

**RECORDING REQUESTED BY:**  
Kaweah Delta Water Conservation District

**WHEN RECORDED MAIL TO:**  
Kaweah Delta Water Conservation District  
2975 North Farmersville Blvd.  
Farmersville, CA 93223  
Attn: Larry Dotson

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Space above this line for Recorder's use

**Documentary Transfer Tax \$0.00**  
**Exempt under Cal. Government Code Section 6103**

**RESTATED BASIN AGREEMENT**  
(Oakes, Andrade and Peoples Basins)

THIS AMENDED AND RESTATED BASIN AGREEMENT (hereinafter referred to as the "Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2023 by and between the CITY OF VISALIA (hereinafter referred to as the "City") and the KAWEAH DELTA WATER CONSERVATION DISTRICT (hereinafter referred to as the "District").

**RECITALS**

A. WHEREAS, the City is a charter city duly organized under the laws of the State of California;

B. WHEREAS, the District is a water conservation district, duly organized under authority of The Water Conservation Act of 1927 found in Deering's Water Uncodified Acts, Act 9127a;

C. WHEREAS, under authority of its charter, the City has developed a Storm Water Master Plan which it implements to dispose of storm water drained off of City streets and other locations in the City as expeditiously and efficiently as possible in order to reduce flooding within the City;

D. WHEREAS, historically, and more recently as part of the City's Storm Water Master Plan, the City has discharged storm water into natural and man-made channels such as Mill Creek, Packwood Creek, Modoc Ditch and Evans Ditch as they flow through the City, which means that the greater the available capacity of such channels to take storm water, the greater the benefit such channels are to the City in its efforts to dispose of storm water;

E. WHEREAS, it is anticipated that current and future development within the City will increase the need for additional capacity for storm water discharges into the natural channels located in the City;

F. WHEREAS, the City will be able to optimize the capacity of the aforementioned channels within the City available for the disposition of storm water, if, during storms, the City is able to temporarily divert upstream flows in such channels into off-stream basins for short term detention;

G. WHEREAS, the City and District (hereinafter sometimes individually referred to as the "Party" and collectively as the "Parties") have entered into agreements with holders of water rights on the Lower Kaweah River system ("Water Diversion Agreements"), which, among other things, will allow the city to divert and detain the water right holders' ("Water Right Holders") water upstream of the City for the purpose of creating additional capacity in the aforementioned channels available for the disposition of storm water;

H. WHEREAS, the District has for many years engaged in a program of groundwater recharge whereby it uses waters available to the District and purchases other waters to import into the District for the purpose of recharging the groundwater underlying the District, which it accomplishes, in part, by placing such waters into one or more of its approximately forty (40) groundwater recharge basins;

I. WHEREAS, historical groundwater level measurements taken within the District indicate that the groundwater in and around the City is overdrafted and continuing to decline;

J. WHEREAS, the City and the District both desire to develop groundwater recharge facilities that will recharge the groundwater underlying and surrounding the City;

K. WHEREAS, the District owns a parcel of real property comprised of approximately 40 acres (hereinafter referred to as the "Oakes Basin"), the legal description for which is attached hereto as Exhibit A, located at the terminus of the Lower Kaweah River and also located adjacent to both Mill Creek and Packwood Creek, both of which are natural channels that flow through the City, on which parcel the District and the City have developed a groundwater recharge basin and a storm water facility;

L. WHEREAS, the City owns a parcel of real property comprised of approximately 37 acres (hereinafter referred to as the "Peoples Basin"), the legal description for which is attached hereto as Exhibit B, located adjacent to the Lower Kaweah River, as shown on Exhibit C, which river has distributaries that flow through the City;

M. WHEREAS, the City owns property (hereinafter referred to as the "Andrade Property"), the legal description for which is attached hereto as Exhibit D, located immediately west and adjacent to the Oakes Basin, as shown on Exhibit E, on which it intends to construct improvements that combined with the Oakes Basin will form a single basin; and

N. WHEREAS, on or about November 7, 2006, District and City entered into a Basin Agreement, which governed the Parties rights with respect to the Oakes Basin and the Peoples Basin and other related matters, which agreement (hereinafter referred to as the "Original Basin Agreement") the Parties now desire to modify and replace in its entirety by this Agreement;

O. WHEREAS, the City and the District desire to develop and construct

improvements on the Oakes Basin, the Peoples Basin and Andrade Basin (hereinafter the basins may be individually referred to as a “Basin” and collectively referred to as the “Basins”), so that all can be used as both a storm water facility and a groundwater recharge basin in a manner that will be beneficial to both the District and the City;

NOW, THEREFORE, in and for consideration of the mutual covenants, conditions and promises hereinafter set forth, the Parties hereby agree as follows:

1.     **Development of the Peoples Basin.** The City and the District will share the costs to develop the Peoples Basin as follows:

a.     Initial Earthwork Improvements. The Parties shall each pay their share of costs to develop the Peoples Basin for the City’s and District’s use in accordance with the allocation of such costs as set forth in this Agreement. The Parties have conceptually agreed that the costs of earthwork to develop the Peoples Basin for groundwater recharge should be borne equally by the District and the City, with the understanding that the initial earthwork to develop the Peoples Basin for groundwater recharge shall allow for a water storage depth of two (2) feet and the development of another one (1) foot for freeboard. Further, the Parties have conceptually agreed that the costs for any further earthwork to develop the Peoples Basin, deeper than described above for groundwater recharge, shall be deemed to have been incurred to develop the Peoples Basin for the City’s storm water layoff, and, therefore, all such costs shall be allocated one hundred percent (100%) to the City. Attached to this Agreement as Exhibit F is a drawing showing examples of the earthwork requirements, both at grade and below grade, necessary to develop the Peoples Basin for City and District purposes. All plans and specifications for the earthwork to develop the Peoples Basin shall be approved by the Parties, in writing, which includes approvals communicated by e-mail or facsimile

transmission, prior to the commencement of such earthwork.

b. Each Party will pay its share of costs to plan and construct new inlet and outlet improvements in the Peoples Basin in accordance with the allocation of such costs as follows:

(i) Plans and Specifications. The Parties will share equally the costs of all plans, specifications, drawings, engineering studies, permits and estimates necessary for the planning and development of the new inlet and outlet improvements for People Basin. All plans and specifications for the initial improvements described in this subparagraph b shall be approved by both Parties, in writing, which includes approvals communicated by e-mail or facsimile transmission, prior to commencement of any construction.

