

AGREEMENT

This Agreement is entered into this 31st day of December 2001, by and between the City of Visalia ("City"), a California Charter Law City, and the Kaweah Delta Water Conservation District ("District").

I

RECITALS

The City and the District enter into this "Agreement" on the basis of the following facts, understandings and intentions of the parties:

WHEREAS, the City is a municipal corporation and charter law city incorporated under the laws of the State of California; and

WHEREAS, the District is a political subdivision of the State of California organized under The Water Conservation Act of 1927 (Deering's Uncodified Acts, Act 9127a); and

WHEREAS, the City's municipal affairs include maintenance and enhancement of water supplies sufficient to insure a long term reliability of water service to the residents of the City; and

WHEREAS, the District has among its principal purposes maintenance and enhancement of surface and groundwater supplies within its District boundaries; and

WHEREAS, the City of Visalia lies within the boundaries of the District; and

WHEREAS, the District has historically engaged in activities to maintain and acquire water supplies for the benefit of the lands within the District's boundaries;

WHEREAS, the City has granted an exclusive franchise to the California Water Company for the purpose of providing water to the residents of the City; and

WHEREAS, the City and the District desire to undertake a program to maintain existing, and procure additional water supplies, for the benefit of the residents of the City of Visalia; and

WHEREAS, the program to maintain existing and enhance future water supplies for the residents of the City is consistent and compatible with the mutual purposes and objectives of the City and the District; and

NOW THEREFORE, be it resolved and based upon the mutual covenants and conditions contained herein the City and the District agree as follows:

1. **Purposes.** City and District enter into this program, the primary purpose of which is to maintain existing water rights and acquire additional water supplies for the primary benefit of the residents of the City of Visalia. Additionally the purpose of

this Agreement is to provide funding mechanisms for the maintenance and acquisition of such water supplies and for the construction of facilities necessary to apply such water to the benefit of the residents of the City.

The parties hereto intend that the activities undertaken pursuant to this program will result in maintenance and enhancement of groundwater levels in and around the City. Each year an annual plan will be developed to identify specific activities to meet these purposes.

2. **Term.** Subject to the provisions of Paragraph 5, the term of this Agreement shall be for a period of forty (40) years commencing on January 1, 2002, and expiring on December 31, 2042. Subject to negotiating mutually agreeable terms and conditions, this Agreement shall be renewed in ten (10) year increments beginning on January 1, 2043.

3. **City's Obligations.** The City agrees to undertake to do all of the following:

A. The City will provide the District \$100,000.00 annually during the term of this Agreement. Such payment shall be adjusted annually on July 1 by changes in the Consumer Price Index-All Urban Consumers-U.S. City Average-All Items (1982-84 =100). The CPI adjustment shall be based upon the change in the Index for the preceding twelve month period beginning on April 1 and concluding on March 31.

Both parties acknowledge that the City's obligation is to provide the District with \$100,000.00 annually, adjusted by the CPI index referred to above. The City retains discretion to directly utilize additional funds generated as a result of new water service connections for related projects including, but not limited to, acquisition and construction of groundwater recharge and/or storm water recharge basins, construction of water management facilities, implementation of water conservation projects, and planning and engineering projects related to efficient water management activities, or the City may provide the funds to the District further the purposes of this Agreement as specified in the annual plan.

B. The City will participate in the Management Committee addressed in Paragraph 7 below, and cooperate with the District in the acquisition and delivery of water for the primary benefit of the residents of the City.

C. The City will undertake to operate all City owned facilities for the primary purpose of optimizing the storm water, groundwater recharge and surface water delivery benefits of such facilities.

4. **District's Obligations.** The District shall undertake to do all of the following:

A. The District shall utilize the funds provided by the City pursuant to Paragraph 3. A, above to achieve the purposes specified in Paragraph 1. The District shall achieve such purposes by implementation of the annual plan developed by the Management Committee.

B. The District shall prepare and provide to City an annual report of activities undertaken to implement the annual plan. Such annual report shall identify water and/or water rights acquired, actual water deliveries, planning and engineering activities and facilities acquired or constructed.

C. The District shall participate in the Management Committee addressed in Paragraph 7 below.

5. **California Water Service Company.** The parties hereto acknowledge that the primary water purveyor in the City limits of the City of Visalia is the California Water Service Company ("Cal Water"). The parties further acknowledge that the Cal Water owns all of the extraction and conveyance facilities necessary to provide such service to the City's residents. It is the acknowledged and expressed intent of the parties to this Agreement to attempt to engage Cal Water in discussions about participation in the programs contemplated by this Agreement. To that end, the parties commit that they will attempt to engage Cal Water in discussions about appropriate means by which Cal Water could effectively participate in the enhancement of water supplies benefiting the residents of the City.

6. **Management Committee.** The parties hereto agree to form a Management Committee comprised of representatives of the District and the City. The Management Committee shall be comprised of one member from each of the governing boards and other staff and technical representatives of the City and the District. The Management Committee shall meet as necessary. The Management Committee shall each year develop an annual plan to achieve the purposes specified in Paragraph 1, which plan shall be mutually agreeable to the parties hereto. The annual plan shall set forth the

specific activities, which the District will implement. The Management Committee shall review the annual report prepared by the District.

