

**Agreement Between the County of Yolo and Tri-City Water and Farm, LLC  
Regarding Conaway Ranch**

This Agreement is entered into as of December \_\_\_\_, 2010 by and between Tri-City Water and Farm, LLC and the County of Yolo (“County”).

**RECITALS**

WHEREAS, Yolo County (sometimes referred to herein as “County”) has maintained a consistent policy position that the Conaway Ranch should maintain and, to the extent possible, enhance its agricultural land use base and should continue to contribute to the agricultural economy of Yolo County; and

WHEREAS, consistent with this policy, the County has indicated that other non-agricultural activities on Conaway Ranch, including the development and restoration of fish and wildlife habitat, should be undertaken in a manner that protects Conaway Ranch’s agricultural base; and

WHEREAS, also consistent with this policy, the County has sought to protect valuable water rights owned by Conaway Ranch, so that those rights can be available and exercised for agricultural and other purposes on Conaway Ranch with any surplus water made available first for in-County use, such as for potable water use by the cities of Woodland and Davis, and then for use elsewhere, as appropriate; and

WHEREAS, the County also has established a policy supportive of the conjunctive use of surface water and groundwater as a means of protecting the County’s general interests in assuring adequate water supplies for use in Yolo County and, more specifically, Conaway Ranch’s total water resource, including the maintenance of the safe yield in relevant groundwater basins; and

WHEREAS, the County recognizes that Conaway Ranch is privately owned and as such, has certain property and other legal rights guaranteed to it under local, state and federal law; and

WHEREAS, the County recognizes and acknowledges the importance of its role in helping to preserve and restore salmon and other native fish habitat and fisheries within Yolo County and the Sacramento-San Joaquin River Delta, alongside its role to preserve the habitat for giant garter snake, Swainson’s hawk, tri-colored blackbird and other terrestrial species, all in concert with preserving a strong agricultural industry; and

WHEREAS, accomplishing these policy goals and also respecting such property and legal rights includes a consideration of a number of potentially competing factors and various infrastructure costs, including but not limited to needed upgrades to the Conaway Ranch intake facility (including the installation of new screens), the continued agricultural use of the property, the costs of easements for the delivery of municipal water supply, and cooperation with affected public agencies to enhance flood protection for the City of Woodland and Yolo County; and

WHEREAS, Tri-City Water and Farm, LLC (“Tri-City”) has entered into an agreement to acquire a majority interest in Conaway Preservation Group (“CPG”), the owner of Conaway Ranch, and Tri-City, in anticipation of its acquisition of a majority interest in CPG, agrees with and desires that CPG assist Yolo County in the accomplishment of these aforementioned policy goals; and

WHEREAS, Tri-City and Yolo County also agree that the best way to facilitate and accomplish these policy goals is to integrate the various possible land uses available at Conaway Ranch in order to allow those integrated activities to be undertaken in a manner that is consistent, to the extent feasible, with the policies outlined above, while reducing the costs associated with each of them; and

WHEREAS, CPG and Yolo County have previously entered into an agreement dealing with these policy issues: Conaway Ranch Settlement Agreement dated September 7, 2006, and adopted pursuant to a Judgment entered on July 8, 2004, in *Board of Supervisors of County of Yolo v. Conaway Conservation Group*, Superior Court, Yolo County, Case No. ED04-1032 (“Settlement Agreement”). This Agreement is intended to enable Tri-City (should it acquire a majority interest in CPG) and the County to implement and build upon the Settlement Agreement; and

WHEREAS, the County has adopted Ordinance No. 1401 (“Ordinance”) which is “An Ordinance of the Yolo County Board of Supervisors Imposing a Temporary Moratorium on Certain Habitat Projects and Related Activities,” and the Parties have some disagreement on the effect that the moratorium established by the Ordinance (the “Moratorium”) may have on the rights, benefits and burdens that exist in light of the Settlement Agreement; and

WHEREAS, Tri-City and the County, subject to Section 16 hereof, prefer to avoid confrontation over these disagreements and instead, should Tri-City acquire the majority interest in CPG, desire to work together constructively to implement the Settlement Agreement consistent with the Moratorium. This Agreement is intended to, among other things, clarify as between Yolo County and Tri-City, that the Settlement Agreement and this Agreement collectively satisfy the “exemption” provisions of the Ordinance; and

WHEREAS, Tri-City has not yet acquired a majority interest in CPG. Therefore, all references in this Agreement to CPG are intended to bind CPG only if Tri-City acquires a controlling interest in CPG.