(ii) Construction Costs. The costs to construct a one hundred (100) cubic feet per second inlet structure and related facilities in or about the Peoples Basin will be allocated forty percent (40%) to the District and sixty percent (60%) to the City. The costs to construct a forty (40) cubic feet per second outlet structure and related facilities in or about the Peoples Basin will be allocated one hundred percent (100%) to the City.

c. SCADA Systems Costs. If the Parties desire to install a supervisory control and data acquisition system (hereinafter referred to as a “SCADA system”) for the Peoples Basin, then the determination of respective benefits to each Party will be established based upon a consensus between the Parties of the value of the proposed SCADA improvements. The aforementioned determination of benefits shall be used by the Parties to reach an agreement as to the proper allocation of costs related to the construction, operation, maintenance, repair, rehabilitation or replacement of any SCADA system related to the Peoples Basin.

2. **Improvements to Oakes and Andrade Basins.** The parties acknowledge that any inlet and outlet structures and related facilities, together with any other improvements that currently exist on the Oakes Basin, are deemed to be completed work, for which there will be no allocation of costs pursuant to this Agreement. The Parties agree that further improvements will be made on or related to the Oakes and Andrade Basins as follows:

a. Outlet Structures. The City, at its own expense, will pay the costs to prepare plans, specifications, drawings, engineering studies and estimates to construct an outlet structure (hereinafter referred to as the “Outlet”) for the Oakes Basin that will release water from the Oakes Basin into Mill Creek. The Outlet will be constructed by the City or its contractors as agents of the District. The costs of the construction of the Outlet will be paid by City.

b. Increase Inlet Capacity. City and District will cooperate to prepare the plans, specifications, drawings, engineering studies and estimates necessary for the planning and development of new inlet improvements to increase the inlet capacity from Packwood Creek into Oakes Basin by installing additional or expanded inlet pipes and related facilities (hereinafter referred to as “New Inlet Facilities”). Required modification and upgrades to the existing Mill Creek Check Structure shall be considered as New Inlet Facilities improvements that are necessary to provide the ability for Storm Water Layoff into the Basin. The New Inlet Facilities will be constructed by the City or its contractors as agents of the District. The costs of the construction of the New Inlet Facilities will be paid by City.

c. Andrade Basin. City, at its own expense, will design and construct a basin for groundwater recharge and storm water detention on approximately eighteen (18) acres, located adjacent to and immediately west of the Oakes Basin, on the Andrade Property, which basin (hereinafter referred to as the “Andrade Basin”) will be designed, excavated and otherwise

constructed to join, and operated with the Oakes Basin.

d. **Plans and Specifications.** All plans and specifications for the initial improvements described in this section 2 shall be approved by both Parties, in writing, which includes approvals communicated by e-mail or facsimile transmission, prior to commencement of any construction.

3. **Ownership.** The District presently is and will continue to be the owner of record of the fee simple interest in the Oakes Basin. The City is the owner of record of the fee simple interest in the Peoples Basin and Andrade Basin. Notwithstanding the Parties' anticipated contributions to the future development of the Basins and their contribution to the construction, operation, maintenance, repair, rehabilitation and replacement of improvements hereafter constructed in or about the Basins, each agrees that it will not develop or otherwise become entitled to any fee simple ownership interest in the Basin owned by the other.

4. **Conveyance of License.** Each Party hereby conveys to the other Party the right to use the Basin owned by the conveying Party, for the purposes described in this Agreement, subject to the terms and conditions contained in this Agreement, and limited by the following:

a. Oakes Basin. It is anticipated that Oakes Basin shall have an average useable depth of 10 feet; of this depth, District shall have the exclusive right to the first 2 feet and the City shall have the exclusive right to use 8 feet thereafter.

b. Andrade Basin. It is anticipated that Andrade Basin shall have an average useable depth of 10 feet; of this depth, District shall have the exclusive right to the first 2 feet and the City shall have the exclusive right to use 8 feet thereafter.

c. Peoples Basin. It is anticipated that the Peoples Basin shall have an average useable depth of 9 feet; of this depth, District shall have the exclusive right to use the

first 2 feet and City shall have the exclusive right to use the remaining 7 feet thereafter.

d. Limitation. The licenses herein granted shall not entitle the Parties to use the Basins except as necessary for the fulfillment of the purposes of this Agreement. This Agreement shall not prevent, and a Party shall not interfere with, any use that the Party which owns a Basin may desire to make of the Basin. By way of example, City acknowledges that this Agreement shall not interfere with the District's established habitat and landscaping amenities on areas outside of the top bank on the Oakes Basin. City further acknowledges that it shall have no right to manage or control such amenities by virtue of this Agreement.

e. Encroachment. The depth for which subparagraphs a, b and c above establish an exclusive use for the respective Parties shall be referred to herein as a party's "Storage Depth". Neither party shall encroach or cause an encroachment of water into the Storage Depth of the other except as provided in this paragraph. Either party may request the other party to consent to a temporary encroachment into the Storage Depth of the other for any use permitted by law. Any encroachment request shall be made with prior notice and shall indicate the anticipated timing and duration of such encroachment. If consent to the requested encroachment is granted, the water detained in the other party's Storage Depth shall remain the property of the encroaching party, water recharged as a result of the encroachment shall be considered as water put to beneficial use by the encroaching party, and the consenting party shall have no claim to such water. Further, if consent is granted, whether on a one-time or on a continual basis, such consent shall never form the basis for a claim of a continuing right to encroach in the future. In the event an encroachment is consented to and then the consent is withdrawn because the consenting party has an immediate need for the storage space, the party withdrawing consent shall be responsible for the costs of evacuating the encroaching water from



the respective basin, and shall only do so with the approval of the encroaching party and in a manner consistent with Paragraph 4 of this Agreement.

5. **Downstream Water Rights.** The Parties acknowledge that the diversion of the flow of waters from natural channels upstream from the City, the temporary storage of such waters in the Basins and the percolation of such waters in the Basins, may all impact and could potentially damage those persons and/or entities who have a right to divert water from said natural channels downstream from the Basins. Therefore, the City agrees that the City and the District have entered into a separate agreement, entitled “Water Diversion Agreement,” with each downstream holder of an appropriative water right (hereinafter referred to individually as “Water Right Holder” or collectively as “Water Right Holders”). An example of a signed Water Diversion Agreement is attached hereto as Exhibit G.

