

AGREEMENT TO JOIN FRIANT WATER AUTHORITY

THIS AGREEMENT, made effective this 1st day of February, 2014, by and between CITY OF FRESNO ("CITY") and FRIANT WATER AUTHORITY ("FWA"), is made in light of the following:

RECITALS

- A. On January 19, 2004, FWA was formed as a joint powers authority pursuant to California Government Code Section 6500 et seq., by the execution of a joint powers agreement ("JPA") by and between various irrigation districts and other water-related entities, a copy of which document is attached hereto as Exhibit B, which has been amended in order to delete member agencies and add member agencies;
- B. CITY is a municipal corporation duly organized and existing in Fresno County under the laws of the State of California;
- C. CITY has been authorized to join FWA as both a General Member and an O&M Project Member, as those terms are defined in the JPA;
- D. By a vote held at a duly-called meeting of the Board of Directors of FWA, directors representing at least 75% of the FWA Board of Directors approved the admission of CITY as both a General Member and an O&M Project Member of FWA;
- E. Section 6.02 of the JPA provides, in pertinent part, that prior to becoming a member of FWA, a party must execute an agreement to be bound by the terms of the JPA as if such party had been an original signatory thereto; and
- F. The City Council of CITY has authorized its City Manager to sign the requisite agreement for CITY to become both a General Member and an O&M Project Member of FWA,

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. **Admission of CITY.** Upon its execution of this agreement, CITY shall become both a General Member and an O&M Project Member of FWA.
2. **Adherence to JPA.** CITY agrees to be bound by the terms of the JPA as if it had been an original signatory thereto as both a General Member and an O&M Project Member.
3. **CITY General Membership Dues Allocation.** CITY will not be assessed for costs incurred by FWA prior to February 1, 2014. FWA acknowledges that the CITY has previously submitted \$13,832.62 to FWA on August 22, 2013. The CITY's pro rata share of the October 1, 2013

call-for-funds (February and March of 2014 which represents one third of the six month call for funds for the City from October 1, 2013 to March 31, 2014) as noted in the attached Exhibit A is \$10,454.32. The previously submitted \$13,832.62 will be applied against the initial call for funds with the remaining \$3,378.30 applied against the April 1, 2014 call for funds. The City will not be entitled to any share of carryover funds that exist as of September 30, 2013, as reflected in Exhibit A.

4. **Revised Exhibit A.** CITY agrees that the attached Exhibit A reflects the members of FWA as of the date of the execution of this agreement, together with their identified percentages for the sharing of the costs, including pro rata initial costs to the CITY as noted in 3. above, incurred by FWA commencing on October 1, 2013.

IN WITNESS WHEREOF, the parties have executed this agreement to be effective on the date first above written.

FRIANT WATER AUTHORITY

CITY OF FRESNO,
a California municipal corporation

By: HARVEY BAILEY
Name: Harvey Bailey
Title: Chairman

By: Bruce Rudd
Bruce Rudd
City Manager

By: Ronald D. Jacobson
Name: Ronald D. Jacobson
Assistant
Title: Secretary-Treasurer

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: Sherrill S. Badetschke
Deputy

APPROVED AS TO FORM:
City Attorney's Office

By: Brandon M. Collet 1/7/14
Date
Deputy City Attorney

BMC:prn [63087prn/agt] 10-14-1

EXHIBIT A
(names, addresses and percentages of parties to FWA JPA)

