

HOA WELL PURCHASE AGREEMENT

This HOA WELL PURCHASE AGREEMENT ("Agreement") is made and entered into this 24th day of November, 2020, by and between Fresno County Waterworks District No. 40, a county waterworks district ("WWD 40"), and Shaver Springs Homeowners Association, a nonprofit organization licensed under California ("GRANTOR"). WWD 40 and GRANTOR are also referred to hereinafter individually as a "Party" and collectively as "Parties."

WITNESSETH

WHEREAS, WWD 40 administers and maintains a potable water distribution system ("WWD 40's Water Distribution System") located east of Tollhouse Road, near the intersection of Tollhouse Road and Shaver Springs Road;

WHEREAS, WWD 40 desires an additional source of water, i.e. "water rights", to maintain a safe, reliable supply of water sufficient to meet the needs of its customers. For purposes of this Agreement, the term "water rights" shall mean the right to access, use, and to take, water;

WHEREAS, GRANTOR owns certain property situated in the County of Fresno, State of California, contained within Assessor's Parcel Number 130-710-07 (the "Property");

WHEREAS, GRANTOR has a well ("HOA Well") on the Property which WWD 40 has identified as a potential source to serve WWD 40's Water Distribution System;

WHEREAS, GRANTOR has agreed to sell the HOA Well, and the pipeline that will connect the HOA Well to WWD 40's Distribution System;

WHEREAS, WWD 40 and GRANTOR desire to hereby establish the terms and conditions associated with WWD 40's purchase of the HOA Well including a well easement ("Grant of Well and Well Easement"), which is necessary to extract water from, access, operate on, provide electrical service to, provide treatment to and maintain the HOA Well (as well as any future wells), upon the Property;

WHEREAS, WWD 40 and GRANTOR also desire to hereby establish certain terms and conditions associated with WWD 40's purchase an easement for Well #4 ("Grant of Well #4 Easement"), necessary to access Well #4, and its pipeline.

1 WHEREAS, WWD 40 and GRANTOR also desire to hereby establish certain terms and
2 conditions associated with WWD 40's purchase of an electrical easement ("Grant of Electrical
3 Easement"), necessary to supply power to the HOA Well.

4 WHEREAS, WWD 40 and GRANTOR also desire to hereby establish certain terms and
5 conditions associated with WWD 40's purchase of the connecting pipeline including a pipeline #1
6 easement ("Grant of Pipeline #1 Easement"), which is necessary to access and maintain a pipeline from
7 Well #4 to WWD 40's Water Distribution System;

8 WHEREAS, WWD 40 and GRANTOR also desire to hereby establish certain terms and
9 conditions associated with WWD 40's purchase of the connecting pipeline including a pipeline #2
10 easement ("Grant of Pipeline #2 Easement"), which is necessary to access and maintain a pipeline from
11 the HOA Well to WWD 40's Well #4;

12 WHEREAS, WWD 40 and GRANTOR also desire to hereby establish certain terms and
13 conditions associated with WWD 40's purchase of an access easement ("Grant of Access Easement"),
14 necessary to access the HOA Well, and its pipeline.

15 NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein
16 contained, the Parties agree as follows:

17 I. PAYMENT

18 A. After the execution of this agreement, Grantor will have two weeks to submit an invoice to
19 WWD 40 in the amount of forty-nine thousand fifty-four dollars and thirty-five cents (\$49,054.35) for
20 WWD 40's purchase of the HOA Well, pipeline, and easements.

21 B. WWD 40 shall pay GRANTOR such payment within one hundred and twenty (120)
22 daysafter the invoice has been submitted to and approved by the Director of Public Works and Planning,
23 upon the receipt of a finalized HOA Well Site Map and the Final Grants that are acceptable to WWD 40,
24 in its sole discretion, from Grantor, and upon presentation by GRANTOR of documentation, receipts,
25 and/or such other supporting information as WWD 40 may request.

26 C. GRANTOR makes the following representations, covenants, promises, assertions,
27 warranties and promises to WWD 40:

28 1. GRANTOR has made all findings necessary to convey and has fee simple

1 interests without any legal limitations, liens, or encumbrances in the Property, the HOA Well, the
2 Easements, and all underlying rights connected to or related to the Property, the HOA Well, and the
3 Easements, including water rights.

4 2. GRANTOR has full legal right, power and authority to enter into this Agreement
5 and the Easements, and any other documents or instruments in anyway related to the Property, the
6 HOA Well, the Easements, and all underlying rights, including water rights, necessary to consummate
7 the transactions contemplated herein.

