

AGREEMENT FOR DONATION OF WATER SYSTEM

THIS AGREEMENT (the “Agreement”), made and entered into this 14th day of October, 2015, by and between Upper White River Basin Foundation, Inc., (the "Donee") and Foxfire Utility Company (the “Donor”).

WITNESSETH:

WHEREAS, the Donor has developed, and operates, as a regulated water corporation, to include water facilities in an area of Benton County, Missouri (hereinafter the "Spring Branch Water System" or, the “Water System”); and,

WHEREAS, Donee and Donor are bodies corporate, organized and existing under the constitution and the laws of the State of Missouri with all the requisite power necessary to enter into the transaction described hereinafter; and,

WHEREAS, Donor desires to donate all the assets, property and easements connected with the Spring Branch Water System; and,

WHEREAS, Donee desires to accept all of the assets, property and easements connected with the Spring Branch Water System; and,

WHEREAS, the parties have reached an understanding with respect to the donation by the Donor and the acceptance by the Donee of all of the Spring Branch Water System.

NOW, THEREFORE, it is mutually agreed that:

1. **DONATION OF ASSETS.**

Donor agrees that on the closing date, Donor shall transfer, assign and deliver to Donee all of Donor's then existing assets pertaining to the provision of water service in the Spring Branch Water System located in Benton County, in the State of Missouri, and related properties, including, without limitation, the following:

- A. The easements, rights of way, permits and leases;
- B. All of Donor's water lines, treatment facilities, storage facilities, plant, pipes, manholes, machinery, pumps, screens, plumbing, equipment and appurtenances, and all other personal property, including as built drawings, comprising water system located in Benton County, Missouri;

C. Any machinery and equipment such as meters, tools, devices, mobile work equipment, and all furniture, fixtures, machinery, supplies and other tangible items located in Benton County, Missouri, and used or held for use in connection with the Spring Branch Water System;

D. All of Donor's rights, title and interest in and to any franchise agreements, franchise rights, warranties, contracts, supply contracts, agreements, and utility deposits pertaining to, allocable to or arising out of the provision of water service in Benton County;

E. All of Donor's inventory, merchandise, contract rights, supplies, goodwill, and general intangibles including accounts receivable pertaining to the water service, except accounts receivable accrued through the end of the month in which Donee commences operation;

F. All assets not described which are located in Benton County, Missouri, and used or useful in the Donor's Spring Branch Water System.

The assets to be sold and delivered, as above described, are hereinafter collectively described as the "Assets."

2. **CONVEYANCES OF EASEMENTS.**

The easements to be conveyed by Donor will include all interest of Donor in any water easements related to the Spring Branch Water System. Easements shall be assigned by written assignment, in a form satisfactory to Donee.

3. **REGULATORY APPROVAL.**

The Donor agrees to make application to the Missouri Public Service Commission for authority to complete the transfer of the Assets. Donee agrees to assist in this process when requested to do so by Donor. Donee and Donor shall act diligently and cooperate with each other in obtaining final approval, if necessary, of the Missouri Department of Natural Resources for transfer of Donor's discharge and/or operating permits and other permits, if any.

4. **CLOSING.**

The closing shall take place at a mutually agreeable location within thirty days after the effective date of any necessary regulatory authority approval, or at such other time as the parties hereto may mutually agree. At the closing, Donor shall deliver to the Donee such deeds, bills of sale,

endorsements, assignments and other sufficient instruments of transfer and conveyance as shall be effective to vest in the Donee such title to the Assets to be sold as provided in this agreement. From time to time, at Donee's request, whether at or after the closing and without further consideration, the Donor will execute and deliver such other instruments of conveyance and transfer and take such other action as Donee reasonably may require to more effectively convey and transfer to the Donee any of the Assets to be transferred hereunder, and will assist the Donee in the collection or reduction to possession of such Assets. The Donor will pay all sales, transfer and documentary taxes, if any, payable in connection with the sale, transfers and deliveries to be made to the Donee hereunder.