Friant Water Authority Exhibit "A" GENERAL MEMBER ALLOCATION Fiscal Year Ending 9/30/2014									Water %	50.00%	October 1 2013 Est Carryover	629,091 (216,269)	
									Equal %	50.00%	April 1 Final	866,269 54,220	
									Total	100.00%		1,333,311	
									1/7/2014 11:07				
District	CLASS I	CLASS I TIMES 2	CLASS II	2 X CLASS I PLUS CLASS II	CONTRACT WATER PERCENT	EQUAL ALLOCATION PERCENT	TOTAL ALLOCATION PERCENT	October 1 Call for Funds	Estimated April 1 2013 Carryover Reimbursement	April 1 Call for Funds	Net April 1 Call for Funds	Final Call for Funds	Total Call for Funds
Arvin-Edison	40,000	80,000	311,675	391,675	7.977%	2.381%	10.358%	67,329.90	(23,546.27)	89,732.01	66,185.74	5,616.31	139,131.95
Delano-Earlimart	108,800	217,600	74,500	292,100	5.949%	2.381%	8.330%	54,147.21	(18,934.67)	72,163.17	53,228.50	4,516.66	111,892.37
Exeter	11,100	22,200	19,000	41,200	0.839%	2.381%	3.220%	20,930.64	(7,314.81)	27,894.72	20,579.91	1,745.93	43,256.48
Fresno ID		0	75,000	75,000	1.528%	2.381%	3.909%	25,405.41	(8,880.18)	33,858.34	24,978.16	2,119.19	52,502.76
City of Fresno	60,000	120,000		120,000	2.444%	2.381%	4.825%	10,454.32		41,798.07	41,798.07	2,616.13	54,868.53
Ivanhoe	6,500	13,000	500	13,500	0.275%	2.381%	2.656%	17,263.45	(6,031.95)	23,007.37	16,975.42	1,440.03	35,678.90
Kaweah Delta WCD	1,200	2,400	7,400	9,800	0.200%	2.381%	2.581%	16,773.61	(5,860.59)	22,354.55	16,493.96	1,399.17	34,666.74
Kern-Tulare		0	5,000	5,000	0.102%	2.381%	2.483%	16,138.14	(5,638.29)	21,507.64	15,869.35	1,346.16	33,353.65
Lindmore	33,000	66,000	22,000	88,000	1.792%	2.381%	4.173%	27,126.48	(9,482.25)	36,152.04	26,669.79	2,262.75	56,059.02
Lindsay-Strathmore	27,500	55,000		55,000	1.120%	2.381%	3.501%	22,757.62	(7,953.93)	30,329.57	22,375.64	1,898.32	47,031.58
Lower Tule River	61,200	122,400	238,000	360,400	7.340%	2.381%	9.721%	63,189.41	(22,097.84)	84,213.89	62,116.05	5,270.93	130,576.39
Madera	85,000	170,000	186,000	356,000	7.251%	2.381%	9.632%	62,606.90	(21,894.07)	83,437.56	61,543.49	5,222.34	129,372.74
Orange Cove	39,200	78,400		78,400	1.597%	2.381%	3.978%	25,855.54	(9,037.65)	34,458.23	25,420.58	2,156.74	53,432.86
Pixley		0		0	0.000%	2.381%	2.381%	15,476.19	(5,406.73)	20,625.45	15,218.72	1,290.94	31,985.86
Porterville	15,000	30,000	30,000	60,000	1.222%	2.381%	3.603%	23,419.57	(8,185.49)	31,211.76	23,026.27	1,953.54	48,399.38
Saucelito	21,500	43,000	32,800	75,800	1.544%	2.381%	3.925%	25,511.32	(8,917.23)	33,999.49	25,082.26	2,128.02	52,721.60
Shafter-Wasco	50,000	100,000	39,600	139,600	2.843%	2.381%	5.224%	33,957.78	(11,871.99)	45,256.27	33,384.28	2,832.58	70,174.64
Stone Corral	10,000	20,000		20,000	0.407%	2.381%	2.788%	18,123.98	(6,332.98)	24,154.22	17,821.24	1,511.81	37,457.02
Teapot Dome	7,200	14,400		14,400	0.293%	2.381%	2.674%	17,382.60	(6,073.63)	23,166.17	17,092.54	1,449.97	35,925.10
Terra Bella	29,000	58,000		58,000	1.181%	2.381%	3.562%	23,154.79	(8,092.86)	30,858.89	22,766.03	1,931.45	47,852.28
Tulare	30,000	60,000	141,000	201,000	4.094%	2.381%	6.475%	42,086.51	(14,715.59)	56,089.59	41,374.00	3,510.64	86,971.15
Totals	636,200	1,272,400	1,182,475	2,454,875	50.000%	50.000%	100.000%	629,091.36	(216,269.00)	866,269.00	650,000.00	54,219.64	1,333,311.00

Notes: October 1, 2013 call for funds, before City pro rate, was a total of \$650,000. City's full share for the October 1 call for funds is \$31,362.95, pro rated to \$10,454.32 (two of the six months, or one third). The City of Fresno has paid \$13,832.62 on August 22, 2013, that will be applied against the \$10,454.32 of their October 1, 2013 call for funds with the remaining credit of \$3,378.30 applied against their April 1 call for funds of \$41,798.07, resulting in a net April 1, 2014 call for funds of \$38,419.77. The final call for funds is adjusted from the original final call for funds in order to cover the FWA Board approved budget, in the amount of \$1,333,311.00, for the fiscal year ending September 30, 2014. The final call for funds and budget is subject to change based upon review of the General Member financial position by the FWA Board of Directors.

EXHIBIT B
(copy of signed JPA)

JOINT POWERS AGREEMENT FRIANT WATER AUTHORITY

THIS JOINT POWERS AGREEMENT is made and effective as of January 19, 2004 in order to establish the Joint Powers Agreement of the Friant Water Authority (the "Authority"). This Agreement is made pursuant to the Joint Exercise of Powers Act, by and between those irrigation districts, water districts, and other districts and public entities whose names are hereunto subscribed. The parties to this Agreement, together with their current address, are set forth in Exhibit "A" attached hereto and made a part hereof.

