

**AGREEMENT BETWEEN CALAVERAS COUNTY WATER DISTRICT
AND
BLUE LAKE SPRINGS MUTUAL WATER COMPANY
FOR WHOLESALE TREATED WATER SERVICE**

This AGREEMENT ("Agreement") is made effective this 10/28/2015 by and between Calaveras County Water District, a California special district ("CCWD"), and Blue Lake Springs Mutual Water Company, a non-profit corporation and mutual water company ("Water Company"). This Agreement refers to CCWD and Water Company collectively as the "parties."

RECITALS

- A. CCWD provides water and wastewater services within its service area in Calaveras County, California, including communities in the Ebbetts Pass service area, such as Arnold, from water diverted from the Stanislaus River.
- B. The Water Company provides treated water service to the Blue Lake Springs subdivision in Arnold, California from locally owned and operated groundwater wells.
- C. The Water Company purchased water on an as-needed basis from CCWD since the beginning of the subdivision in the mid-1960s through 1986 to supplement its groundwater wells. During the severe drought years of '76 and '77, the Water Company developed an initial well field which substantially lost yield by 1985.
- D. By 1986, both the Water Company and CCWD urgently needed to increase system capacity in the Ebbetts Pass service area to meet new water demands. The Water Company and CCWD reached an agreement (Resolution 86-52) to develop new wells at White Pines Lake and build a treatment plant in Blue Lake Springs that would meet part of the demand of the entire service area until a new treatment plant could be constructed in Avery. Half of the new infrastructure in Blue Lake Springs was paid for with a grant and the other half with a loan, both from the NorthFork Project Development Fund of CCWD. The loan obligation was half CCWD debt and half Water Company debt.
- E. CCWD completed construction and began operation of the Avery water treatment plant (Hunter's) by 1992, at which time CCWD moved fully to its surface water supply and no longer relied on supplemental ground water from the White Pines wells and Blue Lake Springs treatment plant. At the same time, the Water Company decided to remain independent of the new surface water facilities of CCWD and instead continued to rely solely on groundwater through the wells at White Pines.
- F. By mutual agreement in 1986 and application of CCWD Ordinance 87-2 which established a connection fee schedule for the purposes of funding certain improvements to the Ebbetts Pass Improvement District (EPID) 5, from 1987 to

1992, the Water Company collected capacity fees under CCWD Ordinance 87-2 for new connections to the Water Company and held the collected fees in a separate interest-bearing account. Between 1987 and 1992, the Water Company added 167 new connections. In 1992, CCWD and the Water Company reached a new agreement (Resolution 92-112) regarding final disbursement of capacity charges; CCWD and the Water Company agreed to use the capacity charges collected between 1987 and 1992 (approximately \$114,000) to pay off the remaining balance of the loan (approximately \$112,000) jointly incurred by the Water Company and CCWD to fund the infrastructure in Blue Lake Springs.

- G. The agreement from 1992 stated, "As of January 1, 1992 BLSMWC shall have no further obligations to collect said fees and shall have no liability to CCWD for new connection fees until such time as BLS shall be provided water on a regular, non-emergency basis by CCWD."
- H. The Water Company realized 1,320 connections to its system prior to 1987, 167 additional connections between 1987 and 1991, and 227 more connections since 1992.
- I. Since 1992, the Water Company has on several occasions obtained emergency water deliveries from CCWD to augment limited groundwater supplies for its customers.
- J. To enhance the continued sustainability of the Water Company's groundwater resources and reduce the need for future emergency assistance, both the Water Company and CCWD desire for the Water Company to have immediate and ongoing access to surface water from CCWD. This will create an effective conjunctive use program of surface and groundwater supplies that improves the Water Company's current and future water supply reliability.
- K. To this end, the Water Company now seeks to purchase surface water from CCWD on a long-term, wholesale basis to supplement its existing groundwater supplies on the terms set forth in this Agreement.