6. **Operation of Basins.** Pursuant to one or more Water Diversion Agreement, agents of the Kaweah & St. Johns Rivers Association (hereinafter referred to as the “Association”) shall be requested to take the actions necessary to direct water into and out of the Basins for storm water layoff purposes, including any and all such operations required to accomplish such tasks and the record keeping related thereto. District will perform all operations required in or about the Basins in order to use the Basins for groundwater recharge. The City will instruct the Association and notify the District as to when the City desires to use the Basins for storm water layoff and/or groundwater recharge, including the diversion of water owned by third parties; however, such use shall be subject to prior approval of the Kaweah River Watermaster pursuant to the relevant Water Diversion Agreement.

7. **Accounting for Loss.** The Parties acknowledge that water stored at the Basin will result in the loss of water through various means, including but not limited to, groundwater

percolation and evaporation. The amount of each Party's water loss experienced at the Basins shall be estimated on a pro-rata basis according to the respective amount and duration of Storage Depth used by the Parties.

8. **Maintenance of Excavation and Earthworks Improvements.** The District will perform, at its own discretion, all operation, maintenance, repair, rehabilitation and replacement of the excavation and earthwork improvements in the Basins in a manner similar to the ordinary operation, maintenance, repair, rehabilitation and replacement as the District employs for similar improvements in its other groundwater recharge basins. The costs to operate, maintain, repair, rehabilitate and replace the excavation and earthwork improvements in the Basins shall be allocated between the Parties based on the Storage Depth of the basin in question allocated to groundwater recharge, which costs shall be shared equally by the parties, and the Storage Depth of such basin allocated to storm water layoff, which costs shall be paid wholly by the City. The aforementioned Storage Depth of each basin allocated to groundwater recharge and storm water layoff shall be determined and agreed to in a future agreement between the Parties upon completion of earthwork improvements.

9. **Structure and Mechanical Facilities Maintenance.** The District will perform or delegate all structure and mechanical facilities operation, maintenance, repair, rehabilitation and replacement on the Basins. The District herein assigns the City the responsibility of debris removal to the New Inlet Facilities for the Oakes and Andrade Basins. The costs of doing such work shall be allocated between the Parties as hereinafter provided in this section 9. The costs to maintain, repair, rehabilitate and replace the bridge across Packwood Creek and connected to the Oakes Basin shall be shared equally between the Parties. The costs to maintain, repair, rehabilitate and replace the Oakes Basin outlet structures to Mill Creek and Packwood Creek

including any related mechanical facilities shall be allocated one hundred percent (100%) to the City. The costs to maintain, repair, rehabilitate and replace the overflow structure to Packwood Creek and related mechanical facilities shall be allocated sixty percent (60%) to the City and forty percent (40%) to the District. The costs to maintain, repair, rehabilitate and replace the Oakes Basin New Inlet Facilities and related mechanical facilities shall be allocated sixty percent (60%) to the City and forty percent (40%) to the District. The costs to maintain, repair, rehabilitate and replace any other structure or mechanical facility on the Basins shall be allocated between the Parties the same as the costs were allocated for the initial construction of such structure or mechanical facility.

10. **Term.** This agreement shall extend in perpetuity, unless terminated as hereinafter provided. Either Party may terminate this Agreement for good cause, as defined solely in this paragraph, upon ninety (90) days notice, as hereinafter provided, which notice shall also describe the good cause for such termination. Good cause shall exist to support termination if, and only if, use of a Basin by one of the Parties has caused or with reasonable certainty will cause the other Party to lose the ability to use the Basin for their purposes. The Parties shall, in good faith, attempt to remedy any use of the Basin that has caused either Party to lose the ability to use the Basin for its purposes. In the event that such actions are unsuccessful in attempting to remedy and one of the Parties terminates this agreement for good cause, the other Party shall have the option to purchase all of terminating Party's interests in the Basin at the then fair market value, as determined by independent appraiser mutually acceptable to the Parties.

11. **District's Right of First Refusal.** District shall have the right of first refusal to purchase the Peoples Basin or the Andrade Basin on the same terms and conditions as a bona fide offer received by the City from a third party that is acceptable to the City. City shall notify

District of receipt of an acceptable bona fide offer, including all pertinent terms, and District shall have 14 days to notify City that it will purchase the property on the same terms and conditions contained in the offer.

12. **City's Right of First Refusal.** City shall have the right of first refusal to purchase the Oakes Basin on the same terms and conditions as a bona fide offer received by the District from a third party that is acceptable to the District. District shall notify City of receipt of an acceptable bona fide offer, including all pertinent terms, and City shall have 14 days to notify District that it will purchase the property on the same terms and conditions contained in the offer.

13. **Discharge Permits.** The City shall obtain and keep current all permits or other government approvals required by law, regulations or ordinance, including National Pollution Discharge Elimination System permits, for the discharge of water from the Basins into natural channels as provided in this agreement.

14. **Reimbursements and Payments.** A Party requesting reimbursement from the other party for construction, operation, maintenance, repair, rehabilitation or replacement, pursuant to the agreements, shall submit a detailed invoice to the other party. The Parties agree to manage their budgets so that they can promptly pay their respective share of the costs of work in the Basins.

15. **Indemnification and Hold Harmless.** To the fullest extent permitted by law, the City shall indemnify, hold harmless and defend the District, its directors, officers, employees, consultants, agents or authorized volunteers, and each of them, from and against:

a. Any and all claims, demands, causes of action, damages, costs, expenses, losses or liabilities, in law or in equity, of every kind or nature whatsoever for, but not limited to, injury to or death of any person and damages to or destruction of property of any person, arising

out of or in any manner directly or indirectly connected with the diversion of water pursuant to this agreement, any diversion of water pursuant to the aforementioned Water Diversion Agreement or the construction, operation, maintenance, repair, rehabilitation or replacement of improvements of the Basins; and

b. Any and all actions, proceedings, damages, costs, expenses, penalties or liabilities, in law or equity, of every kind or nature whatsoever, arising out of, resulting from, or on account of any action taken pursuant to this agreement or the aforementioned Water Diversion Agreement that causes or results in the violation of any law, regulation or ordinance.

c. The parties agree that the provisions of this section 15 shall apply with full force to the acts and omissions of any contractor or other third party acting at the request of or in concert with the City, and such acts and omissions shall be treated as acts and omissions of the City itself for the purposes of this section 15.