Said districts and public entities are hereinafter collectively referred to as the "parties," "member entities" or "members". The terms "parties," "member entities" or "members" shall include any parties subsequently becoming O&M Project Members, General Members or Associate Members in accordance with the terms of this Agreement, but shall exclude any parties that withdraw from this Agreement pursuant to the provisions of Section 6.02 hereof and Affiliates.

Recitals:

This Agreement is made with reference to the following facts.

Each of the parties is a supplier of water and, therefore, is vitally interested in securing dependable and affordable sources of such water and the operation and maintenance of works designed to deliver such water. Each of the parties has the statutory power to preserve, defend and enhance its water supply, and desires to exercise such power in common with the other parties hereto for the purpose of preserving, defending and enhancing the parties' water supplies. Each of the parties also has statutory power to acquire, construct, operate and maintain reservoirs, canals and works for the purpose of conserving, storing and distributing water, and desires to exercise such power in common with the other parties hereto for the purpose of operating and maintaining specified Project works of the Friant Division of the Central Valley Project, including, but not limited to, the Friant-Kern Canal, consisting of the Friant-Kern Canal in-line control facilities, turnouts, measuring devices, associated water level control devices, water level recording instruments and other appurtenant structures. The Friant Water Users Authority currently operates, maintains and funds the operation of the Friant-Kern Canal under contract to the United States, and it was anticipated that it may at some future date negotiate to own, operate, fund and/or control those and/or other Project works and other facilities necessary and incidental thereto, and may be involved in matters concerning the contractual and other rights to water of the parties. The Authority intends to negotiate an assignment of all assets, liabilities, rights and obligations of the Friant Water Users Authority in the contract with the United States. The Authority may at some future date, when the power is common to all members, develop, design, finance, acquire, construct, operate and maintain hydroelectric facilities.

NOW, THEREFORE, in consideration of the recitals set forth above and the mutual promises, covenants and conditions hereinafter set forth, it is agreed by and among the parties hereto as follows:

Article I: Definitions.

As used in this Agreement, unless the context requires otherwise, the meaning of the terms hereinafter set forth shall be as follows:

(a) "Advisory Committee" shall mean the advisory body of the Friant Water Authority created by Section 3.02 of this Agreement, consisting of representatives from the member entities.

(b) "Affiliate" shall mean individuals or entities who are not members of the Authority, but who share a common interest with the Authority in issues affecting the Friant Division and wish to provide contributions to the Authority to assist it in its activities. Affiliates shall be designated by the Board of Directors from time to time and shall share in the dissemination of information on water supply, water distribution and other matters of mutual interest. Affiliates shall have no rights, obligations, powers or vote in the Authority and shall be associated with the Authority only for purposes of sharing of information with members of the Authority for purposes of common benefit. Affiliates shall not be entitled to representation on the Authority's Board of Directors or on any committee.

(c) "Associate Members" shall mean those members of the Authority admitted in accordance with the terms and provisions of this Agreement that are not General Members, which are identified as Associate Members on Exhibit "A" attached hereto and made a part hereof. The Board of Directors may from time to time admit Associate Members on terms and conditions determined by the Board. Directors and committee members designated by Associate Members may attend all meetings of the Board or committee on which they serve, including closed or executive sessions, but shall be non-voting. Their presence shall not be counted in determining whether a quorum is present, and they shall not be deemed present for purposes of determining which directors or committee members are present and voting.

(d) "Authority" shall mean the Friant Water Authority, being the separate entity created by this Agreement.

(e) "Board of Directors" or "Board" shall mean the governing body of the Friant Water Authority as established by Section 3.01 of this Agreement.

(f) "Contract" shall mean the contract between the United States Bureau of Reclamation and the Friant Water Users Authority, which provides for operation and maintenance of the Friant-Kern Canal system.

(g) "Fiscal Year" shall mean that period of twelve (12) months which is established as the Fiscal Year of the Friant Water Authority pursuant to Section 4.01 of this Agreement.

(h) "General Members" shall mean those members of the Authority more particularly identified as General Members on Exhibit "A" attached hereto and made a part hereof, and any parties which shall hereafter become General Members in accordance with the terms and provisions of this Agreement. The General Members, in their capacity as General Members, shall not participate in contracting with the United States of America for operation and maintenance of the Friant-Kern Canal system, or have any other rights or obligations in connection therewith as General Members of the Authority. The General Members shall

participate in other activities of the Authority as shall from time to time be carried out in accordance with this Agreement.

