

Appendix A

Water Transfer/Exchange Agreements

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**AGREEMENT BETWEEN
MADERA IRRIGATION DISTRICT
and
ROOT CREEK WATER DISTRICT
FOR THE CONVEYANCE AND SALE OF WATER**

THIS AGREEMENT FOR THE CONVEYANCE AND SALE OF WATER ("Agreement") is made and entered into by MADERA IRRIGATION DISTRICT, a California irrigation district ("MID"), and ROOT CREEK WATER DISTRICT, a California water district ("RCWD") (collectively, the "Parties") as of March 13, 2002.

RECITALS:

- A. WHEREAS, MID is an irrigation district organized under the California Irrigation District Law, codified at § 20500 et seq. of the California Water Code, that delivers water from Hidden Dam and Friant Dam under 25-year Long Term Renewal Contracts with the United States Department of Interior, Bureau of Reclamation ("USBR") to locations in Madera County for irrigation purposes.
- B. WHEREAS, RCWD is a water district organized under the California Water District Law, codified at § 34000 et seq. of the California Water Code, and serves a portion of southeastern Madera County currently consisting of 9,221 acres.
- C. WHEREAS, the Parties executed an "Agreement Concerning Agricultural, Municipal and Industrial Water Use Within Root Creek Water District" ("Root Creek Agreement") on December 30, 1999, with the Friant Water Users Authority ("FWUA"), Chowchilla Water District ("CWD") and certain Holding Contract owners and Landowners/Developers within RCWD.
- D. WHEREAS, the Root Creek Agreement recognizes that surface water supplies may become available to RCWD from: (1) Friant Dam flood flow releases unused by Friant Contractors; (2) Water transfers from sources outside of Madera County; (3) Water transfers from Central Valley Project ("CVP") water service or exchange contractors; (4) Water transfers from sources within Madera County; and (5) Purchase of water to supplement San Joaquin River water, first from MID and CWD, then if additional water is needed, purchase from other supplemental sources.
- E. WHEREAS, the Root Creek Agreement, Article III, section 2, provides that before obtaining supplemental water from any sources other than San Joaquin River flood flows, and Section 215 water purchased directly from the Bureau, RCWD shall first satisfy its water purchase requirements from supplies available for sale by MID, to the extent and on the same terms and conditions that MID is willing to sell such water to parties other than Friant Contractors or other CVP Contractors. In exchange MID agrees that RCWD shall have the first right to purchase any MID surface water available for sale outside its district, subject only to water sold to other Friant Contractors or CVP Contractors.

- F. WHEREAS, the Root Creek Agreement, under Article V, section 4, provides that the Parties will negotiate and execute an implementing agreement to construct necessary facilities to convey water to RCWD from MID's Lateral 6.2.
- G. WHEREAS, the United States constructed the Madera Canal as a part of the CVP for the carriage and distribution of waters of the San Joaquin River, which Canal is now operated by the Madera Chowchilla Water and Power Authority ("MCWPA"), pursuant to the "Cooperative Agreement Among the United States of America, the Madera Irrigation District, and the Chowchilla Water District Providing for Operation and Maintenance of Madera Canal and Associated Project Works," dated September 20, 1985, and the Joint Exercise of Powers Agreement by and between MID and CWD.
- H. WHEREAS, on April 30, 1985, MID and CWD entered into an agreement on the method of sharing capacity of the Madera Canal ("1985 Capacity Agreement"), which allocates the capacity of the Madera Canal during normal operations as 60% of the capacity to MID and 40% to CWD, and allows the use of whatever share of the other District's capacity is not being used. The Agreement further provides that this allocated capacity "shall apply regardless of the type of water being delivered to any district."
- I. WHEREAS, the Root Creek Agreement, under Article V, section 5, provides that the Parties will negotiate and execute an implementing agreement regarding water conveyance charges, capacity, terms and conditions.
- J. WHEREAS, the most convenient surface route to deliver water to RCWD is through the Madera Canal and MID Lateral 6.2.
- K. WHEREAS, the Parties desire to explore opportunities to cooperate and jointly participate in groundwater recharge projects in Madera County.
- L. WHEREAS, the Parties desire to cooperate and support one another, as appropriate, on Madera County and regional water issues.
- M. WHEREAS, upon the completion of the Environmental Impact Report ("EIR") for the Village of Gateway Development within RCWD, this Agreement will be reviewed and no physical implementation of the Agreement will occur prior to the completion of such EIR.

NOW THEREFORE, the Parties agree as follows:

ARTICLE I DEFINITIONS

As used in this Agreement, the terms set forth below have the following meanings.

1. "As-Available Capacity" shall mean any water conveyance capacity in the Madera Canal or Lateral 6.2 in excess of MID or CWD needs and the "Reserved

Capacity" made available to RCWD pursuant to this Agreement, which, if available, may be used by RCWD to convey its water.

2. "Building Permit" shall mean any building permit issued by the County of Madera, or any other public entity which may assume such authority, for construction in RCWD pursuant to any Tentative Map, Parcel Map or other entitlement.

3. "CVP Water" shall mean all water that is developed, diverted, stored, or delivered by the USBR in accordance with the statutes authorizing the CVP and in accordance with the terms and conditions of water rights acquired by the USBR pursuant to California law.

4. "CVP Class 1 Water" shall mean that supply of water stored in or flowing through Millerton Lake which, pursuant to MID's Long-Term CVP Water Service Contract, will be available for delivery from Millerton Lake and the Madera Canal as a dependable water supply during each year.

5. "CVP Class 2 Water" shall mean that supply of water which can be made available pursuant to MID's Long-Term CVP Water Service Contract for delivery from Millerton Lake and the Madera Canal, in addition to the supply of Class 1 Water. ~~Because of its uncertainty as to availability and time of occurrence, such water will be undependable in character and will be furnished only if, as, and when it can be made available, as determined by the USBR.~~

6. "Village of Gateway" shall mean that certain property described in the Village of Gateway Area Plan dated November 2000.

7. "General Plan Amendment Approval by Madera County" shall mean certification of the Village of Gateway Environmental Impact Report based on the draft dated February 2001, approval of the Village of Gateway Area Plan, designation of the Village of Gateway as a new growth area and the running of any applicable period to appeal those decisions.

8. "Infrastructure Master Plan for Village of Gateway" shall mean that certain plan for infrastructure (including roadways, water, sewer and other urban infrastructure) within the Village of Gateway and the EIR for that plan as required by mitigation measures imposed by the County of Madera in its General Plan Amendment Approval for the Village of Gateway.

9. "Lateral 6.2" shall mean the canal constructed by the U. S. Bureau of Reclamation beginning at mile post 6.2 of the Madera Canal for the purpose of delivering irrigation water to lands within MID

10. "Madera Canal" shall mean the canal constructed by the USBR extending from Friant Dam to the Chowchilla River, for the purposes of flood control and delivering irrigation water to MID and CWD.
11. "Non-CVP Water" shall mean any water not deemed to be CVP Water.
12. "Non-Residential Equivalent Dwelling Unit ("e.d.u.")" shall be defined as follows: The number of e.d.u.'s in any permitted non-residential structure shall equal the total square feet of floor space divided by 500.
13. "Reserved Capacity" shall mean that water conveyance capacity in the Madera Canal or Lateral 6.2 that has been reserved by MID for use by RCWD pursuant to the terms of this Agreement, and held available during the term of this Agreement for RCWD use in conveying its water.
14. "Residential Equivalent Dwelling Unit ("e.d.u.")" shall mean any single family dwelling unit or any unit of a multi-family residential structure designed to house a single family or individual.
15. "Restoration Fund Costs" shall mean any rates, costs or charges payable to the Restoration Fund pursuant to the Central Valley Project Improvement Act, PL 102-575.
16. "Surplus Class 2 Water" shall mean Class 2 water made available to RCWD following a determination by MID that a Surplus Water Condition exists.
17. "Surplus Water Condition" shall mean a condition, as determined solely by MID, wherein the MID supply of Class 2 water, in combination with other water supplies available to MID, has resulted in the ability of MID to transfer water to RCWD without impacting current or future deliveries of water to MID agricultural customers.
18. "Uncontrolled Season" shall mean that period of time, typically occurring during the spring months of March through May, when the USBR has determined that there is a need to evacuate water from Millerton Lake in order to prevent or minimize a spill or meet flood control criteria, and has notified Friant long-term water service contractors that such condition exists. During an Uncontrolled Season, water taken by a Friant long-term water service contractor is in addition to the water supply declaration for the balance of the contract year.
19. "Uncontrolled Season Class 2 Water" shall mean water delivered as Class 2 Water during the period(s) when the USBR has declared an Uncontrolled Season.
20. "MID Long-Term CVP Water Service Contract" shall mean the "Long-Term Renewal Contract Between the United States and Madera Irrigation District

Providing for Project Water Service From Friant Division," Contract No. 175r-2891-LTR1 and as it may be renewed from time to time.

