CITY OF BELLFLOWER
AGREEMENT FILE NO. 320.4
(Refer Resolution No. 06-40)

AGREEMENT TO OPERATE CITY WATER SYSTEM

This Agreement is made and entered into this 14th day of August, 2006, between the City of Bellflower, a general law city (hereinafter referred to as the "City") and Bellflower-Somerset Mutual Water Company, a California corporation operated as a mutual water company under California law (hereinafter referred to as the "Operator"). The City and the Operator are each a "Party" and are collectively, the "Parties."

RECITALS

A. The City is contemplating obtaining certain facilities presently owned by Peerless Water Company which are used to produce, process, and distribute water to properties and members of the general public within a portion of the City of Bellflower.

B. Should the City obtain such facilities, the City and the Operator desire to operate, maintain, and improve them pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, it is agreed by and between City and the Operator as follows:

1. DEFINITIONS

For purposes of this Agreement, the following terms shall be defined as set forth in this Section:

"Bond Component" means that portion of the Water Rates established to generate revenue to pay the principal of and interest on any Bonds, and to comply with the Water Rate Covenant. Procedures to determine the Bond Component are more fully described in Section 9, below.

"Bonds" means any bonds issued by the City for the purpose of acquisition of the Water System and/or improvement thereof during the term of this Agreement.

"Capital Improvements Component" means that portion of the Water Rates established to generate revenue to fund scheduled capital improvements and reserves for capital improvements to the Water System. Procedures to determine the Capital Improvements Component are more fully described in Section 9, below.

"City" shall mean the City of Bellflower, a general law city. Except as otherwise required by law, actions of the City required by this Agreement may be taken by the City Manager of the City or his designee.

"City Administrative Cost Component" means that portion of the Water Rates established to reimburse the City for its actual costs in administering this Agreement and the Water System. Procedures to determine the City Administrative Cost Component are more fully described in Section 9, below.

"DHS" means the Department of Health Services of the State of California.

"Facilities Operations" means the operation, maintenance, and repair of the Water Facilities so that the properties within the Water Service Area receive water which meets all applicable health and safety standards and regulations on a continuous and uninterrupted basis.

"Improvements" means those improvements to and alterations of the physical plant used to provide water within the Water Service Area which, as of the date of this Agreement, the City anticipates funding, as described more fully in Attachment C to this Agreement. The description of Improvements is subject to change as set forth in Section 5, below.

"Office Building" means the office building located at 16913 Lakewood Blvd., Bellflower, California, which the City anticipates acquiring from Peerless on or before the Transfer Date.

"Office Building Capital Costs" means the cost of any capital improvements to the Office Building, which shall be approved by the City Manager or his or her designee (which approval shall not be unreasonably withheld), made by Operator during such time as the License set forth in Attachment E hereto is in effect.

"Office Building Operation and Maintenance Costs" means all reasonable costs actually incurred by Operator in operating, maintaining and repairing the Office Building during such time as the License set forth in Attachment E hereto is in effect.

"Operations Component" means that portion of the Water Rates established to reimburse the Operator for the actual cost of the Facilities Operations, Office Building Operation and Maintenance Costs, Office Building Capital Costs and Operator's Preparation Costs. Procedures to determine the Operations Component are more fully described in Section 9, below.

"Operator" means the Bellflower-Somerset Mutual Water Company, a California corporation operated as a mutual water company under California law.

"Operator's Preparation Costs" means all actual costs incurred by Operator prior to the Transfer Date in connection with the negotiation and preparation of this Agreement and the preparation and delivery of information necessary to effectuate Operator's transition to operate, maintain and improve the Water Facilities as contemplated hereunder (which costs shall include legal fees, staff time and director compensation for work performed in aid of the aforementioned preparation and over and beyond the normal business activities of Operator); provided, however, that such Operator's Preparation Costs shall not exceed the sum of fifty thousand dollars ($50,000.00) and shall be supported by written substantiation of such costs submitted to the City not later than ninety (90) days after the Transfer Date.

"Peerless" means the Peerless Water Company.

"Transfer Date" means the date that the transfer of possession of the Water System from Peerless to the City shall occur. The anticipated Transfer Date is July 15, 2006, but the Parties understand and agree that this date may be changed at the sole discretion of the City.

"Water Facilities" shall mean those facilities used to produce, process, and distribute water to properties and members of the general public within the Water Service Area, as more fully described in Attachment A to this Agreement.

"Water Rate Covenant" means the covenant entered into by the City as defined in that certain document entitled "Installment Purchase Agreement" entered into between the City and the Bellflower Financing Authority in connection with the Bonds.

"Water Rates" means those rates, charges and fees imposed upon the customers of the Water Facilities pursuant to this Agreement.

"Water Rights" means that portion of the water rights actually obtained by the City from Peerless which will allow groundwater production to provide water to the businesses and residences in the Water Service Area. Procedures to determine such portion are described more fully in Section 8, below.

"Water Service Area" means that portion of the City of Bellflower more fully described in Attachment B to this Agreement.

"Water System" means the Water Facilities and the Water Rights collectively.

"Water Year" means the period from July 1 through the following June 30.

2. COOPERATION PRIOR TO TRANSFER OF THE WATER SYSTEM

The City and the Operator acknowledge and agree that the provision of uninterrupted water service is of primary importance to residences and businesses in the Water Service Area. The City and the Operator therefore agree to work cooperatively during the time prior to the City's acquisition or possession of the Water System (including, but not limited to, sharing of information regarding the operation of the Water System and regarding billing of the Water System's customer accounts and the fulfilling of actions necessary to accommodate the turn over of the Water System from Peerless to the City in accord with the Transition Plan attached hereto as Attachment D) to assure that water service will not be interrupted upon transfer of the Water System from Peerless to the City. Notwithstanding the foregoing, prior to the Transfer Date each Party shall be solely responsible for its own actions undertaken in contemplation of the potential transfer of the Water System and shall bear its own costs in making such preparations as it deems necessary or desirable to carry out the terms of this Agreement, except as specifically provided in this Agreement.

3. CITY DETERMINATION NOT TO ACQUIRE THE WATER SYSTEM

The Operator acknowledges that the City has not acquired title to the Water System as of the date of this Agreement, but will obtain such title or an order for possession prior to the commencement of Operator's obligations hereunder on the Transfer Date. The Operator agrees that the City may, in its sole discretion, determine not to acquire title to or possession of the Water System, or to return possession to Peerless should it be acquired prior to acquisition of title. Should the City determine not to acquire title to the Water System, the City shall promptly provide notice of such determination to the Operator, including the date on which such return of possession shall occur. As of such date, this Agreement shall terminate and be of no further force or effect.

4. WATER FACILITIES OPERATION

A. Operator's Obligations. From and after the Transfer Date, except as otherwise expressly set forth in this Agreement, the Operator shall provide at its sole cost and expense, but subject to reimbursement in accordance with Sections 9 and 14, below, all work, labor, material, and supplies required for the Facilities Operations. To assure the Operator's work does not adversely affect other City facilities, prior to undertaking any work for which a permit would be required if the Water Facilities were not owned by the City, *e.g.* an encroachment, excavation, or building permit, the Operator shall apply for and obtain from the City such permit, provided, however, that notwithstanding the foregoing, any such permit shall be issued by the City without charge to the Operator.

B. City's Obligations. The City agrees that from and after the Transfer Date the Operator shall have such access to the Water Facilities as the Operator determines is necessary to perform the Facilities Operations, subject to any requirement to obtain a permit as set forth in Subsection A of this Section 4. In addition, for a five (5) year period beginning on the Transfer Date, the City grants to the Operator a license to use the Office Building for the purposes of Facilities Operations, under the terms and conditions set forth in Attachment E to this Agreement.

5. IMPROVEMENT OF PHYSICAL PLANT FOR WATER SERVICE

A. Improvements Defined. The Parties understand and agree that the public health, safety, and welfare would be benefited by improvements to and alterations of the physical plant used to provide water within the Water Service Area. The Improvements anticipated to be funded by the City as of the date of this Agreement are set forth in Attachment C hereto, provided, however, that the City may in its sole discretion, but after consultation with Operator, add or remove items listed on Attachment C, and the inclusion of any Improvement on Attachment C shall not be deemed to obligate either the City or the Operator to construct or install such Improvement unless and until an Implementation Agreement is first approved pursuant to the provisions of Subsection B of this Section 5.

B. Construction Management and Implementation Agreements. The Operator shall act as the City's construction manager for any Improvement(s), to oversee and administer any such construction work, unless, in the City's reasonable determination, the Operator is prohibited from so acting by any statute, rule, regulation, or condition of financing applicable to the Improvement. The Parties shall work cooperatively to determine for each Improvement the exact nature of the work required, the schedule of performance for such work, the obligations, if any, arising from the funding source used for the Improvement, including but not limited to any obligation to comply with the Davis-Bacon Act, and any other criteria relevant to the particular project. Such determinations shall be documented in one or more Implementation Agreements between the Parties. All costs incurred in the design and/or construction of any Improvement shall be the sole responsibility of the City unless otherwise agreed to in an Implementation Agreement executed by both Parties. Such Implementation Agreement shall provide for the Operator's recovery of its staff time expended in managing such construction at the actual cost incurred by the Operator (based upon wage rate plus benefits applicable to the relevant staff member(s)), and the Operator shall implement and utilize a job cost accounting system to accurately account for all such staff time expended in connection with any construction of Improvements pursuant to this Agreement.

6. COMPLIANCE WITH APPLICABLE LAW

A. Operator Obligations. Except as expressly set forth in Subsection B of this Section 6, the Operator shall, at all times during the term of this Agreement,

have in full force and effect all licenses required of it by law to perform the terms of this Agreement, including all necessary water system distribution and treatment certifications required by the DHS. The Operator further agrees that in carrying out any operation, maintenance, or repair of the Water Facilities and the construction of any Improvement, it will comply with all applicable Federal, State, and City statutes, regulations, ordinances, guidelines, and standards, including but not limited to any directive arising from or relating to the Domestic Water Supply Permit referred to in Subsection B of this Section 6, and any regulatory directive from DHS to the City relating to the Water Facilities. In particular, the Operator understands and agrees that any "construction, alteration, demolition, installation, or repair work" to any property owned by the City, including but not limited to the Water Facilities and the Office Building, is a "public work" as defined in Labor Code § 1720. The Operator therefore agrees that it shall pay prevailing wage to workers employed on such public works when required by Labor Code § 1771.

B. City Obligations. The City shall obtain and maintain at the City's sole cost and expense a Domestic Water Supply Permit from the DHS for the operation of the Water Facilities.