(i) "O&M Project Members" shall mean those parties to this Agreement identified as O&M Project Members on Exhibit "A" attached hereto and made a part hereof, and any parties which shall hereafter become O&M Project Members in accordance with the terms and provisions of this Agreement. O&M Project Members must be General Members that are also long-term Friant Division contractors for water that receive water directly from the Friant-Kern Canal. All General Members eligible to be O&M Project Members must become O&M Project Members. The O&M Project Members shall participate in the Project involving the Contract with the United States of America for the operation, maintenance and funding of the Friant-Kern Canal system as more particularly defined herein, together with such other activities as may be necessary, incidental and convenient thereto. The O&M Project Members shall participate in other activities of the Authority as shall from time to time be carried out in accordance with this Agreement.

(j) "Project" shall have the meaning described in Article V of this Agreement.

(k) "Special Activities" shall mean activities that are consistent with the purpose of this Agreement, but which are undertaken by fewer than all the parties in the name of the Authority pursuant to Section 3.06 of this agreement.

Article II: Creation of Friant Water Authority

Section 2.01 – Creation.

The parties, pursuant to their joint exercise of powers, hereby create a public entity to be known as the "Friant Water Authority".

Section 2.02 – Term.

This Agreement shall remain in effect until terminated by mutual agreement of 75% of the Members of the Authority. Notwithstanding any other provision herein, this Agreement shall remain in effect and be binding upon the parties hereto and upon all subsequent parties joined herein for such a period as the Authority desires to engage in any activities under this Agreement. The foregoing provision shall not apply, however, to any party which withdraws or is terminated from its participation in the Authority in accordance with this Agreement.

Section 2.03 – Purpose.

The purpose of this Agreement is to provide for the joint exercise, through the Authority, of powers common to each of the parties to acquire, protect, preserve and enhance water supplies and water rights, enter into contracts, obligations and commitments with the United States of America, State of California, and other persons and entities in connection with carrying out its activities and interests, and to develop, design, finance, acquire, construct, operate and maintain dams, reservoirs, tunnels, conduits, canals and hydroelectric facilities at such time as the power to do so is common to all members as specified in this Agreement, and all related facilities necessary and incidental thereto in order to acquire, divert, store and distribute water for beneficial use, provide information on water supply, water distribution and operation and

management problems affecting the parties, preserve and protect the rights and benefits of the parties in the Central Valley Project, and such other purposes as are incidental, necessary and convenient to the mutual benefit and interest of such purposes and of the members, including, but not limited to, acceptance of an assignment of the Contract as set forth herein.

Section 2.04 – Powers.

The Authority shall have the power to take any action to carry out the purposes of this Agreement. Notwithstanding the foregoing, members of the Authority shall at all times retain control and authority, independent of the Authority, over their own internal matters, including water supplies, facilities, and water supply projects. The Authority is authorized, in its own name, to do all acts necessary for the exercise of said powers, including, but not limited to, any and all of the following: to make and enter into contracts; to employ agents and employees; to acquire, construct, manage, maintain and operate any buildings, works, or improvements; to acquire by eminent domain, or otherwise, and to hold or dispose of any property; to sue and be sued in its own name; to incur debts, liabilities and obligations; and to issue bonds and all other forms of indebtedness, to the extent and on the terms provided by law for any of the parties herein or for any separate entity so permitted. The Authority may levy assessments, or in lieu, in whole or in part thereof fix and collect charges for any service furnished by the Authority. In accordance with California Government Code Section 6509, the foregoing powers shall be subject to the restrictions upon the manner of exercising such powers pertaining to TERRA BELLA IRRIGATION DISTRICT, as specified in the Irrigation District Law, Division 11 of the California Water Code, commencing at Section 20500.

Article III: Internal Organization.

Section 3.01 – Governing Body.

The Authority shall be governed by a Board of Directors which is hereby established and which shall be composed of one (1) representative of each of the parties, and who shall be selected and designated in writing from time to time by the governing body of the respective party from among the elected members of that party's governing body. Each party, in addition to appointing its member to the Board, shall appoint at least one (1) alternate to the Board who shall be a director, officer or employee of that party, but need not be an elected member of that party's respective governing body. For a party with a Mayor-Council form of Government, the Mayor shall be the Party's representative. In addition, the Mayor shall appoint at least one (1) alternate to the Board who shall be an elected official, appointed official or employee of that party. The role of each alternate Director shall be to assume the duties of the Director appointed by his/her member entity in case of the absence or unavailability of such Director. The Directors and alternates so named shall continue to serve until their respective successors are appointed. Due to the fact that the national and state water, environmental, and political issues that involve the General Members are so complex, it is the intent of the parties that the Authority's directors and their alternates attend, whenever possible, the open and closed session board meetings of the Authority so that Alternate Directors are able to keep abreast of these matters and, thereby, be able to attend and vote upon issues that are presented at meetings when they are called on to attend in place of Directors.

