

**CONTRACT FOR THE TAKING OF RAW
WATER
FROM GRAND RIVER OR ITS TRIBUTARIES**

THIS CONTRACT made and entered into as of the 13th day of May, 2020 between the **GRAND RIVER DAM AUTHORITY**, an Agency of the State of Oklahoma, created and existing under and pursuant to 82 O.S.A. § 861 *et seq.*, (GRDA) and **QUAIL RIDGE GOLF AND EVENT CENTER, LLC**, an Oklahoma Limited Liability Corporation (CUSTOMER).

W I T N E S S E T H:

WHEREAS, CUSTOMER desires to take and use raw water from the Pensacola Reservoir, which CUSTOMER estimates will require approximately 7 million gallons per year raw water diversion; and

WHEREAS, GRDA controls and manages the Grand River and its tributaries, including the Grand Lake, Hudson and Fort Gibson Reservoirs; and

WHEREAS, GRDA desires to grant to CUSTOMER the right to take and use raw water from Grand Lake, for the purpose of maintaining the greens and fairways of a golf course.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Contract, and the payment of an application fee in the sum of two hundred fifty and no/100 Dollars (\$250.00), receipt of which is hereby acknowledged, the parties agree as follows:

1. SERVICE AND USE. From and after the effective date of this Contract, CUSTOMER shall have the right to divert and use up to a maximum of 7 million gallons per year (the "Maximum Annual Quantity" or "MAQ") but not more than 1.8 million gallons of raw water per month from Grand Lake at a point or points of diversion located in Section 1, Township 24 North, Range 23 East, Delaware County, Oklahoma as depicted on the map marked as Exhibit A attached hereto and made a part hereof by reference. CUSTOMER agrees not to contract for the sale or exportation of the raw water obtained from GRDA outside the State of Oklahoma.

2. EXCEEDANCE OF MAXIMUM ANNUAL QUANTITY. If CUSTOMER's annual diversion for any reason exceeds the Maximum Annual Quantity stated in CUSTOMER's Contract during two (2) consecutive years, or two (2) out of any four (4) consecutive years, OR the CUSTOMER's monthly diversion exceeds 1.8 million gallons per month for 4 consecutive months, the CUSTOMER will be required to negotiate a new standard form raw water sales contract for an increased MAQ or increased monthly diversion.

3. REDUCTION OF MAXIMUM ANNUAL QUANTITY. If CUSTOMER commences using the raw water but thereafter fails to beneficially use all or any part of the MAQ allocated to Customer, such MAQ shall be subject to reduction by GRDA. The GRDA reserves the right to review CUSTOMER's MAQ every seven (7) years and, in its

sole discretion, may adjust the MAQ if CUSTOMER has failed to beneficially use all or any part of its MAQ.

4. DELIVERY OF WATER. GRDA makes no guarantee that the water supplied under this Contract will be available at any particular time or place or that any GRDA owned/operated reservoir or the Grand River and its tributaries will be retained at any specific level at any particular time. GRDA hereby specifically reserves the right to temporarily curtail CUSTOMER's use in times of drought.

5. SUPERIOR WATER RIGHTS. CUSTOMER acknowledges that GRDA has superior water rights and certain municipalities and entities have superior water rights as granted by a court of competent jurisdiction or by previous grant from GRDA and agrees that in the event of a water shortage, said rights will take precedence over CUSTOMER's rights pursuant to this Contract.

6. OPERATION OF DAMS AND RESERVOIRS. CUSTOMER recognizes the right of GRDA to maintain and operate its several dams and their appurtenances on the Grand River and its tributaries and at any and all times in the future to impound and release waters thereby in any lawful manner and to any lawful extent in GRDA's sole discretion and that there shall be no obligation upon GRDA to release or not to release any impounded waters at any time or to maintain any waters at any specified level. CUSTOMER acknowledges that the level of said reservoirs and the Grand River and its tributaries will vary as a result of GRDA's license with the Federal Energy Regulatory Commission and the operations controlled by the U.S. Army Corps of Engineers regarding operation of GRDA dams. CUSTOMER further acknowledges that this Contract is made subject to the right of GRDA or the United States of America to inundate and overflow all of the lands of GRDA upon which CUSTOMER may place any of its facilities, and to use the property for all purposes in connection with the construction, maintenance and operation of the GRDA.

7. QUALITY OF WATER. The parties hereby agree that GRDA does not represent to CUSTOMER that the water taken by CUSTOMER is suitable for domestic purposes and it shall be the obligation of CUSTOMER to comply with all federal, state and local laws, rules and regulations. The GRDA does not guarantee the quality of the water supplied and does not represent it is suitable for any particular purposes. Further, CUSTOMER hereby releases GRDA and agrees to hold it harmless from any and all claims that CUSTOMER or CUSTOMER's users or customers have or may have against GRDA for any diminution in or impairment of the quality of water supplied under this Contract.