On the date of closing, Donee shall accept and assume ownership and title to the Assets to be conveyed hereunder and Donee shall assume liability, and become responsible, for all obligations in connection with the Assets, except for those liabilities and obligations which Donor has herein under agreed to retain.

5. **DONOR'S REPRESENTATIONS AND WARRANTIES.**

The Donor represents and warrants as follows:

A. **Organization and Standing of Donor.**

Donor is a body corporate organized, existing under the constitution and laws of the State of Missouri in good standing, and has all the requisite power and authority to sell the Spring Branch Water System business and its Assets pursuant to the terms of this agreement.

B. **Liabilities.**

All liabilities or obligations of Donor, whether accrued, absolute, contingent or otherwise pertaining to or arising out from the Spring Branch Water System are liabilities and obligations of the Donor.

C. **Absence of Certain Changes.**

After Donee's inspection and acceptance of the Spring Branch Water System, there shall not be:

i. Any material change in the business or operations of the Spring Branch Water System;

ii. Any damage, destruction or loss whether or not covered by insurance, materially and adversely affecting the Spring Branch Water System's assets.

D. **Title to Properties.**

Donor has, or shall have, good and marketable title to all of the Water Assets. Donor also owns the Assets to be sold under this agreement, in all cases, free and clear of all liens, mortgages, pledges, leases, options, rights of first refusal, conditional sales agreements, encumbrances or other charges except liens for taxes not yet due or payable, easements or right of ways, streets, railways, pipelines, electric transmission and distribution lines, telephone lines, drainage rights and other similar rights or restrictions of record which do not, either individually or in the aggregate have a materially adverse effect on the value or utility of the Assets to be sold hereunder. Donor makes no warranty concerning the merchantability or status of the title of the real estate upon which the easements are located.

Notwithstanding, but not in limitation of, the foregoing, Donor agrees to provide within thirty days of the date first above written a plat of the distribution and collection lines showing the location of said lines with respect to lot lines, platted utility easements, if any, to the extent the same can be shown with reference to such lot lines and platted utility easements.

Donor agrees to identify any and all interests in land (including easements or license agreements) it has obtained in connection with its operation and maintenance of the Water System and provide Donee or Donee's representatives copies of the same or a reference to the book and page number of the records of the Benton County Recorder's Office where such easements are recorded.

Donee shall have thirty days from the date of receipt of the distribution and collection line plat, and the description and identification of all easements, licenses or other interests in land Donor has obtained within which to determine: 1) if Donor lacks an easement or other interest necessary for operation of the Water System; or, 2) an easement is defective in title or interest conveyed. If it appears that Donor lacks a valid easement for any portion of the Water System, or any easement identified suffers from a defect in title or interest conveyed, Donee at its option may: 1) cancel this agreement; 2) independently negotiate with the owner of the affected property toward acquisition of water well, treatment plant, and distribution lines easement or other easements; 3) notify Donor that Donee will cancel the agreement

unless a necessary easement is acquired or a defect satisfactorily cured or remedied; or, 4) undertake any action, which in Donee's sole and absolute discretion, would correct an easement or remedy the situation caused by a lack of an easement or proper land interest. Donee's failure to cancel this agreement, however, shall not relieve Donor from any of its duties of indemnification set forth in subsequent paragraphs herein, nor shall such failure be construed as Donee's waiver of any such provisions.

E. **Authority to Operate.**

The Assets described at Section 1 of this agreement, constitute all of the assets presently owned by the Donor pertaining to the Spring Branch Water System. To the best of Donor's knowledge, the Water System is being conducted, and as of the closing date, will be conducted in full compliance with requirements of all regulatory bodies exercising jurisdiction with regard to rates and conditions of service, and with local building and zoning codes. Donor has received no notice of any violation of federal or state safety or environmental statute, rule or regulation which remains uncorrected.

F. **Litigation.**

There is no litigation or proceeding pending, or to the knowledge of the Donor threatened, against or relating to the Donor, its properties, or the Spring Branch Water System, nor does the Donor know or have reasonable grounds to know of any basis for any such action, or of any governmental investigation relative to the Donor, its properties, or the Spring Branch Water System, except as otherwise disclosed to Donee.