21. "The Root Creek Agreement" shall mean that certain "Agreement Concerning Agricultural, Municipal and Industrial Water Use Within Root Creek Water District" entered into December 30th 1999 by and among the Friant Water Users Authority, Madera Irrigation District, Chowchilla Water District and Root Creek Water District.

ARTICLE II TERM AND RENEWAL OF AGREEMENT

1. Term

This Agreement shall become effective upon execution by the Parties and shall terminate on February 28, 2026.

2. Initiation of Physical Performance

No physical performance, other than the payment of fixed or guaranteed payments due during 2002 through 2005 under this Agreement shall occur prior to environmental review of this Agreement under the EIR prepared by the County of Madera to review the environmental effects of Infrastructure Master Plan for the Village of Gateway, including the implementation of this Agreement.

3. Renewal

Upon date of termination, this Agreement shall be automatically renewed on the same terms and conditions, except as changes to the Agreement are necessary to reflect change in MID's CVP Long-Term Water Supply Contract. Either Party may provide notice of intent to negotiate revised terms for renewal, provided that such notice is made at least one year prior to the expiration of this Agreement.

ARTICLE III. CONVEYANCE FACILITIES AND CHARGES

1. Lateral 6.2

a. Capacity

i) Under this Agreement, RCWD is entitled to the use of Reserved Capacity in Lateral 6.2 of 25 cfs from May 1 to August 31 of each year, and 50 cfs from September 1 of each year until April 30 of the following year.

(1) RCWD shall have the first right of refusal for any increase in Reserved Capacity that MID may determine is available on Lateral 6.2 as a result of changed conditions or actions taken by MID. Should RCWD request an increase in available Reserved

Capacity, MID agrees to negotiate in good faith to make such capacity available.

(2) MID shall not reduce Reserved Capacity of RCWD unless required to do so by the USBR or by exercise of state or federal law. Should MID be required to reduce Reserved Capacity, the parties shall negotiate in good faith to adjust capacity charges commensurate with the changed circumstances.

(3) The Reserved Capacity is for the sole and exclusive use of RCWD and it shall not be assigned for any other purpose or to any other user.

ii) As-Available Capacity in excess of Reserved Capacity may be utilized by RCWD during each water year as it becomes available (for that year only) from MID's capacity provided:

(1) MID landowners and agricultural customers' water conveyance capacity needs are first satisfied, then RCWD shall have first priority on any available capacity.

(2) MID shall provide RCWD one day's notice of available capacity changes affecting the requested additional capacity by RCWD.

iii) Terms and Conditions Applicable to RCWD's Reserved Capacity and As-Available Capacity

(1) RCWD must provide MID at least 30 days' notice to initiate deliveries if Lateral 6.2 is out of service at the time delivery is requested by RCWD.

(2) If Lateral 6.2 is in service at the time delivery to RCWD is requested, RCWD shall give MID at least three days' notice of RCWD capacity requirements.

b. Delivery Locations

i) RCWD will use the existing diversion structure from Lateral 6.2 located at Station 129+35 ("Turnout 1-A"), or such structure at that location as modified to increase its diversion capacity.

ii) The existing diversion structure at Turnout 1-A is owned by MID to benefit MID Improvement District #3 landowners. Any modifications to such diversion structure to increase capacity shall be at the sole expense of RCWD, with the approval of MID and MID

Improvement District #3 landowners. RCWD will have the sole responsibility to obtain approval from MID Improvement District #3 landowners but MID will provide reasonable assistance in a mutually acceptable resolution.

- iii) Any additional diversion locations from Lateral 6.2 by RCWD shall require the prior approval of MID, which shall not be unreasonably withheld.

c. Carriage Losses

- i) Carriage losses for conveyance of RCWD water supplies in Lateral 6.2 shall be computed at 3% from Madera Canal outflow structure to delivery location at Turnout 1-A. Carriage losses to any additional future diversion locations shall be determined when additional diversion locations are approved by MID.
- ii) If the only water conveyed in Lateral 6.2 is that being delivered to RCWD, the delivery amount shall be measured at the Madera Canal outflow structure into Lateral 6.2 and no carriage loss calculation will be necessary for Lateral 6.2.

d. Capacity and Conveyance Charges

- i) **Charges for Reserved Capacity And Other Cooperation**
The charges assessed by MID to RCWD for the long-term assurance of availability of Reserved Capacity to convey RCWD water supplies through the Madera Canal and Lateral 6.2 and for the other assistance and cooperation provided to RCWD pursuant to this Agreement include three components. Fixed Reimbursement Payments prior to the construction of residential and commercial development within the Village of Gateway are intended to reimburse MID for prior and anticipated administrative and legal costs incurred in the development, environmental review and administration of this and other agreements.

Commencing in the year 2004, when construction of such units is expected to be underway, two other fees shall then be paid to MID by RCWD: an Impact Fee and an Annual Assessment Fee. The Impact Fee shall be a one-time fee paid by RCWD at the time a building permit is issued for each Equivalent Dwelling Unit for the purpose of defraying all or a portion of the cost of MID facilities related to the development project. The Annual Fee shall be applied annually to all Equivalent Dwelling Units existing at that time.

(1) Fixed Reimbursement Payments to MID by RCWD:

- A. The initial payment shall be \$100,000, which shall be made within 120 days of County of Madera Board of Supervisors final action to approve the Village of Gateway General Plan Amendment,
- B. The second payment of \$125,000 shall be made at the one-year anniversary of the initial payment.
- C. The third payment, expected to occur in 2004, shall be \$150,000, which shall be made upon certification of the applicable EIR and approval of the Infrastructure Master Plan for the Village of Gateway by Madera County.

(2) One-time Impact Fees payable to MID by RCWD at issuance of Building Permits by Madera County shall be paid by the fifteenth (15th) day of each month for Building Permits issued in the prior month based on the following rates:

- A. From 2004 to 2008, \$1,000 per Building Permit issued for each Residential e.d.u., and \$250 per Non-Residential e.d.u. For the year 2005 only, the minimum Impact Fee payable by RCWD shall be \$150,000 as additional reimbursement, provided that any Impact Fees paid in 2004 shall be credited toward meeting the \$150,000 required to be paid by the end of 2005.
- B. From 2009 to 2013, \$1,100 per Building Permit issued for each Residential e.d.u., and \$260 per Non-Residential e.d.u.
- C. From 2014 to 2018, \$1,200 per Building Permit issued for each Residential e.d.u., and \$270 per Non-Residential e.d.u.
- D. From 2019 to 2023, \$1,300 per Building Permit issued for each Residential e.d.u., and \$280 per Non-Residential e.d.u.
- E. From 2024 to 2026, \$1,400 per Building Permit issued for each Residential e.d.u., and \$290 per Non-Residential e.d.u.

F. Upon renewal of this Agreement, the Impact Fee shall continue to escalate in the manner described above (i.e., by \$100 per Residential e.d.u. and \$10 per Non-Residential e.d.u. every five years), unless otherwise agreed to by the Parties.

(3) Annual Assessment Fee payments to MID by RCWD shall be based upon the number of e.d.u.'s on the regular property tax roll of Madera County during each calendar year. The Annual Assessment Fee payments shall be made in two installments due on or before January 31 and May 31 of each year using the following annual unit rates:

A. Annual Payment Rate for 2004: \$80.00 per Residential e.d.u. and \$40.00 per Non-Residential e.d.u.

B. Each year thereafter the Annual Payment Rate for both Residential e.d.u. and Non-Residential e.d.u. shall increase by 2% per year (e.g., the payment rate for 2005 will be \$81.60 per Residential e.d.u. and \$40.80 per Non-Residential e.d.u.).

ii) Conveyance Charges

(1) Reserved Capacity Water conveyed by RCWD through the Madera Canal and Lateral 6.2 pursuant to this Agreement shall be subject to charges based on the cost per acre-foot of water conveyed, which will be determined each year based on MID's budget for that upcoming year. (Such annual rate will be established to cover MID operations, maintenance and administrative costs of conveying water, including MID's share of costs to convey water through the Madera Canal.)