AGREEMENT

NOW, therefore, the parties mutually agree as follows:

- 1. Term of Agreement.** This Agreement will become effective once fully executed by the Parties and will remain in effect for an initial term of 20 years. Unless otherwise amended or terminated as provided in this Agreement, this Agreement will automatically renew every ten years after the initial 20-year term and after each subsequent ten-year term. This Agreement may only be terminated by mutual, written agreement of the Parties.

2. CCWD To Provide Wholesale Treated Water Service to the Water Company.

- 2.1. Maximum Daily Capacity.** CCWD will provide the Water Company with a maximum available capacity of 100,000 gallons per day (gpd) of treated water from May 1 through September 30. In furtherance of the goal to maximize the longevity of the Water Company's groundwater supply, the Water Company may rely on CCWD for its entire demand, even if it exceeds 100,000 gpd, from October 1 through April 30 as long as the capacity is available. Maximum daily capacity is determined strictly on a daily basis and will not be averaged bi-monthly or annualized. The maximum daily capacity will become available to the Water Company for each and every day of the year beginning on the date the Water Company makes the first capacity charge payment described in Section 3.1. That capacity then will be available to the Water Company for the duration of this Agreement.
- 2.2. Capacity for Emergency Fire Services.** The limit on maximum available capacity stated in Section 2.1 does not apply if a fire department uses water for emergency fire suppression via fire hydrants within the subdivision. The Water Company will promptly notify CCWD of each such emergency.
- 2.3. Water Quality.** All treated water delivered to the point of the Water Company's master meter(s) under this Agreement will meet all applicable government minimum water quality requirements for treated water for domestic use in accordance with CCWD's operating permit for the Ebbetts Pass drinking water system issued by the State Water Resources Control Board, Division of Drinking Water. CCWD will provide to Water Company a copy of CCWD's annual consumer confidence water quality report when it is available to facilitate Water Company's preparation of its own water quality report to its retail customers.
- 2.4. Backflow Protection.** The Water Company will protect at all times CCWD's system from cross-contamination and cross-connections to untreated (unfiltered and/or undisinfected) raw well water by means of air gaps and/or reduced pressure backflow devices on the downstream side of each master meter or other appropriate locations as agreed by CCWD and the Water Company. Any identified backflow of water from the Water Company's raw wells into CCWD's system will be cause for immediate suspension of service to the Water Company until the backflow problem is corrected to the satisfaction of CCWD. All backflow devices will be annually tested and certified by the Water Company at its expense with documentation provided to CCWD.
- 2.5. Ownership, Maintenance, Operation, Repair and Replacement of CCWD's Facilities.** CCWD will maintain ownership, possession, and access to all CCWD water service facilities and all facilities necessary to pump, treat, and deliver treated water to the Water Company's delivery points. CCWD also will be responsible for all actions for the operation, maintenance, repair, and replacement of all CCWD facilities in good working order and any facilities improvements, as necessary or useful for CCWD to perform all water delivery and other obligations under this Agreement.
- 2.6. Ownership, Maintenance, Operation, Repair and Replacement of Blue Lake Springs Mutual Water Company Facilities.** The Water Company owns,

operates, and maintains its own water distribution system; CCWD has no obligation to service, operate, maintain, or make improvements to Water Company's water system downstream of the master meters. The Water Company will be responsible for all actions for the operation, maintenance, repair, and replacement of all Water Company facilities in good working order and any facilities improvements, as necessary or useful for the Water Company to perform all water delivery and other obligations under this Agreement.

