

EXHIBIT A

POTABLE WATER SERVICE AGREEMENT

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THIS AGREEMENT is made and entered into this 12 day of February 2018, by and between the County of Fresno, a political subdivision of the State of California, on behalf of County Service Area 32 (County) and Cantua Creek Vineyards IV, LLC, a California registered limited liability company, whose address is P.O. Box 789, Ceres, CA 95307 (Vineyards).

WITNESSETH:

WHEREAS, the County has received grant planning funding from the State Water Resources Control Board (SWRCB), Drinking Water State Revolving Fund (DWSRF) to prepare the study, planning, and plans and specifications for the construction of improvements to the water system serving Fresno County Service Area No. 32 (CSA 32), also known as "Cantua Creek," to ensure that it is capable of producing a sufficient quantity of water meeting State of California drinking water standards; and

WHEREAS, the County is also seeking grant construction funding from the SWRCB through the DWSRF to construct improvements to the water system serving CSA 32, to ensure that it is capable of producing a sufficient quantity of water meeting State of California drinking water standards; and

WHEREAS, the work to be planned with grant planning funding and performed with grant construction funding consists, in general, of drilling one potable water well at CSA 32, and connecting this well via pipeline to the existing water facility, which will be improved to accommodate the new water source (collectively, the Water Facilities), and, upon execution of this agreement, the work to be planned and performed will also include installing a pipeline to Vineyards' property on the northeast corner of the intersection of West Clarkson Avenue and South San Mateo, with a service connection that will allow Vineyards to serve the multiple farm labor housing units on its property (the Pipeline; together with Water Facilities, the Project); and

1 WHEREAS, Vineyards has been operating a public well system under Domestic
2 Water Supply Permit No. 03-23-13P-003 to serve residents of the farm labor housing
3 units on its property; and

4 WHEREAS, Vineyards is unable to provide adequate quantities of safe potable
5 water to its residents, in accordance with State of California drinking water standards,
6 and the SWRCB has issued compliance order No. 03-23-14R-101 to Vineyards for a
7 violation of the arsenic Maximum Contaminant Level (MCL); and

8 WHEREAS, Vineyards is located outside of CSA 32's boundaries and sphere of
9 influence as designated by the Fresno County Local Agency Formation Commission
10 (LAFCo), and desires to establish a service connection to draw potable water from the
11 CSA 32 for service to Vineyards' residents; and

12 WHEREAS, the individual listed below

13 Frank Canela
14 Address: P.O. Box 488, Ceres, CA 95307
15 Phone Number: 209-272-3035
16 Email: frank.canela@wcgfi.com

17 is designated as the Vineyards Contract Manager for this Agreement, and shall remain
18 so unless the Vineyards requests and the County's Director of Public Works and
19 Planning (Director) or his or her authorized designee approves such change, in writing,
20 for which approval will not be unreasonably withheld; and

21 WHEREAS, the County Special Districts Principal Staff Analyst at

22 2220 Tulare Street, 6th Floor, Fresno, CA 93721
23 559-600-4319
24 SpecialDistrictsAdm@co.fresno.ca.us

25 is designated as the County Contract Manager for this Agreement, and shall remain so
26 unless Vineyards is otherwise notified in writing by the Director or his or her authorized
27 designee; and

28 WHEREAS, the SWRCB has requested the County include the construction of
the Pipeline in the Project, so that the County, through CSA 32, will be able to serve

1 Vineyards with potable water if the improved water system has the capacity to serve all
2 of CSA 32 and Vineyards' customers with potable water; and

3 WHEREAS, Vineyards shall retain its control of the distribution system and billing
4 beyond the meter for the service connection established under this agreement, subject
5 to the requirements of applicable local, state, and federal law; and

6 WHEREAS, the SWRCB, as a condition of construction funding, requires an
7 agreement between the County and Vineyards that commits CSA 32 to providing a
8 potable water supply after the Project is complete and which identifies the party
9 responsible for operation and maintenance of the water delivery system within
10 Vineyards after construction; and

11 WHEREAS, the County has requested and obtained from LAFCo written
12 approval to provide potable water service outside the boundaries of CSA 32, as
13 required by Government Code sections 25212.3 and 56133;

14 NOW THEREFORE BE IT AGREED, that the County, through CSA 32, and upon
15 completion of the Project, shall supply potable water to Vineyards, subject to the
16 following terms and conditions:

17 1. FUNDING: Vineyards will give all required permissions and information
18 that are necessary for the County to obtain DWSRF construction funding from SWRCB
19 to construct the Project.

20 2. LAFCo APPROVAL: The County has received written approval from
21 LAFCo to Extend Services outside the boundary of CSA 32 pursuant Sections 25212.3
22 and 56133 of the California Government Code.

23 County and Vineyards understand this agreement to be an interim arrangement.
24 After completion of the Project, the County intends to annex the area served by
25 Vineyards into CSA 32. Vineyards shall fully support and cooperate with all proceedings
26 required for annexation.

