

AGREEMENT FOR TRANSFER OF CERTAIN LAKE OF THE WOODS MUTUAL WATER
COMPANY ASSETS
TO FRAZIER PARK PUBLIC UTILITY DISTRICT AND PROVIDING FOR WATER
SERVICE.

THIS AGREEMENT (“Agreement”) is made this ____th day of _____, 2021, between, FRAZIER PARK PUBLIC UTILITY DISTRICT, a California public utility district organized under the California Public Utilities Code (Section 15501 et seq.) (“DISTRICT”) and the LAKE OF THE WOODS MUTUAL WATER COMPANY, a California corporation organized as a mutual water company (Corporations Code Section 14300 et seq.) (“LOW”) on the basis of the following facts and understandings:

A. LOW currently provides water primarily for domestic purposes to landowners located within the LOW service area. In association with providing water to these landowners, LOW owns interests in real estate and other physical property, including but not limited to easements, storage tanks, pipelines, treatment facilities, and meters. Necessary upgrades and improvements to these systems to meet and comply with current requirements would require the expenditure of substantial sums of money and create serious technical challenges were LOW to undertake such activities itself.

B. LOW and its shareholders have determined that it is in their best interest to transfer and convey the assets described in Exhibit “A,” attached hereto, to the DISTRICT in accordance with the terms and conditions hereinafter set forth, and to be annexed to the DISTRICT for the purpose of receiving future water service from the DISTRICT.

C. A majority of the shareholders of LOW have consented to transfer LOW’s assets to the DISTRICT, as evidenced by the minutes of the special shareholders meeting dated __, 2017.

By unanimous consent, the LOW Board of Directors has similarly consented.

D. The DISTRICT has agreed to receive certain LOW assets which are more particularly described in Exhibit “A,” attached hereto, without any of LOW’s liabilities, in accordance with the terms and conditions as hereinafter set forth.

E. The project that must be completed in order for the DISTRICT to provide water service to LOW shareholders and customers generally can be described as follows: constructing, developing and equipping additional wells to supply LOW and the DISTRICT with an adequate quantity of water, constructing a transmission pipeline between the DISTRICT and LOW distribution systems and providing certain interconnections to said pipeline; constructing several booster plants and tanks along said pipeline to lift water to the LOW service area; securing necessary permits from the State of California to operate such integrated system; and all engineering and administrative costs associated with implementing and carrying out same (hereinafter collectively called the “Project”).

F. LOW wishes to have the DISTRICT commence delivery of water to current LOW shareholders as soon as possible, but recognizes there are many contingencies which must occur prior to water service commencing. If full funding of the Project is not obtained, LOW must expressly approve any unfunded work for which LOW may be financially responsible prior to commencement of the work. The conditions that must occur, which are the contingencies in order for the DISTRICT to assume responsibility for providing water service to LOW’s shareholders and customers, can be summarized as follows:

(i) Funding is secured for hydrologic studies and tests (including test wells) to determine the best location for additional wells to serve LOW and the DISTRICT, the tests and

studies are undertaken and those studies prove out sufficient available groundwater supplies to serve both the District and LOW;

(ii) The DISTRICT annexation of LOW (and other lands), approved by the Kern County Local Agency Formation Commission (LAFCO), which will be subject to certain contingencies;

(iii) Funding is secured for and planning studies are successfully completed, including preparation of plans and specifications, preparation of a final Engineer's estimate of costs of the Project and the California Environmental Quality Act (CEQA) is successfully completed;

(iv) Applying for and securing grant(s) from Federal, the State, County, and/or private sources to pay for all of the Project Costs, and if not for all the cost, financing is approved and secured from the former LOW shareholders, with no additional costs to the DISTRICT residents and customers;

(v) Detailed plans and specifications being prepared for the Project that are approved by the DISTRICT and reviewed by LOW, and contract(s) being entered into with the DISTRICT to construct such Project works for an amount that is less than the grants obtained and other financing referenced in (iv) above; and

(vi) The DISTRICT determines that the Project has been constructed and is operational as planned, LOW conveys the assets that are the subject of this Agreement to the DISTRICT, and necessary permits are secured from the State of California to operate the integrated system, including the LOW service area;

(vii) The DISTRICT's satisfaction with LOW's representations of property condition as determined under paragraph 6(c).

NOW, THEREFORE, THE DISTRICT AND LOW HEREBY AGREE:

1. TERMS OF TRANSFER:

(a) *Transfer of Assets.* Subject to the terms and conditions hereinafter set forth, LOW agrees to convey, assign, and transfer to the DISTRICT those assets listed in Exhibit “A,” attached hereto. The DISTRICT in return agrees to accept those assets listed in Exhibit “A” presently owned by LOW. LOW further agrees that the DISTRICT shall not be deemed to have accepted any liability of LOW not specifically set forth in this Agreement and that LOW shall remain responsible for all outstanding liabilities.

