CITY OF BELLFLOWER
AGREEMENT FILE NO. 320.4
(Refer Resolution No. 06-40)
AMENDMENT NO. 2

SECOND AMENDMENT TO AGREEMENT TO OPERATE CITY WATER SYSTEM

This Amendment No. 2 to the Agreement to Operate City Water System is made and entered into this 20th day of February, 2008, between the City of Bellflower, a general law city (hereinafter referred to as "City") and Bellflower-Somerset Mutual Water Company, a California corporation operated as a mutual water company under California law (hereinafter referred to as "Operator"). City and Operator are each a "Party" and are collectively, the "Parties."

RECITALS

A. City and Operator have previously entered into the Agreement to Operate City Water System (Agreement File No. 320.4, the "Operating Agreement") pursuant to which Operator operates the City's municipal water system.

B. The Operating Agreement was amended by the first amendment to the Operating Agreement dated June 25, 2007 (the "Amendment No. 1").

C. The Operating Agreement and Amendment No. 1 are hereinafter referred to as the "Amended Operating Agreement").

B. Paragraph 9.A of the Amended Operating Agreement established a timetable for the exchange of information between the City and the Operator, such information to be used in making an annual water rate determination, and the City Council's consideration of the proposed water rates by each June 15.

C. Said Paragraph 9.A did not consider the 45-day public noticing requirement prior to the City Council's consideration of any proposed water rate increase, and that the dates provided therein cannot accomplish the June 15 consideration by the City Council.

NOW, THEREFORE, it is agreed by and between City and the Operator the Amended Operating Agreement is further amended as provided below:

1. "9.A. Annual Water Rate Determination. Except as set forth below for the initial year following the Transfer Date, by April 10 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 March 10; 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 March 10; 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 March 10 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.
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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 April 10 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 at or prior to its first regular meeting of each June. 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.”

2. **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.

3. **Continuation of Amended Operating Agreement.** Except as expressly provided or the context requires otherwise, all terms and conditions of the Amended Operating Agreement shall remain in full force and effect.

4. **Effective Date.** The effective date of this Amendment No. 2 shall be the date first stated above.
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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

ATTEST:

Michael J. Egan, City Manager

Debra D. Bauchop, City Clerk

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

Leo Struiksma, President

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