

Documentary Transfer Tax -- \$0.00

For the Benefit of:

CITY OF VISALIA

BASIN AGREEMENT
(Oakes and Peoples Basins)

THIS AGREEMENT is made this 7TH day of NOVEMBER, 2006, 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 Deerings 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 flows that would ordinarily be conveyed in such channels into off-stream basins for short term detention;

G. WHEREAS, City and District have or will enter 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 Rights Holders") water upstream of the City for the purpose of creating additional capacity in the aforementioned channels available for the disposition of storm water; and

H. WHEREAS, by authority of powers vested in it by its enabling act and its adoption of a Groundwater Management Plan pursuant to Water Code Section 10750 et seq., 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, groundwater level measurements taken within the District over the last 62 years indicate that the groundwater reservoir in and around the City is overdrafted and groundwater levels are 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 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 is attached hereto as Exhibit A (hereinafter referred to as the "Oakes Basin");

L. 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 is attached hereto as Exhibit B (hereinafter referred to as the "Peoples Basin"); and

M. WHEREAS, the City and the District desire to share in the costs to develop and construct improvements on the Oakes Basin and on the Peoples Basin (hereinafter collectively referred to as the "Basins" and sometimes individually as "Basin") so that each 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; and

N. WHEREAS, City and the District desire to enter into an agreement establishing their respective rights and obligations regarding the use of the Basins for groundwater recharge purposes as well as the City's storm water management purposes, including the right of the City to use the Basin for the purpose of detaining water diverted pursuant to the Water Diversion Agreements, and returning such water back into the source waterways for delivery to the water right holders after the need for storm water capacity has passed.

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

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

a. Completed Work. The District has entered into contracts with private individuals and entities that have allowed for the removal of sand and similar materials from the Basins at no cost to the District, with the removal of the materials being done in such a way as to assist in the initial construction of the Basins, which will result in a considerable savings to the District and the City in the form of expenses that they might otherwise incur to develop the Basins. Also, the District has performed substantial work in the Oakes Basin, the cost for which work has been partially reimbursed to the District by grant funds, together with contributions made by the City of Visalia and the California Water Service Company. The costs to be allocated by the parties, pursuant to this Agreement, shall only be those costs incurred on or after the

date of the execution of this Agreement.

b. Initial Earthwork Improvements. The parties shall each pay their share of costs to develop the Basins for groundwater recharge and storm water layoff in accordance with the allocation of such costs as set forth in this Agreement. The parties have conceptually agreed that the costs of the initial earthwork to develop the Basins for groundwater recharge should be borne equally by the District and the City, with the understanding that the initial earthwork to develop the Basins 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 Basins, deeper than described above for groundwater recharge, should be deemed to have been incurred to develop the Basins for storm water layoff, and, therefore, all such costs should be allocated one hundred percent (100%) to the City. Attached to this Agreement as Exhibits C and D are drawings showing examples of the earthwork requirements, both at grade and below grade, necessary to develop the Basins for groundwater recharge and storm water layoff purposes. Based on the foregoing concepts agreed to by the parties and the aforementioned Exhibits, the costs of any earthwork for development of the Oakes Basin, to a depth not exceeding 12 feet, shall be allocated twelve and one-half percent (12.5%) to the District and eighty-seven and one-half percent (87.5%) to the City, and the costs of any earthwork for development of the Peoples Basin, to a depth not exceeding 6.5 feet, shall be allocated twenty-three and eight hundredths percent (23.08%) to the District and seventy-six and ninety-two hundredths percent (76.92%) to the City. All plans and specifications for the earthwork to develop the Basins, other than

the earthwork referred to above in subparagraph a of this section, 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.

c. Initial Inlet and Outlet Improvements. Each party will pay its share of costs to construct new inlet and outlet improvements in the Basins in accordance with the allocation of such costs as follows:

(i) Oakes Basin. The parties acknowledge that any inlet and outlet structures and related facilities 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 initial costs to construct a forty (40) cubic feet per second gravity and pumping outlet structure and related facilities to divert water into Mill Creek shall be allocated one hundred percent (100%) to the City. All costs related to increasing the capacity on the existing inlet structure from twenty (20) cubic feet per second to one hundred (100) cubic feet per second shall be allocated one hundred percent (100%) to the City. The costs to construct an interior diversion structure shall be allocated twenty percent (20%) to the District and eighty percent (80%) to the City.