(2) The conveyance charge shall reflect the full operations cost of Lateral 6.2 if the canal would not otherwise be operating at the time RCWD is using such capacity.

(3) The conveyance charge shall be calculated based upon the amount delivered as measured at Turnout 1-A, plus Carriage Losses as defined in Section III 1.c. above, or if the only water conveyed in Lateral 6.2 is that being delivered to RCWD, the delivery shall be measured at the Madera Canal turnout structure.

- (4) The payment of conveyance charges shall be due within 30 days of the last day of the month in which water is delivered.

2. Madera Canal

a. Use of MID Share of Reserved Capacity in Madera Canal

Under this Agreement, RCWD may also utilize a portion of MID's allocation of Madera Canal capacity equal to RCWD's Reserved Capacity in Lateral 6.2 set out in Section III 1.a.i) above, under the following terms and conditions:

- i) Utilization of MID's share of Reserved Capacity in the Madera Canal shall be for a 25-year period (to match term of the current MID CVP Contract) and shall be renewable on the same terms and conditions with the exception of any changes required by USBR in any renewal of the MID CVP Contract.
- ii) RCWD's utilization of MID's Reserved Capacity in the Madera Canal may be subject to necessary conveyance agreements with MCWPA and USBR.
- iii) As provided in Section III 1.a.i)(3), the Reserved Capacity is for the sole and exclusive use of RCWD and it shall not be assigned for any other purpose or to any other user.

RCWD payment to MID for its share of Reserved Capacity in the Madera Canal is included in RCWD's payment to MID for Lateral 6.2 Reserved Capacity as set forth in Section III 1.d.i) of this Article.

b. RCWD Use of Additional As-Available Capacity in Madera Canal

Under this Agreement, RCWD may also utilize As-Available Capacity in excess of its Reserved Capacity in MID's allocation in the Madera Canal on the following terms and conditions:

- i) As-Available Capacity in the Madera Canal may be available on an annual basis, subject to satisfying needs of MID and CWD conveyance requirements.
- ii) If the Madera Canal is not currently operating, RCWD must give MID at least 30 days' notice of request for As-Available Capacity. If Canal is out of service due to scheduled Canal maintenance, the 30-day notice period may be modified by mutual agreement of the Parties and MCWPA with the intent of operating the canal as soon as reasonably possible. (Such minimum maintenance period will

be determined annually by the MCWPA in consultation with the Parties.)

iii) If Madera Canal is operating, RCWD must give MID at least three days' notice of request for As-Available Capacity.

iv) MID must give RCWD one day's notice of any change in As-Available Capacity.

c. Terms and Conditions Applicable to RCWD Use of Both Reserved Capacity and As-Available Capacity in the Madera Canal

i) RCWD's use of capacity in the Madera Canal shall not include the annual 45-day period of "down" time for Canal maintenance. MID shall give RCWD 30 days' prior written notice of such scheduled Canal maintenance down time.

ii) The use of capacity provided in this Agreement in the Madera Canal shall in no manner be construed as a warranty or covenant by MID that any water is available to be conveyed under such RCWD capacity and such conveyance shall be subject to the USBR minimum release requirements in place at Friant Dam. (The availability of any water to be conveyed under the capacity provided in this section depends upon a variety of factors beyond MID's control, such as annual precipitation, increased use by MID and CWD landowners, and other factors.)

iii) The delivery location of waters conveyed through the Madera Canal pursuant to this section shall be at the Lateral 6.2 diversion on the Madera Canal.

iv) RCWD is responsible for scheduling the water deliveries with MID.

v) Carriage Losses

(1) There shall be no carriage losses within the Madera Canal associated with CVP water whose delivery point is at Lateral 6.2.

(2) Carriage losses for all water that is not CVP water shall be calculated pursuant to Warren Act provisions in any applicable USBR Contracts.

vi) Conveyance Charges for the Madera Canal

(1) There shall be no additional charge to RCWD for the conveyance of water that is purchased directly from MID pursuant to other terms of this Agreement.

(2) RCWD will pay all operations costs of the Madera Canal to MID if the Canal is operated solely for the conveyance of water to RCWD.

ARTICLE IV. SALE OF MID WATER AND OPTIONS TO PURCHASE

1. Options to Purchase MID Water

RCWD shall pay an annual option fee to MID to secure the first right to purchase surplus water from MID (if any) on the following terms and conditions for each source of water specified:

a. Surplus Class 2 Water will be made available by MID for purchase by RCWD pursuant to an annual option by RCWD upon the occurrence of:

i) A determination by MID based on June 1 or later water supply conditions, that Class 2 Water available to MID, in combination with other supplies available to MID, has resulted in the ability of MID to transfer water to RCWD without impacting current or future deliveries to MID agricultural customers.

ii) If USBR issues a notice of reduced allocation of Class 2 Water after delivery of Surplus Class 2 Water by MID to RCWD is complete, RCWD shall render replacement of water to MID from other water supply sources within one year of date of pre-reduction delivery.

b. Uncontrolled Season Class 2 water will be available for purchase by RCWD pursuant to an annual option by RCWD only upon MID determination that there is water in excess of MID's ability to divert and deliver water to MID landowners, recharge facilities or storage facilities, including those facilities that may be developed in conjunction with RCWD, during the uncontrolled season.

2. Option Payments

a. RCWD shall purchase annually from MID an option to receive 10,000 acre-feet of MID water.

b. The total annual option price shall be \$10 per acre-foot per year, equaling a \$100,000 annual payment, payable no later than February 1 of each calendar year.

- c. Option payments are non-refundable and MID makes no guarantee that surplus water will be available in any year for purchase under these options.
- d. RCWD shall receive full credit for option payments for water purchased in future years up to a maximum \$50.00 per acre-foot purchased in any year.
- e. Annual Option payments by RCWD shall not be required whenever RCWD has accumulated an unused \$500,000 credit because MID has been unable to make water available.
- f. Option payments by RCWD shall be forfeited at a rate of \$10.00 per acre-foot for water made available by MID but not taken by RCWD.

3. Purchase of Water By Exercise of Option

a. Price of MID CVP Water Purchased Under Exercise of Option

If RCWD exercises its option to purchase water from MID, the purchase price shall be set at \$50 per acre-foot above MID cost of water. The MID cost of water determination will include the following: CVP contract rate (currently \$10.05/acre-foot); Restoration Fund Charges; any incremental costs charged by USBR; any USBR surcharge for water transferred to non-CVP Contractors; and San Luis/Delta Mendota Authority charges, and other charges that may be imposed upon MID water deliveries.

b. Delivery of MID Non-CVP Water Supplies Under Exercise of Option

i) MID may deliver Non-CVP Water, if available, in lieu of CVP Class 2 Water.

ii) If Non-CVP water is delivered to RCWD in lieu of Class 2 Water, cost adjustment will be made to reflect increases or decreases in MID or RCWD costs, including but not limited to:

(1) Restoration Fund Costs, if any;

(2) Non-CVP water conveyance charges and carriage losses.

c. Cooperation in Acquisition of Supplemental Supplies

MID will cooperate and assist RCWD in securing supplemental water supplies from other sources. If MID secures such supplies on behalf of RCWD, the following charges shall be assessed by MID to RCWD:

- i) The purchase price by RCWD shall be \$50 per acre-foot above MID cost in securing such supplies;
- ii) MID shall apply option payments previously made to MID by RCWD to the price payable by RCWD for such supplemental supplies up to \$50 per acre-foot.

4. Billings and Payments

a. Compensation Factor for Carriage Losses

The billing for water shall be based on charges per acre-foot of metered water taken by RCWD at the point of delivery. In order to compensate for the carriage loss set forth in Section III.1.c (Carriage Losses), the billing for all water charges under this Agreement shall be based on the amount of metered water taken by RCWD multiplied by a factor of 1.03, except as otherwise provided in Section III.1.c.

b. Billing Due Dates

RCWD will be billed separately by MID for water purchase amounts and water conveyance costs. All payments shall be due within 30 days of the last day of the month in which water is delivered. Interest shall be charged for all delinquent payments at a rate of 1 percent per month from the due date to the date of payment.