7. PERSONNEL AND CONTRACTORS HIRED BY THE OPERATOR

A. The Operator's Work Force. The Operator shall, at the Operator's sole cost and expense, but subject to reimbursement under Sections 9 and 14, below, engage, secure, and/or hire such persons as may, in the opinion of the Operator, be necessary to comply with the terms of this Agreement. In the event any such persons are retained by the Operator, the Operator hereby warrants that such persons shall be fully qualified and, if required by applicable law or regulation, certified by the State of California to perform services required hereunder. The Operator further agrees that no contractor or subcontractor shall be retained by the Operator to provide any Facility Operations service or any construction management service pursuant to the provisions of Section 5 of this Agreement except upon the prior written approval of the City, provided, however, that the City's approval shall not be required for (i) any person hired as an employee of the Operator to perform such services or (ii) any contractor retained by the Operator to address a bona fide emergency situation occurring at a time when City offices are not open, provided the City is informed of such retention at the earliest possible time thereafter and a cost accounting of the emergency repair is provided to the City within thirty (30) days of the date of such retention.

B. Designation of Contact Person. The Operator hereby designates Dan L. Koops as its contact person with the City in the administration of this Agreement. The Operator may change this designation in its sole discretion by providing written notice of such change to the City not less than five (5) business days prior to making such change.

8. WATER RIGHTS PROVIDED BY THE CITY TO THE OPERATOR

The City desires to provide the Operator with the amount of Water Rights obtained from Peerless which are necessary to service the Water Service Area at no cost to the Operator. Information presently available to the Parties shows that historically an average of 432 acre feet of Water Rights were utilized to provide water within the Water Service Area in each Water Year. The Parties therefore agree that on the Transfer Date the City shall transfer to the Operator that amount of Water Rights equal to the proportion that 432 acre feet bears to the remainder of the Water Year (e.g., if six (6) months remain in the Water Year on the Transfer Date, the right to utilize 216 acre feet of Water Rights shall be so transferred). Once the first six (6) months of operations under this Agreement have been completed, the Operator shall provide the City with a statement as to the actual amount of Water Rights used within the Water Service Area, and the Parties shall adjust the amount of Water Rights to be provided under this Agreement without cost to the Operator as necessary to reflect the actual usage of such Water Rights for that portion of the Water Year then remaining. Thereafter, the City agrees it shall consider such adjustment upon request of the Operator at not more than two (2) year intervals, and shall approve such adjustment if supported by documentation as to the actual amount of water utilized within the Water Service Area. The parties shall also consider adjustment of such Water Rights at such time, if any, as Operator's groundwater production facilities become connected to the Water Facilities.

9. RATES, FEES AND CHARGES TO CUSTOMERS

The Operator shall be responsible for the billing and collection of all rates, charges and fees imposed upon the customers of the Water Facilities. Such Water Rates shall be established by the Operator, with the prior approval of the City Council of the City, pursuant to the following procedure and requirements.

A. Annual Water Rate Determination. Except as set forth below for the initial year following the Transfer Date, by May 15 of each year, the Operator shall provide the City with a schedule of the proposed Water Rates for the ensuing Water Year. The City and the Operator understand and agree that the Water Rates must be set in compliance with the Water Rate Covenant, and must produce the minimum required annual water revenue anticipated therein. The Operator shall therefore develop the schedule using its best estimates so as to produce in the ensuing Water Year the following revenue from customers of the Water Facilities:

(1) The Bond Component: an amount equal to the aggregate of the principal of and interest on any Bonds, to be paid by the City during the ensuing Water Year as such principal and interest become due and payable during that year, except to the extent such principal and interest are payable from the proceeds of the Bonds or from any other source of legally available funds of the City which have been deposited with a bond trustee prior to the commencement

of that Water Year, together with any additional amount required to comply with the Water Rate Covenant to provide adequate debt service coverage. The City shall provide the Operator with the necessary information to determine the Bond Component (including, but not limited to any information regarding any amounts that have previously been deposited with a bond trustee) annually on or prior to each April 16; and

(2) The Operations Component: an amount sufficient to reimburse the Operator for the actual cost of (a) the Facilities Operations, (b) the Office Building Operation and Maintenance Costs, (c) the Office Building Capital Costs, and (d) the Operator's Preparation Costs, provided, however, that the Operator's Preparation Costs shall be amortized, without interest, over a five (5) year payback period. The Operations Component shall be determined by adding (i) those costs which are anticipated to be directly incurred in the ensuing Water Year by the Operator in the Facilities Operations, including but not limited to energy costs associated with pumping water within the Water Service Area provided such costs are determined by separate meters, and such other operation and maintenance costs and expenses as the Operator may reasonably be able to segregate from generally incurred costs as being related solely to the Water Facilities; (ii) the estimated cost of any contractor or subcontractor anticipated to perform work on the Water Facilities (provided the prior written consent of the City to such cost is first obtained prior to incurring such cost); and (iii) a prorated share of all costs and expenses indirectly incurred by the Operator in the Facilities Operations which cannot be reasonably allocated to the Facilities Operations under subdivision (i) above, including but not limited to, administrative support, workers compensation insurance, employee salaries and benefits, utilities, and taxes, calculated by applying the ratio of the number of metered connections within the Water Service Area to the total number of metered connections serviced by the Operator; and

(3) The City Administrative Cost Component: an amount sufficient to reimburse the City for its actual costs in administering this Agreement and the Water System, including but not limited to any fees or charges imposed by the DHS in connection with the Domestic Water Supply Permit and the costs of insurance to be provided by the City. The City shall provide the Operator with the necessary information to determine the City Administrative Cost Component annually on or prior to each April 16; and

(4) The Capital Improvements Component: an amount sufficient to fund scheduled capital improvements and reserves, which amount the City shall provide annual to the Operator on or prior to each April 16 thereafter.

In addition, until the amount set forth in Section 12 below is available in the Rate Stabilization Fund, the Water Rates shall be adjusted as set forth in said Section.

Notwithstanding the foregoing, the Operator shall endeavor to keep the Water Rates as low as possible consistent with providing an acceptable level of service, including but not limited to the maintenance of reasonably adequate operating reserves by the Operator and capital replacement reserves by the City. In the event a determination is made to refinance the Bonds, the Operator shall cooperate with the City in determining how to best implement such a refinancing while keeping the Water Rates at the lowest level possible.

The schedule of proposed Water Rates submitted by May 15 shall be accompanied by an explanation of the method by which the Water Rates were determined sufficient to show the City how the Bond Component, Operations Component, City Administrative Cost Component, and Capital Improvements Component were determined and are provided for, including but not limited to the Operator's budget for the up-coming Water Year, and, if applicable, how the Rate Stabilization Fund requirement has been implemented. If the schedule proposes a change from the then-existing Water Rates, upon submitting such schedule, the Operator shall obtain from the City the date the change in Water Rates will be considered and shall include in each bill sent thereafter a statement that a change in the Water Rates is being proposed and will be considered by the City Council on such date.

The City Council shall consider the proposed Water Rates by each June 15. Following such consideration, the City Council may, after good faith consultation with the Operator, modify all or any of the proposed Water Rates, provided, however, that the total Water Rate schedule shall remain such as to produce revenue that is at least equal to the sum of the Bond Component, Operations Component, City Administrative Cost Component, and Capital Improvements Component, adjusted to account for the Rate Stabilization Fund if applicable.

(B) Initial Water Rate Determination. The Water Rates which are charged to customers in the Water Service Area by Peerless on the day before the Transfer Date shall remain in effect for a period of not less than three (3) months after the Transfer Date. Immediately following approval of this Agreement, the Parties shall begin to prepare the information required to determine the Bond Component, Operations Component, City Administrative Cost Component, and Capital Improvements Component and the amount required for the Rate Stabilization Fund. The Parties shall thereafter work cooperatively to determine the revision to the Peerless Water Rates required to meet the criteria set forth in Paragraph (A) above. The revised Water Rates shall be implemented at the beginning of the billing cycle which occurs on or immediately after the three (3) month anniversary of the Transfer Date.

10. TRANSMITTAL OF REVENUE TO CITY

The City shall provide the Operator with a schedule of the Bond payment dates. Unless the prior written consent of the City is first obtained to a different distribution schedule, within thirty (30) days prior to each Bond payment date, the Operator shall

forward to the City a sum equal to all revenue collected from operation of the Water System since the last such payment was made which constitutes the Bond Component, the Capital Improvements Component, and the City Administrative Cost Component, and, if applicable, the Rate Stabilization Fund revenues.

11. PRIORITY OF REVENUE USE

The payment to the City of the Bond Component shall be a first priority on any revenues received by the Operator from operation of the Water System. The payment to the City of the Capital Improvements Component shall be a second priority on any revenues received by the Operator from operation of the Water System, following payment of the Bond Component. The payment to the City of the City Administrative Cost Component shall be a third priority on any revenues received by the Operator from operation of the Water System, following payment of the Bond Component and Capital Improvements Component. The payment to the City of amounts for the Rate Stabilization Fund required by Section 12, below, shall be the fourth priority on any revenues received by the Operator from operation of the Water System, following payment of the Bond Component, the Capital Improvements Component, and the City Administrative Cost Component.

12. RATE STABILIZATION FUND

The City shall establish a Rate Stabilization Fund, which shall be used and maintained as set forth in this Section 12. Until such time as the Fund contains not less than one hundred thousand dollars ($100,000), the Water Rates shall be increased by ten cents ($0.10) per one hundred (100) cubic feet, or portion thereof, of water delivered in addition to the total otherwise determined pursuant to Section 9, above. At such time as revenues are distributed to the City pursuant to Section 10, above, the Operator shall pay to the City for deposit into the Rate Stabilization Fund all revenues received which constitute such amount. The City may determine, in its sole discretion, to keep Water Rates from sharply rising in any one year by paying the Operator for all or part of the Operator's costs with money from the Fund, which amount shall then be off-set against the anticipated Operations Component.

13. INITIAL OPERATING CAPITAL

The Parties understand and agree that the provisions of this Agreement requiring the Operator to provide for the Facilities Operations at its own cost and expense would place an undue hardship on the Operator during the initial months of the Facilities Operations, both because Water Rates will initially remain as established by Peerless and because there will be a delay between the Transfer Date and the collection of revenues from customers. The City therefore agrees that notwithstanding any provision of this Agreement to the contrary, on the Transfer Date it shall pay to the Operator the sum of Two Hundred Fifty Thousand Dollars ($250,000), the Operator's use of which shall be restricted to the payment of work, labor, services, materials and supplies in

connection with the Facilities Operations under this Agreement. The City further agrees to negotiate with the Operator in the event additional amounts of initial capital are necessary for the payment of such work, labor, services, materials and supplies. The Operator shall reimburse such sum(s) to the City from revenue received from Water Rates, without interest, by such payments or lump sum as the Operator determines in its sole discretion, provided, however, that the total sum of Two Hundred Fifty Thousand Dollars ($250,000), and any additional amounts advanced, shall be reimbursed to the City on or before the fifth anniversary of the Transfer Date. The City understands and agrees that the Operations Component of the Water Rates will include an amount necessary to provide for such reimbursement.