8 3. Neither this Agreement, anything provided to be done hereunder, nor the
9 Easements, violates any contract, agreement or instrument which GRANTOR is a party to or bound by.

10 4. There are no written notice of pending or unresolved violations or County, State,
11 or Federal building, zoning, fire, or health codes or ordinances, or other governmental regulations, filed
12 or issued in writing against GRANTOR concerning the Property, the HOA Well, the Easements, or any
13 of the underlying rights related to the Property, the HOA Well, or the Easements, including water rights.

14 5. There are no current or contemplated actions, lawsuits, claims, legal proceedings,
15 whether civil, criminal, or administrative, pending or threatened, that in anyway relate to the Property,
16 the HOA Well, the Easements, or any of the underlying rights, including water rights, related to the
17 Property, the HOA Well, or the Easements.

18 6. The title to the Property, the HOA Well, the Easements, and the underlying rights
19 connected to or related to the Property, the HOA Well, and Easements, including water rights, are free,
20 clear and unencumbered, without any liens, encumbrances, or easements. Furthermore, GRANTOR
21 has not entered into any agreement with any third parties regarding the sale, lease, licensing,
22 management, repair, improvement, or any other matter concerning the Property, the HOA Well, the
23 Easements, or the underlying rights connected to or related to the Property, the HOA Well, or the
24 Easements, including water rights.

25 7. Upon execution of this Agreement, GRANTEE will provide WWD 40 with a valid,
26 accurate, and recent title report ("Title Report") regarding the Property, the HOA Well, the Easements,
27 and all underlying rights related thereto. GRANTOR represents and warrants that the Title Report shall
28 remain valid and accurate during the term of this Agreement and any extension thereof and at the time

of execution of the Grant of Well and Well Easement, Grant of Well #4 Easement, Grant of Electrical Easement, Grant of Access Easement, Grant of Pipeline #1 Easement, Grant of Pipeline #2 Easement.

8. GRANTOR agrees to indemnify, save, hold harmless and, at WWD 40's request, defend WWD 40, its officers, employers, agents, consultants, contractors, subcontractors and independent contractors harmless from any and all costs and expenses (including attorney's fees and costs), damages, liabilities, claims, and losses occurring or resulting to which arise out of or are in connection with the Property, the HOA Well, the Easements, and/or the underlying rights connected to or related to the Property, and/or the performance or failure to perform of GRANTOR's obligations by GRANTOR, its officers, agents, or employees under this Agreement, including water rights. GRANTOR's indemnification and defense obligations include all losses, claims, damages, costs, fees, expenses, injuries, fines, monetary expenditures and attorney's fees and costs. The provisions of this Section shall survive the termination of this Agreement.

9. GRANTOR agrees to hold WWD 40 harmless and reimburse WWD 40 for any and all losses, claims, damages, costs, fees, expenses, injuries, fines, monetary expenditures and attorney's fees and costs, that are in anyway related to any lease of the Property, the HOA Well, the areas related to or part of the Easements, or any of the underlying rights to the foregoing held by any tenant or licensee of GRANTOR. The provisions of this Section shall survive the termination of this Agreement.

10. GRANTOR has no knowledge of any claims to the basin or claims to water rights that would be or are superior to that of WWD 40.

11. GRANTOR has reviewed, investigated, and otherwise determined that the HOA Well and water accessed via any well on the Property do not overlie a Bulletin 118 groundwater basin, nor does GRANTOR have knowledge of such. Information regarding Bulletin 118 may be found here: <https://water.ca.gov/Programs/Groundwater-Management/Bulletin-118>.

12. GRANTOR has no knowledge of any claims that the water underlying the Property comes from a subterranean stream.

D. The Purchase Agreement will be processed through an external escrow by Fidelity National Title Company, 7475 N. Palm Avenue, Suite 101, Fresno, CA 93711. In the event WWD 40

desires to use another external escrow company, WWD 40 may select and use any such escrow company.

II. GENERAL COVENANTS

A. This Agreement shall not be construed to create a principal-agent, master-servant, employer-employee, partnership, joint-venture, or any other associational relationship between WWD 40 and GRANTOR. Each Party and its respective officers, agents and employees shall act in an independent capacity in all matters and correspondence between the Parties in connection with the performance of this Agreement.

B. This Agreement is not assignable, nor is any duty of GRANTOR under this Agreement delegable, without the express, written permission of WWD 40.

C. All notices, consents, approvals, communications, and/or reports of any kind whatsoever provided for or given under this Agreement shall be in writing and shall be transmitted to each Party's Point of Contact at the address set forth hereinafter or to such other address as a Party may designate by written notice to the other Party.