16. **Notices.** All notices or other communications required or desired to be given under this Agreement shall be given in writing and mailed, delivered or transmitted to the other party at the address indicated below:

To City at:

CITY OF VISALIA  
220 North Santa Fe Street  
Visalia, California 93292  
Attention: City Manager  
Telephone number: (559) 713-4300  
Facsimile number: (559) 713-4800

To District at:

KAWEAH DELTA WATER CONSERVATION DISTRICT  
2975 N. Farmersville Blvd.  
Farmersville, California 93223  
Attention: General Manager

Telephone number: (559) 747-5601  
Facsimile number: (559) 747-1989

Each such notice or other communication shall be deemed effective and given (i) upon receipt, if personally delivered; (ii) upon being transmitted, if sent by electronic facsimile, if a copy of the notice is also sent by United States first class mail and provided receipt is confirmed by a transmission report or otherwise; (iii) two (2) business days after deposit in the United States mail, postage prepaid, properly addressed to the Party to be served; or (iv) upon receipt, if sent in any other way. Either Party may from time to time, by written notice, designate a different address than that set forth above for the purpose of notice, provided, however, that no notice of change of address shall be effective until actual receipt of the notice.

17. **Representation and Warranties.** Each Party represents to the other Party that such Party has the full power and authority to enter into this Agreement, that the execution and delivery thereof will not affect any agreement to which such Party is a Party or by which such Party is bound, and that this Agreement, as executed and delivered, constitutes a valid and binding obligation of such Party enforceable in accordance with its terms. Each of the parties to this Agreement represent and warrant that this Agreement is executed in compliance with a Resolution of the governing entity of the public agency, duly adopted by the governing entity and transcribed in full in the Minutes of the governing entity.

18. **Duty to Cooperate.** Each Party shall cooperate so as to facilitate the other Party's efforts to carry out its obligations under this Agreement.

19. **Assignment, Successors and Transferees.** Neither Party shall assign its rights and obligations under this Agreement without the express written consent of the other Party. The obligations and benefits of this Agreement are binding upon and inure to the benefit of any successors and assigns to the parties hereto.

20. **Amendment/Modification.** This Agreement may not be altered, modified or otherwise changed in any respect except by writing, duly executed by the parties and their authorized representatives.

21. **Construction.** The parties acknowledge that each Party and its counsel have reviewed and revised this Agreement and that notwithstanding Civil Code Section 1654, ambiguities, if any, are not to be resolved against the drafting Party and no presumption against one Party to the other shall govern the interpretation or construction of any of the terms of this Agreement.

22. **Waivers.** A waiver or breach of a covenant or provision in this Agreement shall not be deemed a waiver of any other covenant or provision in this Agreement, and no waiver shall be valid unless in writing and executed by the waiving Party. Any extension of time for performance of any obligation or act shall not be deemed an extension of time for performance of any other obligation or act.

23. **Recording of Agreement.** This Agreement shall be recorded in the office of the County Recorder of Tulare County. The parties shall execute any documents required for the purpose of recording this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth above.

City:

CITY OF VISALIA

District:

KAWEAH DELTA WATER  
CONSERVATION DISTRICT

By \_\_\_\_\_  
City Manager

By \_\_\_\_\_  
President

Attested:

\_\_\_\_\_  
Deputy City Clerk

By \_\_\_\_\_  
General Manager

Approved as to form:

\_\_\_\_\_  
Risk Management Manager

\_\_\_\_\_  
City Attorney



A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document

## CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGEMENT

State of California )

County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(here insert name and title of the  
personally appeared \_\_\_\_\_

\_\_\_\_\_

who 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.

I certify under PENALTY OF PERJURY under the laws of State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

## CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGEMENT

State of California )

County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(here insert name and title of the  
personally appeared \_\_\_\_\_  
officer)

\_\_\_\_\_

who 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.

I certify under PENALTY OF PERJURY under the laws of State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

**EXHIBIT A**  
**(Legal Description – Oakes Basin)**

That portion of Lot 23 of Mineral King Orchard Tract, per map recorded in Book 8, page 63, of Maps in the Office of the County Recorder, County of Tulare, State of California, lying Westerly of the center line of Packwood Creek, said center line of Packwood Creek being described as follows:

Beginning at the Southwest corner of Lot 22 of said Mineral King Orchard Tract, said Southwest corner of Lot 22 being a point in the centerline of Packwood Creek;

Thence, Southwesterly 1620 feet, more or less, along said centerline of Packwood Creek, as it existed on May 1, 1997, to a point in the West line of said Lot 23, said point being 150 feet North of the Southwest corner of said Lot 23.

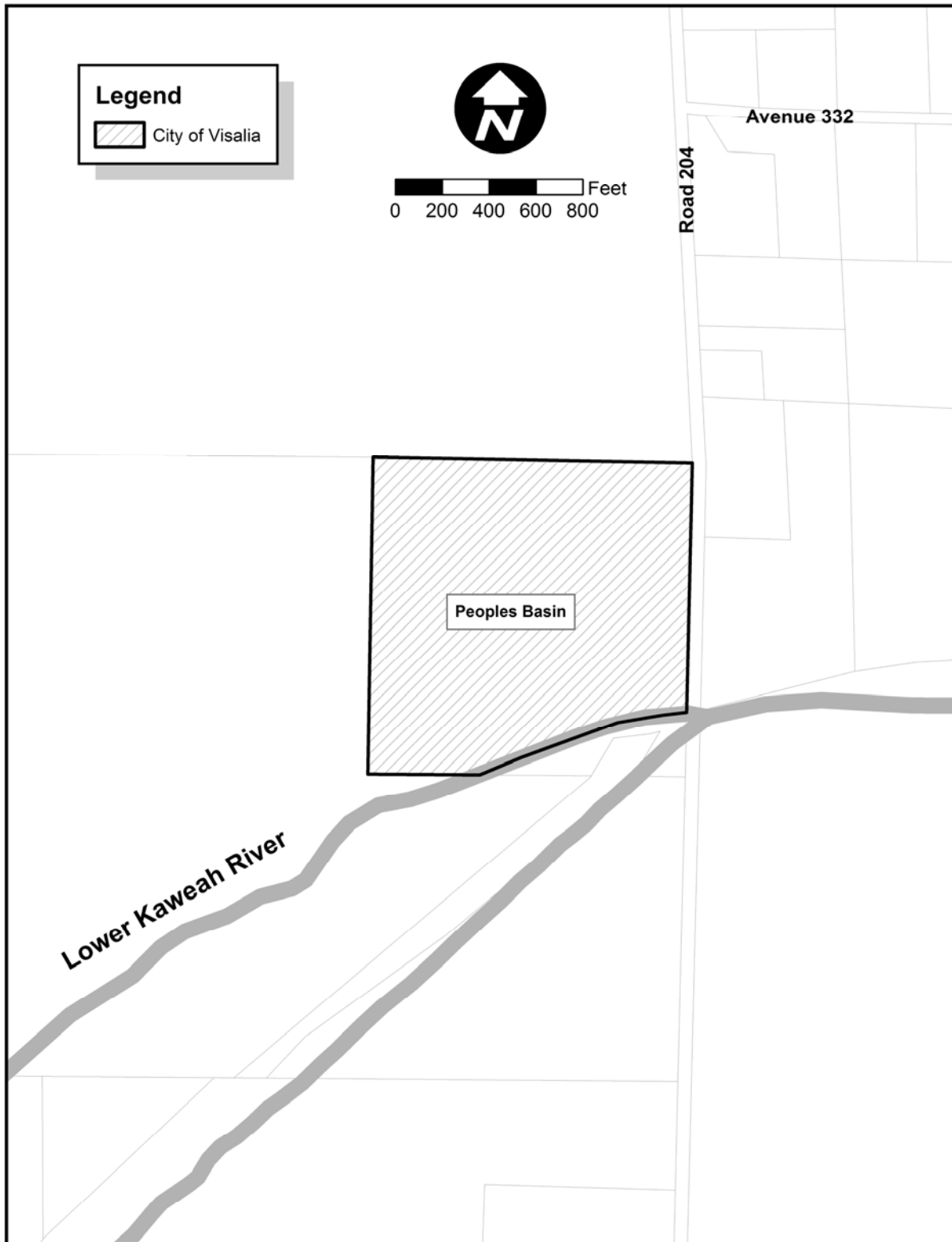
**EXHIBIT B**  
**(Legal Description – Peoples Basin)**