8. LINES AND FACILITIES. CUSTOMER shall furnish, install, operate and maintain all pipelines, connections, facilities and equipment to enable it to take and use the specified water. GRDA shall be under no obligation to furnish any lines, equipment or facilities.

9. PERMIT FOR USE OF GRDA LAND. GRDA grants to CUSTOMER the right and privilege to construct, operate and maintain a water line, pumping equipment and other facilities required for the water system, upon, over and across the

lands of GRDA at a location in Section 1, Township 24 North, Range 23 East, in Delaware County, Oklahoma as evidenced by Exhibit A.

CUSTOMER shall maintain and keep in repair all pipelines, equipment and facilities located upon GRDA property. CUSTOMER agrees to hold GRDA harmless and wholly indemnify GRDA for any and all expenses, costs and attorneys' fees which GRDA may incur from any allegations, claims or actions stemming directly from or arising out of CUSTOMER's negligence or disrepair of CUSTOMER's equipment or facilities.

CUSTOMER shall, upon termination of this Contract, remove said lines, equipment and facilities from GRDA property and shall leave the property in the same condition as it was at the execution of this Contract.

10. METERING OF RAW WATER.

a. To measure the amount of water used by CUSTOMER hereunder, CUSTOMER agrees at CUSTOMER's expense to install such flow meters and recording devices (collectively the "Meter") as are approved by GRDA. Said Meter to permit, within five percent (5%) accuracy, determination of quantities of raw water diverted hereunder in units of 1,000 gallons. GRDA shall have the right to approve both the design of the Meter as well as the location of its installation. A CUSTOMER must repair, replace or make necessary improvements to a Meter that is not in compliance with this Contract promptly after CUSTOMER becomes aware of the deficiency that causes the Meter to be out of compliance with this Contract.

b. CUSTOMER agrees to provide GRDA's representatives access across CUSTOMER's property for inspection, testing and reading of the Meter. CUSTOMER shall locate the Meter in a manner that provides GRDA with reasonably safe access to the Meter for the purpose of making meter readings, testing, and/or periodic inspections. GRDA shall have the right to read the Meter at any time and make any necessary adjustments to the previous period's bill as required by GRDA personnel's meter reading.

c. CUSTOMER agrees that the Meter shall be tested for accuracy by qualified personnel as approved by GRDA and at the expense of CUSTOMER once each calendar year at intervals of approximately twelve (12) months.

d. CUSTOMER shall furnish GRDA a report of such test results. Readings within five percent (5%) of accuracy shall be considered correct.

e. In the event CUSTOMER fails to test the Meter for a period of fifteen (15) consecutive months, GRDA shall have the right to have the Meter tested. CUSTOMER agrees to pay GRDA for the actual cost of testing the Meter. GRDA will provide CUSTOMER a written invoice of the cost of testing the Meter, and said invoice will be subject to the payment terms provided below in this Contract.

f. CUSTOMER shall be required to take necessary steps to correct any inaccuracy in the Meter discovered during any test. GRDA may install, at CUSTOMER's expense, check meters in or to any of CUSTOMER's Meters at any time and may leave such check meters installed for such periods as is reasonably necessary to determine the accuracy of CUSTOMER's Meters.

g. In the event it is discovered that CUSTOMER's Meter is not working within five percent (5%) accuracy, CUSTOMER shall have 90 days from the date of discovery to remedy the inaccurate meter. Since it is impossible to quantify the amount of water being diverted during a meter failure, CUSTOMER agrees to pay GRDA the amount of \$500.00 per day for each day the meter is not working properly not as a penalty, but as liquidated damages.

h. GRDA reserves the right to install and read Meters under the control of GRDA at CUSTOMER's intake and shall, at its sole option, have the right to recover such costs from CUSTOMER.

11. METER READINGS. Billing meters shall be read by CUSTOMER on the last day of each month and reported to GRDA **no later than the 5th day of the following month.** For example, CUSTOMER shall read its meter on October 31st and report the reading to GRDA no later than November 5th. Failure to report meter readings by the 5th of each month are grounds for termination of this Contract. Meter readings are to be submitted by e-mail to lakebilling@grda.com or by fax to Lake Billing at 918-236-3040. The readings shall be submitted in the following format:

Customer Name:					
Mailing Address:					
City, State, Zip:					
Reported by:		Phone Number:			
Current Meter Reading:			Date:		
Previous Meter Reading:			Date:		
Total Usage in 1,000 of gallons:					

In the event GRDA installs and reads the Meters, this paragraph shall be null and void.