ARTICLE V CONDITIONS AND OBLIGATIONS OF PARTIES

1. Madera Irrigation District

a. Assistance with Environmental Approvals

MID agrees to provide reasonable assistance to RCWD, as appropriate on water issues, on the County, State and Federal environmental approvals for the Village of Gateway General Plan Amendment, the Infrastructure Master Plan for the Village of Gateway, subsequent tentative and subdivision maps, the Root Creek Agreement and this Agreement.

b. Provide Reasonable Support at Gateway Village Entitlement Hearings

MID agrees to provide RCWD reasonable support on water issues at all entitlement hearings for the Village of Gateway General Plan Amendment, the Infrastructure Master Plan for the Village of Gateway, subsequent tentative and subdivision maps before the Madera County Planning Commission and Board of Supervisors.

c. Provide Support for Future Annexations to RCWD

MID agrees to provide RCWD reasonable support for additional future annexations to RCWD, providing such annexations are subject to the provisions of the Root Creek Agreement and this Agreement.

d. Provide Support for Special RCWD Legislation

MID agrees to provide RCWD reasonable support for State legislation to expand the powers of RCWD to allow RCWD to provide roadways, public buildings and school facilities, parks, street lighting and landscaping, electricity, natural gas, telecommunications, and other utilities and urban services and contract for police and fire services within the boundaries of RCWD. MID acknowledges, however, that nothing in this Agreement entitles MID to participate in any additional revenue generated by RCWD from any activities authorized by the special legislation.

e. Provide Assistance in Obtaining Pipeline from RCWD to Lateral 6.2

MID shall provide reasonable assistance to RCWD to obtain an easement to deliver water from Turnout 1-A on Lateral 6.2 to the boundary of RCWD.

2. Root Creek Water District

a. Indemnification of MID by RCWD

It is the understanding of the Parties hereto, and the intention of this Agreement, that the execution of this Agreement by MID and all actions taken by MID under this Agreement are to be performed at the expense and risk of RCWD, and that RCWD shall defend, indemnify and hold MID harmless against any loss, expense, damage or liability of any kind whatsoever, including attorneys' fees, arising out of or in connection with the sale or conveyance of water or any other action taken under this Agreement.

b. Future Lands Annexed or Served by RCWD

All additional lands annexed or served by RCWD after the date of execution of this Agreement shall be annexed or served by RCWD subject to the terms and provisions of the Root Creek Agreement and this Agreement.

c. RCWD Commitment to Purchase Water First from MID and CWD

In purchasing its necessary water supplies, RCWD shall purchase such water first from MID and then CWD, if available, prior to purchasing water from any other sources.

d. **RCWD Commitment Not to Sell or Provide Water Service to Lands Outside of RCWD Boundaries**

RCWD shall not sell or provide water service utilizing water purchased from MID to lands outside of RCWD boundaries without the prior approval of MID.

e. **Provision of Services Only to Properties Subject to a Groundwater Management Plan**

RCWD will provide its services, including but not limited to, provision of water, wastewater treatment, flood control, electrical power, natural gas, telecommunications, public facilities, or any other urban or M & I services, only to properties that have adopted or are subject to a groundwater management plan that stipulates to water balance, and, if applicable, are subject to an agreement to limited consumption of San Joaquin River waters pursuant to USBR Holding Contracts, similar to the limitations imposed in the Root Creek Agreement.

ARTICLE VI

GENERAL PROVISIONS

1. **Compliance with Environmental Laws**

The Parties shall comply with all applicable federal, state and local environmental laws and regulations, and take all steps necessary to assess whether the activities described in this Agreement may adversely impact threatened or endangered species, critical habitat or other environmental resources regulated pursuant to the federal Endangered Species Act, the California Endangered Species Act and other applicable state and federal laws relating to the protection of environmental resources.

2. **Enforcement of Agreement**

If default shall be made by any Party in any provision contained in this Agreement, such default shall not excuse the other Party from fulfilling its obligations under the Agreement and such other Party shall continue to be liable for the performance of all obligations herein contained. The Parties hereby declare that this Agreement is entered into for the benefit of all Parties to the Agreement and each Party shall have the right to enforce this Agreement, and all the obligations of each Party hereunder, by whatever lawful means that Party deems appropriate.

3. **Recording**

This Agreement shall be recorded in the Official Records of Madera County to bind the land within RCWD to the extent legally permissible and to make an official record of the agreement of the Parties.

4. **Best Efforts/No Guaranty**

When this Agreement requires any Party to assist, cooperate, negotiate, facilitate or otherwise participate in a process to obtain a mutually desired result described in this Agreement, all that is required of that Party is that they exert their reasonable and appropriate best efforts in relation to the matter described in this Agreement. In agreeing to cooperate, assist or negotiate in good faith, no Party is endeavoring to guaranty any result describe or sought by this Agreement.

5. **Uncontrolled Forces**

If any of the Parties to this Agreement are prevented in whole or in part from delivering wheeling or receiving water as a result of forces beyond their control, all Parties are relieved from the obligations to the extent they are reasonably unable to complete the obligation due to the uncontrollable force. Uncontrollable forces shall include, but are not limited to, earthquakes, fires, tornadoes, floods and other natural disasters. However, each Party shall be responsible for payment of any costs incurred on its behalf by the other Party before the occurrence of the uncontrollable force.

6. **Waste and Unreasonable Use**

Nothing in this Agreement is intended or shall be construed as condoning any waste or unreasonable use of water. All Parties specifically retain their rights and responsibilities as water purveyors to ensure that water within their jurisdiction is put to reasonable and beneficial use.

7. **Remedies - Specific Performance**

The Parties acknowledge that both groundwater and surface water are unique and irreplaceable resources. Therefore, monetary compensation or other remedies at law will not be sufficient to cure a breach of this Agreement. Thus, the Parties agree that in addition to all remedies at law, specific performance shall be available to all Parties to enforce the terms of this Agreement.

8. **Costs**

The costs and expenses incurred for the preparation of this Agreement shall be paid by each Party subject only to the reimbursement of MID set forth above.

9. **Time**

Time is of the essence of this Agreement and each and all of its provisions.

10. Effect of Headings

The subject headings of the articles and paragraphs of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

11. Entire Agreement

This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings of the Parties. No supplement, modification, or amendment to this Agreement shall be binding unless executed in writing by all of the Parties hereto. It is understood by the Parties that this Agreement may be subject to additional mitigation measures if required by the EIR to be prepared for the Village of Gateway Amendment to the Madera County General Plan, the Infrastructure Master Plan for the Village of Gateway, subsequent tentative or subdivision maps for the Village of Gateway.

12. Waiver

Waiver of any breach of this Agreement by any Party hereto shall not constitute a continuing waiver or a waiver of any breach of the same or another provision of this Agreement.

13. Counterparts

This Agreement may be executed in any number of counterparts and each such counterpart shall be deemed to be an original instrument, all of which together shall constitute one and the same instrument.

14. Binding Effect

This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, assigns and successors of the Parties hereto, and shall bind and apply to all property subsequently annexed to RCWD or any other party and shall be recorded against subsequent annexed land.

15. Survival of Agreement

The provisions of this Agreement and the covenants and conditions contained herein shall be continuous and shall survive any annexation or other change in the boundaries of RCWD and any transfer of ownership of any Holding Contract property or other property within RCWD.

16. Attorneys' Fees

Should any litigation be commenced between the Parties hereto concerning this Agreement or the rights and duties of any Party in relation thereto, the Party prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to recover from the losing Party a

reasonable sum for its attorneys' and paraprofessionals' fees and costs in such litigation, or any other separate action brought for that purpose.

17. Governing Law

This Agreement shall be governed by the laws of the State of California.

18. Rules of Construction and Word Usage

All words used in the Agreement shall be construed to include the plural as well as the singular number and vice versa. Words used herein in the present tense shall include the future as well as the present, and words used in the masculine gender shall include the feminine and neuter genders.