- 2.7. Commitment to Conjunctive Use System.** At all times during this Agreement, unless and until it obtains all of its water supply from CCWD pursuant to this Agreement, the Water Company will operate a conjunctive use system of surface water from CCWD and groundwater supplied from wells developed, operated and maintained by, and treated by the groundwater treatment plant operated and maintained by, the Water Company. Consistent with the historical relationship between CCWD and the Water Company, surface water from CCWD (up to 100,000 gpd) is intended to be supplemental to the amounts supplied by groundwater sources of the Water Company, which will continue to supply the balance of the Water Company's annual water use and maximum day water demands. From 2003 to 2014, the Water Company's annual water use has ranged from 45 to 75 million gallons and its maximum day demands have been 320,000 to 450,000-gpd. Through this commitment to a conjunctive use program, the Water Company will maximize the life and productivity of its wells to continue to provide a safe yield for its community.
- 2.8. Point of Delivery.** All water to be furnished under this Agreement will be delivered to the Water Company by CCWD at the following points of delivery: the existing CCWD four-inch metered connection, located at 470 Summit View Road and six-inch metered connection located at the corner of Moran Road and Linda Drive to the Water Company, subject to the limitations of use of the six-inch meter in Section 2.10.
- 2.9. Water Service Payments for Water Delivered to the CCWD Four-Inch Meter that Serves the Water Company.** The Water Company will receive regular treated water through the existing CCWD four-inch meter. The Water Company will pay bi-monthly service charges according to CCWD's standard rate for a four-inch master meter. Payment is due to CCWD 30-days after the Water Company receives an invoice from CCWD.
- 2.10. Water Service Payments for Water Delivered to the CCWD Six-Inch Meter.** CCWD's existing six-inch meter connection to the Water Company will remain in place to be utilized for fire service only. The Water Company will pay CCWD's base rate for a 5/8-inch meter to cover maintenance costs associated with the six-inch meter, but it will not receive any water service through the six-inch meter except as necessary to support fire response personnel responding to a fire emergency. The six-inch meter will be read and reported to CCWD at a minimum bi-monthly, corresponding to the regular billing period. Unauthorized use of the 6-inch meter for any purpose other than fire suppression may result in its conversion to a standard service meter, subject to CCWD's standard base and usage rates for a 6-inch meter.
- 2.11. Suspension of Service for Nonpayment.** Should the Water Company fail to

make timely payment for water service under this Agreement, CCWD may suspend water service to the Water Company until payment is made in full. Water service will resume upon full payment of the amount due for past water service. CCWD is also entitled to recover reasonable costs incurred directly as a result of the non-payment and suspension of service with the exception of attorneys fees.

2.12. Meter Reading and Reporting. Both CCWD meters serving the Water Company, the four-inch and six-inch meters, will be read on a daily basis by the Water Company on any day water is delivered through those meters. The Water Company will report the meter readings in writing to CCWD on at least a monthly basis.

2.13. Changes to Water Service Rates. CCWD will comply with all applicable laws in making any changes to any of its rates applicable to the Water Company under this Agreement. In the interests of full transparency and building a stronger relationship between entities, prior to implementation of any such changes affecting the Water Company, CCWD and the Water Company will meet to share information and seek a common understanding of the issues affecting each entity.

2.14. Minimum Bi-Monthly Purchase by the Water Company. The Water Company is required to pay for a minimum average of 45,000 gpd, or approximately 2,737,500 gallons during each bi-monthly billing period, except as otherwise provided in this Section 2.14. In years where CCWD implements customer water use reduction requirements due to drought, the minimum bi-monthly purchase amount is reduced to an average of 40,000 gpd for each billing cycle while such water use restrictions are in effect. The Water Company will pay CCWD for at least the bi-monthly minimum amount even if the Water Company uses less than the applicable average over the two month billing period. In the unlikely event that CCWD does not have adequate capacity to deliver the bi-monthly minimum average the Water Company will only be required to pay for its actual use.

3. Payment of Capacity Charges to CCWD by Water Company.

3.1. Initial Capacity Charge Payment Required.

3.1.1. Amount. The Water Company will make an initial capacity charge payment to CCWD of \$825,000 for buy-in of 100,000 gpd capacity into the Hunters treatment plant, Meadowmont and Avery pump stations, and Reach 2 and 3 transmission lines. This amount represents the buy-in rate of \$625 for each of the 1,320 Water Company connections that existed prior to 1987. This rate is consistent with the buy-in portion of CCWD's current residential capacity charge for the Ebbetts Pass service area.

3.1.2. Timing. The Water Company will make an initial buy-in payment of \$600,000 toward the one-time capacity charge stated in Section 3.1.1 within seven business days of the effective date of this Agreement. The Water Company will pay the remaining \$225,000 toward that capacity charge to CCWD no later than May 1, 2016.