The real property located in Tulare County, California, described as follows:

That portion of the Northeast quarter of the Northeast quarter of Section 14, Township 18 South, Range 26 East, Mount Diablo Base and Meridian, in the County of Tulare, State of California, according to the official plat thereof, described as follows:

Excepting therefrom that portion lying south of the centerline of the Lower Kaweah River.

**EXHIBIT C**  
People Basin

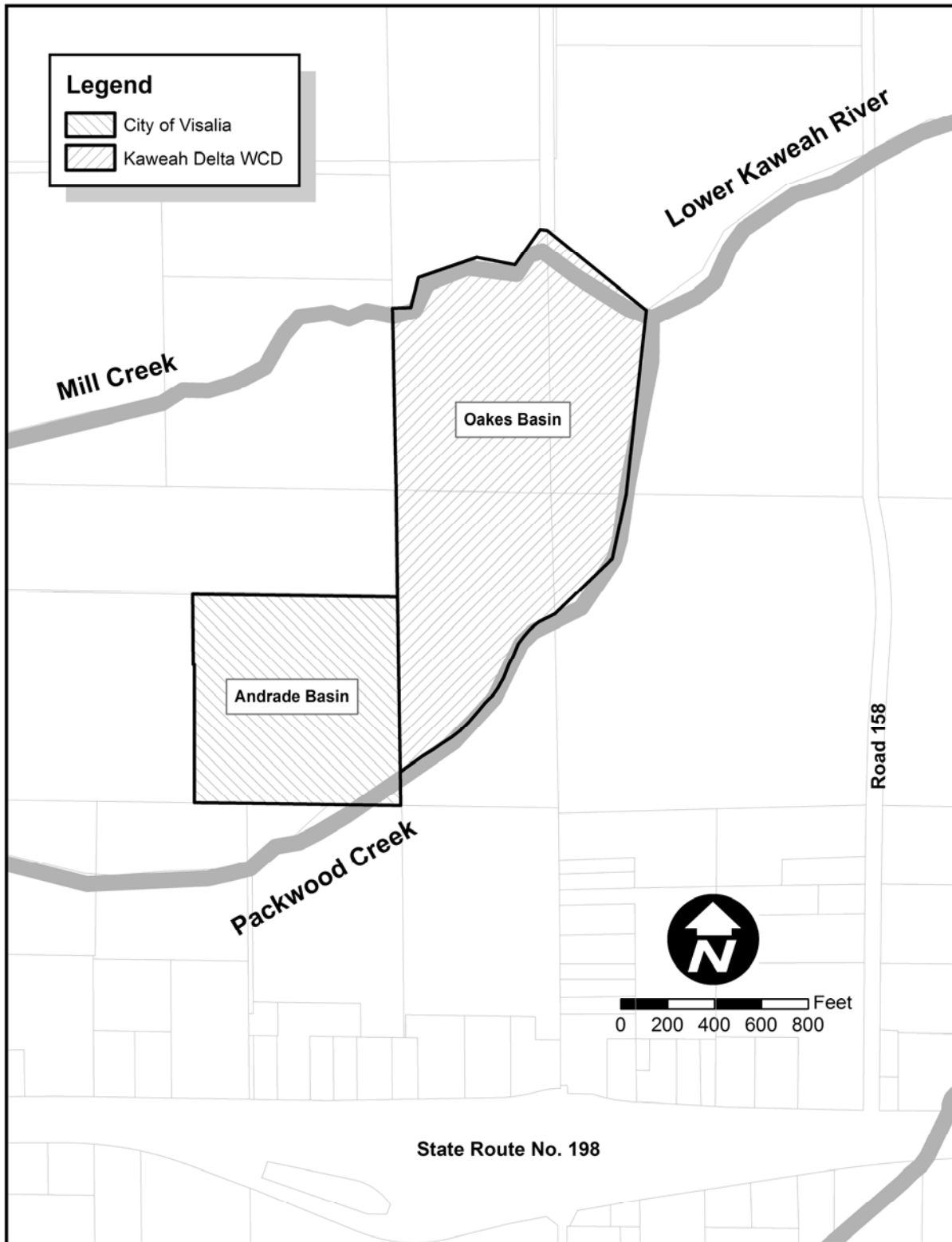


**EXHIBIT D**  
**(Legal Description – Andrade Basin)**

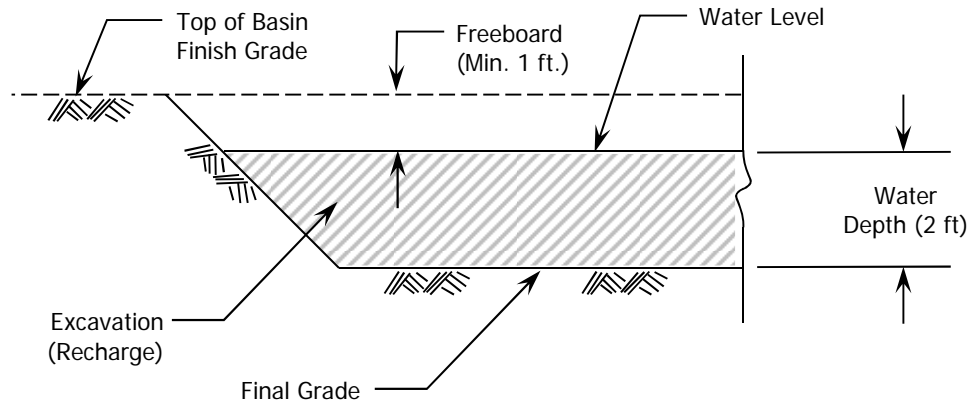
That portion of the North half of the Southeast quarter of Section 26, Township 18 South, Range 25 East, Mount Diablo Base and Meridian, in the County of Tulare, State of California, more particularly described as Parcel 2 of Parcel Map No. 4782, according to the map recorded in Book 48, Page 87 of Parcel Maps, Tulare County Records.

Together with an easement for access over and across the North 20 feet of Parcel 1 of Parcel Map No. 4782 as per map recorded in Book 48, Page 87 of Parcel Maps.

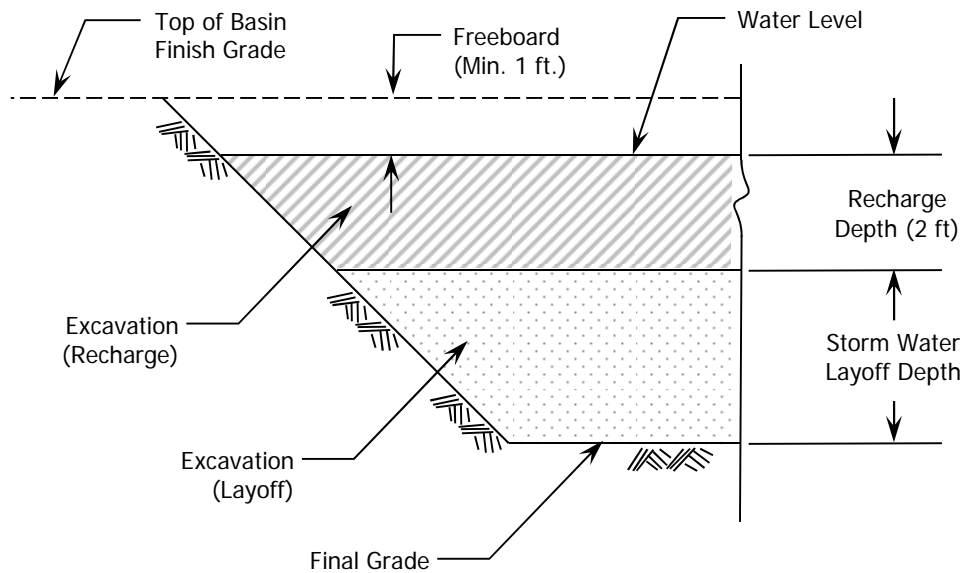
**EXHIBIT E**  
Oakes and Andrade Basins



## EXHIBIT F



## RECHARGE IMPROVEMENT



## RECHARGE/LAYOFF IMPROVEMENT

**EXHIBIT G**  
**(sample Water Diversion Agreement)**

**WATER DIVERSION AGREEMENT**

THIS AGREEMENT is made this 6<sup>TH</sup> day of FEBRUARY, 2007, by and between the CITY OF VISALIA (hereinafter referred to as the "City"), EVANS DITCH COMPANY (hereinafter referred to as the "Water Right Holder"), KAWEAH & ST. JOHNS RIVERS ASSOCIATION (hereinafter referred to as the "Association") and the KAWEAH DELTA WATER CONSERVATION DISTRICT (hereinafter referred to as the "District").

**RECITALS**

A. WHEREAS, the City is a charter city duly organized under the laws of the State of California;

B. WHEREAS, Water Right Holder is a California corporation, duly organized and operating in Tulare County, California, with, among other rights, a pre-1914 appropriative water right (hereinafter referred to as the "water right") to divert water into its headgate from Mill Creek;

C. WHEREAS, Association is an unincorporated association of entities and individuals with rights to divert water from the Kaweah River, including its distributaries such as the Lower Kaweah River, Mill Creek and Packwood Creek;