19. Parties in Interest

Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies on any persons other than the Parties hereto and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third person to any Party to this Agreement, nor shall any provision give any third person any right of subrogation or action over and against any Party to this Agreement.

20. Notices

All notices and other communications required under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service, if served personally on the person to whom notice is to be given, or on the third (3rd) day after mailing, if mailed to the Party to whom notice is to be given by first class mail, registered or certified, postage prepaid, and properly addressed as follows:

To Stephen H. Ottemoeller, General Manager, at:
Madera Irrigation District
12152 Road 28 ¼
Madera, CA. 93637-9199

To Christopher L. Campbell, Counsel, at:
Root Creek Water District
5260 N. Palm Ave., Suite 421
Fresno, CA 93704

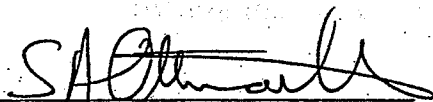
or at such other address as any party may, by like notice, designate to the other Party in writing.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

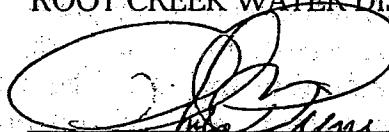
MADERA IRRIGATION DISTRICT


By President – Board of Directors

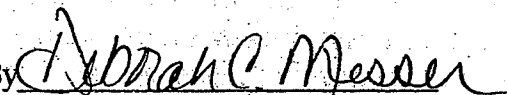
Attest:

By 
GENERAL MANAGER

ROOT CREEK WATER DISTRICT


By President – Board of Directors

Attest:

By 
SECRETARY ROOT CREEK
WATER DISTRICT

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

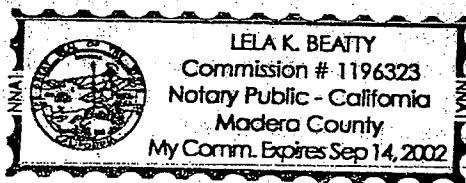
State of California

County of Madera } ss.

On March 13, 2002, before me, Lela K. Beatty, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
 personally appeared Phillip R. Pierre
Name(s) of Signer(s)

☐ personally known to me
☒ proved to me on the basis of satisfactory evidence

to be the person(~~s~~) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(~~ies~~), and that by his/~~her~~/their signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.



Place Notary Seal Above.

WITNESS my hand and official seal.

Lela K. Beatty
 Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Agreement Between MID & Root Creek WD
for the Conveyance & Sale of Water
 Document Date: 3/13/02 Number of Pages: 20

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: Root Creek Water District

RIGHT THUMBPRINT
 OF SIGNER
 Top of thumb here

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Madera

} ss.

On March 13, 2002, before me

Date

Lela K. Beatty, Notary Public
Name and Title of Officer (e.g., "Jane Doe, Notary Public")

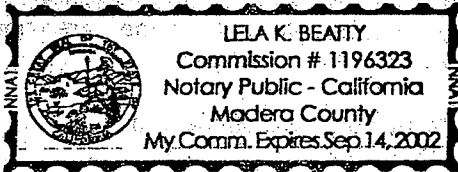
personally appeared Don Pistaresi

Name(s) of Signer(s)

☒ personally known to me

☐ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

WITNESS my hand and official seal.

Lela K. Beatty
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Agreement Between MID & Root Creek WD for the Conveyance & Sale of Water

Document Date: 3/13/02

Number of Pages: 20

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: Madera Irrigation District

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

WATER SUPPLY AGREEMENT

THIS WATER SUPPLY AGREEMENT is made effective as of November 1, 2006, by and between the ROOT CREEK WATER DISTRICT, a California water district ("RCWD") and WESTSIDE MUTUAL WATER COMPANY, LLC, a California limited liability company ("Westside").

R E C I T A L S:

A. RCWD is a California water district, located in Southeastern Madera County. The lands of the district have been extensively developed to agriculture, and in particular, permanent plantings. Also, a portion of the district has been designated for municipal and industrial development.

B. The lands within RCWD rely primarily on groundwater, and the groundwater basin underlying the district is in a state of overdraft. In order to efficiently manage its groundwater supplies, RCWD is seeking to acquire surface water supplies for conjunctive use purposes.

C. RCWD has acquired or will acquire certain wet-year supplies that it intends to deliver to its agricultural water users. RCWD is also seeking "firm" supplies, available in dry years, that will be available if necessary for the agricultural, municipal and industrial development within the district. Westside desires to provide RCWD with dry-year firm supplies, as described below.

D. Westside and its members have certain rights to banked groundwater in the North Kern Water Storage District ("North Kern") and may bank additional water in North Kern in the future. Westside proposes to pump and deliver banked groundwater to North Kern, for North Kern in turn to deliver to the Shafter Wasco Irrigation District ("SWID"). SWID shall use the banked groundwater delivered from North Kern in lieu of a comparable amount of surface water that SWID would otherwise have taken from the Friant Unit of the Central Valley Project ("Friant"), under its long-term water supply contract with the US Bureau of Reclamation ("Reclamation"). Westside and its members also have access to certain non-project supplies (i.e., waters that are not captured or delivered by Reclamation's Central Valley Project) that Westside may provide to RCWD under this Agreement.

E. The Friant water that could have been delivered to SWID shall remain in Lake Millerton, available for delivery to RCWD through the Madera Canal and related facilities. The parties intend that the SWID water delivered from Lake Millerton to RCWD shall be deemed an exchange for North Kern banked groundwater, and shall not be deemed to be Federal project water when delivered to RCWD.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement, the parties agree as follows:

1. Definitions. Definitions for the following terms are found at the following paragraphs of this Agreement:

- (a) "Approvals" is defined at Paragraph 10.
- (b) "CEQA" is defined at Paragraph 10(b).
- (c) "Commencement Date" is defined at Paragraph 8.
- (d) "Delivered Price" is defined at Paragraph 3(c).
- (e) "Delivery Point" is defined at Paragraph 6.
- (f) "Event of Default" is defined at Paragraph 16.
- (g) "Friant" is defined at Recital D.
- (h) "Force Majeure Event" is defined at Paragraph 14(b).
- (i) "Maximum Delivery Quantity" is defined at Paragraph 2.
- (j) "North Kern" is defined at Recital D.
- (k) "Order" is defined at Paragraph 5.
- (l) "Pre-Delivered Water" is defined at Paragraph 7.
- (m) "Reclamation" is defined at Recital D.
- (n) "Replacement Water Supply" is defined at Paragraph 16.
- (o) "Pre-Delivery Notice" is defined at Paragraph 7.
- (p) "RCWD" is defined in the Preamble.
- (q) "Reservation Fee" is defined at Paragraph 3(a).
- (r) "Standby Charge" is defined at Paragraph 3(b).
- (s) "SWID" is defined at Recital D.
- (t) "Term" is defined at Paragraph 8 .
- (u) "Uncredited Standby Charges" is defined at Paragraph 7(b)(i).
- (v) "Westside" is defined in the Preamble.

2. Agreement to Sell/Right to Purchase. Westside hereby agrees to sell to RCWD banked groundwater or other non-project waters available to Westside each year as requested by RCWD pursuant to the notice procedure set forth below. The amount Westside is obligated to sell each year shall not exceed the "Maximum Delivery Quantity" for that year described in Exhibit "A" to this Agreement and incorporated herein by this reference. RCWD shall not be obligated to purchase water from Westside, except as provided in this Agreement.

3. Pricing.

(a) *Reservation Fee.* Notwithstanding any other provision herein, commencing January 1, 2006 and continuing until the Commencement Date, RCWD shall pay to Westside the sum of \$50,000 each calendar quarter to reserve the availability of water supplies under this Agreement (the "Reservation Fee"). The Reservation Fee shall be paid not later than the 30th day of each calendar quarter.

