

## WATER SERVICES AGREEMENT

This Agreement is made this 10<sup>th</sup> day of May, 2017, between the City of San Buenaventura, a California charter law municipal corporation, hereafter called the "City," and Casitas Municipal Water District, a California special district, hereinafter called "Casitas." The City and Casitas shall collectively be referred to herein as the "Parties."

### RECITALS

- A. WHEREAS, the City and Casitas seek to address the need for consistent water for Casitas and City customers;
- B. WHEREAS, the City and Casitas seek to provide operational flexibility and reliable water sources;
- C. WHEREAS, the City and Casitas seek to ensure Lake Casitas water levels remain sustainable;
- D. WHEREAS, the City and Casitas acknowledge the benefits of coordinating and cooperating in their water supply and operations;
- E. WHEREAS, the City and Casitas seek to develop an agreement consistent with State water law;
- F. WHEREAS, the City and Casitas acknowledge that water contracts require flexibility and adaptability to address changing conditions, water law and policy; and
- G. WHEREAS, the City and Casitas seek to develop an agreement consistent with the following mutually agreed to goals for the benefit of both Parties:
  - a. Address water availability issues;
  - b. Increase regional storage and capacity;
  - c. Develop long-term regional water efficiency;
  - d. Ensure both the City and Casitas' financial sustainability;
  - e. Mutually address outside threats to water availability and operational efficiency;
  - f. Acknowledge the City and Casitas' long-standing mutually beneficial relationship and foster a continuing beneficial relationship;
  - g. Maintain collaborative efforts; and
  - h. Serve as regional leaders in water efficiency and conservation.

Based on the preceding Recitals, and in consideration of the mutual covenants of the Parties as set forth below, City and Casitas agree as follows:

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### ARTICLE 1 DEFINITIONS

- 1.1 Actual In-District Demand: The water purchased and utilized by the City within Casitas boundaries as certified by the City on an annual basis. The annual certification calculation for Actual In-District Demand is as follows:
- Actual In-District Demand = (City Metered Water within Casitas Boundaries) + (Water Loss x Purchased Water)
- 1.2 Allocation: When Casitas' Water Efficiency and Allocation Program (WEAP) is in effect, the City shall receive an allocation based on the City's Projected Water Demand adjusted in accordance with Article 4.
- 1.3 Annual Certification: A letter from the City to Casitas comparing Actual In-District Demand to Purchased Water over the same period of time.
- 1.4 Balance Exceedance: When the amount of Purchased Water is more than the Actual In-District Demand.
- 1.5 Catastrophic Failure: Any unanticipated event or circumstance, including acts of God, that reduces either party's water supplies by twenty percent (20%) or more.
- 1.6 Citywide Metered Sales: Includes water sales to the City's customers as determined by meters within the City's service area.
- 1.7 Citywide Water Production: Total amount of water the City extracts, purchases, or treats to deliver to all customers within the City's service area.
- 1.8 Cost of Service: Charges of Casitas which are calculated according to applicable law.
- 1.9 Demand Hardening: Demand hardening, for purposes of this Agreement only, shall be defined as the reduction in the ability of a customer (or customers collectively) to achieve further water reductions without adversely impacting public health, safety and/or business viability in a significant manner.
- 1.10 Fiscal Year: The period from July 1<sup>st</sup> of the current year to June 30<sup>th</sup> of the following year for each year of the contract.
- 1.11 Projected Water Demand: Total amount of water needed to meet the City's water needs within Casitas boundaries. Demand projections are based on the City's Comprehensive Water Resources Report or similar best management practice.
- 1.12 Purchased Water: Water purchased by the City from Casitas as determined by City and Casitas meters.

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- 1.13 Short Interruptions of Service: A period of time of up to two weeks, but not cumulatively more than two weeks, in any one fiscal year, during which water service is interrupted.
- 1.14 Water Balance: Purchased Water is less than or equal to Actual In-District Demand.
- 1.15 Water Loss: The ratio of water lost from systems operations, non-revenue water, leaks, etc. Water Loss shall be determined based on the following calculation:

$$\text{Water Loss} = (\text{Citywide Water Production} - \text{Citywide Metered Sales}) / \text{Citywide Water Production}$$

This Water Loss calculation will be made each year by the City and may be revised to meet State-prescribed definitions and/or standards.

