

## **TRANSITIONAL WATER SERVICE AGREEMENT**

### **EVERGREEN MEMORIAL HISTORIC CEMETERY**

**1. PARTIES.** This Transitional Water Service Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between **Evergreen Memorial Historic Cemetery, a California nonprofit corporation** ("Customer"), and the **City Of Riverside** ("City"), a California charter city and municipal corporation organized and existing under the laws of the State of California, each hereinafter sometimes referred to individually as "Party" and collectively as "Parties."

**2. RECITALS.** This Agreement is made with reference to the following facts, among others:

**2.1** Customer is a nonprofit corporation maintaining a cemetery within the City and is a current customer for water service at the Schedule WA-7 rate, "Special Metered Services."

**2.2** City operates a municipal utility providing retail water service to entities located within and outside of its service territory.

**2.3** City, through its Public Utilities Department, supplies potable water for commercial uses to Customer.

**2.4** On May 22, 2018, the City adopted a five-year water rate plan effective July 1, 2018. As part of that process, the City undertook a cost-of-service study and determined that the City was not adequately collecting from customers all costs for service under Schedule WA-7. In response, the City created the Schedule WA-11 rate, "Landscape Irrigation Metered Service" which will increase Customer's charges for water service. Customer is required to transition to the Schedule WA-11 rate or Schedule WA-6 rate, "Commercial and Industrial Metered Service," depending on applicability.

**2.5** Alternatively, Customer has the option to transition to Schedule WA-10, Recycled Water Service, which was revised in the adopted five-year water rate plan. Customer desires to transition to the revised Schedule WA-10.

**2.6** The City and Customer desire to enter into this Agreement to provide for a ten-year transition to the projected rate in acknowledgment that the Customer has invested in the necessary infrastructure to take recycled water system from the City when available, but that the City does not have sufficient infrastructure to deliver such recycled water to Customer at this time and, in the interim, to ease the cost impacts on Customer in transitioning to the revised Schedule WA-10 rate pending delivery of recycled water. It is the intent that at the end of this transition agreement, the customer will transition to OAT.

**2.7** It is the intent, but not the guarantee, of City to install the necessary infrastructure in order to deliver recycled water service pursuant to Schedule WA-10 to Customer within 10 years of execution of this Agreement. During the term of this Agreement, City shall make

commercially reasonable efforts to provide such service. Customer agrees that if City is able to provide recycled water service that Customer shall take such recycled water service within a commercially reasonable time.

**3. AGREEMENT.** In consideration of the mutual covenants and promises in this Agreement, the Parties agree as follows:

**4. DEFINITIONS.** Terms used herein with initial capitalization, whether in singular or plural, shall have the meaning set forth in the Water Rules except as defined below:

**4.1 Agreement.** This Transitional Water Service Agreement between Customer and City.

**4.2 Authorized Representative:** The representative designated by each Party, in accordance with Section 10, to act on such Party's behalf with respect to those matters specified in this Agreement.

**4.3 Commencement Date:** The date on which City shall begin charging Customer for Water Service at the Water Rate, which shall be January 1, 2019.

**4.4 Customer Site(s):** Customer's metered locations to which City shall provide Water Service under this Agreement as listed in Exhibit "A".

**4.5 Effective Date:** The date defined in Subsection 5.1 as the date this Agreement shall become effective, which shall be July 1, 2018.

**4.6 General Manager:** The General Manager of the Riverside Public Utilities Department.

**4.7 Minimum Charge:** The amount of the Customer Charge as defined in Customer's Otherwise Applicable Tariff.

**4.8 Otherwise Applicable Tariff ("OAT"):** The water rate schedule that would apply to a customer from time to time for water service; for the purposes of this Agreement, Customer's OAT is City's published water rate Schedule WA-10 rate, "Recycled Water Service," as amended from time to time.

**4.9 Term:** The ten (10) year period of this Agreement during which the Water Rate is applicable beginning on the Commencement Date.

**4.10 Water Rate:** The quantity rate and customer charge according to Exhibit "B" and Subsections 6.2 and 6.3 and Section 9 hereof.

**4.11 Water Rules:** The City's "Water Rules and Rate Schedules", as amended from time to time by the City's Board of Public Utilities and City Council.