(b) *Standby Charge.* Beginning on the Commencement Date, RCWD shall pay to Westside an annual "Standby Charge" of \$180 per acre-foot of the Maximum Delivery Quantity available each calendar year, as specified in Exhibit "A" hereto, as adjusted pursuant to this paragraph 3(b) and paragraph 9(b)(ii) hereof. Commencing on the Commencement Date and annually thereafter, the Standby Charge shall be adjusted annually for inflation by the same percentage as the percentage change in the Consumer Price Index for All Urban Consumers, West Region from the value of the Index on January 1, 2006. The annual Standby Charge shall be paid not later than January 31 of each year. Subject to paragraph 7(b)(ii) hereof, all Standby Charges paid shall be credited against the price of water purchased under this Agreement. Any Standby Charges paid that are not credited to water purchased in any year shall roll over into subsequent years until utilized for water purchased. While there shall be no limit to the amount of credit RCWD can accrue for Standby Charges paid, RCWD shall not be entitled to exceed the Maximum Delivery Quantity of water available in any year. If at the end of the Term there is a credit remaining, then RCWD shall be entitled to order and delivery, and be subject to pre-delivery, of the amount of water that can be purchased with such credit pursuant to the provisions of this Agreement.

(c) *Water Charge.* The price of water delivered under this Agreement shall be \$600 per acre-foot (the "Delivered Price") as adjusted pursuant to this paragraph 3(c) and paragraph 9(b)(ii) hereof. Commencing on the Commencement Date and annually thereafter, the Delivered Price shall be adjusted annually for inflation by the same percentage as the percentage change in the Consumer Price Index for All Urban Consumers, West Region from the value of the Index on January 1, 2006.

4. Payment of Delivered Price. RCWD shall pay the Delivered Price for all water ordered within 60 days of the Order for such water. Standby Charges paid shall be credited against the Delivered Price pursuant to paragraph 3(b) hereof.

5. Ordering. Not later than April 1 of each calendar year, RCWD shall give written notice to Westside of the amounts of water to be purchased that year (the "Order"), up to the Maximum Delivery Quantity for that year. At RCWD's option, RCWD may also include in the Order a monthly schedule of requested deliveries as well as the total for the year and Westside shall use its reasonable good faith efforts to comply with the requested delivery schedule. In no case shall Westside be obligated to deliver more than 13.5 percent of the Maximum Delivery Quantity for that year in any single month; provided, however, that Westside shall remain obligated to deliver the full Maximum Delivery Quantity.

6. Delivery. The delivery point for all water ordered under this Agreement shall be RCWD's turnout on Madera Irrigation District Lateral 6.2 from the Madera Canal (the "Delivery Point"). The delivery period for all water ordered shall be April through September. Westside shall not be obligated to deliver any water during the period October through March; provided, however that Westside may pre-deliver water at any time during the year pursuant to paragraph 7 hereof regarding Pre-Delivery.

(a) *Conveyance to Delivery Point.* Except as provided in this Agreement, Westside shall be solely responsible for conveyance arrangements necessary to deliver the water to the Delivery Point, including, but not limited to, contracting with other parties for water exchanges.

(b) *Losses.* Westside shall be responsible to deliver the full amount of water specified in the Order to the Delivery Point and shall have no responsibility for any losses of any kind after its delivery of water to the Delivery Point. RCWD shall be solely responsible for any losses, including carriage or conveyance losses, after the Delivery Point.

7. Pre-Delivery. Westside may, at its option, deliver water at any time during the year to RCWD prior to receipt of an Order for such water ("Pre-Delivered Water"), provided that RCWD has available conveyance capacity and beneficial use (including capacity for direct recharge) for such water. Westside shall notify RCWD in writing when and if Westside has water available for pre-delivery ("Pre-Delivery Notice"). The Pre-Delivery Notice shall specify the amount of water available to be pre-delivered and the proposed timing of delivery. Not later than ten (10) days following receipt of the Pre-Delivery Notice, RCWD shall notify Westside how much, if any, Pre-Delivered Water that RCWD has the conveyance capacity and beneficial use to receive over and above that dedicated to receiving Section 215 water available to RCWD as a Section 215 contractor with the Bureau of Reclamation and/or water available under its agreement with Madera Irrigation District dated March 13, 2002 as it exists on the date hereof. RCWD shall maintain during the Term sufficient beneficial use and conveyance capacity in its water delivery facilities to allow (a) total deliveries of at least 10,000 AF of water each calendar year and (b) deliveries by Westside of at least 4,000

AF of water each calendar year. If this obligation is not satisfied at any time during the Term, then Westside shall have first priority to use RCWD delivery facilities for Pre-Delivered Water until the quantity of water prevented from being delivered by such limitation is delivered by Westside.

(a) *Application to Orders (Delivery).* Water Orders made by RCWD shall be considered satisfied first from the amount of Pre-Delivered Water delivered to the Delivery Point. RCWD shall not be considered to have ordered Pre-Delivered Water until Westside receives an Order.

(b) *Application of Uncredited Standby Charges.* If, as of December 31 of any year:

(i) RCWD has Pre-Delivered Water remaining, and after crediting the Standby Charges paid by RCWD against all water ordered by and delivered to RCWD prior to December 31 of that year RCWD still has a credit for additional Standby Charges ("Uncredited Standby Charges"), then

(ii) RCWD shall be deemed to have ordered an amount of the remaining Pre-Delivered Water up to the lesser of the amount of remaining Pre-Delivered Water or the amount that could be purchased for the amount of the Uncredited Standby Charges. The appropriate amount of Pre-Delivered Water shall be deemed delivered and paid for by crediting the appropriate amount of Standby Charges as of December 31 of that year. At the end of the Term, RCWD shall pay for any Pre-Delivered Water remaining after the foregoing credit at the then existing Delivered Price.

(c) *Reporting.* To monitor RCWD's use of Pre-Delivered Water, RCWD shall deliver to Westside a copy of RCWD's annual report submitted to Madera County, the Madera Irrigation District and/or the Friant Water Users' Authority (or its successor under the December 31, 1999 contract with RCWD) at the time of such submission demonstrating RCWD's water deliveries utilized for elimination of the contribution of its lands to regional overdraft. Should RCWD report the use of any Pre-Delivered Water, or other water from Westside that RCWD has not paid for, in achieving RCWD's groundwater balance, then RCWD shall promptly pay Westside for the reported water.

8. Term. The initial term of this Agreement shall be for a period of twenty-five (25) years, commencing on the "Commencement Date," which shall be January 1, 2008, or, if the General Plan Amendment, Area Plan Amendment and Specific Plan Amendment for Gateway Village are not approved by June 30, 2007, January 1, 2009, unless otherwise mutually agreed by RCWD, Westside, North Kern and SWID.

9. Renewal.

(a) *Renewal.* Subject to the renewal provisions described below, RCWD may, at its option, renew this Agreement on the same terms and conditions for up to one (1) additional twenty-five (25) year period. Each twenty-five (25) year period is referred to herein as a “Term”. RCWD shall provide written notice to Westside of its intent to renew not later than one (1) year prior to the expiration of the initial Term.

(b) *Renewal Provisions.*

(i) Notwithstanding paragraph 6(a) hereof, RCWD and Westside shall, upon delivery to Westside of RCWD’s notice of intent to renew this Agreement pursuant to paragraph 9(a) hereof, be mutually obligated to secure the conveyance arrangements necessary to deliver water under this Agreement to the Delivery Point for any renewal Term. In the event that such arrangements cannot reasonably be secured prior to the expiration of the initial term despite the good faith efforts of both parties, then this Agreement shall not be renewed.

(ii) At the beginning of the renewal Term, the Delivered Price and the Standby Charge shall be adjusted to an amount that reflects the then-current market price for water supplies of similar origin and reliability delivered to the Delivery Point. In the event that the parties are unable to agree as to a then-current market price, such price shall be decided through the dispute resolution procedure described in Paragraph 18 below.

10. Governmental Approvals and Environmental Review.

(a) *Governmental Approvals.* The parties shall work together to obtain any approvals or consents necessary from any governmental agency for the transactions contemplated herein (“Approvals”). Notwithstanding the foregoing,

(i) RCWD shall be solely responsible for any costs or fees incurred for any Approvals, except as provided in this Agreement.

(ii) Westside shall be solely responsible to negotiate with and obtain any necessary Approvals from North Kern and SWID.

(b) *CEQA.* The parties acknowledge that RCWD, North Kern and SWID are responsible to comply with the provisions of the California Environmental Quality Act (“CEQA”) in connection with the performance of the actions contemplated by this Agreement. For CEQA purposes, RCWD shall be the lead agency, and North Kern and SWID shall be responsible agencies. RCWD shall bear all costs for CEQA compliance.