NOW, THEREFORE, in consideration of the foregoing, the parties hereby agree as follows:

**AGREEMENT**

1. Covered Water Transfers. This Agreement relates to two water transfers proposed by CPG, as follows:

- A. The transfer of up to 80,000 acre feet of surface water to the Metropolitan Water District (“MWD”) or one or more other out-of-county purchasers. This is the maximum total amount that can be transferred through 2033 under this provision, and annual transfers to MWD or other out-of-county purchasers cannot exceed 13,500 acre feet. In addition, once the Cities of Woodland and Davis (the “Cities”) begin taking up to 10,000 acre-feet of surface water annually from CPG (covered by a separate agreement to which the County is not a party), the combined transfers to MWD or other out-of-county purchasers and the Cities cannot exceed 13,500 acre feet each year under this provision.
- B. The transfer of up to 10,000 acre feet of surface water annually to the Cities from about 2016 through 2039, with the Cities acquiring water rights in 2039 that would enable continued transfers of up to 10,000 acre feet annually thereafter.

Other water transfers are beyond the scope of this Agreement and shall be governed by the Settlement Agreement and any other applicable authorities. The County agrees that provisions of the Settlement Agreement requiring advance notice to the County of a proposed water transfer shall be deemed satisfied by this Agreement as to the transfers described in subsections A and B, above.

2. Covered Easement Transactions. This Agreement also concerns certain conservation easement transactions proposed by CPG, as follows:

- A. The sale of a conservation easement of not more than 4,000 acres to the State of California or other third party in approximately the location shown on **Exhibit A**. Presently, the parties expect that most of the land included within the easement will eventually be restored to seasonal floodplain habitat within the Yolo Bypass in connection with the Bay Delta Conservation Plan or similar proposals.
- B. The sale of additional conservation easement acreage to the State of California or other third party in other locations on the Conaway Ranch (as yet undetermined), not to exceed 1,000 acres for giant garter snake and another 1,000 acres for the Swainson’s hawk. These additional easements are expected to be compatible with the continued agricultural use of the lands covered by the easements, and no significant change in crop types or other agricultural practices is anticipated to result.

Other conservation easement transactions, though not currently proposed, are nonetheless covered by Section 13 (Additional Conservation Easements) of this Agreement, below, which sets forth the conditions for proceeding with such transactions.

3. Groundwater Management. Tri-City has represented that the water transfers described in Section 1.A-B will not cause fallowing or otherwise significantly reduce the agricultural base of the Conaway Ranch as generally reflected in the crop acreage data for 1990-2010 that is included in **Exhibit B** hereto. In particular, the annual cultivation of about 12,000 acres (typically consisting of about 8,000 acres of rice and about 4,000 acres of row crops) is

expected to continue during the term of the transfers, though the parties recognize that market factors will cause annual variations in crop selection and the location of farmed acreage may vary from year to year. This is because agricultural operations on the Conaway Ranch can, to the extent necessary, rely on additional groundwater pumping to offset the transfers of surface water.

The EIR for the Davis-Woodland Water Supply Project examined this scenario and concluded that the substantial reduction (or elimination) of groundwater pumping by the Cities of Davis and Woodland would eliminate any potential for adverse impacts on the groundwater basin(s) and aquifer(s) associated with additional groundwater use on the Conaway Ranch. Both parties anticipate that the Cities will substantially reduce or eliminate their dependence on groundwater once they begin receiving surface water deliveries from an intake to be constructed on the Conaway Ranch. The EIR also precludes water transfers from Conaway Ranch to the Cities if fallowing would result. Nonetheless, in addition to the requirements set forth in the Settlement Agreement with regard to groundwater management, Tri-City commits to the following measures upon its acquisition of a majority interest in CPG:

- A. To ensure that CPG participates on a regular and timely basis in the groundwater monitoring program administered by the Water Resources Association of Yolo County (the "WRA"). This shall include, but is not limited to, providing groundwater monitoring data in a time and manner consistent with the provision of data by other program participants, as well as otherwise cooperating in good faith with the information-gathering and related efforts of the WRA with respect to the groundwater basin(s) or aquifer(s) underlying Conaway Ranch.
- B. To provide the County with at least 45 days advance notice (unless reduced with the County's consent, which shall not be unreasonably withheld) and an opportunity to comment prior to installing a new groundwater well within the boundaries of the Conaway Ranch. The County's comments may, among other things, encourage the placement of wells in locations where they will not impact the Sacramento River or the operations of the Yolo County Flood Control and Water Conservation District ("YCFCWCD").
- C. To participate in the conjunctive use project that is being implemented by the YCFCWCD, assuming such participation is feasible in the reasonable judgment of CPG. As used herein, the term "feasible" shall have the same meaning as set forth in CEQA Guidelines Section 15364, which states: "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.
- D. To provide the County Agricultural Commissioner reasonable access to information relating to cropping patterns, fallowing, and other related aspects of agriculture on the Conaway Ranch for the purpose of verifying that market factors, rather than water transfers, are the cause of any significant changes (in

comparison with the baseline data shown in Exhibit B) in cropping patterns and the overall number of acres farmed.