14. THE OPERATOR'S COMPENSATION

Except as otherwise required through any Implementation Agreement entered into by the parties under Section 5.B. above, the Operator's sole compensation hereunder for all work, labor, services, materials, and supplies required in the performance of this Agreement shall consist of the retention of revenues collected from operation of the Water System, other than the amounts required to be distributed to the City pursuant to Sections 10 and 12 above. The Operator further agrees that any revenue received from Water Rates which it has in its possession after transmittal of amounts due to the City pursuant to Sections 10 and 12 above and after it has been reimbursed for all work, labor, services, materials and supplies required in the performance of this Agreement shall be placed into a reserve fund, and used by the Operator solely for the operation of or improvements to the Water System.

15. INFORMATION FROM THE CITY TO THE OPERATOR

Both prior to and after the Transfer Date, the City agrees to provide the Operator with all existing files, plans, maps and other information, including but not limited to financial information pertaining to operation of the Water System, which it has available pertaining to the Water System.

16. CITY SUPERVISION

The City Manager of the City, or his designee, shall have the right, but not the responsibility, of general supervision of all work performed by the Operator pursuant to this Agreement, and shall be the City's agent with respect to obtaining the Operator's compliance hereunder. In conjunction with such right of supervision, the City Manager or his designee shall have the right to inspect: (i) any portion of the Water System at any time, provided, however, that he shall coordinate such inspection with the Operator so as to avoid any interference with water service; and (ii) any facility of the Operator which is used by the Operator in performance of its obligations under this Agreement, provided, however, that no such inspection shall occur on less than forty eight (48) hours prior written notice unless in the reasonable determination of the City Manager an immediate inspection is necessary to address a public health or safety issue.

17. CUSTOMER SERVICE; RECORDS

A. Telephone Access. The Operator shall maintain sufficient telephone line capacity and staffing during normal business hours to ensure that telephone calls from the Water System's customers are answered promptly. After normal business hours, telephone calls may be answered by a service or an automated response system, including an answering machine, provided, however, that the Operator shall also maintain an emergency toll-free telephone line on a twenty-four hour basis, including weekends and holidays, and an emergency system in connection therewith which shall be capable of responding to and repairing major malfunctions of the Water Facilities arising other than during normal business hours. The Operator shall maintain a telephone log of all complaints received regarding water service in the Water Service Area.

B. Business Office. The Operator shall maintain a business and service or payment office within the City of Bellflower or conveniently located nearby, open during normal business hours, and adequately staffed with customer service representatives trained to accept customers' payments and to respond to service requests, inquiries and complaints.

C. Record to be Maintained. The Operator shall maintain at its primary place of business all documents, records, reports, and correspondence prepared or received by the Operator in connection with this Agreement, including but not limited to (i) any document relating to any direct or indirect operation or maintenance cost included as part of the Operation Component, (ii) any correspondence relating to the billing or collection of Water Rates, and (iii) any complaint received by the Operator relating to water service in the Water Service Area. Upon the request of the City, the Operator shall provide the City with copies of all such documents, records, reports, and correspondence. The Operator may include the cost of providing such copies in its calculations for the Operations Component.

D. Billing and Collection. The Operator shall be responsible for all billing for service to customers in the Water Service Area and the collection of all such bills. The Operator may perform such billing and collection activities in the same manner as it performs such activities in connection with its other water operations, provided, however, that (i) any penalty for the nonpayment of charges shall not exceed the maximum permitted by California Government Code Section 54348, and (ii) if the Operator brings an action for the collection of due and unpaid bills, it shall bring such action in the name of the City unless otherwise permitted by California Government Code Section 54353. The City understands and agrees that the Operator may discontinue utility service to a customer if the customer fails to pay a bill in the period provided therefore by the Operator.

18. KEEPING ACCOUNTS, REPORTING AND ANNUAL AUDIT

A. Separate Books Required. The Operator shall keep books of accounts in connection with the Facilities Operations separate from the books of account which Operator maintains in connection with its other customers.

B. Estimates and Reports. By March 1 of each year, the Operator shall provide the City with (1) an estimate, based upon the Operator's experience in operating the Water System for the previous half fiscal year (July 1 to December 31), of any deviance from the calculations and determinations used to determine the Water Rate; and (2) a mid-year report of all costs paid and revenues received during the preceding half fiscal year (July1 to December 31), and a projection of revenue expected to be received and costs anticipated to be paid for the remainder of the fiscal year (January 1 to June 30). Within ninety (90) days of the end of each fiscal year, the Operator shall provide City with an annual financial report summarizing the fiscal year's operations under this Agreement.

C. Audit of Water System Books. The Operator's books relating to its operation of the Water System shall be subject to annual audit by the City, another governmental entity, or any private person or institution authorized to do so pursuant to the Installment Purchase Agreement, provided that Operator shall be provided not less than seven (7) days prior written notice of such audit. All costs of such audit shall be borne by the person requesting the audit.

D. Audit of Other Books. The Operator's books relating to its operation of facilities other than the Water System shall be subject to audit by the City, or any other governmental entity, private person, or institution authorized to do so pursuant to the Installment Purchase Agreement, but only to the extent necessary to review information relating to the Operations Component. The documents utilized in any such audit and the results thereof shall be kept confidential to the extent permitted by law. All costs of such audit shall be borne by the person requesting the audit.

E. Retention of Records. All books and records relating to the operation of the Water System shall be retained for such periods of time as required by law provided, however, notwithstanding any shorter periods of retention, all such books, records, and supporting detail shall be retained for a period of at least three (3) years after the expiration of the term of this Agreement. Upon request by the City, the Operator shall provide to the City the schedules, records, and information necessary for the City to prepare the any disclosure reports, including without limitation an annual continuing disclosure report, required with respect to the bonds.

19. RELEASE OF INFORMATION

All information gained by the Operator in performance of this Agreement shall be considered confidential to the extent legally possible and, except as otherwise required by law, shall not be released by the Operator without the City's prior written authorization. Unless required by law, the Operator, its officers, employees, agents, or subcontractors, shall not without the City's prior written authorization voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement, or cooperate in any way with a party who may be adverse to the City or whom the Operator reasonably should know may be adverse to the City in any subsequent litigation. Response to a court order shall not be considered "voluntary" provided the Operator gives the City notice of such court order. The Operator shall incur no liability under this section for materials submitted by it to the City which are later released by the City, its officers, employees, or agents. The Operator shall also incur no liability under this section for statements made by it at any public meeting conducted by the City, or for any document released by it for which prior written City authorization was obtained. If the Operator or any of its officers, employees, consultants, or subcontractors voluntarily provides information in violation of the prohibition in this section, the City has the right to reimbursement and indemnity from the Operator for any damages caused by the Operator's conduct, including attorney's fees for the City Attorney or otherwise.

20. TERMINATION FOR CAUSE

A. Termination by City. The City may terminate this Agreement in the event of default by the Operator of any term of this Agreement pursuant to the provisions of this Section 20. Prior to termination, the City shall first provide the Operator with not less than fifteen (15) days notice of the default and opportunity to cure, unless the City, in its reasonable discretion, determines that the default comprises an immediate danger to the public health, safety or welfare or if the default would adversely impact the City's ability to pay debt service on any indebtedness payable from revenues of the Water System, or if the default would adversely impact the tax-exempt status of interest payable with respect to any such indebtedness. If notice to cure has been given and the default has not been cured within the time established in such notice, or if the City determines immediate termination is required, the City may terminate this Agreement by the giving of a written "Notice of Termination" to the Operator. The Operator shall by the date set forth in said Notice of Termination vacate its occupancy, if any, of the Office Building and the Water Facilities and return to the City equipment or supplies provided to it by the City, if any. Revenues received by the City and/or the Operator from Facilities Operations occurring through the date of termination shall be distributed in accordance with the provisions of Section 9, 10, 11 and 12 of this Agreement, provided, however, that termination pursuant to this Section 20 shall be without prejudice to any other remedy to which the City may be entitled by law, in equity or under this Agreement.

B. Termination by Operator. The Operator shall have the right to terminate this Agreement upon not less than six (6) months written notice to City in the event that the revenues derived from operation of the Water System are insufficient to cover the Operations Component; provided, however, that before Operator may terminate this Agreement pursuant to this subsection B., it shall have previously notified the City in writing of the insufficiency of revenues and met and conferred with the City to attempt to adjust the Water Rates to yield sufficient revenues to cover the Operators Component (including any previous revenue shortfalls), and the City shall have refused to agree to either the necessary adjustment or the use of money in the Rate Stabilization Fund in lieu of making such adjustment. The Operator shall by the date set forth in said written notice vacate its occupancy, if any, of the Office Building and the Water Facilities and return to the City equipment or supplies provided to it by the City, if any. Following such termination, revenues received by the City and/or the Operator from Facilities Operations occurring through the date of termination shall be distributed in accordance with the provisions of Section 9, 10, 11 and 12 of this Agreement.

21. NOTICES AND DESIGNATED REPRESENTATIVES:

Any and all notices, demands, invoices and written communications between the parties hereto shall be addressed as set forth below:

City: City of Bellflower
16600 Civic Center Drive
Bellflower, California 90706
Attention: City Manager
(562) 804-1424

Operator: Bellflower-Somerset Mutual Water Company
10016 East Flower Street
Bellflower, CA 90706
Attention: General Manager
(562) 866-9980

Formal notices, demands and communications between the City and the Operator shall be deemed sufficiently given if dispatched by registered or certified mail, postage prepaid, return receipt requested, to the addresses set forth above. Such written notices, demands and communications may be sent in the same manner to such other addresses as either Party may from time to time designate by written notice. Notice shall be deemed given on the second day following such mailing.

22. INSURANCE

The Operator shall take out and obtain at all times during the term of this Agreement insurance in the forms and amounts set forth in Attachment F and, in addition, shall maintain such additional insurance reasonably identified by the City from

time to time, it being acknowledged by the Operator that the Installment Purchase Agreement and similar documents relating to indebtedness payable from revenues of the Water System will include requirements with respect to insurance to be maintained with respect to the Water System. The Operator shall not commence work under this Agreement until it has obtained all insurance required hereunder through a company or companies acceptable to the City nor shall the Operator allow any City-approved subcontractor to commence work on a subcontract until all insurance required of the subcontractor has been obtained. The City acknowledges and agrees that the premiums for any insurance policies required by this Agreement are a cost which Operator is entitled to include in determining the Operations Component of the Water Rates pursuant to Section 9, above.