GRANTOR Point of Contact

Allen Cross
P.O. Box 492
Prather, CA 93651
(559) 841-4202 or (559) 283-7994
alcross97@yahoo.com

WWD 40 Point of Contact

Fresno County Department of Public Works and Planning
2220 Tulare Street, Sixth Floor
Fresno, CA 93721
(559) 600-4259 phone
Attn: Special Districts Administration
Email: specialdistrictsadmin@fresnocountyca.gov

All notices between the WWD 40 and GRANTOR provided for or permitted under this Agreement must be in writing and delivered either by personal service, by first-class United States mail, by an overnight commercial courier service, or by email. A notice delivered by personal service is effective upon service to the recipient. A notice delivered by first-class United States mail is effective three

1 Fresno County business days after deposit in the United States mail, postage prepaid, addressed to the
2 recipient. A notice delivered by an overnight commercial courier service is effective one Fresno County
3 business day after deposit with the overnight commercial courier service, delivery fees prepaid, with
4 delivery instructions given for next day delivery, addressed to the recipient. A notice delivered by email
5 is effective when transmission to the recipient is completed (but, if such transmission is completed
6 outside of Fresno County business hours, then such delivery shall be deemed to be effective at the next
7 beginning of a Fresno County business day), provided that the sender maintains a machine record of
8 the completed transmission. For all claims arising out of or related to this Agreement, nothing in this
9 Section V.C. establishes, waives, or modifies any claims presentation requirements or procedures
10 provided by law, including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the
11 Government Code, beginning with section 810).

12 D. GRANTOR represents, warrants, and covenants that each person executing this
13 Agreement for GRANTOR is the duly authorized representative of GRANTOR and is fully authorized by
14 GRANTOR to legally bind GRANTOR to this Agreement according to its terms and conditions, and to
15 make on its behalf all of the representations, covenants, warranties, and agreements set forth herein.

16 E. The terms in this Agreement, and the Easements, are for the benefit of WWD 40 and
17 GRANTOR, will run within the land, including the Property. This Agreement shall be binding upon the
18 Parties hereto, their respective heirs, personal representatives, executors, administrators, successors
19 and assignees. Except as provided in the immediately preceding sentence, this Agreement is not
20 intended to confer upon any third parties, including but not limited to members of GRANTOR or
21 customers of GRANTEE, any rights or remedies under this Agreement or the Easements.

22 F. This Agreement may be modified by the mutual, written consent of GRANTOR and WWD
23 40, without in anyway, affecting the remainder.

24 G. GRANTOR hereby acknowledges that GRANTOR has been advised of, and is aware of,
25 its rights in accordance with state law to have an appraisal made and to receive just compensation for
26 the Well, the Easements, and all underlying rights, including water rights, related to the foregoing;
27 however, GRANTOR acknowledges and agrees that WWD 40's agreement to provide water service to
28 GRANTOR, subject to the limitations in this Agreement and in the Easements, and any and all monetary

1 compensation provided for in this Agreement constitutes fair and complete compensation for WWD 40's
2 purchase of the HOA Well, the Easements, and the underlying rights related to the foregoing, including
3 water rights. GRANTOR is apprised of and understands its right to have an appraisal made, GRANTOR
4 hereby voluntarily waives such right, freely and without coercion.

5 III. GOVERNING LAW

6 This Agreement shall be deemed to be performed only in Fresno County, California. Venue for
7 any action which might arise out of or related to this Agreement shall only be in Fresno County,
8 California. The rights and obligations of the Parties and all interpretation and performance of this
9 Agreement shall be governed in all respects by the laws of the State of California.

10 IV. HEADINGS

11 The article headings in this Agreement are for convenience and reference only and shall not be
12 construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions
13 of this Agreement.

14 V. ENTIRE AGREEMENT

15 This Agreement, which includes the attached Exhibits, constitutes the entire Agreement between
16 WWD 40 and GRANTOR with respect to the subject matter hereof and supersedes all previous
17 negotiations, proposals, commitments, writings, advertisements, publications, and understandings, of
18 any nature whatsoever unless expressly included in this Agreement.

19 VI. SEVERABILITY

20 Should any provision of this Agreement be found or deemed invalid by a final and binding judicial
21 determination, all other provisions which are otherwise lawful shall remain in full force and effect, and to
22 this end the provisions of this Agreement are hereby declared to be severable.