D. WHEREAS, the District is a water conservation district, duly organized under authority of The Water Conservation Act of 1927 found in Deerings Water Uncodified Acts, Act 9127a;

E. WHEREAS, under authority of its charter, the City has developed a Storm Water Master Plan which it implements to dispose of storm water drained off of City



streets and other locations in the City as expeditiously and efficiently as possible in order to reduce flooding within the City;

F. WHEREAS, historically, and more recently as part of the implementation of the City's Storm Water Master Plan, the City has discharged storm water into natural channels such as Mill Creek and Packwood Creek as they flow through the City, and continued access to these channels is of benefit to the City for this purpose;

G. WHEREAS, historically, and more recently as part of the implementation of the City's Storm Water Master Plan, the City has discharged, or may in the future discharge, storm water into man-made channels such as Evans Ditch, Persian Ditch and Watson Ditch as they flow through the City, and continued access to these channels is of benefit to the City for this purpose;

H. WHEREAS, it is anticipated that current and future development within the City will increase the need for additional capacity for storm water discharges into the natural channels and man-made channels located in the City;

I. WHEREAS, the City will be able to increase the available capacity of the aforementioned channels within the City for the disposition of storm water, if, during storms, there is a temporary diversion and detention of flows in such channels into off-stream basins upstream of the City;

J. WHEREAS, the District has for many years engaged in a program of groundwater recharge whereby it uses available waters within the District and purchases other waters to import into the District, for the purpose of recharging the groundwater of the District, which it accomplishes, in part, by placing such waters into one or more of approximately forty (40) groundwater recharge basins;

K. WHEREAS, groundwater level measurements taken within the District over the last 62 years indicate that the groundwater reservoir underlying the City and surrounding areas is overdrafted and water levels are continuing to decline;

L. WHEREAS, the City and the District both desire to develop groundwater recharge facilities that will recharge the groundwater within and adjacent to the City;