23. INDEMNIFICATION

A. Operator's Indemnification. The Operator shall defend, indemnify, and hold harmless the City and its elected and appointed officials, officers, agents and employees from all liability from loss, damage, or injury to persons or property, to the maximum extent permitted by law, caused by the negligent or intentional acts, errors, or omissions of the Operator, and/or by the Operator's contractors or subcontractors or anyone for whom the Operator is legally liable, in the performance of this Agreement or in the occupancy of the Office Building. The Operator shall include appropriate risk transfer and indemnification provisions in any agreement into which it enters regarding the operation, maintenance, repair or construction of the Office Building and the Water System or any component thereof.

B. City's Indemnification. The City shall defend, indemnify and hold harmless the Operator and its directors, officers, employees and shareholders from (i) all liability from loss, damage, or injury to persons or property in connection with the Office Building and the Water System, to the maximum extent permitted by law, that arises prior to the Transfer Date and (ii) all liability from loss, damage, or injury to persons or property, to the maximum extent permitted by law, caused by the negligent or intentional acts, errors, or omissions of the City, and/or by the City's contractors or subcontractors (other than the Operator) or anyone for whom the City is legally liable, in the performance of this Agreement.

24. ASSIGNMENT

No assignment of this Agreement or any part or obligation of performance hereunder shall be made, either in whole or in part, by the Operator without prior written consent by the City.

25. INDEPENDENT CONTRACTOR

The Parties hereto agree that the Operator and its employees, officers, and agents are independent contractors under this Agreement and shall not be construed

for any purpose to be employees of the City. The City shall not be called upon to assume any liability for the direct payment of any salary, wage, or other compensation to any person employed by the Operator performing services hereunder.

26. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

27. ATTORNEYS' FEES

In the event any legal proceeding is instituted to enforce any term or provision of this Agreement, the prevailing party in said legal proceeding shall be entitled to recover attorneys' fees and costs from the opposing party in an amount determined by the court to be reasonable.

28. ENTIRE AGREEMENT

This Agreement supersedes any and all other Agreements, either oral or in writing, between the Parties with respect to the subject matter herein. Each Party to this Agreement acknowledges that no representation by any Party which is not embodied herein nor any other agreement, statement, or promise not contained in this Agreement shall be valid and binding. Any modification of this Agreement shall be valid only if it is in writing and signed by all Parties.

29. TERM

This Agreement shall commence upon the date first set forth above and shall remain and continue in effect for so long as any bonds issued by the City to finance its acquisition of the Water System remain outstanding (which shall be deemed to include the refinancing of such bonds).

30. AUTHORITY

Each person executing this Agreement represents that he/she has full power and authority to do so and that the respective governing body of each party has approved this Agreement and authorized its execution. The parties each represent that they have the power and authority to enter into this Agreement, and that, to the best of their respective knowledge, entering into this Agreement does not violate any agreement to which either is a party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first set forth above.

CITY OF BELLFLOWER
A general law city

Michael J. Egan, City Manager

ATTEST:

Janet B. Ashpaugh
~~Debra D. Bauchop, City Clerk~~
Janet B. Ashpaugh, Deputy City Clerk

Approved As To Form:

Stephanie R. Scher
Stephanie R. Scher, City Attorney

Bellflower-Somerset Mutual Water Company, a California mutual water company

Dan L Koops
By: Dan L. Koops
Its: President

K:\CG\Bellflower\Water System\OperatingAgmt(7-20-06).doc

ATTACHMENT A

DESCRIPTION OF WATER FACILITIES

[Behind this page.]

The Water Facilities consist of wells, hydopneumatic tanks, a booster station, and turnouts to deliver groundwater and imported water to the Water Service Area. The wells were designated by PWC as Well No.'s 1 through 5, 8, 13, 14, 16, and 17, the locations of which are set forth below.

Description	Location
Well No. 1	9846 Somerset Blvd
Well No. 2	16913 Lakewood Blvd
Well No. 3	16402 Lakewood Blvd
Well No. 4	9846 Somerset Blvd
Well No. 5 – Active Booster Station/Capped Well	9722 Glandon Ave
Well No. 8	15764 Carfax Ave
Well No. 13	13412 Regentview Ave
Well No. 14	13412 Regentview Ave
Well No. 16	9846 Somerset Blvd
Well No. 17	10430 Felson St

The distribution system consists of 74,418 lineal feet of asbestos cement (AC) pipe and welded steel (STL) pipe ranging from 4-inch to 8-inch in diameter. The majority of the distribution system consists of 4-inch and 6-inch AC pipe. The system includes approximately 1,816 meters and 65 fire hydrants. In 2004, the system supplied water to 1,812 service connections, all of which were active and metered accounts. The actual number of service connections may vary as properties within the Water Service Area develop or become vacant.

PIPELINE SUMMARY

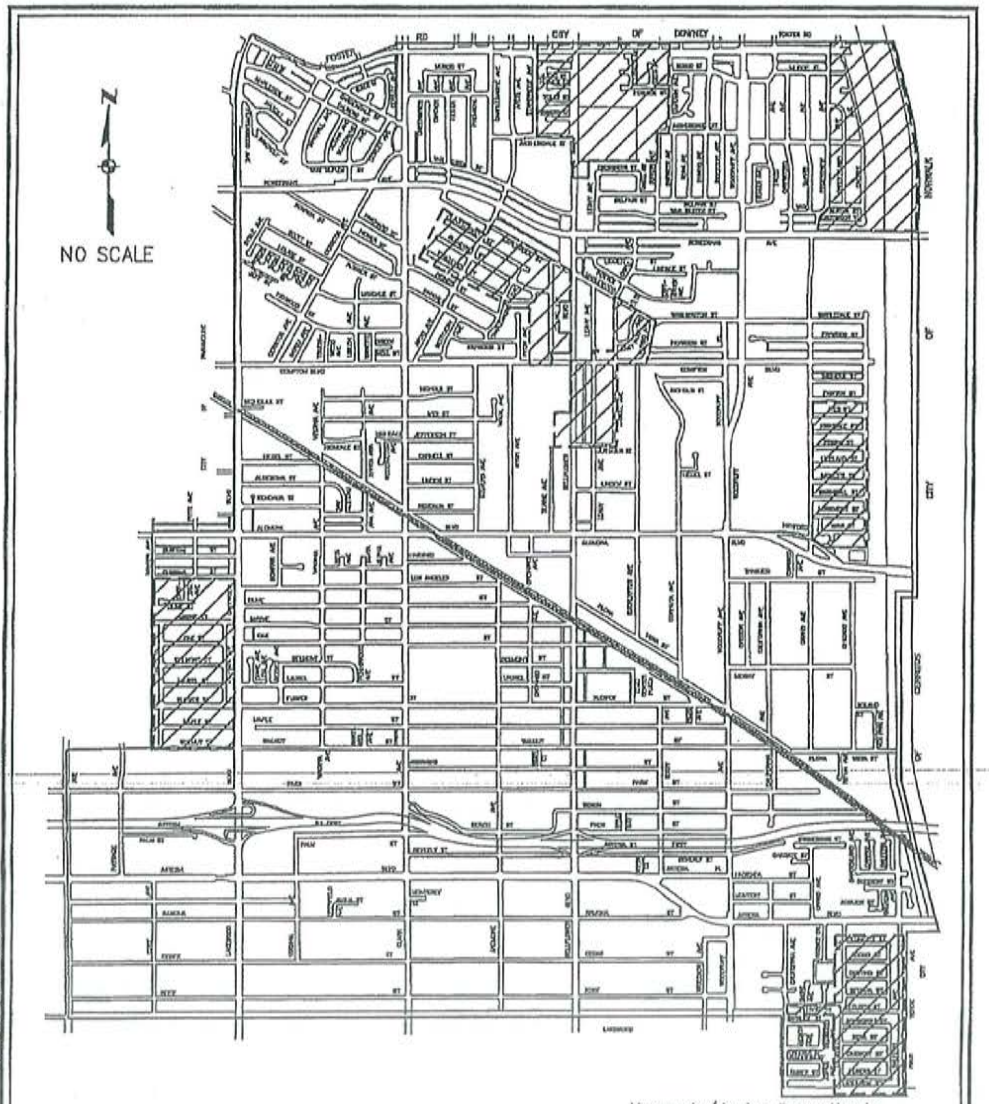
Pipe Inside Diameter (inches)	Pipe Lengths (feet) A.C.	Total Length (feet) Steel	Total Length (feet)
2		1,177	1,177
2.5		7,129	7,129
3		1,793	1,793
4	38,496	903	39,399
5		2,011	2,011
6	20,601		20,601
8	2,308		2,308
Total	61,405	13,013	74,418

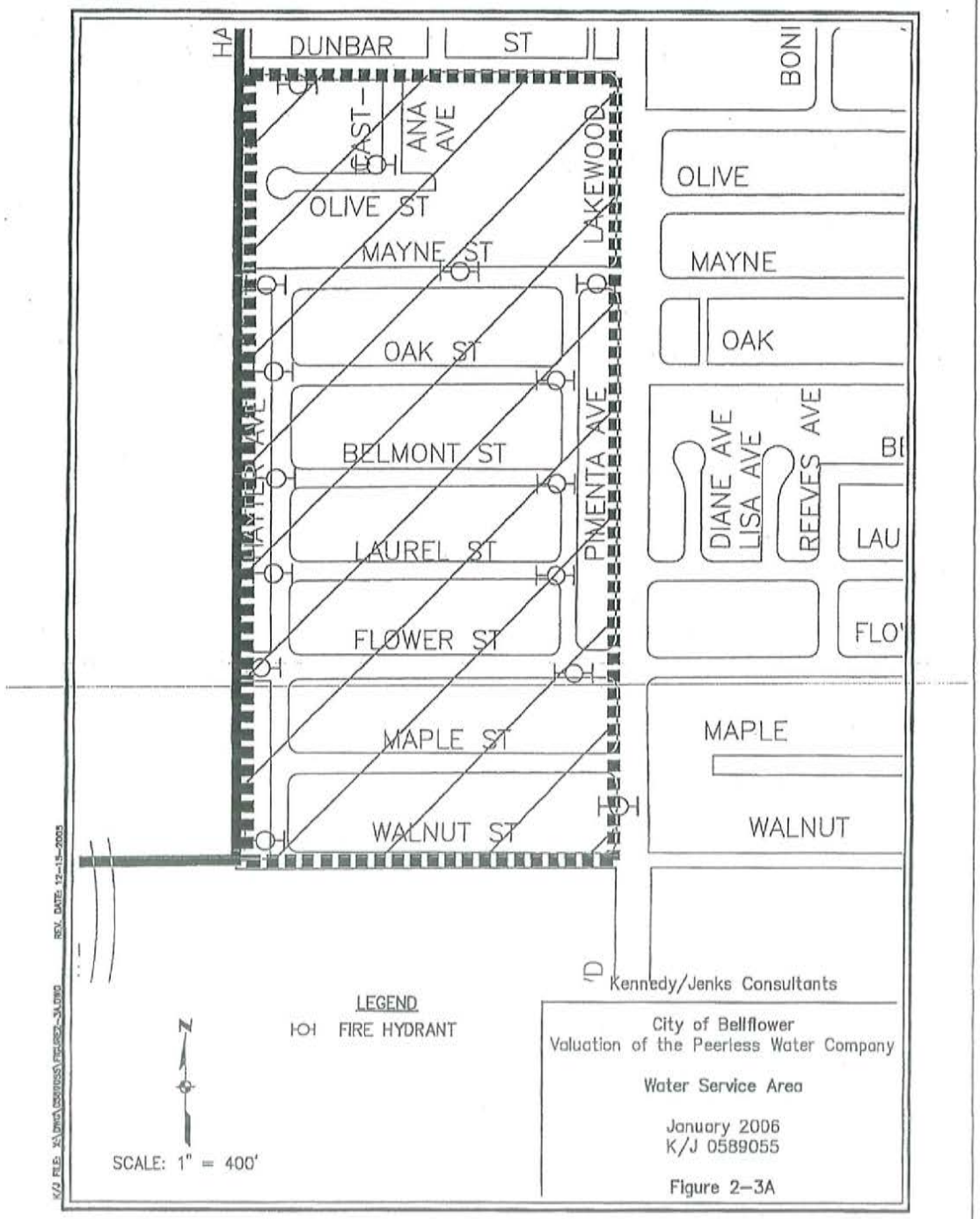
Source: 2004 Annual Report to Public Utilities Commission.