12. RATES AND BILLING. CUSTOMER agrees to pay GRDA monthly during the term of this Contract for water taken from the Pensacola Reservoir at the rate or rates and on the terms set forth in the Rate Schedule attached hereto as Exhibit B and made a part hereof by reference. The terms and rates contained on the Rate Schedule are subject to change by GRDA from time to time as provided by the "Grand River Dam Authority Act" (82 O.S.A. § 861, *et seq.*, as amended and supplemented).

GRDA shall bill CUSTOMER each month at the following address:

Quail Ridge Golf and Event Center, LLC
P.O. Box 451211
Grove, OK 74345

13. PAYMENT. Each month's billing to CUSTOMER will be considered due and payable by the later of (i) the twenty-fourth (24th) day of the month following the month of service covered by the monthly bill, or (ii) fifteen (15) days after the date of the monthly bill. Bills shall be considered past due if not paid within this time frame. A late payment fee of 1.5% per month shall be assessed on past due amounts. CUSTOMER further agrees to pay all costs of collection and reasonable attorneys' fees, in the event CUSTOMER fails to make payment as set forth herein, regardless of whether suit is filed.

14. SUSPENSION OF SERVICE. If CUSTOMER has made no payment by the due date, GRDA may discontinue service upon twenty (20) days written notice to CUSTOMER and may terminate this Contract pursuant to the termination provisions below.

15. TERMINATION OF CONTRACT. Either party may terminate this Contract upon the other party's failure to remedy a breach of this Contract after thirty (30) day written notice from the non-breaching party. In addition to termination of the Contract, GRDA may request injunctive relief from a court of competent jurisdiction to prevent CUSTOMER from diverting additional water under this Contract.

16. NOTICE. Any written notice, demand or request required or authorized by this Contract shall be deemed properly given to or served, if emailed and mailed with sufficient postage to the following addresses:

Grand River Dam Authority
Attn: Legal Department
9933 East 16th Street
Tulsa, OK 74128
Legalnotices@grda.com

Quail Ridge Golf and Event Center, LLC
P.O. Box 451211
Grove, OK 74345
quailridgegolf9@gmail.com

17. TERM OF CONTRACT. This Contract shall become effective upon the date first above written, and shall endure for a period of 10 years unless terminated earlier in accordance with the termination provisions contained herein.

18. ASSIGNMENTS. This Contract shall not be sublet or assigned by CUSTOMER without the written consent of GRDA.

19. INDEMNIFICATION. CUSTOMER will indemnify and save GRDA harmless from any and all claims and demands whatsoever to which GRDA may be subjected by reason of any injury to any person or damage to any property resulting from any and all actions and activities (or failure to act) of CUSTOMER under this Contract except to the extent caused by GRDA's gross negligence or willful misconduct. CUSTOMER's pumping and related facilities shall be installed, operated and maintained by CUSTOMER at CUSTOMER's sole risk. Nothing in this Contract shall be construed as authorizing CUSTOMER, or recognizing that CUSTOMER has any right, to install any equipment or improvements on property owned by GRDA or third parties.

20. FORCE MAJEURE. The term “Force Majeure” as used herein, shall mean those situations or conditions which are beyond the control of GRDA or CUSTOMER, and that, after the exercise of due diligence to remedy such situation or condition, render GRDA or CUSTOMER unable, wholly or in part, to carry out the covenants contained herein. Such force majeure includes but is not limited to acts of God, strikes, lockouts, acts of terrorism, acts of the public enemy, orders of any kind of the government of the United States or of the State of Oklahoma or any civil or military authority insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, civil disturbances, explosions, partial or entire failure of water supply insofar as each of the foregoing are beyond the reasonable control of the party in question. GRDA shall not be held liable or responsible for any damage that may be caused by its inability, after the exercise of due diligence, to make the supply of water available to CUSTOMER due to any force majeure.

21. COMPLIANCE WITH OTHER LAWS. CUSTOMER shall be fully responsible for complying with all rules, regulations, ordinances and laws of any local, state or federal government or agency.

22. TAX EXEMPT INTEREST ON GRDA DEBT. Should CUSTOMER take water from Grand Lake or Lake Hudson Reservoirs or their tributaries, and sell water to users other than the State of Oklahoma or its political subdivisions, the following provision shall be applicable to this Contract: CUSTOMER represents and warrants to GRDA that it will not sell any water sold by GRDA to CUSTOMER under this Contract in any manner that would cause such sale to result in any facility of GRDA being deemed to be used for a private business use under the Internal Revenue Code of 1986 and the regulations promulgated thereunder. To that end, CUSTOMER covenants not to make any resale of water sold to CUSTOMER under this Contract, whether directly or as a part of a sale of water from CUSTOMER’s plant, (i) to a purchaser for resale by such purchaser, (ii) if it would obligate the purchaser to make payments that are not contingent on the water requirements of the purchaser, or (iii) if it would obligate the purchaser to have water requirements (including, but not limited to, a requirement that the purchaser must take water), in each case unless permitted by the following sentences. CUSTOMER may effect resales that require the purchaser to pay reasonable and customary damages (including liquidated damages) in the event of a default, or to pay a specified amount to terminate the contract or arrangement with CUSTOMER while the purchaser has requirements, in each case if the amount of the payment is reasonably related to the purchaser’s obligation to buy water that is discharged by the payment. The foregoing shall not apply to resales of water by CUSTOMER having a term including all renewal options not longer than three (3) years and either negotiated in an arm’s length transaction providing for compensation at fair market value or based on generally applicable and uniformly applied rates. In the event such Code or regulations, or interpretations thereof, changes after the date hereof, any or all of the foregoing may be modified, by notice in writing from GRDA to CUSTOMER based on the advice of counsel, to reflect such changes.