(ii) Peoples Basin. The costs to construct a one hundred (100) cubic feet per second inlet structure and related facilities 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 will be allocated one hundred percent (100%) to the City.

(iii) Plans and Specifications. The parties will share equally the costs of all plans, specifications, drawings, and engineering studies necessary for the

planning and development of the Basins. All plans and specifications for the initial improvements described in this subparagraph c shall be approved by both parties, in writing, which includes approvals communicated by e-mail or facsimile transmission, prior to commencement of any construction.

d. SCADA Systems Costs. If the parties desire to install a supervisory control and data acquisition system (hereinafter referred to as a "SCADA system"), then the parties shall determine their respective benefits derived from using a SCADA system in connection with their use of the Basins. 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 systems related to the Basins.

e. Signage and Fencing. At the discretion of the District, signage and fencing may be installed at the Basins for public safety, vandalism prevention and other reasons, the cost for which signage and fencing shall be shared equally by the parties.

2. **Construction Work.** The District, its contractors or its agents, shall perform all construction work and related work for the aforementioned initial improvements and other work contemplated by this Agreement, including all modifications and upgrades to such improvements that may be agreed to by the parties. The parties agree that they will proceed with the aforementioned work, just as soon as reasonably practical after the execution of this agreement. The parties agree to manage their budgets so that they can promptly pay their respective share of the costs of such work.

3. **Ownership.** The District presently is and will continue to be the owner of

record of the fee simple interest in both of the Basins. The District has paid the full purchase price for the Basins, but the District will not seek reimbursement from the City for the District's payments for the Basins. Notwithstanding the City's anticipated contribution to the future development of the Basins and its contribution to the construction, operation, maintenance, repair, rehabilitation and replacement of improvements hereafter constructed thereon, the City agrees that it will not develop or otherwise become entitled to any fee simple ownership interest in either of the Basins.

4. **Grant of License.** District hereby grants to City the right to use the Basins, as described in Exhibits A and B, 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 a total useable depth of 11 feet; of this depth, City shall have the exclusive right to use 9 feet and District shall have the exclusive right to use the remaining 2 feet.

b. **Peoples Basin.** It is anticipated that Peoples Basin shall have a total useable depth of 5.5 feet; of this depth, City shall have the exclusive right to use 3.5 feet and District shall have the exclusive right to use the remaining 2 feet.

c. **Limitation.** This license shall not entitle City to use the Basins except as necessary for the fulfillment of the purposes of this Agreement. This Agreement shall not prevent, and City shall not interfere with, any use that District may desire to make of the Basin properties that does not interfere with the City's use. By way of example only, City acknowledges that this Agreement shall not interfere with the District's establishment of habitat and landscaping amenities for mitigation purposes on

areas outside of the top bank of the water storage basins to be constructed on the basin property, and City further acknowledges that it shall have no right to manage or control such amenities by virtue of this Agreement.

d. Encroachment. The depth for which subparagraphs a. and b. 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 5 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. The City agrees that the City and the District will enter into a Water Diversion Agreement, with each downstream Water Right Holder. No water claimed by a Water Right Holder will be diverted into the Basins, or either of them, unless and until the City and the District have obtained a fully-executed Water Diversion Agreement from such Water Right Holder. The aforementioned Water Diversion Agreement shall be substantially the same as that form Water Diversion Agreement attached hereto and marked as "Exhibit E."

6. **Operation of Basins.** Pursuant to the Water Diversion Agreements, agents of the Kaweah & St. Johns River 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 the operation of any pumps 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, 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 Water Diversion Agreements.

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 Earthwork Improvements.** In recognition of both the fact that this agreement is not the sole basin agreement between the parties and that the understanding between the parties is that the owner of any basin accepts responsibility for all operation, maintenance, repair, rehabilitation and replacement in such basin, the District will perform, at its own expense and in 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.