4. Out-of-County Water Transfer Fee. The transfer of surface water as described briefly in Section 1.A, above, including all individual transfers to MWD or another out-of-county purchaser pursuant to that provision, shall be addressed in accordance with Section 4.D of the Settlement Agreement (Long Term Transfers). In lieu of exercising its rights under Section 4.D of the Settlement Agreement, however, the County may instead elect to receive a payment equal to 7.5% of the net proceeds of each individual transfer to MWD or such other out-of-county purchaser(s). Such payments shall be made within 30 days after CPG receives payment from the purchaser for a completed water transfer. The County shall advise CPG of its election within a reasonable time of receiving notice that a transfer to MWD is contemplated, which notice shall be given by CPG at the earliest reasonable opportunity.

5. Fluoridation. Following its acquisition by Tri-City, CPG will support the inclusion of equipment necessary to allow for the provision of water fluoridation in the design and construction of the Davis-Woodland Water Supply Project.

6. Conservation Easements. While the Conaway Ranch is of vital importance to the agricultural industry of the County, it also contains significant biological resources and other attributes that make it an essential part of any strategy for addressing the collapse of many salmonids and other native fish populations. The parties thus recognize and agree that portions of the Conaway Ranch lying within the Yolo Bypass are likely to be a significant element of any seasonal floodplain habitat project that is implemented pursuant to the Bay Delta Conservation Plan (“BDCP”) or similar efforts. In the context of these mutual understandings, the parties agree to the following:

- A. *Fundamental Objective.* The parties agree that any habitat project implemented within the easement briefly described in Section 2.A, above, should proceed in a manner that, to the extent feasible taking into consideration the competing factors described in the seventh Recital to this Agreement, is compatible with existing agriculture, terrestrial species habitat, salmonids and other native fish species, recreational activities (including but not limited to recreational and educational programs within the Yolo Bypass Wildlife Area), the flood protection function of the Yolo Bypass, and the Yolo Natural Heritage Program. This is a fundamental objective of both parties to this Agreement, and it is intended to guide future cooperative efforts with regard to the proposed conservation easement and the planning, design, and operation of related habitat projects.
- B. *County Role.* With regard to the conservation easement transactions briefly described in Section 2.A-B, above, as well as related efforts (e.g., the BDCP) that involve the planning, design, operation, or other aspects of subsequent habitat projects, following its acquisition of a majority interest in CPG, Tri-City commits that CPG will use its best efforts to provide meaningful opportunities for the County to raise and advance the fundamental objective described in subsection A with the State of California (in particular, the California Department of Fish and

Game). In addition, Tri-City will support the County in such efforts with the State of California and any other applicable agency or interest group.

Consistent with this commitment, among other things, CPG will afford the County an opportunity to review and comment on provisions in easements and any related agreements with the State, and will duly consider all County comments thereon in good faith. It will also request that the County be identified as a third party beneficiary of any easement or contractual provisions relating to County participation in such matters. In addition, CPG will request that the County be identified as a third party beneficiary of the easements with the right to enforce other provisions thereof (for example, to institute an action in the event that floodplain habitat is neglected in a manner that violates easement terms).

In connection with the foregoing, within thirty days after its acquisition of a majority interest in CPG, Tri-City will ensure that CPG designates a knowledgeable, high-level employee or consultant to coordinate regularly with the County on the commitments of the parties set forth in this Section. The designated individual shall, among other things, work with County staff and consultants to identify and pursue opportunities for advancing these commitments, such as meetings with State agency staff to discuss easement terms or project planning, design, and operation. To support substantial involvement by the County in such matters, Tri-City will also ensure that CPG reimburses the County's reasonable staff or consultant costs and related expenses. The amount of such reimbursement shall not exceed \$100,000 in total, and no more than \$5,000 may be reimbursed in any given month (additional amounts may be carried forward to subsequent months).

- C. *Alternative Projects.* Consistent with the fundamental objective of the parties expressed in subsection A, above, the parties agree that full consideration of alternative means of establishing seasonal floodplain habitat in the Yolo Bypass to benefit salmonids and other native fish species is very important. The parties do not intend for the sale of conservation easements to the State of California in accordance with Section 2.A-B, above, to foreclose or impair the full consideration of different means of establishing such habitat (e.g., the Westside Yolo Bypass Management Option as an alternative to operable gates on the Fremont Weir), nor do they intend for it to preclude a later decision against such a project altogether. Moreover, in entering into this Agreement, the County has been assured by an authorized representative of the California Department of Fish and Game that the proposed purchase of conservation easements is not determinative of the planning, design, or operation of any habitat conservation project(s) that may later proceed.