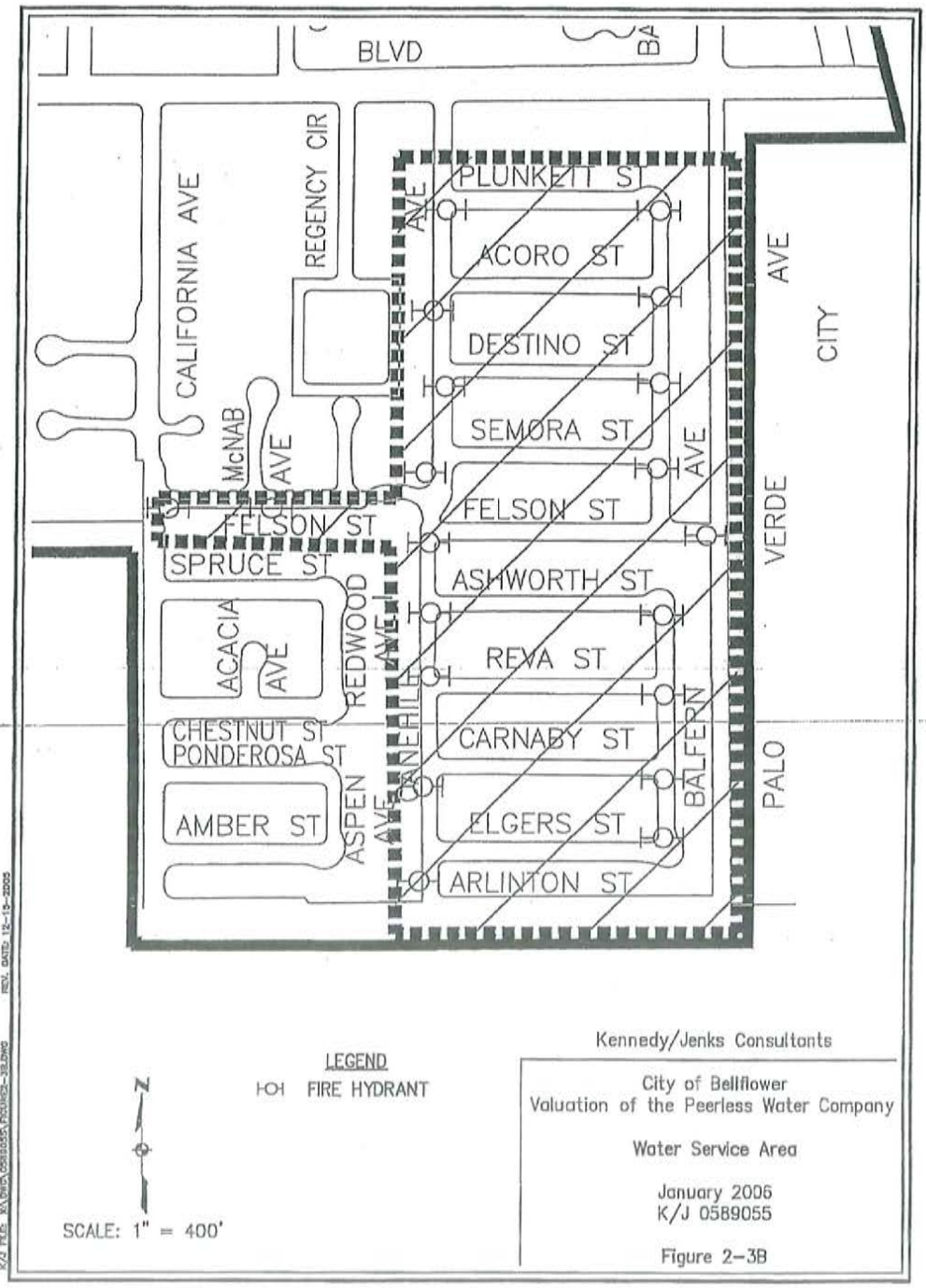
ATTACHMENT B

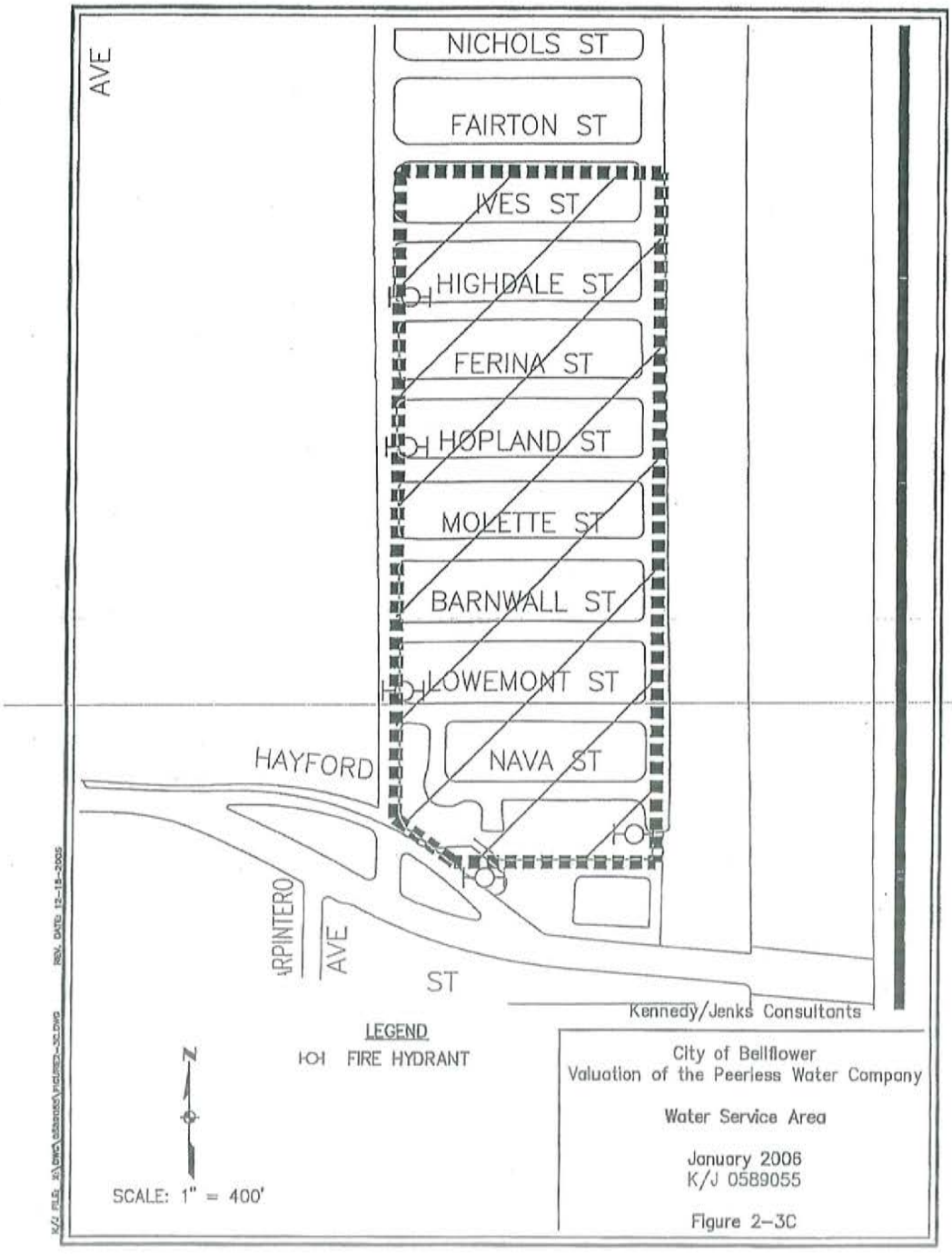
THE WATER SERVICE AREA

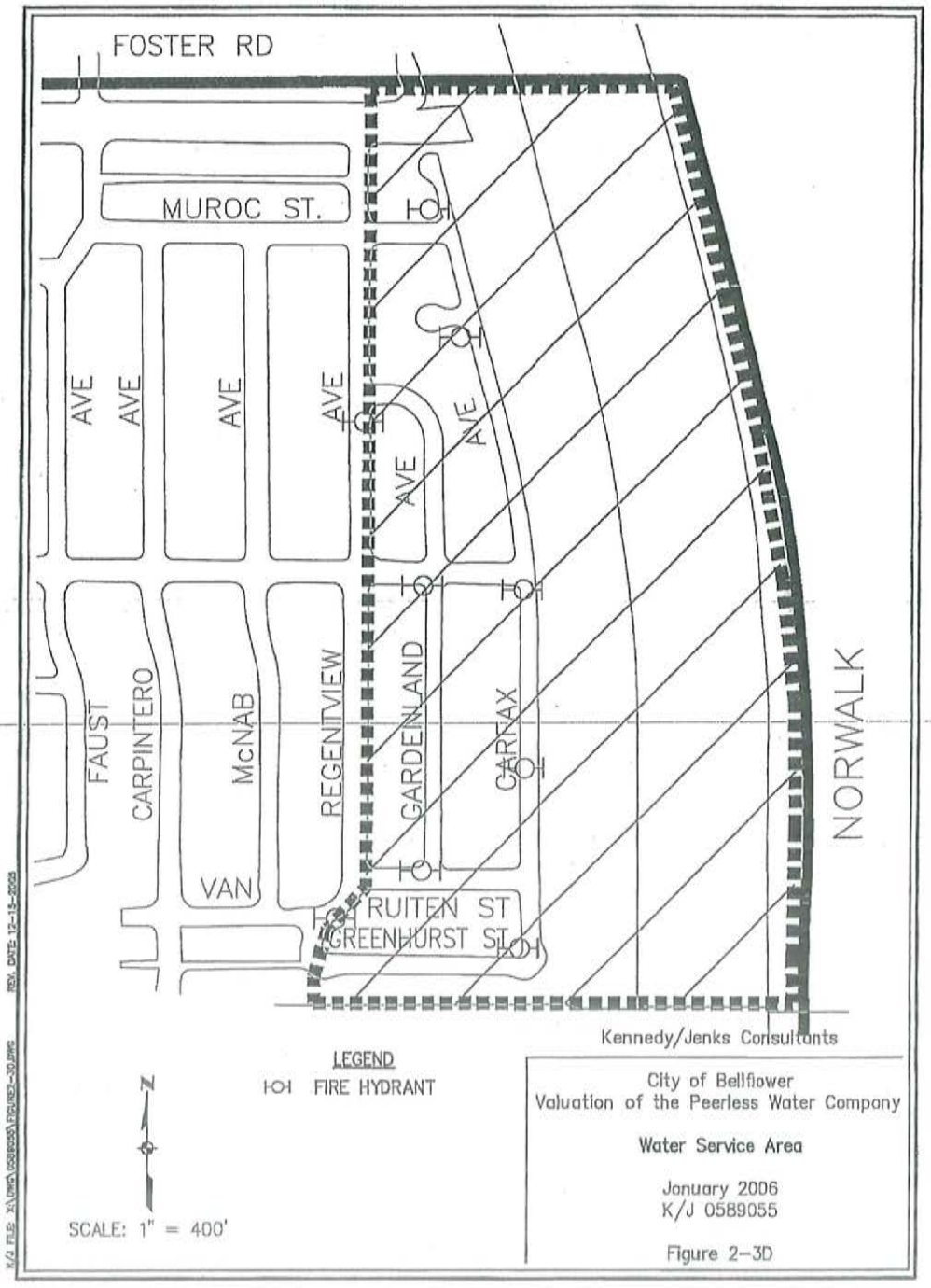
[Behind this page.]

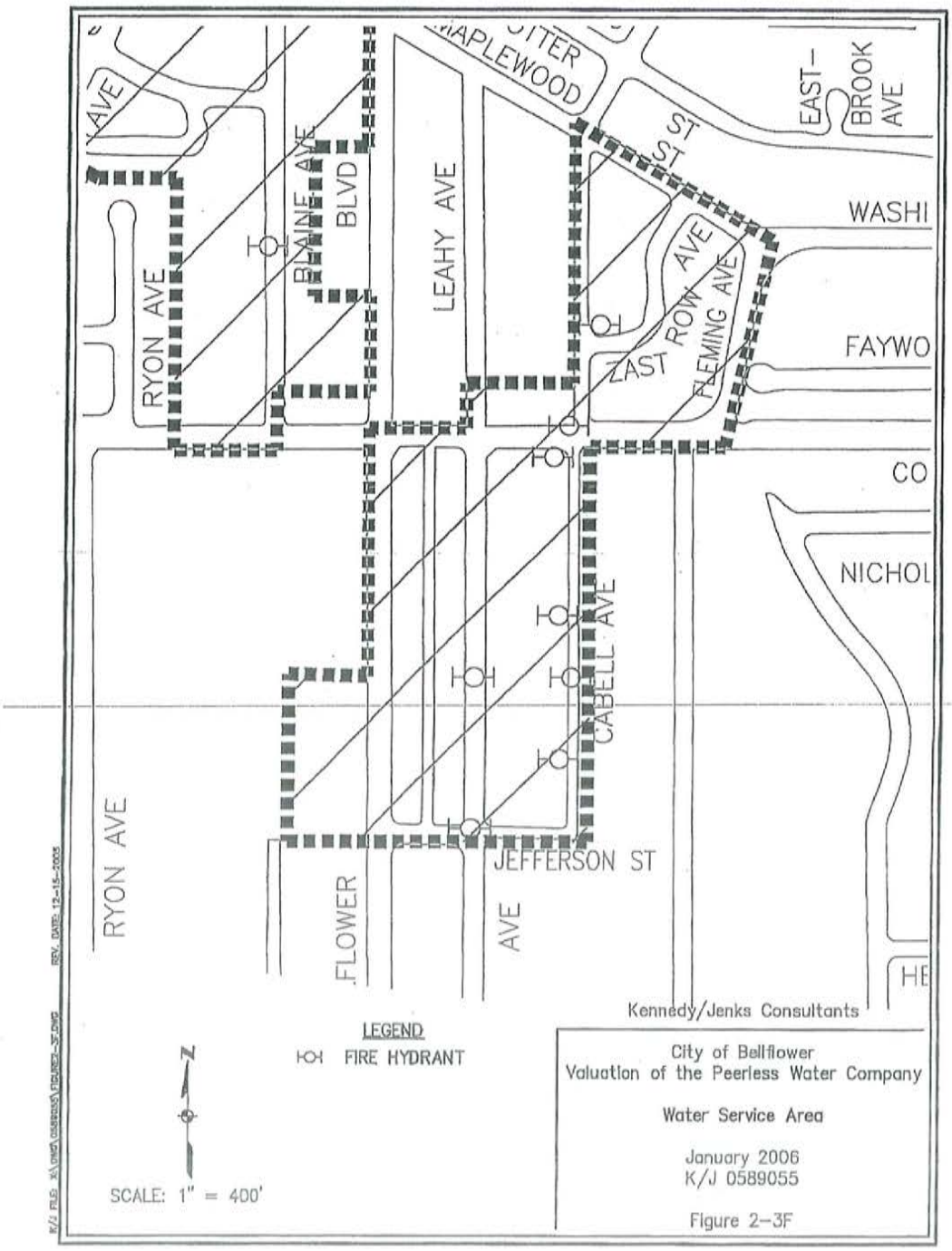

N
NO SCALE
CITY OF DOWNEY
Peerless Water Company
Water Service Area
Kennedy/Jenks Consultants
City of Bellflower
Valuation of the Peerless Water Company
Overview of Peerless Water Company
Water Service Area