(b) *Consideration.* As consideration for the assets described in paragraph 1(a), the DISTRICT shall undertake the obligation of providing water to the owners of lands within the LOW service area identified in Exhibit “B,” attached hereto, in accordance with applicable law and the DISTRICT’s Bylaws, Rules and Regulations, policies and rates, as they may be amended from time to time. Water service shall not commence until the contingencies summarized in Recital F have occurred.

LOW customers obtaining a service connection pursuant to this agreement shall pay the same rates, fees, assessments and surcharges as are paid by any other DISTRICT customers, including but not limited to the current the DISTRICT monthly billing amounts and any assessments levied. A copy of the current the DISTRICT rates is attached as Exhibit “C.” There is also currently a \$5 per parcel per year standby charge on undeveloped parcels and developed parcels that have been locked off for more than six months.

(c) *Additional Obligations.* LOW, acting for and on behalf of its shareholders, consents that any charge or liability arising under paragraph 10 [Indemnification], or any deficiency, that is not otherwise paid by LOW, may be levied as a special surcharge on deliveries

to LOW shareholders and customers and others served by the Project who are not currently within the District, notwithstanding the fact that said charges and assessments are not levied against other DISTRICT customers and residents;

LOW further acknowledges, that if grant(s) are not sufficient to pay all the Project Costs, and LOW expressly consents to proceeding with the Project notwithstanding the insufficient funds, as a contingency to proceeding with the Project and the DISTRICT providing water service to the LOW service area, that either (i) LOW and others served by the Project who are not currently within the District will provide the addition funds necessary for completing the Project, and/or (ii) to the extent those funds are not provided, then a loan will be secured from governmental or private sources to fund the difference, and payments to service such loan will be provided through a surcharge on water deliveries to current LOW shareholders and customers and others served by the Project not currently within the District, and/or an assessment levied upon such parties, and in either case as part of this contingency a successful process under Proposition 218 may be required before the contingencies of this Agreement are deemed satisfied.

LOW further agrees to complete any lawfully required reports, filings, or other documentation required by any local, State or Federal agency required to carry out this Agreement. This shall be deemed to include, but not limited to, any health or environmental reports. LOW specifically acknowledges that completion and filing of these reports is not a responsibility of the DISTRICT.

(d) *Prorating of Expenses.* All payments of rent, taxes, insurance and other amounts required to be paid by LOW with respect to the assets described in paragraph 1(a) above if any, shall be prorated on and as of the effective date of the transfer of assets between the DISTRICT

and LOW. Any additional fees or expenses, arising prior to the Effective Date (as defined in paragraph 3 of this Agreement) are the sole responsibility of LOW.

(e) *Transfers Tax and Fees.* LOW shall pay any sale or transfers taxes levied by the State of California, or any other tax or fees levied by a governmental agency, including any transfer tax, as a result of the transactions contemplated hereby, and for any transactions occurring prior to the Effective Date of this Agreement.

(f) *Construction of Additional Works.* The DISTRICT shall construct a tie-in of its existing facilities with LOW facilities as summarized at Recital F. Prior to the completion and tie-in of the Project, LOW agrees to continue providing water to its existing customers from its present wells, or other arrangements LOW may make, and agrees to accept any and all responsibility for the quantity and/or quality of water provided to its customers and shareholders. Prior to the Effective Date, LOW shall properly abandon its Well No. 3

(h) *Future Parcel Development.* LOW agrees, on behalf of its landowners, that any future development of any currently undeveloped land shall be governed by the rules and regulations, policies, rates and Bylaws of the DISTRICT in existence at the time of the development, including, but not limited to, new connection fees (current fees specified at Exhibit C).

(i) *Treatment of debt, dues or monies presently owed to LOW.* The DISTRICT agrees that any debt, fees, dues, or other amounts owed by present LOW Customers is the responsibility and property of LOW. Any such debt, fees, dues or other amounts incurred prior to the Effective Date shall be retained by LOW after the DISTRICT commences water service to LOW's service area. The DISTRICT accepts no responsibility or liability for the collection, accounting, administration, or other treatment of such monies.