Only O&M Project Member Directors, or any alternates then serving as Directors, shall participate in or vote on any matters coming before the Board involving the rights or obligations of the Authority or of the O&M Project Members in connection with the Agreement entered into by the Authority with the United States of America for the operation and maintenance of the Friant-Kern Canal system as defined herein, or any other matters necessary or incidental to such agreement for operation and maintenance. The Chairman of the Board or, in his absence, the Vice Chairman shall determine whether any question or matter coming before the Board involves the rights or obligations of the Authority or the O&M Project Members in connection with any Agreement entered into by the Authority with the United States of America for the operation and maintenance of the Friant-Kern Canal system.

Section 3.02 – Advisory Committee.

There shall be an advisory body known as the “Friant Water Authority Advisory Committee” which shall consist of one (1) representative for each of the member entities. Each party, in addition to appointing its representative to the Advisory Committee, may appoint at least one (1) alternate to the Advisory Committee. Representatives and alternates shall be designated in writing from time to time by the respective governing body of each such member entity. For a party with a Mayor-Council form of Government, the Mayor shall be the Party’s representative on the Advisory Committee. In addition, the Mayor shall appoint at least one (1) alternate to the Advisory Committee who shall be an elected official, appointed official or employee of that party. The Advisory Committee shall be responsible to the Board and the Board shall be empowered to delegate to the Advisory Committee certain functions for purposes of program development, policy formulation and program implementation; provided, however, that any portion of the budget to be expended by the Advisory Committee shall be approved by the Board.

Except as specifically provided above for a party with a Mayor-Council form of Government, Advisory Committee representatives and alternates need not be elected officials or employees of their respective member agencies. Advisory Committee representatives may also serve as Directors or alternates to the Board of Directors of the Authority. The Advisory Committee shall meet from time to time as required by the Board or as the Advisory Committee establishes.

Section 3.03 – Participating Percentages.

(a) The participating percentages of the O&M Project Members shall be as set forth in Exhibit “A” attached hereto and made a part hereof. The formula for determining the participating percentages of the O&M Project Members provides that the participating percentages of the O&M Project Members are proportional to the average annual quantities of water available to the respective members under their long-term contracts with the United States Bureau of Reclamation (the “USBR”) under the following formula: Allocation Factor = $2.33 \times \text{Class I Contract Total} + 1.00 \times \text{Class II Contract Total}$. The participating percentage of each O&M Project Member shall be the percentage derived by dividing that member’s Allocation Factor by the total of the Allocation Factors of all such members.

The above O&M Project Member participating percentages formula may be changed only upon a vote of at least 75% of the then O&M Project Members. However, the participating percentages set forth in Exhibit "A" hereto shall be automatically amended from time to time without further action by the Authority or its members in the event of any change in the respective Contract Totals of water available to the O&M Project Members under their long-term contracts with the USBR. Such changes of the respective quantities of such water may result from changes in the long-term water supply contracts of the respective members with the USBR or from the addition or withdrawal from the Authority of O&M Project Members in accordance with this Agreement, in which event there shall be a reallocation of the participating percentages among the then remaining O&M Project Members after such change according to the above formula for O&M Project Members.

(b) The participating percentages of the General Members shall be as set forth in Exhibit "A" attached hereto and made a part hereof.

The formula for determining the participating percentages of the General Members is based on the following: Fifty percent (50%) prorated equally to each member and fifty percent (50%) prorated in proportion to the quantities of water under long-term contracts with the United States Bureau of Reclamation for Friant Division water supplies under the formula: $2 \times \text{Class I Contract Total} + 1 \times \text{Class II Contract Total}$.

The above General Member participating percentages formula may be changed only upon a vote of at least 75% of the then General Members. However, the participating percentages set forth in Exhibit "A" hereto shall be automatically amended from time to time without further action by the Authority or its members in the event of any change in the respective Contract Totals of water available to the General Members under their long-term contracts with the USBR for Friant Division water supplies. Such changes in the respective quantities of such water may result from changes in the long-term water supply contracts of the respective members with the USBR or from the addition or withdrawal from the Authority of General Members in accordance with this Agreement, in which event there shall be a reallocation of the participating percentages among the then remaining General Members after such change according to the above formula for General Members.

Section 3.04 – Seal; Bylaws.

The Board may adopt an official seal for the Authority and adopt such bylaws as it may deem necessary to regulate the affairs of the Authority in accordance with this Agreement. The bylaws may be amended from time to time by the Board as it may deem necessary.

Section 3.05 – Voting; Quorum.

(a) Each member of the Authority shall be entitled to one (1) representative on the Board of Directors of the Authority. A majority in number of the O&M Project Members' representatives on the Board of Directors shall constitute a quorum for the transaction of O&M Project Members' business of the Authority. A majority in number of the representatives on the Board of Directors of the General Members shall constitute a quorum for the transaction of General Members' business.

(b) Each Member representative on the Board of Directors shall be entitled to one (1) vote.