January 2006
K/J 0589055
Figure 2-2

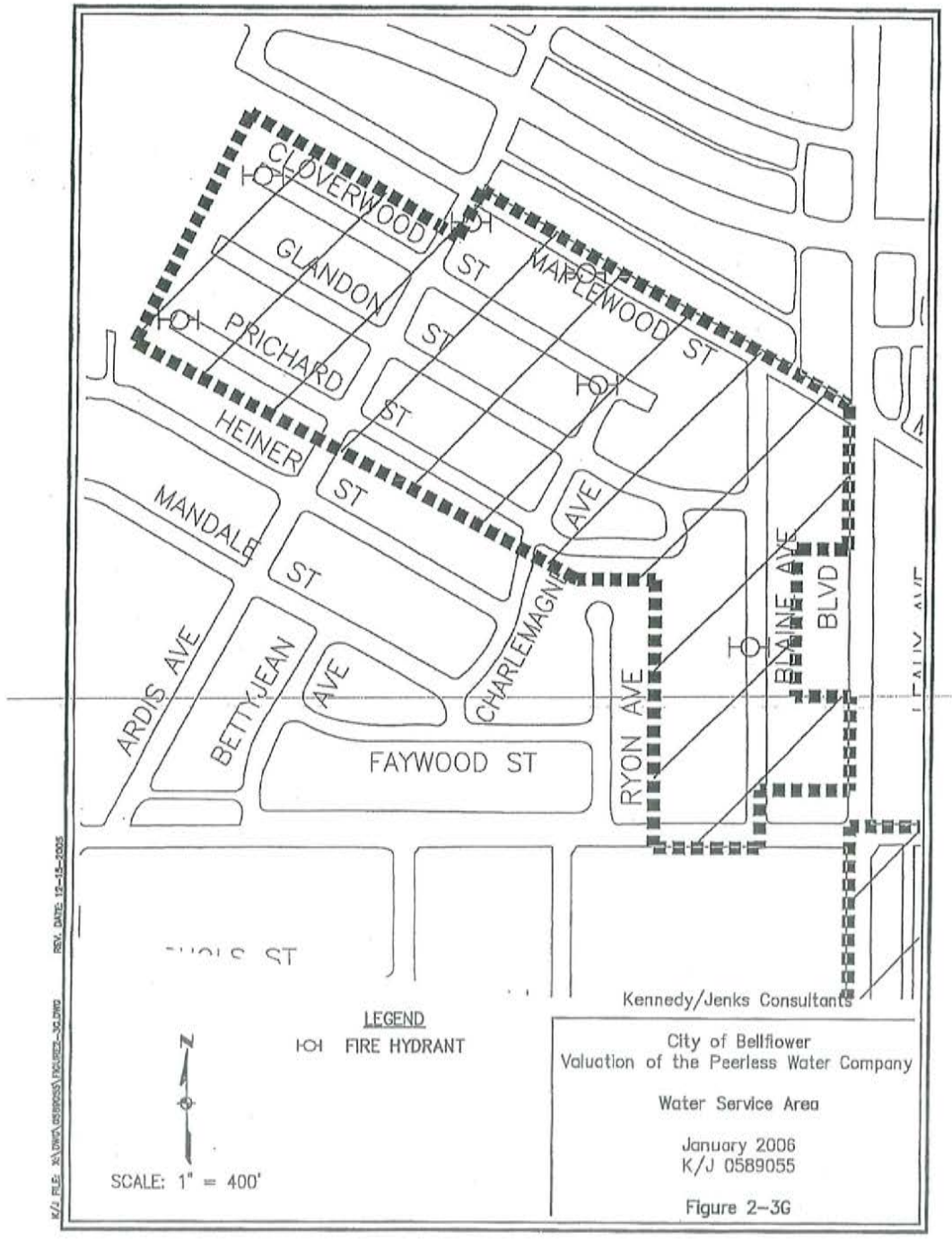

DUNBAR ST
EAST-ANA AVE
OLIVE ST
MAYNE ST
OAK ST
BELMONT ST
LAUREL ST
FLOWER ST
MAPLE ST
WALNUT ST
LAKEWOOD
PIMENTA AVE
OLIVE
MAYNE
OAK
DIANE AVE
LISA AVE
REEVES AVE
MAPLE
WALNUT
LEGEND
FIRE HYDRANT
N
SCALE: 1" = 400'
Kennedy/Jenks Consultants
City of Bellflower
Valuation of the Peerless Water Company
Water Service Area
January 2006
K/J 0589055
Figure 2-3A