3.2. Additional Capacity and Capacity Charges.

3.2.1. Complete Reliance on CCWD. In the event the Water Company submits a written request to have its maximum daily demand available from CCWD on a wholesale basis, and CCWD has sufficient water supply available at the time of the request, the Water Company may purchase all of its water from CCWD by paying the total amount described in Section 3.2.3. CCWD will make the additional capacity needed to satisfy the Water Company's demand available within a reasonable amount of time after receipt of full payment of capacity fees. This may include implementing system improvements (plant expansion, etc.) to make that capacity available. If no system improvements are required to meet the Water Company's additional demand, the additional capacity will be available to the Water Company immediately upon payment of the total amount described in Section 3.2.3.

3.2.2. Incremental Additional Capacity. At any time during the term of the Agreement, the Water Company may request additional capacity from CCWD beyond the 100,000 gpd maximum included in this Agreement but less than its maximum daily capacity demand. CCWD will consider the Water Company's request in good faith but nothing in the Agreement obligates CCWD to provide additional, fractional capacity. Any capacity fees paid for incremental additional capacity would be credited against the number of total capacity fees the Water Company must pay prior to reliance on CCWD for all of its water demand as set forth in Section 3.2.3.

3.2.3. Cost of Additional Capacity. Before the Water Company can rely on CCWD for all of its water demand, it must pay the total of the capacity charge then in effect for the Ebbetts Pass Service Area at the time of payment times 310.5 connections. For example, at the current capacity charge of \$7,028, the amount due would be \$7,028 times 310.5 for a total of \$2,182,194. 310.5 represents the number of connections added to the Water Company since 1992 (227) plus half of the connections added between 1987 and 1992 (83.5). If CCWD must expand plant capacity at the Hunters treatment plant at any time after the Water Company requests to rely on CCWD for its entire water demand, the Water Company will pay an additional 158 capacity fees as an advance payment toward potential new connections. The advance payment of 158 capacity fees towards plant expansion would be due at the time CCWD enters into a construction contract for the plant expansion. CCWD will provide the Water Company with reasonable advance notice prior to its letting of any such contract for construction of the plant expansion. If the Water Company has already added more than 158 connections between the effective date of this agreement and the date of payment for complete reliance on CCWD, then Water Company will pay for each of the connections added during that time instead of the 158. If at any time after it makes the advance payment of additional capacity fees to CCWD towards the plant expansion, the Water Company realizes the addition of

new connections above and beyond the amount of connections paid to CCWD for its advance payment, the Water Company will pay to CCWD for each new connection added at the time it comes online at the capacity charge then in effect for the Ebbetts Pass Service Area.

3.2.4. Capacity Fees for New Connections. Other than set forth in section 3.2.3, the Water Company has no obligation to pay capacity fees for new connections added after the effective date of this agreement.

- 4. Water Availability.** The amount of water made available by CCWD to the Water Company under this Agreement is subject to reduction, to the extent and for the period made necessary, by reason of water shortage, drought (as defined in this section), an emergency (as defined in this section) or by malfunctioning or rehabilitation of facilities in CCWD's water system. "Drought" as used in this section means a water shortage caused by lack of precipitation, as reflected in actions by CCWD implementing voluntary or mandatory water use reduction measures in accordance with CCWD's drought response plan. "Emergency" as used in this section means a sudden, non-drought event, such as an earthquake, fire, failure of CCWD infrastructure, or other catastrophic event or natural disaster. The Water Company agrees that as part of this Agreement it, and its customers will be required to participate in any water use reduction measures implemented by CCWD or implement their own equivalent or stricter reduction measures.
- 5. No Agreement To Take Over Service.** The Water Company acknowledges that nothing in this Agreement requires or guarantees that CCWD will provide water service directly to the Water Company's customers. Should the Water Company want CCWD to provide direct service to its customers that will be the subject of a further written agreement and may require payment of additional fees and costs, to be determined at the time per CCWD's normal fee schedule at the time service is requested.
- 6. Water Rights Not Affected.** This Agreement only contemplates the sale of water by CCWD to the Water Company; this Agreement does not contemplate the sale of any water rights currently held by CCWD to the Water Company. No sale of water pursuant to this Agreement shall confer any appropriative, groundwater, public trust or other right to water on the Water Company, or any other person or entity, directly or indirectly. Nothing in this Agreement shall act as a forfeiture, diminution or impairment of any rights of CCWD after the expiration of the Agreement, and shall in no way prejudice any of CCWD's rights. The Parties agree that no sale of water under this Agreement, nor the Agreement itself, is evidence of the availability of surplus water beyond the term of the Agreement, nor any evidence of lack of beneficial use of the water involved in the sale, and they shall not contend otherwise. The only rights granted to the Parties as a result of this Agreement are those expressly set forth herein.
- 7. Amendment.** This Agreement may only be amended by the mutual, written agreement of CCWD and the Water Company.
- 8. Wholesale Restriction.** The Water Company will not sell water on a wholesale basis as