### ARTICLE 2 TERM

The term of this Agreement shall be thirty (30) years commencing on the date first herein described. The Parties agree to review the provisions of this Agreement every five (5) years consistent with Article 5 Cooperative Management. Unless otherwise amended by the Parties in writing, this Agreement shall remain in full force and effect.

### ARTICLE 3 CERTIFICATION

- 3.1 City shall annually certify whether it achieved Water Balance. The certification shall identify Purchased Water, Actual In-District Demand, and Water Loss. The City shall provide its Annual Certification no later than the last business day of August. The Annual Certification shall cover the period of July 1 to June 30 of each year and shall be in lieu of any monthly certifications required of City by Casitas. City will use its best efforts to accurately calculate Actual In-District Demand and Water Loss. The Parties agree to the following calculation for determining Water Balance:

$$\text{Water Balance} = \text{Purchased Water} - \text{Actual In-District Demand}$$

Water Balance: The City achieves Water Balance when the above calculation equals a negative number or zero.

Balance Exceedance: If the above calculation results in a positive number, the City utilized more Casitas water than its Actual In-District Demand, causing a

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Balance Exceedance.

3.2 In the event of a Balance Exceedance, the following shall occur:

3.2.1 For the twelve-month period following the Annual Certification showing the Balance Exceedance, the City shall reduce its Actual In-District Demand by an amount equal to the Balance Exceedance.

3.2.2 Pursuant to Article 5, the City shall immediately notify Casitas if the City cannot reach Water Balance within a 12-month period following Balance Exceedance.

3.2.3 City will continue to reduce its Actual In-District Demand until the reduction equals the Balance Exceedance. Failure of the City to reduce Actual In-District Demand to adjust for the Balance Exceedance within the 12-month period shall be cumulative, reported in the relevant Annual Certification, and may be subject to Article 13.

3.3 The Parties acknowledge that under certain circumstances and operational failures, the City may be unable to reduce its Actual In-District Demand sufficiently to achieve Water Balance within a 12-month period following the documented Balance Exceedance. In these circumstances the Parties may renegotiate an extended time frame. The Parties agree to extensions as follows:

3.3.1 The City is developing alternate water supplies that will require additional time to implement. The City anticipates such alternate water supplies will not be in operation until July 2020 (Transition Period). During this Transition Period, the City may request an extension of time up to 18 months (in addition to the 12-month period following documented Balance Exceedance) to achieve Water Balance. Casitas reserves the right to deny an extension of time in the event it is at Stage 3, 4, or 5 in the WEAP.

3.3.2 In the event of a Catastrophic Failure, the Parties agree that the City may request an extension of time up to three (3) years to come into Water Balance from the date of certified Balance Exceedance.

3.3.3 If the end of the time extension, pursuant to this Article 3.3, does not coincide with the Annual Certification, the City shall provide an interim report documenting status on complying with Balance Exceedance provisions.

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3.3.4 If Casitas rejects the City's reasonable requests for a time extension, Parties agree to submit to the procedures outlined in Article 14 of this Agreement.

### ARTICLE 4 ALLOCATION

- 4.1 To provide maximum flexibility and in recognition of former agreements and rights, Casitas shall provide the City with sufficient water to meet its Projected Water Demand consistent with this Article 4.
- 4.2 The City shall submit a Projected Water Demand to Casitas by the last business day of May of every year. This Projected Water Demand shall include any adjustments on demand associated with land use. If the City does not provide a revised Projected Water Demand by the last business day of May, Casitas will utilize the previous year's figure. The Projected Water Demand submitted pursuant to this Article 4.2 shall be utilized in the annual Certification referenced in Article 3.
- 4.3 In the event that Casitas must enact its WEAP due to a water shortage, Casitas may adjust the City's Allocation consistent with the percentage reduction for the WEAP stage.
- 4.3.1 The City's Stage 1 Allocation shall be the average of the City's Projected Water Demand during the five (5) most recent years during which neither the City nor Casitas are implementing their water shortage contingency plans.
- 4.3.2 Casitas will adjust the City's allocation amount to account for Demand Hardening.
- 4.4 The Parties acknowledge and agree, that in addition to the City's existing and complementary adjustments to Projected Water Demand, the City enacts water restrictions within its boundaries. Nothing in this Agreement shall require City to follow Casitas' water restriction provisions, such as watering days, or limitations on development.
- 4.5 Pursuant to law, the Parties acknowledge and agree that nothing in this Agreement shall be construed to limit or infringe on the City or Casitas' water rights.