BLVD
CALIFORNIA AVE
REGENCY CIR
McNAB AVE
FELSON ST
SPRUCE ST
ACACIA AVE
REDWOOD AVE
CHESTNUT ST
PONDEROSA ST
AMBER ST
ASPEN AVE
CANEHILL
PLUNKETT ST
ACORO ST
DESTINO ST
SEMORA ST
FELSON ST
ASHWORTH ST
REVA ST
CARNABY ST
ELGERS ST
ARLINTON ST
BALFERN AVE
PALO VERDE AVE
CITY
LEGEND
FIRE HYDRANT
N
SCALE: 1" = 400'
Kennedy/Jenks Consultants
City of Bellflower
Valuation of the Peerless Water Company
Water Service Area
January 2006
K/J 0589055
Figure 2-3B


AVE
NICHOLS ST
FAIRTON ST
IVES ST
HIGHDALE ST
FERINA ST
HOPLAND ST
MOLETTE ST
BARNWALL ST
LOWEMONT ST
NAVA ST
HAYFORD
RPINTERO
AVE
ST
Kennedy/Jenks Consultants
LEGEND
FIRE HYDRANT
N
SCALE: 1" = 400'
City of Bellflower
Valuation of the Peerless Water Company
Water Service Area
January 2006
K/J 0589055
Figure 2-3C


FOSTER RD
MUROC ST.
AVE
AVE
AVE
AVE
AVE
AVE
FAUST
CARPINTERO
McNAB
REGENTVIEW
GARDENLAND
CARNAX
NORWALK
VAN
RUITEN ST
GREENHURST ST
Kennedy/Jenks Consultants
LEGEND
FIRE HYDRANT
N
SCALE: 1" = 400'
City of Bellflower
Valuation of the Peerless Water Company
Water Service Area
January 2006
K/J 0589055
Figure 2-3D


RYON AVE
BLVD
LEAHY AVE
FLEMING AVE
CABELL AVE
JEFFERSON ST
EAST-
BROOK
AVE
WASHI
FAYWO
CO
NICHOL
HE
LEGEND
FIRE HYDRANT
N
SCALE: 1" = 400'
Kennedy/Jenks Consultants
City of Bellflower
Valuation of the Peerless Water Company
Water Service Area
January 2006
K/J 0589055
Figure 2-3F


CLOVERWOOD ST
GLANDON ST
PRICHARD ST
HEINER ST
MANDALE ST
MARLEWOOD ST
AVE
CHARLEMAGNE
RYON AVE
BLAINE AVE
BLVD
ARDIS AVE
BETTYJEAN AVE
FAYWOOD ST
LEGEND
FIRE HYDRANT
N
SCALE: 1" = 400'
Kennedy/Jenks Consultants
City of Bellflower
Valuation of the Peerless Water Company
Water Service Area
January 2006
K/J 0589055
Figure 2-3G
REV. DATE: 12-15-2005

ATTACHMENT C

ANTICIPATED IMPROVEMENTS

[Behind this page.]

Water Master Plan Update[B]
Well Abandonment[B]
Pipeline Improvement Program
System Interconnection Pipeline
Reservoir Share[B]
Well Share[B]
MWD Connection Share[B]
Booster PS Upgrade[B]
Fire Hydrant Replacement Program[C]
Meter & Service Replacement Program[D]

Notes:

A. Reference City of Bellflower Water Master Plan 1995, NBS Lowry, June 1995
B. Ratio of 11.25% of System Demand for Peerless Water Company.
C. Assumes a hydrant spacing of 300'. Then # Hydrants = 74,418/300 = ~ 250. Cost per hydrant = $4,000.
D. Assumes replacement of 60% of 1,812 = 1,088 services and meters @ ~ $1085 per unit.

The following is a brief description of each of the projects and programs outlined above.

Water Master Plan Update

This project consists of an update of the City's Water System Master Plan completed in 1995, which evaluated the capacity of the water systems in the City to provide service to the City's constituents.

Well Abandonment

Six (6) out of 10 water wells which are owned by Peerless are not functional and must be abandoned under the provisions of the Los Angeles County Health Department and State regulations.

Pipeline Improvement Program

This program will provide for the replacement of 45,000 feet of undersized distribution and transmission main pipelines within the Water Service Area. These improvements shall also include replacement and installation of fire hydrant assemblies, valves, appurtenances, services and meters.

System Interconnection Pipeline

This project will provide for the installation of 2,100 feet of an 8" water pipeline in Woodruff Avenue from Mapledale Street to Rosecrans Avenue and in Rosecrans Avenue from Woodruff Avenue to Carpentiro Avenue as an interconnect between the existing water system owned by Operator to the northerly service area of the Water Facilities.

Reservoir Share

This project provides for the City's pro-rata share for the construction of a new water storage reservoir. Pro-rata costs will be determined based upon the areas served by the project.

Well Share

This project provides for the City's pro-rata share for the construction of a new high-capacity water supply well. Pro-rata costs will be determined based upon the areas served by the project.

MWD Connection Share

This project provides for the City's pro-rata share of a new Metropolitan Water District of Southern California (MWD) connection and vault structure in Woodruff Boulevard. Pro-rata costs will be determined based upon the areas served by the project.

Booster Pump Station Upgrade

This project provided for the upgrading of an existing booster pump station faculty, as identified in the City's 1995 Water Master Plan. The project was completed by BSMWC.

Fire Hydrant Replacement Program

This program will provide for the replacement of existing outdated and undersized fire hydrants within the Water Service Area as well as the addition of fire hydrants in compliance with Los Angeles County Fire Department requirements.

Meter & Service Replacement Program

This program will provide for the replacement of existing outdated water service meters and service assemblies throughout the Water Service Area. Many systems are in backyard areas and these replacements will be made in conjunction with pipeline replacement projects.

ATTACHMENT D

TRANSITION PLAN

[Behind this page.]

Action	Due Date	Responsibility
ADMINISTRATIVE		
1. Prepare and submit Technical, Managerial and Financial (TMF) report to DHS to obtain Domestic Water Supply Permit for the operation of the City's Municipal Water System	Completed 16 JUN 06	ACM / PM
2. Adopt policy to meet GC 65589.7 requirements for water service priority to housing affordable to lower-income households	Completed 10 JUL 06	ACM
3. Complete the preparation and execution of the Operating Agreement with BSMWC / City Council approval	14 AUG 06	CA / CC
4. Document clearance from the PUC on Transfer	18 AUG 06	ACM / PM
5. Set and approve Rate Structure for Water Enterprise	28 AUG 06	FD / CC
6. Finalize FY 2006/07 City Operating Budget for the Water Enterprise	28 AUG 06	FD / CC
7. Approve addition of the Water Enterprise's Emergency Response Plan into City's SEMS	28 AUG 06	ACM / PM / CC
8. Conduct Public Information Meeting on Ownership Transfer	TD-9	CM / ACM / PAM
9. Read first ½ of PWC meters	TD-7	PWC / BSMWC
10. Tentative date for obtaining the DHS Permit	TD	ACM / PM
11. Complete formal acquisition of PWC system	TD	CM
12. Interview existing PWC personnel and assimilate into BSMWC staff	TD	PM / BSMWC
13. Prepare a Water Enterprise Organization Chart and Functional Responsibility Matrix	TD	ACM / PM
14. Establish a Water Enterprise Committee to monitor the Operating Agreement	TD	ACM / PM
15. Establish a set of Rules and Regulations for the Water Enterprise	TD	ACM / PM
16. Obtain PWC Billing Records and Computer Data on Customers	TD+5	FD
17. Read second ½ of PWC meters	TD+7	PWC / BSMWC
18. Review BSMWC's use of PWC Administrative Office	TD+90	ACM / WM / PM
19. Develop a format for an Annual Water Enterprise Report	29 SEP 06	ACM / FD / PM
20. Develop format for the Annual Consumer Confidence report	15 DEC 06	WM / BSMWC
OPERATIONAL		
21. Conduct a Field Review of all PWC facilities	TD-5	PM / WM / DPS
22. Consult with LA County's Fire Marshal on their system upgrade recommendations	TD+10	ACM / WM / PM
23. Review and catalog PWC system records and map information	TD+15	WM / BSMWC
24. Conduct a System Pressure Test	TD+15	WM / BSMWC
25. Field verification of system information and update of system maps and records	TD+30	WM / BSMWC
26. Investigate and catalog number of backyard meters and service connections	TD+60	WM / BSMWC
27. Prepare a Water System Operations Manual	TD+60	WM / PM / BSMWC
28. Initiate Training Program for City Water System staff	TD+90	WM / BSMWC
29. Conduct a Water System Leak Detection Audit	TD+90	WM / BSMWC

Action	Due Date	Responsibility
30. Locate and operate system valves to check condition	TD+120	WM / BSMWC
31. Conduct an Emergency Response Training Exercise	TD+120	ACM / WM / BSMWC
32. Conduct a Water Quality Study to determine the potential of contamination to the system	TD+150	WM / BSMWC
FINANCIAL		
33. Council Review of Budget Pro-forma	Completed 12 JUN 06	CM / FD / CC
34. Disposition of Installment Purchase Agreement Re: Bonds	TD+180	CM / FD / CC
35. Setup a Budget Administration system to monitor Water Enterprise costs	TD+7	WM / FD
36. Develop a detailed five year five (5) year Water System Improvement Program	TD	PM / WM / FD
37. Conduct Initial Quarterly Financial Review Meeting of the Water Enterprise	TD+90	FD / ACM / PM / WM
38. Initiate first billing cycle for new Water Rate Structure	TD+180	ACM / FD
TECHNICAL		
39. Establish a methodology for conducting mandated system water quality testing	TD	WM / BSMWC
40. Administer EPA STAG Program	TD	PM / WM
41. Prepare an RFP for the Water Master Plan Update 2006	TD+10	WM / PM
42. Prepare a Vulnerability Assessment (VA) for the system per EPA Requirements	TD+30	WM / PM / BSMWC
43. Establish Policies and Procedures for Bidding Contracts & Capital Program Contract Administration.	TD+30	ACM / PM / WM
44. Prepare an RFP for the 2006 Water Main Improvement Program project design	TD+60	WM / PM
45. Prepare and let contract for Abandonment of Non-Operable Water Wells	TD+60	ACM / WM / BSMWC

Abbreviations Used: BSMWC – Bellflower Somerset Mutual Water Company , CC – City Council, CM – City Manager, ACM - Assistant City Manager, CA – City Attorney, DHS - California Department of Health Services, DPS – City Director of Public Safety, EPA – United States Environmental Protection Agency, FD – City Finance Director, PAM – City Pubic Affairs Manager, PM – Bucknam & Associates Program Manager, PUC - California Public Utilities Commission, PWC – Peerless Water Company, TD – Transition Date (a.k.a. "closing date"), TD+/- - days after (+) or prior to (-) the transition date, WM – Bucknam & Associates Water Manager

Due Dates: Whenever possible, a date certain is specified. Whenever the due date is dependant on the date of transition, the due date is expressed as days prior to (TD-x) or days after (TD+x) transition.