G. **No Violation or Breach.**

The performance of this agreement by the Donor, including any preconditions or surviving warranties or representations, is not in violation of any laws, statutes, local ordinances, state or federal regulations, court orders or administrative order or ruling, nor is such performance in violation of any loan documents, conditions or restrictions in effect for financing, whether secured or unsecured.

6. **DONEE'S REPRESENTATIONS AND WARRANTIES.**

Donee represents and warrants as follows:

A. **Organization and Standing of Donee.**

Donee is a body corporate organized, existing under the constitution and laws of the State of Missouri, and has the requisite power to purchase the assets which are to be sold pursuant to the terms of this agreement.

B. **Authority.**

The execution and delivery of this agreement by Donee and the purchase of the Assets as contemplated hereby have been duly authorized by the Donee, and all necessary action on the part of the Donee has been taken to authorize the execution and delivery of this agreement and to consummate the sale contemplated hereby.

7. **CONDITIONS PRECEDENT.**

All obligations of the Donee under this agreement are subject to the fulfillment, prior to or at the closing, of each of the following conditions:

A. **Regulatory Approval.**

The Missouri Public Service Commission and Missouri Department of Natural Resources shall have, if necessary, authorized or approved the sale, transfer or disposition of the Assets to the Donee from the Donor. Both parties shall diligently pursue the required approvals and authorizations contemplated herein.

B. **Representations and Warranties True at Closing.**

The Donor's representations and warranties contained in this agreement shall be true at the time of closing as though such representations and warranties were made at such time.

C. **Performance.**

The Donor shall have performed and complied with all agreements and conditions required by this agreement to be performed or complied with by Donor prior to or at the closing; including the payment of all taxes and assessments, or portions thereof, attributable to periods prior to or ending on the closing date.

D. **No Casualty.**

The system at any location shall not have been adversely affected in any material way as a result of any strike, lockout, accident or other casualty or act of God or the public enemy,

or any judicial, administrative or governmental proceeding.

8. **INDEMNIFICATION.**

The Donor shall, and hereby agrees to indemnify and hold harmless the Donee, at any time after the closing against and in respect of:

A. All liabilities or obligations of Donor, whether accrued, absolute, contingent or otherwise, and including all liabilities or obligations arising out of the transactions entered into, or any state of facts existing, prior to the date of closing, including, without limitation, such liabilities or obligations as are described in paragraph B of Section 5 hereof;

B. Any claim, damage or deficiency resulting from any misrepresentation, untrue warranty, breach of warranty, or nonfulfillment of any agreement on the part of Donor under this agreement or from any misrepresentation in or omission from any certificate or other instrument furnished or to be furnished to the Donee under this agreement;

C. Any claim, liability, damage or obligation arising out of or attributable to, directly or indirectly, the storage or disposal of hazardous waste or materials prior to the date of closing;

D. All actions, suits, proceedings, demands, assessments, judgments, costs (including attorney's fees) and expenses incident to any of the foregoing;

E. All reasonable costs and expenses, including attorney's fees, reasonably incurred by Donee to purchase or condemn easement rights if (i) such rights were to have been assigned under this agreement, but which Donor ultimately was unable to convey good and marketable title thereto for any reason, and (ii) such rights were used in, and necessary for, the operation of Donor's Water System business as of the closing date.

If any claim or demand is made against Donee that, if sustained, would give rise to an obligation of the Donor pursuant to this section, the Donee shall cause notice of the claim or demand to be delivered to the Donor and shall afford the Donor, at his own cost and expense, the opportunity to defend the claim using counsel selected by the Donor, but approved by the Donee.

The Donor shall reimburse the Donee, on demand, for any payment involuntarily made, required by law to be made, or with the consent of the Donor made by the Donee at any time after the date of closing in respect of any liability, obligation or claim to which the indemnity and hold

harmless by the Donor contained in this section relates.