23 VII. AUDITS AND INSPECTIONS

24 GRANTOR shall at any time during business hours, and as often as the WWD 40 may deem
25 necessary, make available to the WWD 40 for examination all of its records and data with respect to the
26 matters covered by this Agreement. GRANTOR shall, upon request by the WWD 40, permit WWD 40 to
27 audit and inspect all of such records and data necessary to ensure GRANTOR'S compliance with the
28 terms of this Agreement.

1 If this Agreement exceeds ten thousand dollars (\$10,000.00), GRANTOR shall be subject to the
2 examination and audit of the California State Auditor for a period of three (3) years after final payment
3 under contract (Government Code Section 8546.7).

4 VIII. DISCLSOSURE OF SELF-DEALING TRANSACTIONS

5 This provision is only applicable if GRANTOR is operating as a corporation (a for-profit or non-
6 profit corporation) or if during the term of the agreement, GRANTOR changes its status to operate as a
7 corporation.

8 Members of GRANTOR's Board of Directors shall disclose any self-dealing transactions that
9 they are a party to while GRANTOR is providing goods or performing services under this agreement. A
10 self-dealing transaction shall mean a transaction to which GRANTOR is a party and in which one or
11 more of its directors has a material financial interest. Members of the Board of Directors shall disclose
12 any self-dealing transactions that they are a party to by completing and signing a Self-Dealing
13 Transaction Disclosure Form, attached hereto as Exhibit A and incorporated herein by reference, and
14 submitting it to the WWD 40 prior to commencing with the self-dealing transaction or immediately
15 thereafter.

16 IX. RECORDATION

17 Immediately following the Parties' execution of this Agreement, WWD 40 shall have the right to
18 record this Agreement and the Easements against the Property in the office of the Fresno County
19 Recorder. To that end, in connection with the Parties' execution of this Agreement, the Parties shall
20 cause the respective persons executing this Agreement and the Easements on their behalf to notarize
21 their respective signatures.

22 X. COUNTERPARTS

23 This Agreement may be executed in any number of counterparts, each of which shall be deemed
24 an original, but all of which together shall constitute one and the same Agreement, binding on the
25 Parties according to its terms and conditions.

26 ///


27 ///

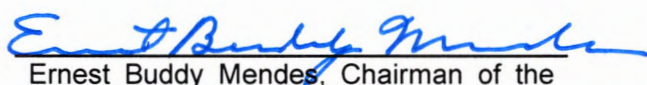
28 ///

1 IN WITNESS WHEREOF, the Parties have executed this Agreement on the date
2 set forth above.

3 **GRANTOR**

WWD 40

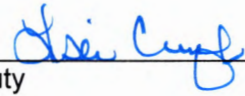
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5 Randi Terio, President
6 Shaver Springs HOA
7 PO Box 492
8 Prather, CA 93651


Ernest Buddy Mendes, Chairman of the
Board of Supervisors of the County of
Fresno on behalf of WWD 40

9
10 **ATTEST:**

Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

11
12
13
14
15 By:


Deputy

16 FOR ACCOUNTING USE ONLY:

17 ORG No.: 9360
18 Account No.: 8400
19 Program No.: 91292
20 Fund: 0900
21 Subclass: 16000
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SELF-DEALING TRANSACTION DISCLOSURE FORM

In order to conduct business with the County of Fresno (hereinafter referred to as "County"), members of a contractor's board of directors (hereinafter referred to as "County Contractor"), must disclose any self-dealing transactions that they are a party to while providing goods, performing services, or both for the County. A self-dealing transaction is defined below:

"A self-dealing transaction means a transaction to which the corporation is a party and in which one or more of its directors has a material financial interest"

The definition above will be utilized for purposes of completing this disclosure form.

INSTRUCTIONS

- (1) Enter board member's name, job title (if applicable), and date this disclosure is being made.
- (2) Enter the board member's company/agency name and address.
- (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the County. At a minimum, include a description of the following:
 - a. The name of the agency/company with which the corporation has the transaction; and
 - b. The nature of the material financial interest in the Corporation's transaction that the board member has.
- (4) Describe in detail why the self-dealing transaction is appropriate based on applicable provisions of the Corporations Code.
- (5) Form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).

Exhibit A

(1) Company Board Member Information:			
Name:	Bardi L. Terrio	Date:	9/17/20
Job Title:	Hoa Board pres.		
(2) Company/Agency Name and Address:			
Shaver Springs owners Association PO Box 492 Prather, CA. 93651			
(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to):			
N/A			
(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code 5233 (a):			
none			
(5) Authorized Signature			
Signature:	Ron L. L...	Date:	9/17/20