9. **Structure and Mechanical Facilities Maintenance.** While the District will perform or delegate all structure and mechanical facilities operation, maintenance, repair, rehabilitation and replacement on the Basins, the costs of doing such work shall be allocated between the parties as hereinafter provided in this section. 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 Packwood Creek outlet and overflow structures and related mechanical facilities shall be allocated one hundred percent (100%) to the City. 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. The District may terminate this Agreement for good cause, as defined solely in this paragraph, upon ninety (90) days notice to the City 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, City's use of the Basins has caused or with reasonable certainty will cause the District to lose the ability to use the Basins for the District's purposes. City shall, in good faith, attempt to remedy any use of the Basins that has caused the District to lose the ability to use the Basins for its purposes. In the event City is unsuccessful in attempting to remedy and District therefore terminates this agreement for good cause, City shall have the option to purchase all of District's interests in the Basins at the then fair market value, as determined by independent appraiser mutually acceptable to the parties. The sale under such circumstances shall be subject to the District retaining rights in the Basin properties as the District may designate at the time of such appraisal, if any.

11. **Right of First Refusal.** City shall have the right of first refusal to purchase the Basins 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.

12. **Discharge Permits.** The City shall obtain and keep current all permits or other government approvals, if any, that may be 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.

13. **Reimbursement.** 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.

14. **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 storm water layoff improvements on either 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

15. **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
707 W. Acequia
Visalia, California 93291
Attention: City Manager
Telephone number: (559) 713-4312
Facsimile number: (559) 713-4800

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.

16. **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.

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

18. **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.

19. **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.

20. **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.

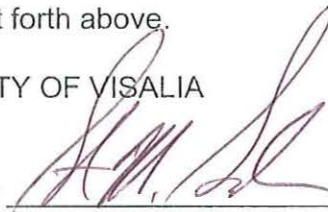
21. **Waivers.** A waiver or breach of a covenant or provision in this Agreement shall not be deemed a waiver of any other covenant or provision in this Agreement, and no waiver shall be valid unless in writing and executed by the waiving party. Any

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.

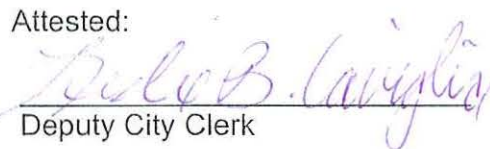
22. **Recording of Agreement.** This Agreement, or an abstract thereof, shall be recorded in the office of the Recorder of Tulare County. The parties shall execute any documents required for the purpose of recording this Agreement.

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

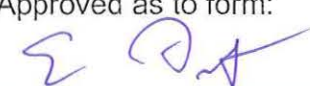
CITY OF VISALIA

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

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.

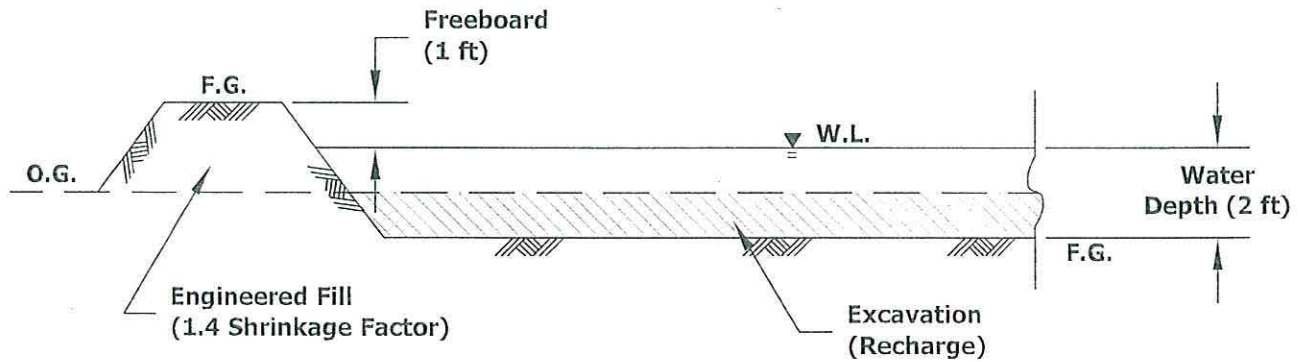
EXHIBIT B
(Legal Description – Peoples Basin)