27 3. CONNECTION: Subject to the approval of grant construction funding from
28 the SWRCB, the County will construct the Project such that, upon completion,

1 Vineyards will be able to receive water service through a service connection with a
2 single meter. The County will construct the service connection with a meter and a
3 backflow preventer along San Mateo Avenue.

4 4. SERVICE: Upon completion of the Project, and provided the improved
5 system has the capacity to serve all of CSA 32 and Vineyards' customers with potable
6 water, County agrees to provide Vineyards with potable water through CSA 32. If the
7 County ceases or is unable to provide potable water to CSA 32 customers for any
8 reason, or if the SWRCB determines that the potable water supply from the Project is
9 unusable for domestic use, or well dries up completely, the County is not obligated to
10 provide water to Vineyards from any other source. Nothing in this agreement
11 guarantees any delivery of water, or delivery of any minimum volume of water, to
12 Vineyards.

13 5. DOWNSTREAM OPERATION AND MAINTENANCE: Vineyards is solely
14 responsible for the construction, operation, and maintenance of any and all connections
15 downstream of the meter and backflow preventer on its service connection, and solely
16 responsible to pay for all potable water delivered through that meter. Vineyards is solely
17 responsible for any and all billing and collection of fees or other charges for the delivery
18 of potable water to its own customers. Vineyards agrees that drinking water
19 connections within its purview shall comply with all applicable local, state, and federal
20 laws and regulations, and that Vineyards shall operate its system in compliance with all
21 applicable local, state, and federal laws and regulations.

22 6. PIPELINE OWNERSHIP: Upon completion of the Project, the
23 water delivery system to the meter at the service connection (including but not limited to
24 storage tanks, pumps, hydropneumatic tank, controllers, pipeline, and any other piece
25 of equipment that is necessary to deliver water to the meter) shall be property of the
26 County. Vineyards will retain ownership of all water service and distribution equipment
27 downstream of the meter.

28 7. USER FEES: Vineyards shall pay water service fees established by the

1 County Board of Supervisors pursuant the California Constitution, Article XIII D (also
2 known as Proposition 218). Vineyards has the rights and responsibilities of a fee payer
3 under Proposition 218 and of a customer under Title 14, Chapter 14.10, of the
4 Ordinance Code of Fresno County. Vineyards is also subject to Title 14, Chapter 14.01,
5 of the Ordinance Code of Fresno County. Vineyards may attend all CSA 32 community
6 meetings, including community meetings that inform the public of all of the Proposition
7 218 process and procedures, which is the process to increase water fees. If the water
8 fees are increased after Proposition 218 procedures, which may occur from time to time
9 due to the increase costs for ongoing operations and maintenance, the fee for
10 Vineyards will also be increased. Downstream of the meter on the master service
11 connection, Vineyards may charge its connecting customers for water service, provided
12 it does not charge more than is reasonably required to pay the County's water fees and
13 to pay for operation and maintenance of water service and distribution equipment
14 downstream of the meter.

15 8. WATER SYSTEM UPGRADES: Vineyards agrees that, as a condition of
16 connection to County's CSA 32 water system, its water distribution system downstream
17 of the meter on the service connection shall be fully functional, constructed in
18 accordance with all applicable local, state, and federal standards. Vineyards represents
19 and warrants that it will continuously maintain its water distribution downstream of the
20 meter on the master service connection in compliance with all local, state, and federal
21 requirements for domestic water delivery systems. In addition:

22 A. Permits: Vineyards will give all permissions, information, and
23 support that the County may require to obtain permits needed to complete the Project.

24 B. Easements and Access: Vineyards shall provide all easements
25 and other rights of access that the County requires to complete the Project and to
26 operate and maintain the water delivery system up through the meter on the service
27 connection.

28 9. LIMITATION OF LIABILITY: Upon connection of the new water delivery

1 system, County is responsible only for the delivery of safe, potable water to the service
2 connection.

3 10. TERM & TERMINATION: This agreement is effective upon its execution
4 by both parties, and shall remain in effect for twenty (20) years or until the County gives
5 written notice to Vineyards that its property has been annexed into the jurisdictional
6 boundaries of CSA 32, or as provided in this section 10 below.

7 The services to be provided by the County under this agreement are contingent
8 upon the approval of grant construction funding from the SWRCB and the successful
9 completion of the Project. If the SWRCB declines to provide grant construction funding
10 for the Project, the services to be provided under this agreement may be modified, or
11 the County may terminate this agreement terminated by giving Vineyards 30 days'
12 advance written notice.

13 11. NOTICES: The persons and their addresses having authority to give and
14 receive notices under this agreement are the Vineyards Contract Manager and the
15 County Contract Manager.