**4.12 Water Service:** Extraction, treatment, distribution and transmission service necessary to deliver water to Customer Site, and such other services that the City is required to provide pursuant to this Agreement, the Water Rules and any programs or services mandated by a state or federal regulatory agency, or the City's City Council.

## **5. COMMENCEMENT DATE; TERM.**

**5.1** This Agreement shall be effective July 1, 2018 and shall remain in effect until terminated pursuant to the provisions herein.

**5.2** The Term of this Agreement shall be ten (10) years from the Effective Date.

**5.3** This Agreement may be terminated (subject to payment of Liquidated Damages) upon written notice as follows:

**5.3.1** On the sixtieth (60th) day after City receives notice by Customer requesting termination of this Agreement.

**5.3.2** On the thirtieth (30th) day after City sends notice of nonpayment to Customer, if Customer fails to pay any amount due hereunder.

**5.3.3** Upon thirty (30) days' advance written notice by the non-defaulting Party to the defaulting Party following a material breach of this Agreement.

**5.3.4** On the thirtieth (30th) day after City sends notice that the City is able to provide recycled water service to Customer under Schedule WA-10.

**5.4** Termination of this Agreement shall not relieve either Party of its obligations incurred prior to termination.

**5.5** Upon termination of this Agreement, City's obligations to provide Water Service to Customer and the rates and rules applicable to City's provision of such Water Service shall be pursuant to City's then existing Water Rules.

**5.6** This Agreement is not renewable at the expiration or termination of its Term.

## **6. WATER SERVICE AND RATES.**

**6.1 Water Service Requirements:** Customer agrees to purchase from City and City agrees to sell to Customer at the Water Rate set forth herein, all of Customer's Water Service requirements at Customer's Site(s) including Water Service necessary to deliver water to Customer's Site, throughout the Term of this Agreement. Except as expressly provided in this Agreement, City shall provide such Water Service in accordance with the Water Rules. In the event any term of this Agreement adds to, varies or contradicts the Water Rules, the terms of this Agreement shall prevail. In addition to the above, during the term of this Agreement, the City will continue efforts to develop non-potable water supplies suitable for use at Customer's Site.

In the event City is able to provide non-potable water service to Customer's Site, Customer shall take such non-potable water service within a commercially reasonable time.

**6.2** Water Rate: Beginning on the Commencement Date, Customer shall pay City for Water Service as set forth in Exhibit "B" attached hereto and incorporated herein. In addition to the Water Rate, Customer shall pay the Miscellaneous Fees and Taxes and Miscellaneous Charges, as set forth in Subsections 6.3 and 9, respectively.

**6.3** Miscellaneous Fees and Taxes: All charges for Water Service pursuant to this Agreement shall be subject to City's Water Conservation Surcharge, the Utility Users Taxes, any state or federal energy tax, and any other governmental taxes, duties, or fees, as may be revised from time to time by the relevant regulatory authority, applicable to Water Service provided by City.

**6.4** Service to Others: The Water Service provided herein is expressly reserved for Customer's sole use. Customer is prohibited from transferring, providing or reselling all or any portion of such service to any third party or parties.

## **7. METERING SERVICES.**

**7.1** Existing Accounts: City shall maintain, service and replace (as needed), and retain ownership of all water meters at the existing Customer Site(s) as reflected in Exhibit A. These meter services and meters shall be provided free of charge, so long as such meters are standard meters consistent with those provided to similar City non-residential customers.

**7.2** New Accounts: This Agreement applies only to the meters and accounts at Customer's Site existing as of the Effective Date and reflected in Exhibit A. All new, modified or upgraded service, meters, and accounts shall be added in accordance with the terms, conditions, costs, and rates in the Water Rules.

## **8. BILLING AND PAYMENT.**

**8.1** Procedure: Unless otherwise specified in this Agreement, all billing for Water Service shall be rendered and payments collected in accordance with the Water Rules.

**8.2** Adjustments of Bills for Undercharges: City reserves the right to adjust any Customer bill for undercharges, computed and billed in accordance with the Water Rules in effect at the discovery of an error.

## **9. MISCELLANEOUS CHARGES AND REBATES:**

**9.1** Customer shall pay any applicable new fees or surcharges imposed by City on other non-residential customers in accordance with Customer's Otherwise Applicable Tariff, unless specifically exempted by City's Board of Public Utilities and the City Council, after the Effective Date of this Agreement, in the same manner and amounts, as set forth in the Water Rules, and any premiums or surcharges as established by City's Board of Public Utilities and

adopted by City's City Council in response to federal or state laws, standards, or other mandated legislation.

**9.2     Water and Energy Efficiency Audits:** To encourage efficient use of water, City will provide Customer with a comprehensive water audit to identify conservation and efficiency updates for both the irrigation systems and commercial buildings on site. Customer commits to implementing cost-effective and feasible conservation and efficiency updates identified in the water audit. In addition, to encourage efficient use of energy, City will provide Customer, with a comprehensive electric audit to identify usage at the site, and recommend energy conservation and efficiency updates for the buildings on site.

**9.3     Rebate Assistance:** City staff will assist Customer to analyze and review potential rebate programs to help offset costs for any water and electric upgrades that meet criteria for the rebate programs, such as the Water-Wise Landscape Improvements Rebate.

**10.     AUTHORIZED REPRESENTATIVES.** Upon the Effective Date of the Agreement, the individuals identified pursuant to Section 16 shall be the Authorized Representative who will act on its behalf in the implementation of this Agreement. Either Party may at any time change, via written notice, the designation of its Authorized Representative to the other Party.

## **11.     THIRD PARTY RIGHTS.**

**11.1     Dedication of Facilities:** No undertaking by one Party to the other Party under this Agreement shall constitute the dedication of the water system or any portion thereof by the undertaking Party to the public or to the other Party, and it is understood and agreed that any such undertaking under any provision of this Agreement by a Party shall cease upon the termination of such Party's obligations under this Agreement.

**11.2     Third Party Beneficiaries:** This Agreement shall not be construed to create rights in or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, obligation or undertaking established in this Agreement.

**12.     ASSIGNMENT OF INTERESTS.** This Agreement is personal to Customer as a Customer served by the City, and Customer shall not assign or transfer this Agreement or assign or transfer any privilege thereunder, or interest therein, in whole or in part ("assign") without the prior written consent of the City. Any attempt by Customer to make such an assignment without the City's consent shall be void *ab initio*, shall confer no right on any third party, and shall entitle the City to terminate this Agreement on five (5) days written notice to Customer pursuant to Subsection 5.4.3.

**13.     DAMAGE LIMITATION.** The City shall not be liable for any consequential, incidental, indirect, or special damages, whether in contract, tort, or strict liability including, but not limited to, lost profits, property damage, personal injury and loss of power, arising out of or in any way related to service outages, other water service interruption(s), the City's performance or nonperformance of its obligations under this Agreement or termination of this Agreement.

**14. INDEMNITY.** Customer shall indemnify, protect, defend and hold harmless the City, its elected officials, employees, officers, and agents from any liens, claims, costs, damages, liability or loss arising from this Agreement, including reasonable attorneys' fees, but only in proportion to and to the extent such liens, claims, costs, damages, liability or loss are caused by or result from the willful or negligent acts, errors or omissions of Customer, its employees,, officers, or agents.

**15. GOVERNING LAW.** This Agreement shall be interpreted, governed by, and construed under the laws of the State of California or the laws of the United States as applicable without regard to the conflicts of laws or rules thereof. Any action at law or in equity brought by either of the Parties for the purpose of enforcing a right or rights provided in this Agreement shall be tried in the Superior Court of California, County of Riverside, and the Parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county.

**16. NOTICES.**

**16.1** Any notice and other communication required or permitted to be given under this Agreement shall be deemed given: (i) when hand delivered; or (ii) one (1) business day after pickup by Federal Express or similar overnight delivery service properly addressed as provided below; or (iii) three (3) business days after such notice or communication shall have been deposited with the United States Postal Service, postage prepaid and properly addressed as provided below; or (iv) when sent by facsimile transmission to the fax numbers provided below, with receipt of such fax confirmed telephonically, provided that on the same day such notice or communication shall also be hand delivered or sent by overnight delivery pursuant to this Subsection:

If to Customer: Evergreen Memorial Historic Cemetery  
P.O.Box 20544  
Riverside, CA 92516-0544  
Phone: 951-522-6462  
Authorized Representative: Etienne Caroline, President

If to City: Public Utilities General Manager  
City of Riverside  
3901 Orange Street  
Riverside, CA 92501  
Phone: (951) 826-5784  
Fax: (951) 826-2450

**16.2** Either Party may change such address by giving notice to the other Party as provided herein.

## **17. WAIVERS; MODIFICATIONS.**

**17.1** Waivers by either Party of its rights under this Agreement, or with respect to any default or other matters with this Agreement, shall not be deemed waivers to any subsequent default or other matters in connection therewith. Any delay, short of the statutory period of limitation in asserting or enforcing any right, shall not be deemed a waiver of such right.

**17.2** No modification of this Agreement shall be valid or binding unless in writing duly signed by both Parties.

**18. ENTIRE AGREEMENT.** This Agreement contains the final, complete, and exclusive statement of the terms of the agreement between the Parties pertaining to the subject matter of this Agreement, and supersedes all prior and contemporaneous oral or written communications of the Parties. Neither Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty of the other Party outside those expressly set forth in this Agreement.

**19. INTENT OF AGREEMENT.** Ambiguities or uncertainties in the wording of this Agreement shall not be construed for or against either Party, but shall be interpreted in a manner that most accurately reflects the original intent of the Parties, and is consistent with the nature of the Parties' rights and obligations.

**20. DISPUTES.** All disputes regarding questions of fact, opinions or interpretation of provisions in this Agreement shall be submitted to the Authorized Representatives. If the Authorized Representatives are unable to resolve the dispute, the matter shall be referred to the individuals designated to receive notices pursuant to Section 16. Nothing in this Agreement precludes either Party from taking any lawful action it deems appropriate to enforce its rights.

**21. EXHIBITS.** All documents referred to below and attached to this Agreement as Exhibits are incorporated into and made a part of this Agreement.

Exhibit "A": Customer Site(s); Metered Accounts

Exhibit "B": Water Service Rates

**22. SEVERABILITY.** If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance is held invalid by any court or regulatory agency of competent jurisdiction, all other terms, covenants and conditions of this Agreement, and the application of such term, covenant or condition to other persons or circumstances, shall not be affected thereby, but shall remain valid and in full force and effect, unless such court or regulatory agency holds that the invalid provisions are not separable from all other provisions of this Agreement.

**23. SUCCESSORS.** This Agreement shall be binding upon and inure to the benefit of the successors, heirs, administrators, executors and assigns of the Parties.

24. **HEADINGS.** Section headings in this Agreement are for the convenience of reference only and shall not govern the interpretation of any provision of this Agreement.

25. **SIGNATURE CLAUSE.** The signatories hereto represent that they have been authorized to enter into this Agreement on behalf of the Party for whom they sign.

Evergreen Memorial Historic Cemetery,  
a California nonprofit corporation,

City of Riverside, a California charter city  
and municipal corporation

By: 

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

Title: PRESIDENT EMHC

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: 

Attest:

Title: Secretary, Board of Directors

\_\_\_\_\_  
City Clerk

Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Ruthann M. Salera  
Deputy City Attorney



**EXHIBIT “A”**

**CUSTOMER SITE(S); METERED ACCOUNTS**

**Evergreen Memorial Historic Cemetery**

4388 Pine Street  
Acct # 21-5204.300

## **EXHIBIT “B”**

### **WATER SERVICE RATE**

Evergreen Memorial Historic Cemetery

Year 1	Quantity Rate All Usage per CCF Customer Charge 2" \$59.80	\$1.14
Year 2	Quantity Rate All Usage per CCF Customer Charge 2" \$86.70	\$1.18
Year 3	Quantity Rate All Usage per CCF Customer Charge 2" \$98.45	\$1.26
Year 4	Quantity Rate All Usage per CCF Customer Charge 2" \$110.68	\$1.35
Year 5	Quantity Rate All Usage per CCF Customer Charge 2" \$124.64	\$1.45
Year 6	Quantity Rate All Usage per CCF Customer Charge 2" \$132.74	\$1.57
Year 7	Quantity Rate All Usage per CCF Customer Charge 2" \$141.37	\$1.70
Year 8	Quantity Rate All Usage per CCF Customer Charge 2" \$150.56	\$1.84
Year 9	Quantity Rate All Usage per CCF Customer Charge 2" \$160.35	\$1.99
Year 10	Quantity Rate All Usage per CCF Customer Charge 2" \$170.77	\$2.15

Customer Charge is per meter per month