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

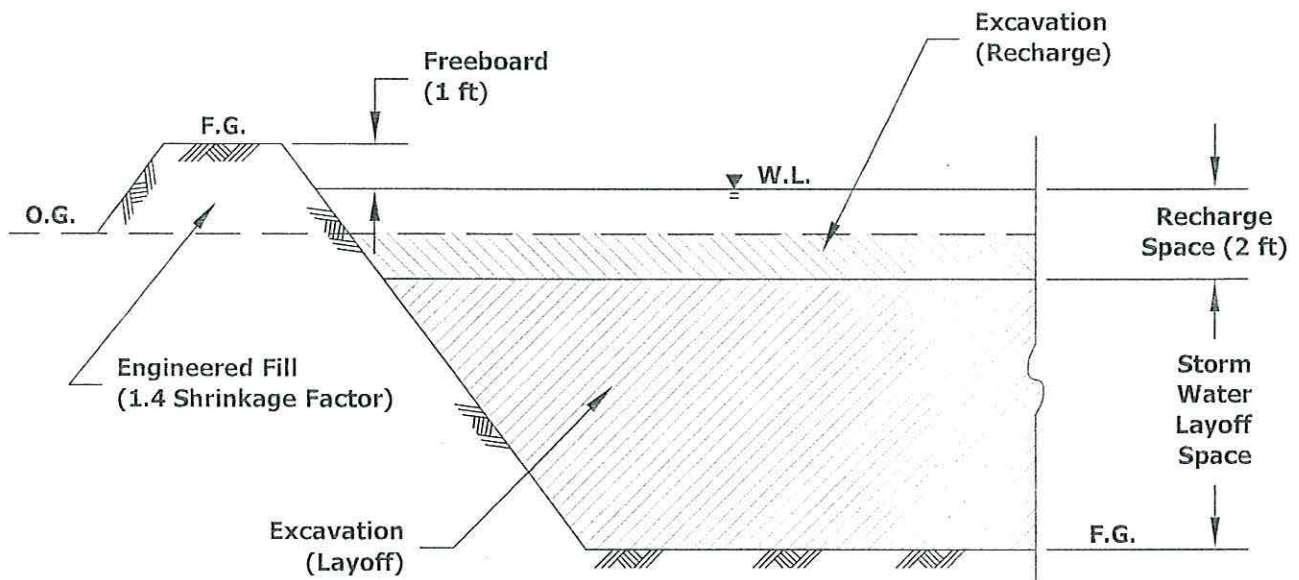
THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 14,
TOWNSHIP 18 SOUTH, RANGE 26 EAST, MOUNT DIABLO BASE AND MERIDIAN,
IN THE COUNTY OF TULARE, STATE OF CALIFORNIA, ACCORDING TO THE
OFFICIAL PLAT THEREOF.