9. **FEES AND COMMISSIONS.**

Each party represents that it has not retained any broker or finder and is not paying, and is not obligated to pay, any finder's fee in connection with the transactions contemplated by this agreement. Each party shall pay its own fees for attorneys, accountants, appraisers or others engaged by it in the course of negotiating or executing this agreement and in closing and completing the transactions hereunder provided. Fees for professional advisors retained jointly by the parties for their mutual benefit shall be equally divided.

10. **BENEFIT.**

All of the terms of this agreement shall be binding upon, and enure to the benefit of, and be enforceable by, the respective legal representatives of the Donor, and the successors and assigns of the Donee.

11. **GOVERNING LAW.**

This agreement is being delivered and is intended to be performed in the State of Missouri, and shall be construed and enforced in accordance with the laws of such state.

12. **COUNTERPARTS.**

This agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. This agreement shall not be binding until executed by all parties.

13. **NO THIRD PARTY BENEFICIARIES.**

This Agreement shall not confer any rights or remedies upon any Person other than the parties and their respective successors and permitted assigns.

14. **ENTIRE AGREEMENT.**

This Agreement (including the documents referred to herein) constitutes the entire agreement among the parties and supersedes any prior understandings, agreements or representations by or among the parties, written or oral, to the extent they have related in any way to the subject matter hereof.

15. **SUCCESSION AND ASSIGNMENT.**

This Agreement shall be binding upon and inure to the benefit of the parties named herein

and their respective successors and permitted assigns. No party may assign either this Agreement or any of its rights, interests or obligations hereunder without the prior written approval of Donee and Donor, said approval not to be unreasonable withheld.

16. **HEADINGS.**

The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

17. **NOTICES.**

All notices, requests, demands, claims and other communications hereunder shall be in writing. Any notice, request, demand, claim or other communication hereunder shall be deemed duly given and effective five (5) business days after it is sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the intended recipient as set forth below:

If to Donee:

David L. Casaletto, President
Upper White River Basin Foundation, Inc.
2 Kissee Avenue, Suite C
P.O. Box 636
Kimberling City, Missouri 65686

If to Donor:

Garah Helms, President
Foxfire Utility Company
3478 Smyrna Road
Rogersville, MO 65742

Any party may send any notice, request, demand, claim or other communication hereunder to the intended recipient at the address set forth above using any other means (including personal delivery, expedited courier, messenger service, telecopy, telex, ordinary mail or electronic mail), but no such notice, request, demand, claim or other communication shall be deemed to have been duly given unless and until it is actually received by the intended recipient. Any party may change the address to which notices, requests, demands, claims and other communications hereunder are to be delivered by giving the other parties notice in the manner herein set forth.

18. **AMENDMENTS AND WAIVERS.**

No amendment of any provision of this Agreement shall be valid unless the same shall be in

writing and signed by Donee and Donor. No waiver by any party of any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

19. **SEVERABILITY.**

Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

20. **EXPENSES.**

Donee and Donor will each bear its own costs and expenses (including legal and accounting fees and expenses) incurred in connection with the preparation of this Agreement and activities necessary for Closing.

21. **CONSTRUCTION.**

The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The word “including” shall mean including without limitation.

22. **DEFAULT; ATTORNEY’S FEES.**

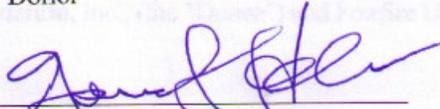
If either party shall default in their performance under this Agreement, which default results in the expenditure of attorney’s fees to enforce the terms of this Agreement or to recover damages for breach of this contract, then the prevailing party shall receive their reasonable and actually incurred attorney’s fees in addition to any other damages recovered.

IN WITNESS WHEREOF, the parties have duly executed this agreement as of the day and

year first above written.

FOXFIRE UTILITY COMPANY,
Donor

By:


Garah Helms, President

**UPPER WHITE RIVER BASIN
FOUNDATION, INC.,** Donee

By:


David L. Casaletto, President