16 All notices between the County and Vineyards provided for or permitted under
17 this Agreement must be in writing and delivered either by personal service, by first-class
18 United States mail, by an overnight commercial courier service, or by telephonic
19 facsimile transmission. A notice delivered by personal service is effective upon service
20 to the recipient. A notice delivered by first-class United States mail is effective three
21 County business days after deposit in the United States mail, postage prepaid,
22 addressed to the recipient. A notice delivered by an overnight commercial courier
23 service is effective one County business day after deposit with the overnight commercial
24 courier service, delivery fees prepaid, with delivery instructions given for next day
25 delivery, addressed to the recipient. A notice delivered by telephonic facsimile is
26 effective when transmission to the recipient is completed (but, if such transmission is
27 completed outside of County business hours, then such delivery shall be deemed to be
28 effective at the next beginning of a County business day), provided that the sender

1 maintains a machine record of the completed transmission. For all claims arising out of
2 or related to this Agreement, nothing in this section establishes, waives, or modifies any
3 claims presentation requirements or procedures provided by law, including but not
4 limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code,
5 beginning with section 810).

6 12. HEIRS AND SUCCESSORS: This agreement shall inure to the benefit of
7 and be binding on the heirs, executors, administrators and successors of each party to
8 this agreement.

9 13. NO THIRD-PARTY BENEFICIARIES: This agreement does not and is not
10 intended to confer any rights or remedies upon any person or entity other than the
11 parties to this agreement.

12 14. SEVERABILITY: If any section or part of this agreement is found to be
13 invalid by a court of competent jurisdiction, the remainder of this agreement shall remain
14 in effect to the fullest extent allowed by law.

15 15. MODIFICATION: Any part of this agreement may be modified from time to
16 time by the written consent of both parties without, in any way, affecting the remainder.

17 16. HOLD HARMLESS: Vineyards agrees to indemnify, save, hold harmless,
18 and at County's request, defend the County, its officers, agents, and employees from any
19 and all costs and expenses, damages, liabilities, claims, and losses occurring or resulting
20 to County in connection with the performance, or failure to perform under this agreement
21 or in the delivery of potable water service downstream of the meter on the master service
22 connection by Vineyards, its officers, agents, or employees, and from any and all costs
23 and expenses, damages, liabilities, claims, and losses occurring or resulting to any
24 person, firm, or corporation who may be injured or damaged by the performance, or
25 failure to perform under this agreement or in the delivery of potable water service
26 downstream of the meter on the master service connection by Vineyards, its officers,
27 agents, or employees.

28 17. VENUE AND GOVERNING LAW: This agreement is signed and performed

1 in Fresno County, California. Vineyards consents to California jurisdiction for actions
2 arising from or related to this agreement, and, subject to the Government Claims Act, all
3 such actions must be brought and maintained in the Fresno County Superior Court. The
4 laws of the State of California govern all matters arising from or related to this
5 agreement.

6 18. AUTHORIZED SIGNATURES: Vineyards represents and warrants to the
7 County that:

8 A. Vineyards is duly authorized and empowered to sign and perform
9 its obligations under this agreement.

10 B. The individual signing this agreement on behalf of Vineyards is duly
11 authorized to do so and his or her signature on this agreement will legally bind
12 Vineyards to the terms of this agreement.

13 19. ENTIRE AGREEMENT: Subject to Vineyards' obligation to pay the water
14 fees to be established by the Board of Supervisors as provided in section 8 of this
15 agreement, this instrument constitutes the entire agreement between Vineyards and
16 County with respect to the subject matter of this agreement, and it supersedes all previous
17 negotiations, proposals, commitments, writings, advertisements, publications, and
18 understanding of any nature whatsoever unless those things are expressly included in this
19 agreement.

20 20. CONSTRUCTION: This agreement is the result of the parties' combined
21 efforts. If anything in this agreement is found by a court of competent jurisdiction to be
22 ambiguous, that ambiguity is to be resolved by construing the terms of this agreement
23 according to their generally accepted meaning, and not by construing the terms of this
24 agreement for or against either party.

25 21. HEADINGS: The headings and section titles in this agreement are for
26 convenience only and are not part of this agreement.

27 22. COUNTERPARTS: This agreement may be signed in counterparts, each of
28 which is an original, and all of which together constitute this agreement.

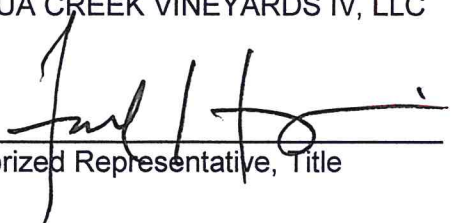
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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

COUNTY OF FRESNO


CANTUA CREEK VINEYARDS IV, LLC

APPROVED:

BY: 
Authorized Representative, Title

BY: 
STEVEN E. WHITE, DIRECTOR
DEPT. OF PUBLIC WORKS AND PLANNING

APPROVED AS TO ACCOUNTING FORM:

BY: 
OSCAR J. GARCIA, CPA, AUDITOR-CONTROLLER/
TREASURER-TAX COLLECTOR

APPROVED AS TO LEGAL FORM:

BY:  Deputy
DANIEL CEDERBORG, COUNTY COUNSEL

FUND 0820
SUBCLASS 16000
ORG 9172
ACCOUNT 5060