11. Conditions Precedent. The following are conditions precedent to the parties' performance under this Agreement except for RCWD's unconditional obligation to pay the Reservation Fee which shall be absolute:

(a) Westside and North Kern shall have executed the agreements necessary for Westside's performance under this Agreement; provided, however, that execution of such agreements shall be within the sole and absolute discretion of Westside. If this condition precedent is not satisfied, then Westside shall refund to RCWD one-half of the Reservation Fee paid to that date and this Agreement shall terminate.

(b) Westside and SWID (or at Westside's discretion Westside and another Friant Contractor) shall have executed the agreements necessary for Westside's performance under this Agreement; provided, however, that execution of such agreements shall be within the sole and absolute discretion of Westside. If this condition precedent is not satisfied, then Westside shall refund to RCWD one-half of the Reservation Fee paid to that date and this Agreement shall terminate.

(c) RCWD, North Kern and SWID shall have completed their environmental review as required by CEQA for the actions contemplated by this Agreement, and the time period to appeal the approval by any of those agencies of any CEQA document shall have run.

(d) The parties shall receive written confirmation from Reclamation that:

(i) RCWD is within the municipal and industrial "place of use" designated in Reclamation's permits from the State Water Resources Control Board for waters delivered from Friant; and that

(ii) SWID Friant water exchanged for North Kern banked groundwater shall be considered "non-project" water when delivered to RCWD.

(e) The parties have received all necessary Approvals.

12. Westside Representations and Warranties. Westside represents and warrants to RCWD that, to the best of Westside's knowledge:

(a) Westside is a limited liability company duly organized, validly existing and in good standing under the laws of the State of California;

(b) As of the date of this Agreement, Westside and its members have banked groundwater within North Kern on their own account(s) and have the current right to withdraw and transfer about 30,000 acre feet of that stored water. Westside and its members also have the right to bank additional water and have other water banked within Kern County that,

based on circumstances, laws, rules and regulations that exist as of the date of this Agreement, will allow Westside to fulfill its obligations under this Agreement throughout the total 50 year term if the option to renew is exercised.

(c) Westside has all necessary power and authority to enter into this Agreement and to perform its obligations hereunder; and all actions required to be taken on its part to approve the execution and delivery of this Agreement have been duly taken. This Agreement constitutes a legal, valid and binding obligation of Westside, enforceable against Westside in accordance with its terms.

(d) The execution and delivery of this Agreement by Westside, and the performance of its obligations hereunder do not and will not (i) violate, or conflict with its obligations under any contract to which it is a party or by which it is bound, or (ii) violate (and none of such obligations is void or voidable under) any law, regulation, order, arbitration award, judgment or decree to which it is a party or to which it is subject.

(e) Subject to paragraphs 10 and 11 hereof, no authorization, consent or approval of, or notice to, any person or entity (including but not limited to any federal, state, county, local or foreign government, regulatory body or official or any third party) not already obtained or given by Westside is required to be obtained or given in connection with the execution and delivery of this Agreement by Westside or the performance of any of its obligations hereunder.

(f) Subject to paragraphs 9, 10, 11 and 14 hereof, Westside currently has and will maintain throughout the Term, as extended, the legal right and ability to perform all of its obligations under this Agreement, including, but not limited to, the conveyance arrangements necessary to deliver the water to the Delivery Point.

(g) As of the date of this Agreement, there is no suit, action, arbitration, or legal, administrative, or other proceeding, or governmental investigation pending or threatened affecting any of the transactions contemplated by this Agreement.

13. RCWD Representations and Warranties. RCWD represents and warrants to Westside that, to the best of RCWD's knowledge:

(a) RCWD is a California water district duly formed and organized under the California Water District Law; RCWD has all necessary power and authority to enter into this Agreement and to perform its obligations hereunder; and all action required to be taken on its part to approve the execution and delivery of this Agreement has been duly taken.

(b) The execution and delivery of this Agreement by RCWD, and the performance of its obligations hereunder, do not and will not (i) violate, or conflict with its obligations under, any contract to which it is a party or by which it is bound, or (ii) violate (and none of such obligations is void or voidable under) any law, regulation, order, arbitration award, judgment or decree to which it is a party or to which it is subject.

(c) As of the date of this Agreement, there is no suit, action, arbitration, or legal, administrative, or other proceeding, or governmental investigation pending or threatened affecting any the transactions contemplated by this Water Service Agreement.

(d) This Agreement constitutes the legal, valid and binding obligation of RCWD, enforceable against RCWD in accordance with its terms.

14. Force Majeure/Permitted Suspension of Performance.

(a) *Suspension of Water Delivery.* Westside may suspend its delivery obligations under this Agreement only if it is unable to substantially perform such delivery obligations as the result of a Force Majeure Event (defined below); provided, however, that no suspension shall extend the Term of this Agreement. If at all possible, prior to suspension of performance, and in no event less than two business days following suspension of performance of water delivery based on a Force Majeure Event, Westside shall provide RCWD with written notice of the estimated duration for the suspension and the basis for the suspension. Westside shall additionally provide RCWD with any information that Westside subsequently obtains regarding the Force Majeure Event and any information RCWD may reasonably request. Except as expressly provided in this Paragraph or as a remedy for a default of the other party, neither party shall be entitled to suspend, or otherwise be excused from, performance of any of its obligations under this Agreement.

(b) *Force Majeure Event.* A "Force Majeure Event" is strictly limited to the following:

Any flood, earthquake, failure of any facility not owned by Westside, acts of God (other than drought), governmental or court actions, Reclamation allocations and other events which are beyond the reasonable control of, and have not been caused or contributed to by Westside and whose consequences cannot be avoided by utilizing other water supplies or conveyance facilities reasonably available to Westside at an equivalent cost. Neither drought nor unavailability of water resulting from drought shall result in cancellation or permanent reduction of water available under this contract.

(c) *Make-up Water.* Should Westside be unable to deliver the full amount of water ordered by RCWD in any year due to a Force Majeure Event, RCWD shall have the option of obtaining water in the following five (5) years pursuant to the provisions of this Agreement, including paragraph 2 hereof, to make up that shortfall if necessary to meet RCWD's obligations to balance the water usage in RCWD.

15. Events of Default. An "Event of Default" of a party shall be deemed to occur if, unless excused by a Force Majeure Event, the party at any time fails to perform any of its obligations as and when required to be performed under this Agreement, or any representation or warranty of the party made or restated in this Agreement becomes false or inaccurate in any material respect at any time; provided, however, that the other party shall have first demanded in writing that the party cure such non-performance, or false or inaccurate representation or warranty (or cause it to be cured) and the party shall have then failed to (i) cure the default within 30 days after the receipt of such demand in the case of payment obligations, (ii) commence a cure within 30 days after the receipt of such demand in the case of non-payment performance obligations, or (iii) develop within 30 days after the receipt of such demand and thereafter perform a plan to maintain RCWD's five year rolling average groundwater balance in the case of Westside's obligation to deliver water.

16. Rights Upon an Event Default. Upon the occurrence of an Event of Default, the non-defaulting party (a) may suspend performance of its obligations under this Agreement until the Event of Default has been cured or waived, and (b) shall have the following rights and remedies:

(i) *Westside Event of Default.*

Replacement Water Supply

Upon a Westside Event of Default, RCWD shall immediately have the right to (A) specific performance of Westside's obligations under this Agreement and (B) reimbursement of the actually incurred reasonable cost of obtaining water to replace the water requested in an Order that Westside does not deliver ("Replacement Water Supply") less all amounts saved as a result of the Event of Default including all amounts that otherwise would have been due under this Agreement.

Termination of Contract and Replacement Contract

RCWD shall have the right to terminate this Agreement upon its reasonable determination that a material Westside Event of Default has occurred that cannot or will not be cured within a reasonable time. Westside's obligation to reimburse RCWD for a Replacement Water Supply shall thereupon cease and RCWD shall have the right to recover from Westside, immediately upon demand, an amount equal to the excess of (A) the net present value as of the termination date of the reasonable cost of securing equivalent substitute performance from a financially responsible contractor for the balance of the existing Term remaining as of the date of termination, over (B) the net

present value as of the date of termination of all amounts RCWD saved as a result of such termination plus the cost of any water under a Replacement Water Supply to be delivered after the date of termination for which Westside has paid reimbursement.