ATTACHMENT E

TERMS OF LICENSE

1. DEFINITIONS: Except as otherwise specifically set forth herein, all capitalized terms used herein shall have the same meaning as set forth in CITY OF BELLFLOWER AGREEMENT FILE NO. _____ (Refer Resolution No. 06-XXX) AGREEMENT TO OPERATE CITY WATER SYSTEM (the "Agreement").

2. USE: During the term of this license, the Operator shall have use of the City-owned building located at 16913 Lakewood Blvd., Bellflower, California, (the "Premises") without cost except as set forth herein. The Premises may be used by the Operator solely for the conduct of business relating to Facilities Operations of the Water System.

3. CITY REQUIREMENTS: In connection with its use of the Premises, the Operator shall comply with all applicable City rules and regulations.

4. EFFECTIVE DATE OF LICENSE: This License shall be effective upon the Transfer Date and remain in effect for a period of five (5) years from such date, unless earlier terminated pursuant to the terms hereof.

5. IMPROVEMENT COSTS: The Operator shall be responsible to pay for all costs of improvements, if any, made by the Operator to the Premises, which costs shall be recoverable in accordance with Section 9 of the Agreement. Capital improvements shall not be made without the prior written approval of the City Manager or his or her designee, which approval shall not be unreasonably withheld.

6. MAINTENANCE COSTS: The Operator shall maintain the Premises in a clean and safe condition. The Operator shall pay for all operation and maintenance costs, including but not limited to, trash disposal, irrigation, water, electricity, landscape maintenance and any and all other utility or maintenance costs to operate the Premises and to keep the Premises clean and safe, which costs shall be recoverable in accordance with Section 9 of the Agreement. Upon termination of this License, the Operator shall return the Premises to the City in the same condition, less reasonable wear and tear, in which it existed on the Transfer Date.

7. RIGHT OF ENTRY: Provided such right does not unreasonably interfere with the Operator's use of the Premises, during the term of this Agreement, the City and its agents shall have the right to enter the Premises during normal business hours.

8. OPERATOR OBLIGATIONS: Termination of this License shall not terminate the Operator's obligations pursuant to Paragraphs 10 and 11, below.

9. TAXABLE INTEREST: This License is not intended to create any interest in real property but to help effectuate the Operator's obligations relating to the Water System in the Agreement. However, if it is determined this License creates a taxable possessory interest, Operator shall be solely responsible to pay such taxes, and such taxes shall be included as an Office Building Operations and Maintenance Cost and be recoverable in accordance with Section 9 of the Agreement. Except for possessory interest tax, the City shall pay other required property taxes, if any.

10. HOLD HARMLESS; : The provisions of Section 23 of the Agreement shall apply to any liability arising out of the use of the Premises by the Operator.

11. NO LIENS ON PREMISES: The Operator shall not permit or suffer any mechanic's or materialman's or other lien of any kind or nature to be recorded or enforced against the Premises for any work done or materials furnished thereon at the instance of requirement of or on behalf of the Operator; and the Operator agrees to indemnify and hold harmless the City and the Premises against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with such work done, labor performed or material furnished in connection with the Operator's use of the Premises.

12. RIGHT TO TERMINATE/NO DISPLACEMENT LIABILITY: Either the City or the Operator shall have the right to terminate this License, with or without cause, upon thirty-days' (30-days') written notice. The City shall not be liable for any displacement or relocation benefits or expense experienced by the Operator, or for reimbursement for any improvements installed by the Operator, as a result of any termination of this License.

13. GOVERNING LAW: The terms of this License shall be interpreted according to the laws of the State of California. If litigation arises out of this Agreement, then venue shall be in the Superior Court of Los Angeles County.

14. LITIGATION FEES: If litigation arises out of this Agreement for the performance thereof, then the court shall award costs and expenses, including reasonable attorney's fees, to the prevailing party. In awarding attorney's fees, the court shall not be bound by any court fee schedule but shall award the full amount of costs, expenses and reasonable attorney's fees paid or incurred in good faith.

15. TRANSFERABILITY AND ASSIGNABILITY: The License is neither transferable nor assignable by the Operator.

16. NOTICES: All notices given or required to be given pursuant to this License shall be subject to Section 21 of the Agreement.

17. WRITTEN AMENDMENT: This License shall not be modified in any particular except by a written amendment duly executed by the Parties.

ATTACHMENT F

INSURANCE REQUIREMENTS

Prior to the beginning of and throughout the duration of the Agreement, the Operator will maintain insurance in conformance with the requirements set forth below. The Operator may use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, the Operator agrees to amend, supplement or endorse the existing coverage to do so. The Operator acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to the City in excess of the limits and coverage required in this Agreement and which is applicable to a given loss, will be available to the City.

The Operator shall provide the following types and amounts of insurance:

Commercial General Liability Insurance using Insurance Services Office "Commercial General Liability" policy form CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross-liability for claims or suits by one insured against another. Limits are subject to review but in no event less than $1,000,000 (One Million Dollars) per occurrence.

Business Auto Coverage on ISO Business Auto Coverage form CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event to be less than $1,000,000 (One Million Dollars) per accident. If the Operator owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If the Operator or the Operator's employees will use personal autos in any way in performing this Agreement, the Operator shall provide evidence of personal auto liability coverage for each such person.

Workers' Compensation on a state-approved form providing statutory benefits as required by law with employer's liability limits no less than $1,000,000 (One Million Dollars) per accident or disease.

Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverage. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum $25,000 self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. The policy shall contain a provision precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to the City

for injury to the employees of the Operator, and its subcontractors or others involved in performance of the Agreement. The scope of coverage provided is subject to approval of the City following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than $1,000,000 per occurrence.

Insurance procured pursuant to these provisions shall be written by insurers that are admitted carriers in the State of California and with an A.M. Bests rating of A or better and a minimum financial size VII.

General conditions pertaining to provisions of insurance coverage by the Operator. The Operator and the City agree to the following with respect to insurance provided by the Operator:

1. The Operator agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insured the City, its officials, employees and agents, using standard ISO endorsement No. CG 20 10 with an edition prior to 1992. The Operator also agrees to require all contractors and subcontractors to do likewise.

2. No liability insurance coverage provided to comply with this Agreement shall prohibit the Operator, or the Operator's employees or agents, from waiving the right of subrogation prior to a loss. The Operator agrees to waive subrogation rights against the City regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.

3. All insurance coverage and limits provided by the Operator and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operations limits the application of such insurance coverage.

4. None of the coverage required herein will be in compliance with these requirements if it includes any limiting endorsement of any kind that has not been first submitted to the City and approved of in writing.

5. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.

6. All coverage types and limits required are subject to approval, modification and additional requirements by the City, as the need arises. The Operator shall not make any reductions in scope of coverage (*e.g.* elimination of

contractual liability or reduction of discovery period) that may affect the City's protection without the City's prior written consent.

7. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverage required and an additional insured endorsement to the Operator's general liability policy, shall be delivered to the City Clerk at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, the City has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other agreement and to pay the premium. Any premium so paid by the City shall be charged to and promptly paid by the Operator.

8. Certificate(s) are to reflect that the insurer will provide 30 days' notice to the City of any cancellation of coverage. The Operator agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the certificate.

9. It is acknowledged by the Parties to this Agreement that all insurance coverage required to be provided by the Operator or any subcontractor is intended to apply first and on a primary, non-contributing basis in relation to any other insurance or self-insurance available to the City.

10. The Operator agrees to ensure that subcontractors, and any other party involved with performance of this Agreement who is brought onto or involved in such performance by the Operator, shall provide the same minimum insurance coverage required of the Operator. The Operator agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. The Operator agrees that upon request, all agreements with subcontractors and others engaged in performance of the Agreement will be submitted to the City for review.

11. The Operator agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, or other entity or person in any way involved in the performance of this Agreement to self-insure its obligations to the City. If the Operator's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At that time the City shall review options with

the Operator, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.

12. The City reserves the right at any time during the term of this Agreement to change the amounts and types of insurance required by giving the Operator ninety (90) days' advance notice of such change.

13. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.

14. The Operator acknowledges and agrees that any actual or alleged failure on the part of the City to inform the Operator of non-compliance with any insurance requirement in no way imposes any additional obligations on the City nor does it waive any rights hereunder in this or any other regard.

15. The Operator will renew the required coverage annually as long as the City, or its employees or agents face an exposure from operations of any type pursuant to this Agreement. This obligation applies whether or not this Agreement is canceled or terminated for any reason. Termination of this obligation is not effective until the City executes a written statement to that effect.

16. The Operator shall provide proof that policies of insurance herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted to the City Clerk prior to expiration. A certificate of insurance and/or additional insured endorsement as required in these specification applicable to the renewing or new coverage must be provided to the City within five (5) days of the expiration of the coverage.

17. The provisions of any Workers' Compensation Act or similar act will not limit the obligations of the Operator under this Agreement. The Operator expressly agrees not to use any statutory immunity defenses under such laws with respect to the City, its employees, officials and agents.

18. Requirements of specific coverage features or limits contained in this Attachment F. are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any Party or insured to be limiting or all-inclusive.

19. These insurance requirements are intended to be separate and distinct from any other provision in this Agreement and are intended by the Parties hereto to be interpreted as such.

20. The requirements in this Attachment F. supersede all sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impair the provisions of this Attachment F.

21. The Operator agrees to be responsible for ensuring that no contract used by any party involved in any way with performance of the Agreement reserves that right to charge the City or the Operator for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to the City. It is not the intent of the City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against the City for payment of premiums or other amounts with respect thereto.

22. The Operator agrees to provide immediate notice to the City of any loss against the Operator arising out of the work performed under this Agreement. The City assumes no obligation or liability by such notice, but has the right, but not the duty, to monitor the handling of any such claim or claims if they are likely to involve the City.