EXHIBIT C

OAKES BASIN



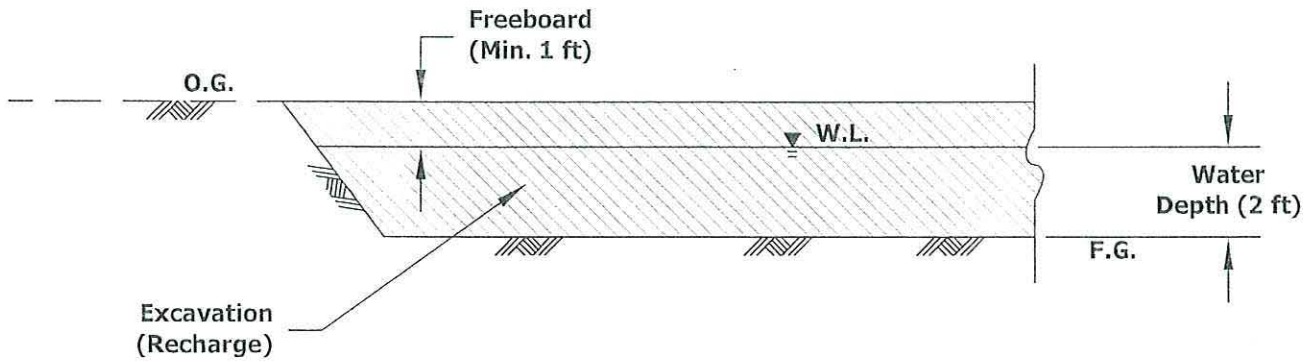
RECHARGE IMPROVEMENT



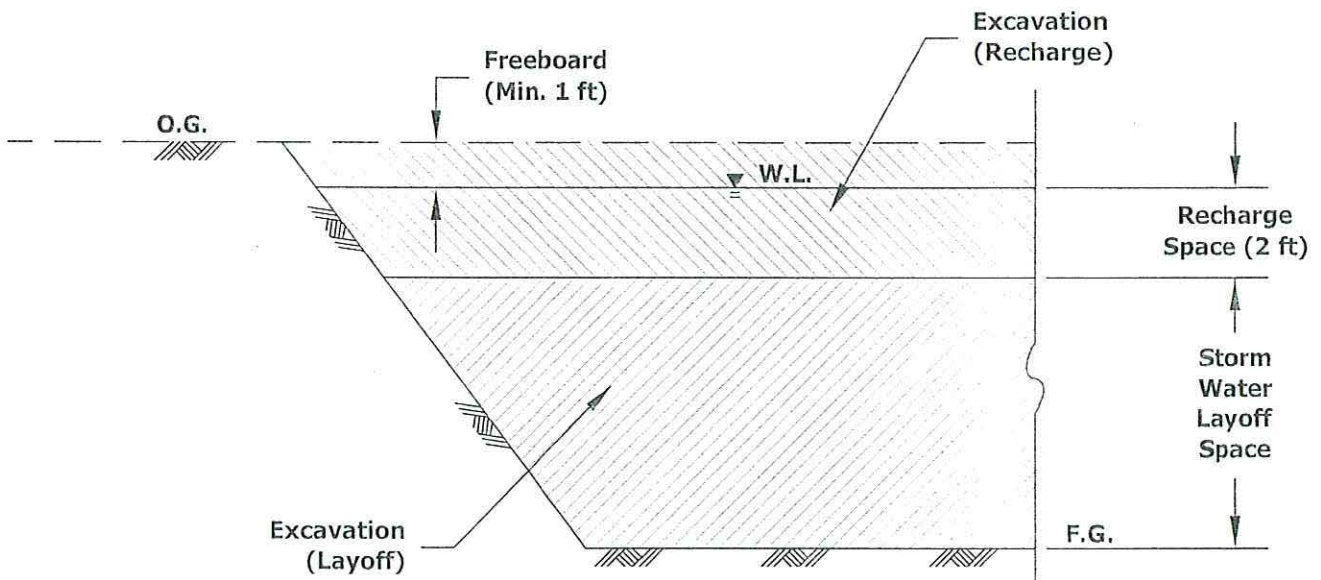
RECHARGE/LAYOFF IMPROVEMENT

EXHIBIT D

PEOPLES BASIN



RECHARGE IMPROVEMENT



RECHARGE/LAYOFF IMPROVEMENT

EXHIBIT E
WATER DIVERSION AGREEMENT
(FORM)

THIS AGREEMENT is made this _____ day of _____, 2006, by and between the CITY OF VISALIA (hereinafter referred to as the "City"), Entity (see table) (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 Source Waterway (see table;

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 Deering's 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, 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;

H. 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;

I. 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;

J. 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;

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

L. 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 is attached hereto as Exhibit A (hereinafter referred to as the "Oakes Basin");

M. 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 is attached hereto as Exhibit B (hereinafter referred to as the "Peoples Basin"); and

N. 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 and into the Peoples Basin (hereinafter collectively referred to as "Basins" and sometimes individually as "Basin"); and

O. 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;

P. 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 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 Benefiting Waters (see table) so that Benefiting Waters (see table) can temporarily take storm water runoff that the City may put into it.

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 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 the Basins are 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 the Basins and return it to the Rediversion Waterway (see table), 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 both 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 Rediversion Waterway (see table) to do so, then all of the water so diverted shall be returned as soon as reasonably practical to the Rediversion Watersay (see table) 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 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 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 the Basin, when such water was evacuated from the Basin, from the amount of the water of Water Right Holder diverted into the 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 Pollution 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 either 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, CA 93275
Attention: Manager
Telephone number: (559) 686-3425
Facsimile number: (559) 686-3673

To Association at:

KAWEAH & ST. JOHNS RIVER ASSOCIATION
2975 N. Farmersville Blvd.
Farmersville, CA 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

KAWEAH DELTA WATER
CONSERVATION DISTRICT

By _____
City Manager

By _____
President

Attested:

By _____
General Manager

Deputy City Clerk

Approved as to form:

Risk Management Manager

City Attorney

ENTITY

KAWEAH & ST JOHNS RIVER ASSOCIATION

By _____
President

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.