Sole Remedy

The rights and remedies of RCWD described in this paragraph 16 are RCWD's sole and exclusive remedy for any Event of Default by Westside under, or any inaccuracy in any of Westside's representations and warranties in, this Agreement.

(ii) *RCWD Event of Default.* Upon a RCWD Event of Default, Westside shall immediately have the right to (A) deem any Pre-Delivered Water as ordered to accelerate delivery of any Pre-Delivered Water and payment therefor, (B) specific performance of this Agreement or money damages at the discretion of Westside, (C) payment of any amount that is due and payable by RCWD under this Agreement plus interest at the rate of 10 percent per annum, and/or (D) terminate this Agreement; provided, however, that no delay in termination of this Agreement by Westside shall constitute a waiver of this right. RCWD's obligation to pay any amounts that are due and payable under this Agreement or this paragraph 16 shall survive any termination of this Agreement. The rights and remedies of Westside described in this paragraph 16 shall be cumulative, and are Westside's sole and exclusive remedies for any Event of Default by RCWD under, or any inaccuracy in any of RCWD's representations or warranties in, this Agreement.

17. Dispute Resolution. Upon the request of either party, any dispute claim, or controversy of any kind arising in connection with this Agreement shall be resolved through a two-step dispute resolution process, as follows:

(a) *Step I Mediation:* At the request of either party, the dispute, claim or controversy of the matter shall be referred for mediation to a retired Superior Court Judge, reasonably acceptable to both parties.

(b) *Step II Trial by Court Reference:* If the dispute, claim or controversy has not been resolved by Step I mediation, then any remaining dispute, claim or controversy shall be submitted for determination by a trial on Order of Reference conducted by a single retired Judge appointed pursuant to the provisions of California Code of Civil Procedure Section 638 (or any amendment, addition or successor section thereto). BOTH PARTIES HEREBY WAIVE A JURY TRIAL OR PROCEEDING IN CONNECTION WITH ANY DISPUTE, CLAIM OR CONTROVERSY ARISING IN CONNECTION WITH THIS AGREEMENT. The parties intend this general reference agreement to be specifically enforceable in accordance with CCP Section 638, and no other agreement shall be necessary to submit a dispute to general judicial reference.

(i) The general reference proceeding shall be commenced by a request or motion filed with the Presiding Judge of the

Superior Court of Kings County. If the parties are unable to agree upon a person to act as referee, then a referee shall be appointed by the Presiding Judge as provided under CCP Section 640.

(ii) The parties shall pay in advance, to the referee, the estimated reasonable fees and costs of the reference. Each party shall be responsible for one-half of such estimated fees. The referee shall be authorized to award costs of the general reference, including, without limitation, attorneys' fees, expert witness fees and fees assessed by the referee to the prevailing party.

(iii) The general reference hearing must commence within three (3) months after appointment of the referee. The referee shall report his or her findings to the Court in the form of a statement of decision within twenty (20) days after the close of testimony, pursuant to CCP Section 643. The Court shall enter judgment based upon the statement of decision which shall be appealable.

(c) *Venue*. The parties agree that venue for any mediation or reference held pursuant to this Paragraph shall be the County of Kings, to avoid any undue advantage that might otherwise accrue to RCWD or Westside from a venue located in their respective home counties.

18. Indemnification. Neither party shall be liable for injury or damage to persons or property caused by the other party, or the other party's employees, agents, or representatives. Each party hereby agrees to defend, indemnify, and hold harmless the other party from any claim, demand, or liability on account of such injury or damage.

19. Severability. If any term or provision of this Agreement shall be held to be invalid or unenforceable in any jurisdiction, for any reason, then it is the intention of the parties that this Agreement shall be construed and enforced as if such invalid or unenforceable term or provision had never been a part hereof without invalidating the remaining terms and provisions hereof, and that all of the terms and provisions of this Agreement shall remain in full force and effect without regard to such invalidity or unenforceability.

20. Waiver. The failure by either party to enforce any of the covenants, terms, or conditions of this Agreement shall not be deemed a waiver of such breach, or any future breach, of such covenants, terms, or conditions, unless such waiver shall have been made in writing.

21. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the, successors, and permitted assignees of the parties.

22. Assignment. Except as provided in this Paragraph, neither party shall assign or transfer its rights under this Agreement. RCWD hereby consents to an assignment of the rights and delegation of the obligations of Westside pursuant to this Agreement to a trust or foundation for estate planning purposes, an affiliate entity, North

Kern or SWID. Upon the prior written consent of Westside, which shall not be unreasonably withheld, RCWD may assign its rights to receive water under this Agreement provided that RCWD shall pay all of the costs of environmental review or third party permitting necessary to accomplish the assignment and pay any additional conveyance costs (including, but not limited to conveyance losses) to any alternate point of delivery.

23. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of California.

24. Further Assurances. From time to time and at any time after the execution and delivery hereof, each of the parties, at their own expense, shall execute, acknowledge and deliver any further instruments, documents and other assurances reasonably requested by the other party, and shall take any other action consistent with the terms of this Agreement that may reasonably be requested by another party, to evidence or carry out the intent of this Agreement.

25. Notices. All notices and other communications required under this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of service, if served personally on the person to whom notice is to be given, (ii) on the date of service if sent by e-mail or telecopier, provided the originally is concurrently sent by first class mail, and provided that notices received by email or telecopier after 5:00 p.m. shall be deemed given on the next business day, (iii) on the next business day after deposit with a recognized overnight delivery service, or (iv) on the third (3rd) day after mailing, if mailed to the party to whom notice is to be given by first class mail, registered or certified, postage-prepaid, and properly addressed as follows:

To Westside: William D. Phillimore, Executive Vice President
Westside Mutual Water Company
33141 E. Lerdo Highway
Bakersfield, California 93308-9767

With a copy to:
Roll International Corporation
Attn: General Counsel
11444 W. Olympic Blvd., 10th Floor
Los Angeles, CA 90064

To RCWD: Philip R. Pierre, President
c/o Christopher L. Campbell, Esq.
Baker, Manock & Jensen
5260 N. Palm Avenue, Suite 421
Fresno, California 93701

or at such other address as any party may, by like notice, designate to the other party in writing.

26. Liquidated Damages. It is not intended that this Agreement contain any provisions providing for liquidated damages. However, in the event that any provision of this Agreement should nevertheless be construed as providing for liquidated damages, then the parties agree that provision is reasonable under the circumstances existing at the time this Agreement is made.

27. References. The Paragraph headings in this Agreement are provided for convenience only, and shall not be considered in the interpretation hereof or thereof. References in this Agreement to Paragraphs refer, unless otherwise specified, to the designated Paragraph of this Agreement. Terms such as "herein," "hereto" and "hereof" refer to this Agreement as a whole.

28. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original instrument, but all of which together shall constitute one and the same instrument.

29. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements or understandings with respect thereto. This Agreement may be modified or amended only by written instrument signed by both parties.

30. Time and Computation of Time. Time is of the essence of this Agreement and each and all of its provisions. The parties agree that the time for performance of any action permitted or required under this Agreement shall be computed as if such action were "an act provided by law" within the meaning of California Civil Code §10, which provides: "The time in which any act provided by law to be done is computed by excluding the first day and including the last, unless the last day is a holiday, and then it is also excluded."

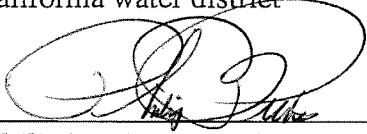
31. Parties in Interest. Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies on any persons other than the parties hereto and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third person to any party to this Agreement, nor shall any provision give any third person any right of subrogation or action over and against any party to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date first above written.

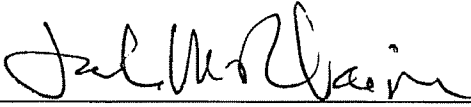
“RCWD”

“Westside”

ROOT CREEK WATER DISTRICT,
a California water district

By 
Philip R. Pierre, President

WESTSIDE MUTUAL WATER COMPANY LLC,
a California limited liability company

By 
Joseph C. MacIlvaine, President

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Exhibit “A”
Maximum Delivery Quantities and Standby Charges

Period after Commencement Date	Maximum Delivery Quantity
Years 1-4	3,500 af/year
Years 5-9	5,000 af/year
Years 10+	7,000 af/year