M. WHEREAS, the District owns a parcel of real property comprised of approximately 40 acres located at the terminus of the Lower Kaweah River and also located adjacent to both Mill Creek and Packwood Creek, both of which are natural channels that flow through the City, on which parcel of real property the District is in the process of developing a groundwater recharge basin, the legal description for which parcel is attached hereto as Exhibit A (hereinafter referred to as the "Oakes Basin");

N. WHEREAS, the District owns a second parcel of real property comprised of approximately 40 acres located adjacent to the Lower Kaweah River, which has distributaries that flow through the City, on which the District is planning to construct a groundwater recharge basin, the legal description for which parcel is attached hereto as Exhibit B (hereinafter referred to as the "Peoples Basin");

O. WHEREAS, the City owns a parcel of real property comprised of approximately 9.5 acres located adjacent to Mill Creek, on which the City has or is constructing a storm water detention basin, the legal description for which parcel is attached hereto as Exhibit C (hereinafter referred to as the "Creekside Basin");

P. WHEREAS, the City and the District have or will soon execute a Basin Agreement (hereinafter referred to as the "Basin Agreement") wherein they agree, among other things to share in the costs to construct, operate, maintain, repair,

rehabilitate and replace improvements in the Basins for both storm water layoff and groundwater recharge by diverting water flowing from the Lower Kaweah into the Oakes Basin, the Peoples Basin and the Creekside Basin (hereinafter collectively referred to as "Basins" and sometimes individually as "Basin");

Q. WHEREAS, the diversions and detention of water in the upstream Basins, at the request of the City, from the Lower Kaweah River and Mill Creek, as contemplated by the Basin Agreement, could impact and potentially damage the Water Right Holder, its shareholders or landowners and other water users; and

R. WHEREAS, the parties have reached an agreement whereby the Water Right Holder will allow the aforementioned diversions and detentions for the benefit of the City, while reserving the Water Right Holder's ability to refuse such a diversion and detention if consenting would cause substantial damage as determined in good faith by the Water Right Holder,

NOW, THEREFORE, in and for consideration of the mutual covenants, conditions and promises hereinafter set forth, the parties hereto hereby agree as follows:

1. **Request for Diversions.** City may request diversion of water from the Lower Kaweah River and Mill Creek into one or more of the Basins for the purpose of detaining the water therein, to the extent that Water Right Holder has a water right to such water. The diversions and detentions shall only be for the purpose of increasing the available channel capacity of Evans Ditch and Mill Creek so that Evans Ditch and Mill Creek can temporarily take storm water runoff that the City may put into them.

2. **Notifications.** City shall notify Association when it desires to have water

diverted from the Lower Kaweah River or Mill Creek pursuant to this agreement. City's notification shall include a time for the commencement of the diversion and the rate of diversion in cubic feet per second of water to be diverted. The Association shall notify the Water Right Holder of the commencement of any diversion and the approximate rate of diversion in cubic feet per second of water to be diverted into each of the Basins as the result of the notice provided by City pursuant to this section. The City shall also notify the Association when the diversions into any of the Basins is to be stopped, including the approximate time when such stoppage will commence. The Association shall notify Water Right Holder that it intends to redivert the water it has diverted into any of the Basins and return it to the Lower Kaweah River and/or Mill Creek prior to the time it begins such diversion, including the approximate time when such return diversion will commence.

3. **Approvals by Water Right Holder.** Prior to diverting any water into one or more of the Basins pursuant to this agreement, Association shall obtain the approval of the Water Right Holder as to the diversion, which approval shall not be unreasonably withheld, taking into account the objectives of this agreement, as described in the foregoing Recitals. The Association is not required to obtain the approval of any Water Right Holder for a diversion of water out of the Basins in order to return such water to the natural channel from which it was diverted.

4. **Return of Diverted Water.** Once a diversion of water, made pursuant to this agreement, has stopped and there is sufficient available capacity in the channel of the Lower Kaweah River and/or Mill Creek to do so, then all of the water so diverted shall be returned as soon as reasonably practical to the Lower Kaweah River and/or Mill

Creek for delivery to Water Right Holder's point of diversion, except for such water as may have percolated into the ground before it was evacuated from the Basins. The determination that there is sufficient available capacity to return water to one or more of the natural channels shall be made by the Watermaster ("Watermaster") appointed by the Association, subject to the criteria set forth hereinafter in section 5.

5. **Approval by Watermaster.** Any diversion of water pursuant to this agreement, either into or out of the Basins, shall be subject to the discretionary approval of the Watermaster exercised in a reasonable and good faith attempt to fulfill the objectives of both this agreement, as described in the foregoing Recitals, and the related Basin Agreement executed by and between the City and the District and which right of approval includes the right to make necessary or reasonable adjustments to both the quantity and time of such diversions that may be necessary to carry out the Watermaster's duties and obligations.

6. **Operations.** Only agents of the Association shall operate the gates, pumps and related facilities necessary to divert the water of Water Right Holder into or out of the Basins.

7. **Accounting.** The Association shall keep a written record of accounts showing the time of all requests for diversions of the water of Water Right Holder into or out of each of the Basins pursuant to this agreement. The aforementioned accounts shall also include a record of the time, duration, and quantity, in acre-feet, of water of Water Right Holder diverted into or out of each of the Basins pursuant to this agreement. Further, the subject accounts shall include a calculation as to the approximate amount of water of Water Right Holder that percolated into the ground

during the time such water was retained in the Basins, which calculation shall be made by subtracting the water of Water Right Holder diverted out of each of the Basins, when such water was evacuated from each Basin, from the amount of the water of Water Right Holder diverted into each such Basin. All of the parties to this agreement shall have access to the aforementioned record of accounts at the office where said accounts are kept, upon reasonable written notice.

8. **Credit.** The Watermaster shall credit the Water Right Holder for any amount of percolated water of Water Right Holder, calculated pursuant to section 7 of this agreement, by showing such amount on the record of accounts of the Association as a diversion for the purpose of groundwater recharge by the Water Right Holder into the Basin where such percolation occurred.

9. **Term.** This agreement shall extend in perpetuity, unless terminated as hereinafter provided. Any party may terminate this Agreement, for good cause, upon ninety (90) days notice to the other party as hereinafter provided, which notice shall also describe the "good cause" for such termination.

10. **Discharge Permits.** The City shall obtain and keep current all permits or other government approvals required by law, regulations or ordinance, including National Pollutant Discharge Elimination System permits, for the discharge of water from the Basins into natural channels as provided in this agreement.