long as this agreement remains in effect. It is understood that Blue Lake Springs Mutual Water Company services only the Blue Lake Springs subdivision as is currently planned with a total of approximately 2,000 residential units at full buildout.

9. Entire Agreement. This Agreement represents the sole and entire agreement of the parties with respect to the subject matter. It supersedes any prior written or oral agreements or communications between the Parties. It may not be modified except in a writing signed by the Parties.

10.No Assignment. Neither party may assign this Agreement without the other party's prior written consent, which must not be unreasonably withheld. A party's entering into contracts with subcontractors is not considered an assignment.

11.Waiver. If either party fails to require the other to perform any term of this Agreement, that failure does not prevent the party from later enforcing that term. If either party waives the other's breach of a term, that waiver is not treated as waiving a later breach of the term.

12.Successors and Representatives. This Agreement binds and inures to the benefit of the parties and their respective successors and (where permitted) assignees.

13.Severability. If any part of this Agreement is for any reason held to be unenforceable, the rest of it remains fully enforceable.

14.Headings. Headings are for convenience only and do not affect the interpretation of this agreement.

15.Interpretation of Agreement. The parties acknowledge that each party and its attorney have reviewed, negotiated, and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any document executed and delivered by any party in connection with the transactions contemplated by this Agreement.

16.Cooperation. Each party to this Agreement agrees to do all things that may be necessary, including, without limitation, the execution of all documents which may be required hereunder, in order to implement and effectuate this Agreement.

17.Dispute Resolution.

17.1. Informal Meetings. In the event of a dispute or controversy between the parties arising out of this Agreement, the respective staff of each party will hold an informal meeting or meetings to attempt to resolve the dispute or controversy.

17.2. Executive Meetings. If staff is unable to resolve the matter informally, each party will designate an executive with the required authority to resolve the

dispute or controversy. The executives of each party will meet and confer in good faith to attempt to resolve the dispute or controversy. The executives of each party will continue to meet until one party or both parties reasonably determines the parties to be at an impasse. The meeting of the executives is a prerequisite to further mediation or litigation on any dispute or controversy between the parties.


17.3. Non-Binding Mediation. If the matter is not resolved by meeting(s) of the executives, the Parties will proceed to non-binding mediation facilitated by a mutually agreed upon mediator. The Parties will share the cost of the mediator equally, but will bear their own costs and attorneys fees for mediation.

17.4. Litigation. Should the Parties fail to reach a negotiated resolution of the disputed matter, either Party may bring an action in Calaveras County Superior Court. If the Party bringing the action has failed or refused to comply with the alternative dispute resolution mechanisms set forth in 17.1-17.3, and the Party defending against the action is the prevailing party, the defending Party will be entitled to recover its litigation costs and attorneys fees. Otherwise, the Parties bear their own litigation costs and attorneys fees.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written as follows:

Dated: October 28, 2015

Calaveras County Water District

By: 
Dave Eggerton, General Manager

Dated: October 21, 2015

Blue Lake Springs Mutual Water Company

By: 
Dave Hicks, General Manager