(c) All questions and matters of any nature whatsoever coming before the Board below shall be determined, provided a quorum is present, by the concurrence of 75% of the representatives of the members of the Authority present and voting on such matter, except to the extent otherwise provided by this agreement or by law. Any representative abstaining from a vote shall be counted for purposes of determining the existence of a quorum, but shall not be deemed to be voting. If the question or matter coming before the Board of Directors is determined by the Chairman or, in his absence, the Vice-Chairman to be an O&M Project Members' matter, the concurrence of 75% of the O&M Project Members present and voting shall be required. If the question or matter coming before the Board of Directors under this matter coming before the Board of Directors is determined to be a General Member matter, the concurrence of 75% of the General Members of the Authority present and voting shall be required. Amendment of this Agreement shall be governed by Section 7.01.

Section 3.06 – Special Activities.

With the prior approval of the Board of Directors, members of the Authority may undertake Special Activities in the name of the Authority. Prior to undertaking a Special Activity, the members electing to participate in the Special Activity shall enter into an activity agreement. Such activity agreement shall provide that (i) the Authority is a signatory to the activity agreement, (ii) the Authority retains the right to terminate the activity agreement if the Board determines that participation in such activity agreement is no longer in the best interests of the Authority, provided, prior to any vote to terminate an activity agreement, written notice of the proposed termination and the reason(s) for such termination shall be presented at a regular Board of Directors meeting with opportunity for discussion. At the next regular Board of Directors meeting and prior to a vote regarding termination, the Members participating in the activity agreement subject to possible termination shall have the opportunity to respond to any reasons that may be cited as a basis for termination (iii) no Special Activity undertaken pursuant to such agreement shall conflict with the terms of this Agreement and (iv) the members signatory to the activity agreement shall indemnify, defend and hold the other parties to this Agreement and the Authority harmless from and against any liabilities, costs or expenses of any kind arising as a result of the Special Activity described in the activity agreement. All rights, benefits, debts, liabilities and obligations attributable to a Special Activity shall be rights, benefits debts, liabilities and obligations solely of the members that have entered into the activity agreement for that Special Activity, in accordance with the terms of the activity agreement, and shall not be the rights, benefits, debts, liabilities and obligations of those members that have not executed the activity agreement.

Article IV: Financial Provisions.

Section 4.01 – Fiscal Year.

The Fiscal Year of the Authority shall be from October 1 through September 30 of the next calendar year.

Section 4.02 – Funds; Accounts.

The Secretary-Treasurer shall be responsible for all money of the Authority from whatever source. All funds of the Authority shall be strictly and separately accounted for and regular reports shall be rendered of all receipts and disbursements at least quarterly during the Fiscal Year. The books and records of the Authority shall be open to inspection by the member entities and by bondholders as and to the extent provided by resolution or indenture. The Secretary-Treasurer shall contract with a certified public accountant to make an annual audit of the accounts and records of the Authority which shall be conducted in compliance with Section 6505 of the California Government Code.

Section 4.03 – Property; Bonds.

The Board of Directors shall from time to time designate the officers and persons, in addition to those specified in Section 4.02 above, who shall have charge of, handle, or have access to any property of the authority. Each such officer and person shall file a bond in an amount designated by the Board of Directors. Such designation shall be subject to ratification by the parties in compliance with California Government Code Section 6505.1.

Section 4.04 – Budget.

By a date set by the Board of Directors each Fiscal Year, the O&M Project Member representatives of the Board of Directors shall adopt an O&M budget for the Authority, and the General Member representatives of the Board of Directors shall adopt a General Member budget for the Authority.

Section 4.05 – Contributions; Payments To The Authority

(a) In accordance with the Contract, all fees, costs, and expenses incurred by the Authority in connection with the operation and maintenance of the Friant-Kern Canal system as defined herein shall be reimbursed to the Authority by the United States or directly from water service contractors.

Any expenses incurred by the Authority in connection with the Contract but finally determined to be nonreimbursable to the Authority by the United States of America under the terms and conditions of the Agreement with the United States of America, shall be allocated to and paid by the O&M Project Members based upon their participation percentage as more particularly set forth in Section 3.03 hereof.

(b) All fees, costs and expenses incurred by the Authority for General Member actions and activities not involving the Contract shall be allocated to and paid by the General Members in accordance with the participation percentage of the General Members as set forth in Section 3.03 hereof.

(c) The Authority may, in lieu, in whole or in part of levying assessments, fix and collect charges for any service furnished by the Authority to both members and nonmembers of the Authority.

Article V: Friant Water Authority Project.

Section 5.01 – Description Of Project.