7. Westside Option. The “Westside Yolo Bypass Management Option” (“Westside Option”), as described in a paper published by the Yolo Basin Foundation released on or about August 25, 2010, is an alternative for conveying additional water into the Yolo Bypass that may

assist in achieving the fundamental objective described in Section 6.A, above. In connection with the Westside Option, Tri-City makes the following commitments:

- A. The November 18, 2010 draft of the BDCP provides for consideration of the Westside Option in the development of a “Yolo Bypass Fisheries Enhancement Plan” (“YBFEP”). Tri-City commits to assist the County in efforts to obtain \$200,000 for surveying, modeling, fisheries studies, and related work necessary to further develop the Westside Option for meaningful consideration as part of the YBFEP. The parties will endeavor to obtain such funding from the State of California or other agencies participating in the BDCP, and the parties agree that the State and/or other agencies are properly responsible for funding this work.

In the event such funding is not received within six months of the full execution of this Agreement, however, Tri-City agrees to provide such funding to the County for said purpose within 30 days after the expiration of the six month period. Any unused funds shall be returned to Tri-City within 18 months, and the County shall provide Tri-City with invoices and other documentation reflecting all expenditures. This will be treated as a no-interest loan. It will be promptly repaid to Tri-City after the County receives funding from the State or other agencies specifically for the activities described in this subsection, which the County will continue to use its best efforts to obtain. However, if the County does not receive such funding from other entities within five years of the execution of this Agreement, the loan will be forgiven. Any funding received by the County pursuant to its July 27, 2010 Memorandum of Understanding with the California Natural Resources Agency shall not be considered in connection with the respective rights and obligations of the parties hereunder.

- B. Tri-City will ensure CPG’s cooperation in the future development and implementation of the Westside Option if it is included in a final habitat project within the Bypass by working in good faith to identify appropriate infrastructure locations, changes in water management, and other activities needed to implement the Westside Option. This does not obligate CPG to dedicate land free of charge or otherwise bear design or implementation costs for such Option except as may be otherwise agreed upon by the parties hereto.

8. Pacific Flyway Center. Within one year of the full execution of this Agreement, Tri-City will dedicate at no cost a site of five acres or less that is owned or controlled by itself or an entity affiliated with Tri-City and its members and, in addition, that is acceptable to the County, the California Department of Fish & Game, and the Yolo Basin Foundation for the Pacific Flyway Center. The parties to this Agreement will work cooperatively with CDFG and the Yolo Basin Foundation to identify a suitable site and prepare the documents necessary to carry out the dedication. In addition, the parties will cooperate in efforts to secure grant or other funding for the construction of improvements on the dedicated site.

As an alternative to the foregoing, in its sole discretion, the Yolo Basin Foundation may elect to accept an access easement, donation, or other contribution from CPG that is equivalent in

value to a five-acre site. Such easement, donation, or other contribution shall be used exclusively to acquire land for, construct, or operate the Pacific Flyway Center.

9. Yolo Natural Heritage Program. The Conaway Ranch contains habitat that supports populations of several species anticipated to be covered by the Yolo Natural Heritage Program, a Habitat Conservation Plan and Natural Communities Conservation Plan ("HCP/NCCP") effort that is being developed pursuant to state and federal law. Such species include, but are not limited to, the giant garter snake, tri-colored blackbird, and Swainson's hawk. Tri-City desires to cooperate with the Yolo Natural Heritage Program in its efforts to successfully complete and implement its HCP/NCCP. It therefore agrees that CPG, upon Tri-City's acquisition of a majority interest therein, will do the following in coordination with the County and the Yolo Natural Heritage Program:

- A. CPG will develop and implement a "giant garter snake friendly" farming plan. Among other things, this plan will identify areas of the Conaway Ranch that include suitable giant garter snake habitat, describe feasible measures to protect and enhance such habitat in a manner that is generally compatible with existing agricultural practices, and prescribe the means by which such measures will be implemented.
- B. CPG will develop and implement a plan for preserving and enhancing suitable nesting areas for tri-colored blackbirds on the Conaway Ranch. This plan will identify and provide for the implementation of feasible farming and other land management activities that help serve the nesting and foraging needs of tri-colored blackbirds.
- C. In furtherance of the foregoing, CPG will work with the County and the Yolo Natural Heritage Program to obtain funding, subject to subsection E, below, from the State of California for the permanent preservation (through conservation easements or similar mechanisms) of habitat on the Conaway Ranch for the giant garter snake, tri-colored blackbird, and other species included in the Yolo Natural Heritage Program. The parties anticipate that, among other things, these efforts will focus on permanently preserving important giant garter snake and tri-colored blackbird habitat areas within the Conaway Ranch that are identified through the efforts described in subsections A and B, above. These efforts may also focus on permanent preservation of Swainson's hawk foraging habitat within the Conaway Ranch. The County and CPG shall make reasonable efforts to provide that upon CPG's receipt of compensation satisfactory to CPG from the State of California (or another conservation entity) in return for such permanent preservation, Yolo Natural Heritage Program will receive "credit" in its reasonable judgment towards satisfaction of its permit requirements from CDFG and/or the United States Fish and Wildlife Service for such preservation in connection with the implementation of its HCP/NCCP. The receipt of such "credit" by Yolo National Heritage Program shall not work to diminish the value of the conservation easement or similar mechanism to CPG

- D. Presently, the Yolo Natural Heritage Program expects regulatory approval of its HCP/NCCP sometime in 2012. Tri-City has expressed a desire to assist the Yolo Natural Heritage Program in its efforts to obtain state funding for staffing and related costs associated with the "start-up" phase of the HCP/NCCP following its approval. Accordingly, following its acquisition of a majority interest in CPG, Tri-City will ensure that CPG supports these efforts to the extent that the Yolo Natural Heritage Program reasonably requests its assistance.
  
- E. California Fish and Game Code Section \_\_\_\_\_ reserves \$24 million for Natural Communities Conservation Plans that cover areas within the statutory Delta. The Yolo Natural Heritage Program intends to seek funding under Section \_\_\_\_\_ for implementation of its HCP/NCCP following the approval thereof. It strongly prefers a separate source of state funding, however, for the preservation and other activities described in subsections C and D, above. The parties agree to respect this preference in carrying out the cooperative efforts described in those subsections unless the Yolo Natural Heritage Program requests otherwise.

10. Conaway Ranch Management Plan: Public Access. Tri-City has expressed an interest in developing a Management Plan for the Conaway Ranch following its acquisition of a majority interest in CPG. The County supports this effort and, in addition, believes that the Management Plan should identify and provide for public recreational opportunities on the Conaway Ranch that are compatible with agricultural operations, habitat management, and other matters. By way of example, and without limitation, such opportunities may include hiking, birdwatching, and other forms of passive public recreation in suitable locations, as well as the development of limited visitor infrastructure (e.g., trails, turnouts, viewing platforms) that is reasonably necessary to facilitate such opportunities.

Tri-City agrees that the Management Plan should address these matters and commits to ensure this outcome following its acquisition of a majority interest in CPG. Preparation of the Management Plan will start no later than January 2012, and will be completed by August 2013. Provisions relating to public access and recreation will be developed in coordination with the County and other agencies and organizations that the parties may mutually agree to include in the planning process. The Management Plan shall include a discussion of alternatives for financing and administering the long-term management of public access to the Conaway Ranch, including but not limited to the creation of a limited purpose conservancy or similar non-profit organization. Nothing in this Section 10 shall be construed as a dedication for public use and therefore any and all public access will be revocable by CPG in its discretion at any time, provided said discretion is exercised in a manner that is consistent with the provisions of the approved Management Plan.

To support substantial involvement by the County in the development of these provisions and any later monitoring of the implementation thereof, CPG agrees to reimburse the County's reasonable staff or consultant costs and related expenses. The amount of such reimbursement shall not exceed \$150,000 in total. Before or upon the commencement of the Management Plan process, Tri-City will ensure that CPG deposits this sum in a manner satisfactory to the County in an account that can be drawn upon by the County for this purpose.

11. Local Government Fiscal Issues. CPG will, upon Tri-City's acquisition of a majority interest therein, take the following actions to preserve and protect local government tax revenues:

- A. For lands included within the easements briefly described in Section 2.A-B, above, in addition to all property taxes otherwise due in accordance with California law, CPG will annually pay an amount equal to the difference (if any) between (i) the County's share of Market Rate Taxes (as defined below) on the lands covered by the conservation easements and (ii) the tax receipts that the County actually collects for such lands. CPG shall only be required to pay the difference if the County's share of Market Rate Taxes on the lands within those easements is higher than the tax receipts that the County actually collects for the those lands.