(j) *Fees and Billing of LOW customers.* Subject to the provisions of this Agreement, all LOW customers will be treated in a manner identical to current DISTRICT customers and residents after the Effective Date of this Agreement, as provided in the Bylaws, rules and regulations, policies and rates of the DISTRICT, as may be amended from time to time, subject to the potential for surcharges or assessments as provided at paragraph 1(c) above, and provided further that a higher water rate may be charged to LOW customers to the extent of greater energy costs because its service area is higher in elevation. Any surcharge on water deliveries to current LOW shareholders and customers and others served by the Project not currently within the District, and/or an assessment levied upon such parties, may be subject to Proposition 218 proceeding and would be a further contingency as provided a paragraph 1(c) above.

2. TRANSFER OF ASSETS:

The transfer of the assets described in Exhibit “A” from LOW to DISTRICT in accordance with this Agreement shall be by appropriate deed, bill of sale, or assignment, together with such appropriate instruments of title as the DISTRICT may reasonably request, including a secretary’s certificate or the equivalent provided in conformance with Corporations Code section 1002, in a form prepared by, or acceptable to and approved by the DISTRICT. Such conveyance instruments shall include appropriate assignments of easements, encroachment permits, and any other right of way in which the LOW facilities are located. Such instruments shall be sufficient to vest and confirm good and marketable title in the DISTRICT to all transferred assets, free and clear of any and all claims, liens and encumbrances of any character. LOW shall also provide the DISTRICT with all records (or copies thereof) pertinent to the transferred assets.

3. CLOSING:

The consummation of the transaction provided for herein shall take place on such a date as the DISTRICT and LOW agree, and shall be effective as of the close of business on such date, herein called the “Effective Date”. In no event shall the Effective Date occur before all of the conditions specified in the Agreement, including those summarized at Recital F have been met or appropriately waived in writing, or later than December 31, 2021, absent an extension agreed upon by the DISTRICT and LOW.

4. CONDUCT OF BUSINESS PRIOR TO EFFECTIVE DATE:

Except as provided herein, between the date of this Agreement and the Effective Date, LOW shall not engage in any transaction, except in the ordinary course of business, the ordinary course of business including any new connections not exceeding a total of 20 should the moratorium on new connections no longer be operative, unless otherwise mutually agreed in writing by both LOW and the DISTRICT. This section shall be deemed to include a prohibition on the acquisition or purchase outside the ordinary course of business of any major new equipment or supplies except to the extent necessary to keep the LOW system operational, as well as prohibiting the sale, transferal or disposal outside the ordinary course of business of any property or equipment owned by LOW as of the date of this agreement, unless otherwise mutually agreed to in writing. LOW further agrees to maintain any and all insurance policies required for the property and assets described herein.

5. REPRESENTATIONS AND WARRANTIES

Each party hereto makes the following representations and warranties to the other party:

(a) It is not subject to any charter, bylaw, indenture, mortgage, lease, agreement, instrument, order, judgment, lien, or decree which would prevent consummation of this Agreement as contemplated hereby.

(b) No party has hired or otherwise engaged any broker, finder or agent, or agreed to pay any fee or commission to any agent, broker or other person for or on account of this Agreement or the transactions contemplated hereby for which the other party shall be or become liable, or which shall become a lien or encumbrance on any of the assets to be acquired under the terms of this Agreement.

6. REPRESENTATIONS AND WARRANTIES OF LOW:

(a) LOW is duly organized and authorized to do business in the State of California and has full corporate power and authority to carry out the transactions provided for in this Agreement on the terms and conditions set forth herein. The execution and delivery by LOW of this Agreement and the consummation by LOW of the transaction contemplated hereby have been duly and validly authorized by all necessary action of its shareholders and Board of Directors, and this Agreement constitutes a valid and binding obligation of it.

(b) LOW has full authority to transfer to the DISTRICT good and marketable title to all of the properties and assets covered by this Agreement, free of any encumbrances, liens, or claims of third parties, all as contemplated by this Agreement.

(c) *Condition of property.*

(1) Unless otherwise noted, all property conveyed to the DISTRICT under this Agreement is, in all material respects, in good physical operating condition and up to date on maintenance, normal wear and tear excepted. To the best of LOW's knowledge, any real property conveyed to the DISTRICT is free of contamination from any known or suspected hazardous substances or

other contaminants, unless otherwise disclosed to the DISTRICT in writing and containing a description of the contaminated property and the suspected or known contaminants.

(2) LOW has informed the DISTRICT in writing of any property subject to this Agreement which is not in good physical operating condition, and has provided a detailed description of the property and any defects or damage. LOW further agrees to provide the DISTRICT with physical access to the property subject to this subsection, and fully cooperate with any inspections or examinations the DISTRICT deems necessary upon the DISTRICT's request prior to the finalization of the transfer of assets under this Agreement.