11. **Indemnification and Hold Harmless.** To the fullest extent permitted by law, the City and the District shall indemnify, hold harmless and defend the Association and the Water Right Holder, its members, directors, members, shareholders, officers, employees, consultants, agents, authorized volunteers, heirs, successors and assigns,

and each of them, from and against:

- a. Any and all claims, demands, causes of action, damages, costs, expenses, losses or liabilities, in law or in equity, of every kind or nature whatsoever for, but not limited to, injury to or death of any person and damages to or destruction of property of any person, arising out of or in any manner directly or indirectly connected with the diversion of water pursuant to this agreement or the construction, operation, maintenance, repair, rehabilitation or replacement of improvements on any of the Basins; and
- b. Any and all actions, proceedings, damages, costs, expenses, penalties or liabilities, in law or equity, of every kind or nature whatsoever, arising out of, resulting from, or on account of, any action take pursuant to this agreement that causes or results in the violation of any law, regulation or ordinance.

12. **Notices.** All notices explicitly identified as notices to be put in writing pursuant to this Agreement shall be mailed, delivered or transmitted to the other party at the address indicated below:

To City at:

CITY OF VISALIA  
707 W. Acequia  
Visalia, California 93291  
Attention: City Manager  
Telephone number: (559) 713-4312  
Facsimile number: (559) 713-4800

To Water Right Holder at:

EVANS DITCH COMPANY  
P.O. Box 1920  
Tulare, California 93275  
Telephone number: (559) 686-3425  
Facsimile number: (559) 686-3673

To Association at:

KAWEAH & ST. JOHNS RIVER ASSOCIATION  
2975 N. Farmersville Blvd.  
Farmersville, California 93223  
Attention: Watermaster  
Telephone number: (559) 747-5601  
Facsimile number: (559) 747-1989

To District at:

KAWEAH DELTA WATER CONSERVATION DISTRICT  
2975 N. Farmersville Blvd.  
Farmersville, California 93223  
Telephone number: (559) 747-5601  
Facsimile number: (559) 747-1989

Each such notice or other communication shall be deemed effective and given (i) upon receipt, if personally delivered; (ii) upon being transmitted, if sent by telegram, telex or telecopy, if a copy of the notice is also sent by United States first class mail and provided receipt is confirmed by a transmission report or otherwise; (iii) two (2) business days after deposit in the United States mail, postage prepaid, properly addressed to the party to be served; or (iv) upon receipt, if sent in any other way. Either party may from time to time, by written notice, designate a different address than that set forth above for the purpose of notice, provided, however, that no notice of change of address shall be effective until actual receipt of the notice.

13. **Representation and Warranties.** Each party represents to the other party that such party has the full power and authority to enter into this Agreement, that the execution and delivery thereof will not affect any agreement to which such party is a party or by which such party is bound, and that this Agreement, as executed and delivered, constitutes a valid and binding obligation of such party enforceable in



accordance with its terms. Each of the parties to this Agreement represent and warrant that this Agreement is executed in compliance with a Resolution of the governing entity of the public agency, duly adopted by the governing entity and transcribed in full in the Minutes of the governing entity.

14. **Duty to Cooperate.** Each party shall cooperate so as to facilitate the other party's efforts to carry out its obligations under this Agreement.

15. **Assignment, Successors and Transferees.** No party shall assign its rights and obligations under this Agreement without the express written consent of each of the other parties. The obligations and benefits of this Agreement are binding upon and inure to the benefit of any successors and assigns to the parties hereto.

16. **Amendment/Modification.** This Agreement may not be altered, modified or otherwise changed in any respect except by writing, duly executed by the parties and their authorized representatives.

17. **Construction.** The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that notwithstanding Civil Code Section 1654, ambiguities, if any, are not to be resolved against the drafting party and no presumption against one party to the other shall govern the interpretation or construction of any of the terms of this Agreement.

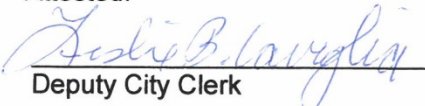
18. **Waivers.** A waiver or breach of a covenant or provision in this Agreement shall not be deemed a waiver of any other covenant or provision in this Agreement, and no waiver shall be valid unless in writing and executed by the waiving party. Any extension of time for performance of any obligation or act shall not be deemed an extension of time for performance of any other obligation or act.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date  
set forth above.

CITY OF VISALIA

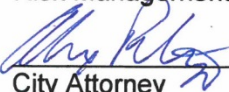
By   
City Manager

Attested:

  
Deputy City Clerk

Approved as to form:

  
Risk Management Manager

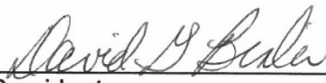
  
City Attorney

KAWEAH DELTA WATER  
CONSERVATION DISTRICT

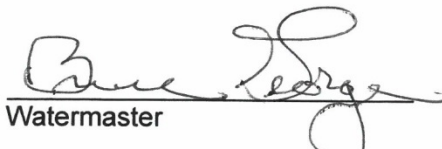
By   
President

By   
General Manager

EVANS DITCH COMPANY

By   
President

KAWEAH & ST JOHNS RIVER ASSOCIATION

By   
Watermaster

**EXHIBIT A**  
**(Legal Description – Oakes Basin)**

That portion of Lot 23 of Mineral King Orchard Tract, per map recorded in Book 8, page 63, of Maps in the Office of the County Recorder, County of Tulare, State of California, lying Westerly of the center line of Packwood Creek, said center line of Packwood Creek being described as follows:

Beginning at the Southwest corner of Lot 22 of said Mineral King Orchard Tract, said Southwest corner of Lot 22 being a point in the centerline of Packwood Creek;

Thence, Southwesterly 1620 feet, more or less, along said centerline of Packwood Creek, as it existed on May 1, 1997, to a point in the West line of said Lot 23, said point being 150 feet North of the Southwest corner of said Lot 23.

**EXHIBIT B**  
**(Legal Description – Peoples Basin)**

The real property located in Tulare County, California, described as follows:

THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 14,  
TOWNSHIP 18 SOUTH, RANGE 26 EAST, MOUNT DIABLO BASE AND MERIDIAN,  
IN THE COUNTY OF TULARE, STATE OF CALIFORNIA, ACCORDING TO THE  
OFFICIAL PLAT THEREOF.

**EXHIBIT C**  
**(Legal Description – Creekside Basin)**

The real property located in Tulare County, California, described as follows:

LOT E OF CREEKSIDE SUBDIVISION UNIT NO. 1, AS PER MAP RECORDED IN  
BOOK 39, PAGE 55 OF MAPS, TULARE COUNTY RECORDS.