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ARTICLE 5  
COOPERATIVE MANAGEMENT

- 5.1 The City and Casitas acknowledge that cooperative management of regional water resources must be achieved through coordinated and joint management activities. Consistent with those ideals and in furtherance of this Agreement, the Parties agree to the following:
- 5.1.1 Communication: The City and Casitas shall meet, as needed, to discuss and seek to resolve any issues relating to systems operations and/or resource management. These meetings may also include without limitation:
- A. Review of Annual Certification.
  - B. Allocations due to water shortage pursuant to Casitas' WEAP.
- 5.1.2 In the event of any change in circumstances that may impede compliance with the terms and timelines of this Agreement, the Parties agree to provide notice to the other as soon as reasonably feasible. Anticipated items requiring notice include, without limitation:
- A. Water quality issues requiring system shut down.
  - B. Failure to achieve Water Balance within agreed times.
  - C. Interruptions of service, including Short Interruptions of Service.
  - D. Operational failures that may result in Balance Exceedance.
  - E. Maintenance of either the City or Casitas' individually or jointly coordinated facilities.
  - F. Water conservation initiatives.
  - G. Water supply issues.
  - H. Changes in water supply.
- 5.1.3 In the event of any change in circumstances, the City and Casitas shall seek resolution of issues within their authority.
- 5.2 Casitas shall have the option of purchasing water from the City. This water may come from an agreed reduction of the City's Actual In-District Demand, or provision of additional water resources available to the City.

ARTICLE 6  
CAUSES BEYOND CONTROL

- 6.1 In the event of an interruption or reduction in demand or supply beyond the control of City or Casitas, including but not limited to acts of God, which, by exercise of due diligence and foresight, such party could not reasonably have been expected to avoid, neither party shall be considered in default in

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respect to any obligation under this Agreement if prevented from fulfilling the obligation by reason thereof.

- 6.2 Either party unable to fulfill any obligation by reason of any of the above described conditions shall exercise due diligence to remove the inability with all reasonable dispatch.

### ARTICLE 7 RATES

Casitas agrees to establish rates, including fixed and variable charges, in accordance with law and these rates shall not exceed the Cost of Service.

### ARTICLE 8 WATER QUALITY

- 8.1 Casitas will use its best efforts to meet all applicable drinking water quality standards and regulations. If at any time during the term of this Agreement Casitas is not able to meet all applicable primary drinking water quality standards and regulations, the City's obligations to pay for water shall be limited to payment for the amounts of water the City can beneficially use for potable purposes.
- 8.2 Casitas shall notify City immediately in the event that Casitas is unable to meet applicable drinking water quality standards. In the event of the City's sale of water to Casitas (see Article 5.2), the City shall notify Casitas immediately if the City is unable to meet applicable drinking water quality standards.

### ARTICLE 9 SUPPLY & OPERATIONS

- 9.1 The Parties acknowledge the possibility for Short Interruptions of Service. However, in all circumstances, Casitas shall use due and reasonable diligence to provide a regular and uninterrupted supply of water, but in case this supply shall be interrupted or be defective or fail for any cause, Casitas shall be required to exercise all reasonable diligence in order to resume the normal supply of water as quickly as practicable.
- 9.2 The Parties shall maintain and operate their respective water systems so as to minimize, to the extent practicable, the likelihood of disturbance originating in either of the Parties' water systems which might cause

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impairment to the service of the water system of the other party or of any water system interconnected with the system of the other party.

ARTICLE 10  
NOTICES

All notices given or required to be given pursuant to this Agreement shall be in writing and may be given by personal delivery, mail, or email if the email is followed by mail. Notices sent by mail shall be addressed as follows:

To City:       City of San Buenaventura  
                  Attention: Acting General Manager  
                  P.O. Box 99  
                  Ventura, CA 93002-0099  
                  Phone No: (805) 654-2828  
                  FAX No.: (805) 643-0339  
                  Email: jmcdermott@venturawater.net

To Casitas:   Casitas Municipal Water District  
                  Attention: General Manager  
                  P.O. Box 37  
                  Oak View, CA 93022  
                  Phone No: (805) 649-2251  
                  FAX No.: (805) 649-3001  
                  Email: swickstrum@casitaswater.com

When addressed in accordance with this paragraph, notice shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices shall be deemed given at the time of actual delivery. Changes may be made in the titles or addresses of the persons to whom notices are to be given by giving notice in the manner prescribed in this paragraph.

