negation of Agency or Partnership.** City's agreement to cooperate with the Authority in connection with the design and construction of the Project and any other provision of this Agreement shall not be construed as making either party an agent or partner of the other party.

2.3 **City's Representations and Warranties.** City represents that it has the ability and will, upon execution of a purchase agreement, make available to the Authority the Available Recycled Water. This warranty does not preclude the City from selling Available Recycled Water to other entities during the duration of this Option Agreement, so long as City is able to perform once Authority exercises its option to purchase the Available Recycled Water. To the best of City's knowledge, there are not any present or foreseeable regulatory or statutory limits or prohibitions affecting City's ability to grant an option to purchase the Available Recycled Water or to sell it to the Authority. City warrants that it requires no other legal or governmental approval or authorization to grant this option. Each representation and warranty in this Section is material and shall be relied on by the Authority and is true in all respects as of the Effective Date.

2.4 **Authority's Representation and Warranties.** The Authority represents and warrants that during the Option Term and until this Agreement expires or terminates, the Authority will make all reasonable efforts to design and construct the Project, including obtaining all necessary approvals and retaining of professional experts to complete the environmental review processes, design and construction of the Project. The Authority further warrants that the Available Recycled Water or the water made available to the users as a result of acquisition of the Available Recycled Water by the Authority, shall be only used for Permitted Uses. Each representation and warranty in this Section is material and shall be relied on by the City and is true in all respects as of the Effective Date.

2.5 **Mutual Indemnification.** To the fullest extent permitted by law, and except as otherwise required by the Joint Powers Agreement, Authority agrees to indemnify and hold City, harmless from and against all costs, claims, liability, actions, damages, expenses (including reasonable attorneys' fees) (collectively, "Costs") arising out of, or by reason of entering into this

Option Agreement. Said indemnity shall not apply to any Costs resulting from the gross negligence or willful acts or omissions of the City, it's employees, agents, officers or officials.

To the fullest extent permitted by law, and except as otherwise required by the Joint Powers Agreement, City agrees to indemnify and hold Authority, harmless from and against all costs, claims, liability, actions, damages, expenses (including reasonable attorneys' fees) (collectively, "Costs") arising out of, or by reason of entering into this Option Agreement. Said indemnity shall not apply to any Costs resulting from the gross negligence or willful acts or omissions of the Authority, it's employees, agents, officers or officials.

3. GENERAL PROVISIONS

3.1 Joint Representations and Warranties. Each of the parties to this Agreement makes the following representations and warranties to the other party:

3.1.1 The persons who have executed this Agreement have been authorized to do so by the party on whose behalf the party is signing. All documents to be delivered under this Agreement will be executed by an authorized person. Each party has a good and legal right to enter into this Agreement and to perform all covenants of that party contained in this Agreement.

3.1.2 None of the warranties, representations, or statements made by any Party in this Agreement contain any untrue statements of material fact or omit a material fact necessary in order to make the statements not misleading.

3.2 Good Faith. Each Party shall use reasonable efforts and work in good faith for the expeditious completion of the purposes and goals of this Agreement and the satisfactory performance of its terms.

3.3 Time of Essence. Time is of the essence in the performance of this Agreement.

3.4 Governing Law. This Agreement is made under, and will be governed by, the laws of the State of California.

3.5 Waiver. Failure of either Party at any time to require performance of any provision of this Agreement shall not limit that party's right to enforce the provision. Waiver of any breach of a provision shall not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or of any other provision.

3.6 Severability. The provisions of this Agreement are severable, and the invalidity, illegality, or unenforceability of any provision of this Agreement will not affect the validity or enforceability of any other provisions. If any provision of this Agreement is found to be invalid, illegal, or unenforceable, the Parties shall endeavor to modify that clause in a manner which gives effect to the intent of the Parties in entering into this Agreement.

3.7 Amendments. This Agreement may be amended or modified only by written mutual consent of the Parties.

3.8 **Integration.** This Agreement contains the entire agreement between the Parties respecting the matter set forth, and expressly supersedes all previous or contemporaneous agreements, understandings, representations, or statements between the parties respecting this matter.

3.9 **Indemnified Parties.** Any indemnification contained in this Agreement for the benefit of a Party shall extend to the officers, employees, and agents of the Party.

3.10 **Counterparts.** This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

3.11 **Successors.** This Agreement shall be binding on and inure to the benefit of the Parties, and their respective heirs, personal representatives, successors, and assigns.

3.12 **Further Assurances.** Whenever requested to do so by the other Party, each Party shall execute, acknowledge, and deliver all further conveyances, assignments, confirmations, satisfactions, releases, powers of attorney, instruments of further assurance, approvals, consents, and all further instruments and documents as may be necessary, expedient, or proper, in order to complete all of the conditions and obligations under this Agreement, and to do all other acts and to execute, acknowledge, and deliver all documents as requested in order to carry out the intent and purpose of this Agreement.

3.13 **Notice.**

3.13.1 Any correspondence, communication or contact concerning this Agreement must be directed to the Parties at the name and address listed herein.

3.13.2 Notice will be deemed as given upon personal delivery, receipt of e-mail, receipt of fax confirmation, or five days after deposit in U.S. Mail, first-class postage, prepaid, and addressed as set forth above. (*Or de we want email notice as well*)

If to City of Ridgecrest:

Attn: City Manger
100 W. California Ave.
Ridgecrest, CA 93555
Tel.: 760.499.5000

With a Copy to:

Keith Lemieux, Esq.
Olivarez, Madruga, Lemieux & O'Neill
2659 Townsgate Road Suite 226
Westlake Village, CA 91361
Tel: (805) 495-4770
Fax: (805) 495-2787

If to Indian Wells Valley Groundwater Authority:

Attn: General Manager

500 West Ridgecrest Blvd.
Ridgecrest, CA 93555
Tel: (760) 384-5511

3.14 Expenses. Authority shall be solely responsible for any expenses it incurred in connection with the purposes described herein.

The Parties are signing this Agreement as of the dates opposite their respective signatures.


**INDIAN WELLS GROUNDWATER
AUTHORITY**

President, Board of Directors

CITY OF RIDGECREST



City Manager

APPROVED AS TO FORM:
