

'Contract' or 'DIA' - Year - Project - Contractor

Contract - 2007 - Untreated Water to Redlands Mesa Golf Course Community Development - Red Junction LLC



Container

CONFLDR/1-1



Enclosed?

Contract Period

Continuous until terminated (non-permanent)



Date of Expiration / Revocation / Discontinuance



NOTES (Contract terms - Parcel# - File#)

this is an unsigned version of the agreement as the signed original has not been located, this was approved at the April 18, 2007 City Council meeting



Related record



External ID

Electronic Record Only

Retention schedule

040.030

WATER AGREEMENT

Amended and Restated

This Water Agreement is made and entered into this ___ day of April, 2007, between the City of Grand Junction, a municipal corporation, State of Colorado ("City") and Red Junction, L.L.C. a Colorado limited liability company ("Redlands Golf").

RECITALS

A. The City agrees to deed to Redlands Golf 3 c.f.s. of the City's Gunnison Water right pursuant to the terms of the December 23, 1997 Water Agreement between the City and Redlands Mesa, LLC. Due to the expense involved, Redlands Golf to date, has elected not to build the infrastructure needed to deliver the 3 c.f.s.; however, the parties agree that Redlands Golf may still choose to do so in the future at its election and upon written notice to and agreement with the City.

B. Redlands Golf owns and operates the Redlands Mesa Golf Course ("Golf Course") located in Grand Junction, Colorado and described in Exhibit A attached hereto and incorporated herein by this reference.

C. The City provides the Golf Course with an irrigation water supply pursuant to the Ridges Planned Unit Development annexation agreement ("Ridges System"). That operation is funded through rates charged and collected for water services. The City does not provide annual operating revenue for the Ridges System operations from tax revenue receipts or grants.

D. Redlands Golf and the City entered into an agreement dated April 19, 2004, whereby Redlands Golf would continue to receive irrigation water in the event the Ridges System is interrupted. That Agreement established:

(i) The City acknowledged and agreed that the Golf Course provided numerous direct and indirect economic benefits to the City, including the improvements to and the extension of Mariposa Road, the looping of the Ute water line in the area, and other

development improvements;

(ii) Raw, untreated water is supplied to the Golf Course and surrounding residential area through the Ridges System by way of a City pump station (a/k/a "Primary Pumping Facility") on the Redlands Water and Power tailrace at the Redlands Water and Power hydroelectric facility and that such water supply is dependent upon the hydroelectric facility;

(iii) The Redlands Water and Power hydroelectric facility derives its water from the Gunnison River and a diversion dam located approximately 3.25 miles upstream from the City's pump station. The water travels from the diversion dam via a canal, through the hydroelectric facility, then down a tailrace canal to the Colorado River. The City's pump station is located along this canal, which normally contains water year around with the exception of approximately one week in the Spring and one week in the Fall when maintenance is performed on the hydroelectric facility; and

(iv) Redlands Golf makes monthly payments to the City for water service under the City's rate setting system.

E. Golf Course irrigation consists of two pump stations and one reservoir. Water is first pumped from the City's pump station to Shadow Lake where it then gravity feeds to the Shadow Lake Pump Station where it is pressurized and then used in the irrigation system to provide water to both the Golf Course and surrounding residential landscaping. Redlands Golf and the City desire to amend and restate the terms of the Agreement dated April 19, 2004, to further define the provisions whereby the City provides water to Redlands Golf and to add certain provisions relating to oral agreements between the City and Redlands Golf relating to pump redundancy, a water injection system and the availability of water during the off season.

AGREEMENTS

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Redlands Golf agree as follows:

1. **Recitals Incorporated.** The foregoing Recitals are incorporated herein as agreed provisions.
2. **Prior Agreement.** The terms of the Agreement entered between the City and Redlands Golf, dated April 19, 2004, are replaced with the terms of this Agreement.
3. **Water Service.**
 - a. The City shall continue to supply untreated water to Redlands Golf on a basis that is consistent with the City's operation of the Ridges System and the City's delivery of untreated water to the residents and owners within the Ridges development.
 - b. The City represents to Redlands Golf that it operates the Ridges System and has the decreed right to divert from the Redlands Water and Power tailrace during the term of this Agreement.
4. **Dedicated Water Supply.**
 - a. The City agrees that the Ridges Systems water supply that provides water to the Golf Course and the residents of the Ridges is derived from certain water rights held by the City known as the Ridges Pumping Station - Alternate points for Gardner Diversion No. 1 (aka Bridges Switch Pumping Pipeline), decreed in Civil Action 13368, which divert from the southerly bank of the Redlands Power Canal in the amount of 6.53_c.f.s absolute. ("Ridges System Water Right"). The Ridges Metropolitan District has an easement from the Redlands Water and Power Company for ingress, egress, installation, maintenance for utilities and irrigation water pumping facilities for the pumping station.

b. During the term of this Agreement, the City agrees to deliver 3.0 c.f.s. of water to the Golf Course as long as the water is available at the Redlands Tailrace pumping facility. Both parties acknowledge and agree that there will also be times when the Redlands Tailrace water is not available.

5. **Charges.** The City agrees to charge Redlands Golf, or its successor, for the Golf Course water supply in accordance with the City Council's adopted resolutions applicable to the Ridges System. The City may make changes to the water rates for the Ridges System as determined from time-to time by the City Council. The City shall give Redlands Golf notice of any such changes to the water rates by October of each year, but the failure to give such notice shall not limit the City's ability to change the rates nor limit in any way Redlands Golf's duty to pay such increased rates.

6. **Interruption.**

a. In the event that, for whatever reason, water is not available to the Ridges System because of an interrupted water supply from the Redlands Water and Power facilities and to the extent of limited capacity in Shadow Lake, Redlands Golf may give a written notice to the City requesting transfer of water already delivered to Redlands Golf. Promptly upon receipt of such notice, the City will allow Redlands Golf to release water into the City's Shadow Lake from existing and future ponds and water impoundments controlled or owned by Redlands Golf.

b. Subject to paragraph 6(a), all users of the Ridges System are entitled to equal treatment, except to the extent that Redlands Golf is entitled to receive from Shadow Lake water previously delivered to Redlands Golf impoundments.

c. It is not the intent of the Parties to unnecessarily sacrifice the landscaping and existing turf in the residential areas of the Ridges, but rather to acknowledge that reductions in that water supply, as supplemented by Redland Golf's stored water, may provide enough excess water to keep the Golf Course grass greens and fairways alive, and will shut off the residential irrigation system so long as Redlands Golf is putting its already delivered water back into Shadow Lake to provide limited irrigation for the Golf Course until the Redlands Golf water is used up or water is again supplied by the operations of Redlands Water and Power.

7. **Extended Interruptions.** The Parties agree to cooperate in efforts to provide additional water in the event of interruptions that last longer than the water made available pursuant to Paragraph 6. The Parties may consult, but are not required to consult, with Redlands Water and Power to construct inexpensive coffer dams or pay for improvements to a by-pass system or similar arrangements so that Redlands Golf, via the City's facilities, may divert water at or immediately above Redlands Water and Power's existing hydropower generating facilities. It is acknowledged that such improvements will benefit the entire Ridges System and the Parties agree to consider a reasonable cost-sharing agreement to realize such improvements.

8. **Water Conservation.** The Parties agree that Redlands Golf has submitted a plan that has been reviewed by the City's Utility Manager as provided in paragraph 5 of the April 19, 2004 Agreement. The City has not approved the plan as a water conservation plan. Redlands Golf will cooperate with the City in adopting a water conservation plan that the City can approve.

9. **Redundant Pump System Components and Remote Irrigation Monitoring System.**

a. On several occasions, officials of the City of Grand Junction and management of Redlands Golf have discussed the concept of Redlands Golf providing redundant pump system components to be located at the Shadow Lake Pump Station. Redlands Golf may elect, at any time during the term of this Agreement, to provide funding to the City for the purchase of the redundant pump system components that meet the standards required by the City. The City acknowledges and agrees that Redlands Golf depends on a constant water supply during many months of the year to keep the golf course operational, and that should Redlands Golf choose to provide the redundant pump system components, that the City will reasonably cooperate in using the redundant equipment to keep the Shadow Lake Pump Station operational. The City also agrees that, should the instance arise when the City would have to use part or all of the redundant pump system components provided by Redlands Golf, the City will, at the expense of the Ridges System, replace with new, refurbished, and/or rebuilt parts the parts or all of the redundant pump system components that it has utilized at reasonable maintenance intervals.

b. The City agrees that Redlands Golf may, at its sole cost and expense, install and maintain a remote irrigation monitoring system at the Shadow Lake Pump Station. The City agrees that Redlands Golf shall have reasonable access in order to maintain this system.

10. **Water Treatment/Injection System.**

a. The City and Redlands Golf previously agreed in a Memorandum dated November 26, 2003, providing that Redlands Golf could install a Water Treatment/Injection System in the Shadow Lake Pump System. The Memorandum dictates that Redlands Golf will be responsible for maintaining this Water Treatment/Injection System and its removal if the system is abandoned. The Water Treatment/Injection System will be used to treat the water that is transported from Shadow Lake into the main lines and subsequently to the Golf Course. Redlands Golf intends to install this Water Treatment/Injection System in 2007 and City hereby renews its agreement to allow the installation to occur with the exception that the installation of the Water Treatment/Injection System shall occur at a location exclusively determined by the City that may or may not be in the Shadow Lake Pump Station. Redlands Golf shall have reasonable access to the equipment in order to operate and maintain it.

b. Redlands Golf indemnifies the City, its officers, officials and employees, and saves them harmless from any and all claims, demands, damages, actions, costs and expenses of any nature and in any manner arising or resulting from the Water Treatment/Injection System either directly or indirectly.

11. **Process for Obtaining Water Outside of Normal Watering Months.** The City and Redlands Golf acknowledge that the pump station at Shadow Lake is operational beginning April 1 of each year and ending November 1 of each year ("Normal Operating Time Period"). The City has made water available to Redlands Golf during the months of November, December, January, February and March ("Non-Operating Time Period") at the request of Redlands Golf. The City agrees to continue this practice of providing water on a limited basis to Redlands Golf during the Non-Normal Operating Time Period. Redlands Golf acknowledges and agrees that its request for additional water could result in additional electrical expense to the Ridges System and that electrical expense, at the option of the City, could be passed on to Redlands Golf at the end of each fiscal year if the City determines that that electrical costs budgeted for in that year were exceeded, due to the additional use of water requested and used by Redlands Golf.

12. **Term.** The term of this Agreement shall be perpetual; provided that Redlands Golf may terminate this Agreement at the conclusion of the next irrigation

season by written notice to the City if it terminates irrigation of the Golf Course or develops a replacement supply of water for irrigation of the Golf Course.

13. **Notices.** All notices or other communications pertaining to this Agreement shall be transmitted in writing and shall be deemed given when duly received by the Parties at their addresses below or any subsequent addresses provided to the other Parties in writing.

City of Grand Junction
c/o City Manager
250 N. 5th Street
Grand Junction, CO 81501

Red Junction, LLC
c/o Rochelle Mullen, Manager of Redlands Mesa
Development, LLC
14301 FNB Pkwy, Suite 115
Omaha, Nebraska 68154

14. **Assignment.** The Parties agree and acknowledge that the rights and obligations of Redlands Golf under this Agreement may be assigned to persons or entities acquiring title to the Golf Course with the prior consent of the City.

15. **Modifications.** This Agreement shall not be amended except by subsequent written agreement of the City and Redlands Golf.

16. **Captions.** The captions of this Agreement are inserted only for convenience and in no way define or limit the scope or intent of this Agreement or any part thereof.

17. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors and assigns.

18. **Invalid Provision.** If any provision of this Agreement shall be determined to be void by any Court of competent jurisdiction, then such determination shall not affect any other provision hereof, all of which other provisions shall remain in full force and effect. It is the intention of the parties hereto that, if any provision of this Agreement is capable of two constructions, one of which would render the provision void, and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

Notary Public