(3) LOW and the DISTRICT acknowledge that the current LOW wells are inadequate to supply the needs of the LOW shareholders and customers, particularly in times of drought.

(d) The President and the Secretary of the LOW Board of Directors have full power and authority to carry out the transactions provided for in this Agreement on the terms and conditions set forth herein.

7. REPRESENTATIONS AND WARRANTIES OF THE DISTRICT:

The DISTRICT is duly organized and authorized to do business in the State of California and has full authority to carry out the transactions provided for in this Agreement on the terms and conditions set forth herein. The execution and delivery by the DISTRICT of the transactions contemplated pursuant to this Agreement have been duly and validly authorized by all necessary action of its Board of Directors, and this Agreement constitutes a valid and binding obligation of it.

8. CONDITIONS TO THE DISTRICT'S OBLIGATIONS:

The obligations owed by the DISTRICT under the terms of this Agreement are subject to the satisfaction of the following conditions, on or before the Effective Date:

(a) *Conditions have been met.* The actions and conditions of proceeding with the Project as summarized in Recital F have been met.

(b) *Performance of Obligations.* LOW shall have complied with all of its obligations under this Agreement, and the representations and warranties of LOW hereunder shall continue to be true and correct as of the Effective Date.

(c) *Absence of Litigation.* No action or proceeding shall have been instituted or threatened on or before the Effective Date pertaining to the acquisition contemplated hereby or the result of which could be materially adverse to the operation or use by the DISTRICT of any asset to be purchased by the DISTRICT under this Agreement.

(d) *Access to Information.* LOW shall have permitted the DISTRICT and its authorized employees, representatives and agents to have access, after the date of execution of this Agreement, to all such properties, assets, and records of LOW as are relevant to this Agreement.

(e) *Destruction of Property.* Between the date of this Agreement and the Effective Date, there shall have been no damage to, or destruction of, the assets to be conveyed by LOW to the DISTRICT pursuant to this Agreement, nor any conveyance of such assets to another party. For purposes of this section, damage or destruction is understood as referring to any injury to property or assets which materially reduces the market value of such assets.

(f) *Other Clearances.* LOW shall have obtained a certificate from the California State Board of Equalization and from the California State Employment Development Department showing that no taxes, contributions, interest or penalties are due or payable by LOW.

9. CONDITIONS OF LOW OBLIGATIONS:

The obligations of LOW hereunder are subject to the satisfaction on or before the Effective Date of the following conditions:

(a) *Conditions have been met.* The actions and conditions of proceeding with the Project as summarized in Recital F have been met.

(b) *Performance of Obligations.* The DISTRICT shall have complied with all of its obligations under this agreement, and the representations and warranties of the DISTRICT under this Agreement shall continue to be true and correct as of the Effective Date.

(c) *Absence of Litigation.* No action or proceeding shall have been instituted or threatened on or before the Effective Date pertaining to the acquisition contemplated by this agreement.

10. INDEMNIFICATION:

LOW and its present shareholders, or their successors in interest to lots within the present LOW service area (as shown in Exhibit “B”), shall indemnify, hold harmless, and assume the defense of the DISTRICT and its directors, officers, agents and employees, from any loss, damage, liability claims or causes of action of every nature whatsoever arising out of or connected with the DISTRICT’s acquisition of LOW assets as provided under this Agreement before and after the acquisition can be consummated, including but not limited to, any loss, damage, liability, claim, or causes of action related to LOW or any related persons allegedly failing to provide sufficient water or delivering contaminated water or water not meeting health and safety requirements established by any Federal, State, or local governmental entity, at any time prior to the DISTRICT commencing to deliver water to LOW shareholders.

11. TERMINATION

This Agreement shall terminate and have no further force or effect as between the parties, except as to any liability for breach of any duty or obligation arising prior to the date of termination, upon the occurrence of any of the following:

(a) Immediately upon the termination of thirty (30) days from the date that either party has given notice to the other party of the latter's breach or misrepresentation of any condition, warranty, representation or covenant herein; provided, however, that no such termination shall take effect if within this thirty (30) day period the alleged breaching party shall have fully and completely corrected the grounds for termination as specified in the aforementioned notice; or

(b) Upon the failure to timely consummate the transaction provided herein by paragraph 3; or

(c) By mutual consent of the respective Board of Directors of the DISTRICT and LOW. Said mutual consent shall be in writing, signed by duly authorized representatives of both the DISTRICT and LOW; or

(d) If, between entering this Agreement and the Effective Date, there shall have been, in the opinion of either the DISTRICT or LOW Board of Directors, any material, adverse change in the business or condition, financial or otherwise, of either party; or information, not otherwise known to one party or the other, is discovered by that party and which, in the opinion of that parties Board of Directors, creates a material, adverse condition such that the Board would not have entered this Agreement had that information or condition previously been known.