7. **Annual Report.** The District shall prepare an annual report each year by no later than April 15th. Such annual report shall identify the amount of water and/or water rights acquired, the cost of the water or water right acquired, the amount and location of water deliveries, planning and engineering activities undertaken, and facility construction activities.

8. **Payments.** The City shall be responsible for collecting all connection fees and conveying such funds to the District on a monthly basis. The District shall deposit such funds in an interest bearing account for use to implement the annual plan. Interest accrued from these funds will be applied to the programs and activities undertaken. The funds shall be specifically utilized by the District to acquire water, construct facilities and reimburse all other costs or expenses, including reasonable administrative costs, incurred by the District in implementing the annual plan.

Additionally the District shall include in the annual report a statement identifying the balance of funds available for projects undertaken pursuant to this Agreement.

9. **Default/Remedies.** Material defaults of this Agreement shall include, but not be limited to, the occurrence of any one or more of the following events:

- A. Either party's failure to keep, perform and observe its promises, covenants, conditions and agreements set forth in this Agreement;
- B. Either party's bankruptcy, insolvency, or receivership, which would include taking the benefit of any present or future insolvency statute, an assignment for the benefit of creditors, the filing of a petition in bankruptcy, the filing of a petition or answer seeking re-adjustment of indebtedness under Federal or State law, the consent to the appointment of a receiver trustee, the involuntary taking of control by a receiver or trustee, or the liquidation of all or substantially all of its property.

In the event either party believes the other is in default, the non-defaulting party shall notify the other, in writing, of the alleged default(s) and arrange to meet and confer within ten (10) days of the notice regarding the potential resolution of such default issues. If such conference is unsuccessful, the matter shall be referred to the Management Committee for resolution. The Management committee shall meet

within ten (10) days of such referral to consider the dispute. If the Management Committee cannot resolve the dispute, the matter shall be referred to binding arbitration. Within ten (10) days of referral by the Management committee, the parties shall agree on an arbitrator.. If the parties are unable to agree on an arbitrator, each party shall choose an arbitrator and the two arbitrators shall choose a third. The arbitration shall be conducted according to the rules of the American Arbitration Association. The decision of the arbitrator(s) shall be binding and the arbitrator(s) shall determine which party shall be responsible for payment of the arbitration fees and associated costs.

10. General Provisions.

A. **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, CA 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 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.

B. Representations and Warranties. Each party represents to all other parties 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 the Agreement is executed in compliance with the 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.

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

D. 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.

E. Entire Agreement. This Agreement constitutes the entire agreement between the parties and it is expressly understood and agreed that the Agreement has been freely and voluntarily entered into by the parties and with the advice of counsel who have explained legal effect of this Agreement. The terms of this Agreement are contractual and not merely recitals. The parties further acknowledge that no warranties, representations or inducements not contained in this Agreement have been made on any subject in connection with this Agreement, and that they have not been induced to execute this Agreement by reason of nondisclosures or suppression of facts. This Agreement is fully integrated.

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

G. 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 or the other shall govern the interpretation or construction of any of the terms of this Agreement.

H. **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.

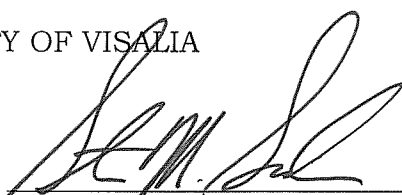
I. **Section Headings.** The various section headings in this Agreement are inserted for convenience of reference only, and shall not affect the meaning or interpretation of this Agreement or any provision hereof. All uses of the words "article(s)" and "section(s)" in this Agreement are references to articles and sections in this Agreement, unless otherwise specified.

J. **Severability.** In the event any of the terms, conditions or covenants contained in this Agreement is held to be invalid, any such invalidity shall not effect any other terms, conditions or covenants contained herein which shall remain in full force and effect.

K. **Governing Law.** California law shall govern the interpretation of and enforcement of this Agreement.

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

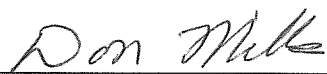
CITY OF VISALIA

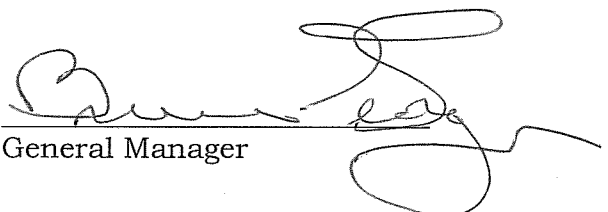
By: 
City Manager

Attested:

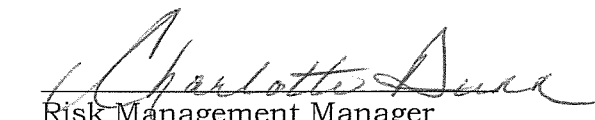

Deputy City Clerk

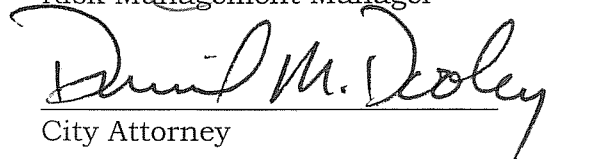
KAWEAH DELTA WATER
CONSERVATION DISTRICT

By: 
President

By: 
General Manager

Approved as to form:


Risk Management Manager


City Attorney

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