The Authority may seek assignment of the Contract or enter into a new contract with the United States of America, Bureau of Reclamation, to operate and maintain the Friant-Kern Canal in-line control facilities, turnouts, measuring devices, associated water level control devices, water level recording instruments and other appurtenant structures, and may enter into contracts, obligations and commitments with the United States of America, State of California, and other persons and entities in connection with the development, design, financing, acquisition, construction, operation and maintenance of dams, reservoirs, tunnels, conduits, canals and hydroelectric facilities at such time as the power to do so is common to all members as specified in this Agreement, and all related facilities necessary and incidental thereto to acquire, divert, store and distribute water for beneficial use, provide information on water supply, water distribution and operation and management problems affecting the parties and preserve and protect the rights and benefits of the parties in the Central Valley Project, and such other activities as are incidental, necessary and convenient to the mutual benefit and interest of such purposes and of the members, including, but not limited to, acceptance of assignment of the Contract and specified Project works as set forth herein.

**Article VI: Relationship of Friant Water Authority And
Its Member Entities**

Section 6.01 – Separate Entity; Property.

In accordance with California Government Code Sections 6506 and 6507, the Authority shall be a public entity separate from the parties to this Agreement. Unless and to the extent otherwise agreed herein, the debts, liabilities and obligations of the Authority shall not be debts, liabilities or obligations of the member entities. The Authority shall own and hold title to all funds, property and works acquired by it during the term of this Agreement, including without liability all assets acquired in connection with a Special Activity.

Section 6.02 – Admission, Withdrawal and Termination of Members.

Admission, withdrawal or termination of a Member shall be documented on a revised Exhibit A that reflects such admission, withdrawal or termination.

Additional qualified parties may join in this Agreement and become Members upon the approval of directors representing 75% of the Board of Directors. As provided in Article I (c), Associate Members may be admitted on terms and conditions set by the Board of Directors. Prior to becoming a new member, a party shall execute an agreement to be bound by the terms of this Agreement as if such party had been an original signatory hereto.

Notwithstanding anything herein to the contrary, any member entity may withdraw from this Agreement by giving written notice of its election to do so, which notice shall be given to the Board of Directors and to each of the other parties; provided, that such withdrawal does not in any way impair any contracts, resolutions, indentures or other obligations of the Authority then in effect. In the event of a disagreement between the Authority and the withdrawing party as to whether such withdrawal shall cause the impairment of any contracts, resolutions,

indentures or other obligations of the Authority, such determination shall be made by the vote of 75% of the directors representing the non-withdrawing members present and voting.

Membership of a Member may be terminated by a vote of directors representing 75% of the General Members, and upon termination the affected Member shall no longer be a member of the Authority. Prior to any vote to terminate a Member, written notice of the proposed termination and the reason(s) for such termination shall be presented at a regular Board of Directors meeting with opportunity for discussion. At the next regular Board of Directors meeting and prior to a vote regarding termination, the Member subject to possible termination shall have the opportunity to respond to any reasons and allegations that may be cited as a basis for termination.

A withdrawing member shall in all events remain liable for its proportionate share of (i) any call for funds or assessment levied by the Authority prior to the date of withdrawal and (ii) the amount of any annual budget approved prior to the date of withdrawal; provided, that a member not concurring in an amendment of this Agreement that withdraws within the thirty (30) day period described in Section 7.01 shall not be liable for any such amounts except to the extent provided below.

Any withdrawing or terminated member, including a member not concurring in an amendment of the Agreement that withdraws within the thirty (30) day period described in Section 7.01, shall remain liable for any liability of the Authority to the extent such liability arises from any action or inaction of that member occurring during the period in which the withdrawing or terminated member was a member of the Authority.

A member not concurring in an amendment of the Agreement that withdraws within the thirty (30) day period described in Section 7.01 or a member whose membership has been terminated by the Board of Directors shall be liable for their share of the approved budget as of the date of their withdrawal or termination, provided, that such share shall be further reduced by a percentage as determined by multiplying the number of months within the fiscal year for which such withdrawing or terminated members was not a member during any part of such month, divided by twelve. Any amounts advanced to the Authority by such member prior to withdrawal shall be applied to reduce the amount owed. Any advance to the Authority by such members which are in excess of amounts owed by such member shall be refunded to the member.

In the event a General Member withdraws from the Authority in accordance with the terms and conditions hereof, other than a member not concurring in an amendment of the Agreement that withdraws within the thirty (30) day period described in Section 7.01, such General Member shall not receive a refund of any amounts advanced to the Authority by such member prior to the date of its withdrawal.

In the event an O&M Project Member withdraws from the Authority or is terminated in accordance with the terms and conditions hereof, such O&M Project Member may be entitled to a repayment of such sums as may be due it in proportion to its participation percentage set forth herein, and subject to the terms, conditions and reimbursement provisions of any agreement then existing between the United States of America and the Authority for the operation and maintenance of the Friant-Kern Canal system.

Section 6.03 – Disposition Of Property Upon Termination Or Determination By Board Of Surplus.