12. CUMULATIVE REMEDIES:

The remedies available herein to either party are cumulative with all other remedies available at law or in equity, and the exercise by a party of any remedy provided in this Agreement, at law, or in equity shall not prevent the exercise of any other remedy provided in this Agreement, at law, or in equity.

13. NOTICES:

Any notice or other communication required or permitted hereunder shall be sufficiently given if delivered in person, or if sent by registered or certified U.S. Mail, postage prepaid, addressed as follows:

(a) *If to DISTRICT:*
Frazier Park Public Utility District
P.O. Box 1525
Frazier Park, CA 93225

(b) *If to LOW:*

Lake of the Woods Mutual Water Company
3534 Mt. Pinos Way
P.O. Box 112
Frazier Park, CA 93225

With a copy to:

Scott C. Nave
Nave & Cortell, LLP
30721 Russell Ranch Rd., Suite 140
Westlake Village, CA 91362

14. ENTIRE AGREEMENT, MODIFICATION AND WAIVERS:

This Agreement constitutes the entire agreement between the DISTRICT and LOW pertaining to the subject matter set forth herein, and supersedes all prior and contemporaneous agreements and understandings of the parties in connection therewith not specifically referred to in this Agreement. No modifications or terminations of this Agreement shall be binding upon either the DISTRICT or LOW unless executed in writing by both parties. No waiver of any provision of this Agreement shall be deemed, nor shall it constitute, a waiver on behalf of any other person (whether or not similar), nor shall any such waiver constitute a continuing waiver of that provision.

15. SURVIVAL OF REPRESENTATIONS AND WARRANTIES / REIMBURSEMENT OF LOSSES:

The respective representations and warranties of the DISTRICT and LOW under this Agreement shall survive the Effective Date hereunder. The DISTRICT and LOW each agree to indemnify and hold the other harmless from and against, and to reimburse the other promptly for, any and all loss, liability, damage, expense, or cost (which shall be deemed to include but not be limited to court costs, litigation expenses and reasonable attorneys' fees) which the other may suffer as the result of any breach of any representation, warranty, covenant or agreement of LOW or the DISTRICT, as the case may be, under this Agreement unless otherwise provided for herein.

16. SUCCESSORS AND ASSIGNS:

Each and every one of the terms and provisions of this Agreement shall be binding upon and accrue to the benefit of the parties to this Agreement and their respective transferees, successors and assigns, but this agreement may not be assigned by any party without the written consent of the other parties to this Agreement.

Any successors to this Agreement shall be treated in accordance with any Bylaws, rules, or regulations of the DISTRICT then in effect.

17. GOVERNING LAW:

This Agreement is being delivered and is intended to be performed in the County of Kern, State of California, and shall be construed and enforced in accordance with the laws of such state, except where Federal law governs.

18. SEVERABILITY OF INVALID PROVISION:

If any provision of this Agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to persons other than those

as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

19. PROVISION OF ATTORNEY FEES:

In the event any action or proceeding is instituted arising out of, or related to, the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney fees and any actual costs.

20. AGREEMENT TO EXECUTE REQUIRED DOCUMENTS:

Within a reasonable time after the date this Agreement is executed, each party agrees to execute whatever documents and/or perform whatever acts are necessary or convenient to carrying out the purpose and intent of this Agreement as well as its specific provisions.

21. INTERPRETATION OF AGREEMENT; NEITHER PARTY TO BE DEEMED SOLE DRAFTER:

The parties agree that the rule requiring interpretation of the language a contract against the drafter shall not be applicable in any future construction of this Agreement. Both parties will be deemed to have jointly and equally participated in the drafting of the agreement.

22. TIME IS OF THE ESSENCE:

Time is of the essence with respect to this Agreement and each and every provision hereof.

23. CAPTIONS MERELY DESCRIPTIVE:

Each of the labels, descriptions or captions attached to and accompanying each of the section numbers is merely illustrative and used for the convenience and reference of the parties, and is not intended to nor creates any additional rights, duties, obligations due or owed to any party under this Agreement.

IN WITNESS HEREOF, the parties to this Agreement have duly executed this Agreement as of the date previously set forth above.

FRAZIER PARK PUBLIC UTILITY DISTRICT

BY: _____

BY: _____

LAKE OF THE WOODS MUTUAL WATER COMPANY

BY: _____

BY: _____

Exhibits:

- A. List of Assets to be Transferred
- B. Lake of the Woods MWC Service Area
- C. Current FPPUD List of Rates and Fees