CUSTOMER shall confirm in writing to GRDA at least annually by December 31 that no resales have been made of the water sold to CUSTOMER under this Contract

other than in compliance with the preceding four sentences. Nothing contained in this Section shall affect the ability of CUSTOMER to (i) make resales to any persons under any conditions if and to the extent such resales are made solely from resources other than the water sold to CUSTOMER under this Contract, or (ii) make cost recoveries from its own customers with respect to facilities or services furnished by CUSTOMER and not by GRDA.

The Parties agree that (a) the provisions of this Section constitute material terms and conditions of this Contract for purposes of Sections 14 and 15 contained herein because of the importance to GRDA of preserving the tax-exempt treatment of the interest on its debt. Determinations by GRDA, in good faith, as to CUSTOMER'S compliance with the provisions of this Section shall be conclusive. Notwithstanding the foregoing, CUSTOMER agrees to indemnify and hold harmless GRDA for any violation of this Section except to the extent resulting from a resale approved in writing by GRDA in its sole discretion. The previous sentence shall survive the expiration or earlier termination of this Agreement.

23. NO RIGHTS OR TITLE ACQUIRED. CUSTOMER agrees and acknowledges that it acquires by this Contract no rights or title to the water that is the subject of this Contract other than those rights explicitly set forth herein.

24. AMENDMENT. This Contract may not be modified or amended except by an instrument in writing signed by authorized representatives of the parties. The parties acknowledge that Exhibit B will be revised throughout the term of this Contract without the necessity for signature by either party.

25. COMPLETE CONTRACT. This Contract, together with its attachments, constitutes the entire agreement between the parties relating to the subject matter of this Contract and supercedes all prior permits, contracts, agreements or understandings with respect to the subject matter hereof, both oral and written.

Each party agrees that the other party (and their agents and representatives) have not made, and it has not relied upon, any representation, warranty, covenant or agreement relating to the transactions contemplated hereunder other than those expressly set forth herein.

26. GOVERNING LAW. This Contract shall be governed by and construed in accordance with the laws of the State of Oklahoma, without reference to the conflict of laws hereof, and venue shall be in Mayes County, Oklahoma.

27. SEVERABILITY. In the event that any provision of this Contract is held unenforceable or invalid, the validity and enforceability of the remaining provisions shall not be affected thereby.

28. BINDING EFFECT. This Contract shall be binding upon and inure to the benefits of the successors, legal representatives and assignees of the parties.

GRAND RIVER DAM AUTHORITY

ATTEST:

By _____
Daniel S. Sullivan, Chief Executive
Officer

Sheila Allen Secretary

**QUAIL RIDGE GOLF AND EVENT
CENTER, LLC**

ATTEST:

By _____
Jordan Wilhelm, Member

For GRDA use only:

APPROVED BY THE BOARD: May 13, 2020

EXHIBIT A

Carey Bay

Intake for Quail Ridge Golf & Event Center



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Google Earth

1995

Imagery Date: 3/29/2015 lat 36.595082° lon -94.801064° elev 744 ft eye alt 11287 ft

EXHIBIT B
RATE SCHEDULE



Approved: June 13, 2018

Effective: July 1, 2018

The terms and charges in this rate schedule are subject to change by GRDA from time to time as provided by the “Grand River Dam Authority Act” (82 O.S.A. § 861, *et seq.*, as amended and supplemented).

RAW WATER RATE:

On June 13, 2018, the GRDA Board of Directors voted to increase the raw water rate effective July 1, 2018 to \$0.12 per 1,000 gallons.

The rates under this contract may be adjusted every year by the Consumer Price Index (CPI) and GRDA’s previous years’ hydro operating expenses.

MINIMUM MONTHLY BILLING:

For each billing period, the Customer shall pay the greater of the amount of gallons actually used calculated at the rate set forth above or the amount of \$50.00 per month, whether or not any raw water is actually withdrawn by Customer. Failure to pay the monthly minimum (\$50.00) will be considered a material breach of the Contract.

PAYMENT TERMS:

For payment terms see the specific provisions contained in the Contract.