(a) Upon termination of this Agreement or upon determination by the Board that any surplus money is on hand, such surplus money shall be returned to the then member entities of the Authority which contributed such monies in proportion to their participation percentages. The Board of Directors shall first offer any properties, works, rights and interests of the Authority for sale to the member entities. If no such sale is consummated, then the Board of Directors shall offer the properties, works, rights and interests of the Authority for sale to any governmental agency, private entity or persons for good and adequate consideration. The net proceeds from any sale shall be distributed among the member entities in proportion to their participation percentages; provided, however, that all of the properties, works, rights and interests constituting a part of the operation and maintenance Project shall be sold, subject to the terms, conditions and restrictions on disposition, if any, as provided for in the Contract.

(b) If no such sale is consummated, then all of the properties, works, rights and interests of the Authority shall be allocated to the members in the same manner as the allocation of the net proceeds from the sale; provided, however, that all of the properties, works, rights and interests constituting a part of the operation and maintenance of the Friant-Kern Canal system shall be allocated to the O&M Project Members in accordance with their participation percentages and, in any event, any allocation of the properties, works, rights and interests or net proceeds therefrom shall be subject to the terms and conditions and restrictions on disposition, if any, as provided for in the Contract. The above allocation may be modified by the agreement of all the member entities.

Section 6.04 – Agreed Upon Share Of Liability Or Judgment For Damages.

The parties to this Agreement do not intend hereby to be obligated either jointly or severally for the debts, liabilities or obligations of the Authority, except as may be specifically provided for in California Government Code Section 895.2 as amended or supplemented. Provided, however, if the members of the Authority are, under such applicable law, held liable for the acts or omissions of the Authority caused in the performance of this Agreement, caused by negligent or wrongful act or omission occurring in the performance of this Agreement, such parties shall be entitled to contribution from each of the other parties to the Agreement so that after said contribution each party shall bear a share equal to its participation percentage in existence at the time the subject act or omission occurred.

Provided, however, that if such negligent act or wrongful act or omission occurs in the performance of the Contract, the share of each O&M Project Member in the liability or judgment for damages shall be determined by the participation percentages for O&M Project Members set forth in Section 3.03(a) in existence as of the date of the subject act or omission. The O&M Project Members shall indemnify, defend and hold harmless the General Members in their capacity as General Members from any liability, cause of action or damage in connection with the Contract. The right of contribution is limited to the amount paid in satisfaction of the judgment in excess of the participation percentage of the parties so paying. No party may be compelled to make contribution beyond its share based upon its participation percentage of the entire judgment in existence as of the date of the subject act or omission.

Article VII: Miscellaneous Provisions.

Section 7.01 – Amendment.

This Agreement may be amended from time to time by the concurrence of 75% of all of the General Members for General Member matters and 75% of all the O&M Project Members for O&M Project matters. To provide non-concurring parties an opportunity to withdraw from the Authority as provided herein, an amendment shall be binding on all parties hereto thirty (30) days after the required concurrence has been obtained. The Chairman of the Board or, in his absence, the Vice Chairman shall determine whether an amendment relates to General Member matters or O&M Project matters.

Section 7.02 – Severability And Validity Of Agreement.

Should the participation of any party to this Agreement, or any part, term or provision of this Agreement be decided by the courts or the legislature to be illegal, in excess of that party's authority, in conflict with any law of the State of California, or otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms or provisions of this Agreement shall not be affected thereby and each party hereby agrees it would have entered into this Agreement upon the same terms as provided herein if that party had not been a participant in this Agreement.

Section 7.03 – Assignment.

Except as otherwise provided in this Agreement, the rights and duties of the parties to this Agreement may not be assigned or delegated without the advance approval by the Board of Directors.

Section 7.04 – Execution In Parts Or Counterparts.

This Agreement may be executed in parts or counterparts, each part or counterpart being an exact duplicate of all other parts or counterparts, and all parts or counterparts shall be considered as constituting one (1) complete original and may be attached together when executed by the parties hereto.

Section 7.05 – Notices.

Notices authorized or required to be given pursuant to this Agreement shall be in writing and shall be deemed to have been given when mailed, postage prepaid, or delivered during working hours to the addresses set forth for each of the parties hereto on Exhibit "A" of this Agreement, or to such other changed addresses communicated to the Authority and the member entities in writing.

IN WITNESS WHEREOF, the parties hereto, pursuant to resolutions duly and regularly adopted by their respective Board of Directors or governing board, have caused their names to be affixed by their proper and respective officers as of the day and year first above-written.

Dated: ~~January 19, 2004~~ February 1, 2014

DISTRICT _____ CITY OF FRESNO

By: *C. Bruce Smith*
Its: *City Manager*
By: *Worey Bailey*
Its: *chairman*

APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE
BY: *BEH* *2/10/14*
CITY ATTORNEY