The County's share of Market Rate Taxes shall be calculated as the County's portion of property taxes in each tax rate area covering the easements, presently estimated to be between 0.16% and 0.19%, of the assessed value (taking into account the existence of any Williamson Act contracts and other factors properly considered under California law) of the lands within the easements as of the date of Tri-City's acquisition of a controlling interest in CPG, with annual upward or downward adjustments as would be applied by the Yolo County Assessor in accordance with California law on like agricultural land in the County. For purposes of this Section, the assessed value of such lands shall be determined by the Yolo County Assessor based on the estimated sale value of a fee simple interest in those lands prior to the conveyance of the conservation easements, again, subject to the effect of Williamson Act Contracts and any other factors properly considered under California law, where applicable.

Altogether, the purpose of this subsection A is to ensure that the County is made whole in the event of any reduction in County property tax revenues due to the conservation easements. This Section 11.A should be construed to apply only to taxes received by the County and shall not be applied to any taxes or assessments received by any other governmental agency.

- B. In the event that CPG later desires to voluntarily convey to the State or federal government (or agency thereof) fee title to any lands within the easements briefly described in Sections 2.A-B, above, it will ensure that an appropriate, enforceable commitment for the continued payment of all local property taxes, fees, and assessments will be created concurrently with the transfer as if such lands remained in private ownership. This may take the form of a contractual commitment by CPG and its successors to pay such sums or, alternatively, an endowment or similar mechanism to ensure payments in lieu of taxes, assessments, and fees. This section shall not apply if the State or Federal Government utilizes its eminent domain powers to acquire any such fee interest.

- C. Tri-City understands that the State of California presently owes the County over \$1 million for past due payments in lieu of taxes for lands included within the Yolo Bypass Wildlife Area. Following its acquisition of a majority interest in CPG, Tri-City commits that CPG will, if reasonably requested by County, cooperate in good faith with the County in its efforts to secure payment from the State of all past due and future in lieu payments.

12. Railroad Relocation Easements. Consistent with commitments made by CPG in separate agreements involving the Cities of Woodland and Davis, Tri-City agrees that after its acquisition of a majority interest in CPG, it will cooperate, in good faith, with Woodland with respect to the relocation of railroad tracks operated by Sierra Northern Railway for a period of ten years following the “Closing,” as defined in those agreements. This includes the following specific matters:

- A. *Relocation of Railroad Tracks*. Sierra Northern Railway, a California corporation (“SNR”), has railroad tracks near the Conaway Ranch which extend into land owned by Woodland. Woodland would like SNR to relocate the railroad tracks in a manner which reduces the impact on street traffic in Woodland and in order for that to occur, the relocated tracks may include replacement railroad tracks through the Conaway Ranch.

Subject to the provisions of subsection B, below, CPG agrees to cooperate, in good faith, with Woodland’s reasonable efforts to have SNR relocate its railroad tracks by providing necessary right of way and construction easements to SNR for the relocated railroad tracks, to the extent they are placed on the Conaway Ranch. These easements will be granted, if at all, without payment from SNR to CPG so long as (1) CPG does not incur any direct costs in connection with the grant of such easements; (2) SNR bears all costs and expenses associated with such easements; and (3) SNR complies with the provisions of subsection C, below.

- B. *Impact on Conaway Ranch*. CPG shall not be obligated to grant any of the easements described in subsection A, above, if in the exercise of CPG’s good faith business judgment, supported by substantial evidence of the same, such easement would have a material negative impact on the operation of Conaway Ranch, or the marketability of the crops grown on Conaway Ranch as a whole. If CPG determines not to grant any of the easements described in subsection A, above, for the reasons stated in this subsection B (a “**Determination of Adverse Impact**”), then CPG shall provide written notice of such determination and the reasons therefore within thirty (30) days of CPG’s receipt of the written request for the grant of such easement. The County, Woodland, or any combination thereof, may request a meeting to discuss CPG’s concerns and if the Determination of Adverse Impact is not resolved at such meeting then the parties shall participate in non-binding mediation to resolve CPG’s concerns before a mediator mutually agreeable to the parties. Each party agrees to attend and participate in such mediation, using their good faith efforts to resolve any such

concerns. Each party agrees to pay a proportionate share of the cost of any such mediation.

