

Appendix D

Water Supply Agreement



WATER SUPPLY AGREEMENT

between

ROOT CREEK WATER DISTRICT

and

WESTSIDE MUTUAL WATER COMPANY, LLC

November 1, 2006

WATER SUPPLY AGREEMENT

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

R E C I T A L S:

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

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

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

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

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

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

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

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

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

3. Pricing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. Renewal.

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

(b) *Renewal Provisions.*

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

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

10. Governmental Approvals and Environmental Review.

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

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

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

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

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

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

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

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

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

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

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

(e) The parties have received all necessary Approvals.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14. Force Majeure/Permitted Suspension of Performance.

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

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

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

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

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

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

(i) *Westside Event of Default.*

Replacement Water Supply

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

Termination of Contract and Replacement Contract

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

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

Sole Remedy

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

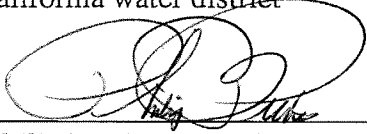
“RCWD”

“Westside”

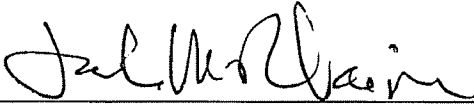
ROOT CREEK WATER DISTRICT,
a California water district

WESTSIDE MUTUAL WATER COMPANY LLC,
a California limited liability company

By


Philip R. Pierre, President

By


Joseph C. MacIlvaine, President

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Exhibit "A"
Maximum Delivery Quantities and Standby Charges

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