ARTICLE 11  
MODIFICATION

11.1 No alteration, change, or modification of the terms of this Agreement shall be valid unless made in writing and signed by both Parties hereto and approved by appropriate action of the governing bodies of the Parties.



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- 11.2 The Parties understand that regular discussion and amendments to this Agreement may be required, as necessary to meet their mutual goals as expressed in Article 2 and Article 5 of this Agreement.

### ARTICLE 12 RULES AND REGULATIONS

- 12.1 As applicable, City agrees to comply with all rules and regulations of Casitas executed with the proper legal authority and formality.
- 12.2 As applicable, Casitas agrees to comply with all rules and regulations of City executed with the proper legal authority and formality.

### ARTICLE 13 TERMINATION

- 13.1 Right of Termination. This Agreement and the transactions contemplated herein may be terminated and abandoned under the following circumstances:
- (i) Upon the mutual consent, in writing, by both Casitas and City; or
  - (ii) After following dispute resolution provisions provided in Article 14, Casitas or the City may provide written Notice to Terminate for:
    - a. Violation by the other party of any of the terms of this Agreement;
    - b. Violation of appropriate provisions of California Law; or
    - c. Failure of City to correct Balance Exceedance consistent with the terms of this Agreement.
- 13.2 The power of termination provided for by Article 13.1 hereof may only be exercised:
- After pursuing dispute resolution pursuant to Article 14, unless delays shall cause undue harm to said party; and
  - During the next fiscal year, but not less than twelve months, following service of the Notice to Terminate; or
  - By written agreement signed on behalf of City or Casitas by designated decision-makers.

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### ARTICLE 14 DISPUTE RESOLUTION

- 14.1 Should there be a dispute over the operation of the Agreement that cannot be resolved by staff of City and Casitas pursuant to Article 5, an appointed committee of at least two Casitas Board members and two City Council members shall convene to discuss and use their best efforts to resolve the dispute before any other action is taken.
- 14.2 Prior to termination of this Agreement pursuant to Article 13, the party seeking termination shall provide the other party written notice of the controversy and efforts to resolve the controversy (Notice of Controversy).
- 14.2.1 Within forty-five (45) days of Notice of Controversy, the Parties shall attempt in good faith to resolve the controversy through informal means consistent with Article 14.1.
- 14.3 Unless otherwise agreed in writing, if the Parties cannot agree upon a resolution of the controversy within forty-five (45) days of Notice of Controversy, the dispute shall be submitted to mediation prior to commencement of any legal action or termination of the Agreement. The following elements shall apply to said mediation:
- Mediation shall be no less than one (1) full day (unless agreed otherwise by the Parties).
  - Cost of the mediation shall be paid in equal proportion between the Parties.
  - The mediator shall be agreed to by the Parties or appointed by the Superior Court of California upon a suit or motion for appointment of a neutral mediator.
- 14.4 Upon completion of mediation pursuant to this Article 14, if the controversy has not been resolved, any party may exercise option for termination or other legal action under this Agreement by serving a Notice of Termination.

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ARTICLE 15  
ENTIRE AGREEMENT

- 15.1 This writing embodies the entire agreement and understanding between the Parties hereto, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby, it being the intent of the Parties that neither shall be bound by any terms, conditions, or representations not written here.
- 15.2 This Agreement supersedes and cancels the June 28, 1995 Agreement, entitled the "1995 Agreement." The City and Casitas are not subject to any further legal or financial obligations under the 1995 Agreement. The Parties agree that as of the commencement of this Agreement, City is in Water Balance.

DATE: 5/9/17 CITY OF SAN BUENAVENTURA  
BY: [Signature]  
City Manager

ATTEST:  
[Signature]  
City Clerk

APPROVED AS TO FORM:  
[Signature]  
City Attorney

DATE: 5/10/2017 CASITAS MUNICIPAL WATER DISTRICT  
BY: [Signature]  
President, Board of Directors

APPROVED AS TO FORM:  
[Signature]  
General Legal Counsel for Casitas