- C. Easement Configuration. All easements described in this Section shall be in alignments and configurations that are reasonably approved by CPG, which approval shall not be unreasonably withheld, delayed or conditioned.
- D. Terms Applicable to Easements Granted Pursuant to this Section. The following provisions shall be applicable to each and every easement granted pursuant to this Section:
- (1) Diligent Construction. Once the grantee of such easement commences construction of the improvements to be located within such easement, such grantee shall diligently prosecute the construction of such improvements through completion.
  - (2) Compliance with Applicable Laws. The grantee of such easement shall, at its own expense, comply with all laws applicable to the construction and operation of the improvements constructed in and the use of such easement.
  - (3) Notice; Coordination. The grantee of such easement and CPG shall cooperate in all reasonable respects to minimize the adverse impact on ranch operations (i.e., ongoing farming operations and in-season hunting) resulting from such grantee's exercise of its rights under its Easement. In that regard, the grantee shall, to the extent reasonably practicable: (i) give CPG written notice of its intention to construct or replace the railway line, and the portions of Conaway Ranch affected, sufficiently far in advance of the farming season to enable CPG to avoid or minimize planting in the areas to be affected by such grantee's activities ("Notice of Construction"); (ii) plan its construction activities for times which will not adversely impact Ranch Operations; (iii) minimize any damage to crops located on CPG's property; and (iv) confine its activities to a single farming season. CPG shall, to the extent reasonably possible, avoid planting in those areas identified in Notice of Construction given by such grantee.
  - (4) Crop Related Damages. The parties recognize that, notwithstanding efforts under subsection (3), above: (i) damages to crops may occur as the result of the activities of the holder of a particular easement ("Easement Holder") or its employees, agents, representatives, contractors, consultants, guests and/or invitees (collectively "Easement Holder Related Parties") and (ii) the tenant farming the portion of Conaway Ranch where such crop damage occurs is entitled to damages as the result of the breach of such tenant's written agreement with CPG (collectively, "Crop Related Damages"). If such Crop Related Damages do occur, the applicable Easement Holder shall be solely responsible for all such Crop Related

Damages caused by such easement Holder or Easement Holder's Related Parties.

Notwithstanding the foregoing, no grantee shall be responsible for any Crop Related Damages for any crops planted during the same farming season in the area identified in the Notice of Construction. Notices of Construction shall be given only when major construction or replacement is planned for the upcoming farming season. The applicable Easement Holder shall be responsible for Crop Related Damages sustained as the result of any maintenance and repair undertaken by such Easement Holder.

- (5) Restoration. Promptly following the completion of the improvements constructed within any construction easements, the Easement Holder shall restore, to farmable condition, the surface of that portion of Conaway Ranch affected by such construction; except that such restoration shall not include matters that obstruct the Easement Areas or interfere with the use of the Easements. To the extent reasonably possible, the Easement Holder shall keep farm fences and gates in place during construction (or use temporary fencing and gates in their place), and shall promptly restore the same after construction is complete. Notwithstanding the foregoing, however, SNR shall not be obligated to restore that portion of the Conaway Ranch upon which it locates levees pursuant to subsection A, above.

13. *Additional Conservation Easements*. As recited above, the County has adopted a moratorium on certain habitat projects that is in effect at the time of execution of this Agreement. The County intends to later adopt a use permit (or similar) ordinance covering certain habitat projects. As also recited above, the parties disagree on the effect that the moratorium and any later ordinance may have on the rights, benefits and burdens that exist in light of the Settlement Agreement.

Accordingly, without any waiver of the rights that either party contends it has with respect to this matter, CPG (following its acquisition by Tri-City) will engage in a "meet and confer" process with the County if it later seeks to record additional habitat conservation easements on the Conaway Ranch. Through this process the parties will each work in good faith to resolve their disagreements and arrive at a mutually acceptable resolution. If that process does not lead to such a resolution, then either party may assert its respective rights under the Settlement Agreement, including but not limited to initiation of the dispute resolution process described in Section 17 of the Settlement Agreement.

14. Legal Effect. This Agreement is intended to be legally binding on Tri-City and Yolo County, subject only to Tri-City acquiring a majority interest in CPG. In the event Tri-City fails to acquire a majority interest in CPG within 90 days following the mutual execution of this Agreement by the parties hereto, this Agreement shall automatically terminate and the parties hereunder shall be released from any and all obligations hereunder.

Nothing in this Agreement shall be construed to waive or diminish the County's rights under the California Environmental Quality Act or any other law to comment upon, dispute, or otherwise challenge actions that may later be undertaken by third parties (with the exception of CPG) to carry out the water transfer and easement transactions briefly described in Sections 1 and 2, above.

15. Additional Documents and Actions. Yolo County and Tri-City agree to execute and deliver such instruments and documents and to diligently undertake such actions as may be reasonably requested by the other party in order to implement the provisions of this Agreement. This is expected to include the preparation of a recorded instrument sufficient to ensure that the obligations herein are binding on future purchasers and/or other successors in interest to CPG following Tri-City's acquisition of a majority interest therein.

16. Effect on Settlement Agreement. The purpose of this Agreement is to enable Tri-City (should it acquire a majority interest in CPG) and the County to implement and build upon the Settlement Agreement. Except as expressly stated herein, nothing contained in this Agreement is intended to be inconsistent with or alter the Settlement Agreement or waive any of the parties' rights or obligations thereunder. The parties agree that except as to the transactions specifically described herein, there shall be a tolling of any statute of limitations during the term of this Agreement with respect to any of the parties' claims relative to challenging the Moratorium or other claims asserted under the Settlement Agreement. In the event of any conflict between the terms of this Agreement and the Settlement Agreement, the terms of the Settlement Agreement shall control as to any matters not specifically addressed herein.

17. Effect on County Habitat Project Moratorium; Other Laws. Upon its full execution, in connection only with the conservation easements described in Section 2.A-B, above, this Agreement shall exempt CPG from the existing moratorium on certain habitat projects.

18. Amendments. Modifications or amendments to the terms of this Agreement shall be in writing and executed by both parties.

19. Notices. All notices, letters, and other communications under this Agreement from one party to the other will be mailed, first class, or hand delivered, or via facsimile followed by delivery of the original documents to the address shown. Either party may change its address at any time by providing written notification to the other party.

If to Tri-City or CPG:

Conaway Preservation Group, LLC  
7700 College Town Drive, Suite 101  
Sacramento, CA 95826  
Attention: Kyriakos Tsakopoulos  
Telephone: (916) 383-2500  
Facsimile: (916) 383-0522

With a copy to:

Hefner Stark & Marois  
2150 River Plaza Drive, Suite 450  
Sacramento, CA 95833  
Attention: Timothy D. Taron, Esq.  
Telephone: (916) 925-6620  
Facsimile: (916) 925-1127

If to the County of Yolo:

Robyn Truitt Drivon  
Office of the County Counsel, County of Yolo  
625 Court Street, Room 201  
Woodland, CA 95695  
Tel: (530) 666-8172  
Fax: (530) 666-8279

No change of address shall be binding upon the other party hereto until such party receives, at the address shown herein, written notice thereof. All notices shall be in English and shall be effective upon receipt.

20. No Business Relationship. Nothing contained in this Agreement shall be construed to constitute the parties as partners, joint venturers, co-owners, agents or otherwise as participants in a joint or common undertaking.

21. Jurisdiction. Any lawsuit, action, or other proceeding arising from this Agreement shall be brought in a California state court located in either the County of Sacramento or the County of Yolo, California, as appropriate under State law.

22. Successors and Assigns. This Agreement may be assigned with the consent of the other party. It shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. No assignment or delegation of the obligation to make any payment or reimbursement hereunder will release the assigning party without the prior consent of the other party, which shall not be unreasonably withheld.

23. Severability. If any provision of this Agreement is deemed invalid or unenforceable, the balance of this Agreement shall remain in full force and effect; provided that if any material obligation or benefit under this Agreement is deemed invalid or unenforceable, the parties shall negotiate in good faith to amend the Agreement to ensure adequate consideration by both parties.

24. Integration. This Agreement constitutes the entire understanding among the parties pertaining to the subject matter hereof and supersedes all prior understandings and representations of the parties with respect to the subject matter hereof. Any representation, promise, or condition not incorporated into this Agreement shall not be binding on any party.

25. CPG. If Tri-City acquires a majority interest in CPG, Tri-City shall cause CPG to promptly execute this Agreement in the space indicated below. From and after execution of this Agreement by CPG, with the exception of the commitments set forth in Section 8 (Pacific Flyway Center), above, CPG shall be substituted for Tri-City for all purposes under this Agreement, Tri-City will no longer be a party to this Agreement and Tri-City will no longer have any rights or liability under this Agreement.

IN WITNESS WHEREOF, the parties hereto enter into this Agreement as of the date first set forth above.

**Tri-City Water and Farm, LLC,**  
a Delaware limited liability company

**County of Yolo**

By: \_\_\_\_\_

By: \_\_\_\_\_

Helen M. Thomson, Chairwoman  
Yolo County Board of Supervisors

Name: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST:  
Julie Dachtler, Deputy Clerk  
Board of Supervisors

Date: \_\_\_\_\_

**Conaway Preservation Group, LLC,**  
a California limited liability company

By: \_\_\_\_\_  
Deputy (Seal)

By: Tri-City Water and Farm, LLC,  
a Delaware limited liability company,  
Its: Authorized Member

APPROVED AS TO FORM:  
Robyn Truitt Drivon, County Counsel

By: \_\_\_\_\_

By: \_\_\_\_\_  
Philip J. Pogledich, Senior Deputy

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_