

**REVISED, AMENDED AND RESTATED
COOPERATIVE AGREEMENT BETWEEN FRESNO
IRRIGATION DISTRICT AND CITY OF FRESNO
FOR WATER UTILIZATION AND CONVEYANCE**

THIS AGREEMENT is entered into as of December²⁰, 2016 by and between the Fresno Irrigation District, an irrigation district (herein called "District") and City of Fresno, a municipal corporation (herein called "City").

WITNESSETH:

WHEREAS, District is an irrigation district organized and existing under the laws of the State of California and is the owner of certain water supplies, water rights and a water distribution system that can convey water to lands both within and outside District boundaries; and

WHEREAS, City is a municipal corporation with boundaries largely overlapping those of District and is the owner of a water distribution system for the distribution of water to lands both in and outside the exterior boundaries of City; and

WHEREAS, District and City have heretofore entered into a cooperative program of water utilization between said parties evidenced by a written agreement for such water utilization and conveyance dated August 12, 1970, which by its terms and by the terms of amendments thereto terminated on May 30, 1976; and

WHEREAS, District and City continued with said cooperative program and entered into a replacement contract for water utilization and conveyance dated May 25, 1976 ("1976 Agreement"); and

WHEREAS, District and City wish to amend and restate the 1976 Agreement in its entirety in order to continue with and expand said cooperative program to recognize changed circumstances affecting them via this Revised, Amended and Restated Cooperative Agreement between Fresno Irrigation District and City of Fresno for Water Utilization and Conveyance ; and

WHEREAS, certain provisions of this Agreement are specifically authorized by, and entered into pursuant to, Chapter 9 (commencing with Section 26670), Part 10, Division 11 of the California Water Code; and

WHEREAS, by agreement dated December 22, 2010 between City and the United States of America identified as Contract No. 14-06-200-8901D (the "City Bureau Contract"), City is entitled to purchase certain water from the United States; and

WHEREAS, by agreement dated December 22, 2010 between District and the United States of America identified as Contract No. 14-06-200-1122D (the "District Bureau Contract"), District is entitled to purchase certain water from the United States; and

WHEREAS, District holds rights to Kings River water and storage in Pine Flat Reservoir on the Kings River, subject to various contracts with the United States of America, water supply schedules and agreements by and among members of the Kings River Water Association and others, judicial and regulatory decrees, and the water rights governing the diversion and use of Kings River water, all as they may be amended or supplemented from time to time (collectively, the "Kings River Agreements"); and

WHEREAS, it is recognized by District and City that District is primarily charged with the distribution and delivery of water within District for Agricultural Use and that its canals and distribution system must primarily be used for that purpose; and

WHEREAS, it is recognized by both District and City that many inhabitants of District also require water for domestic, industrial or fire protection purposes supplied to them by City; and

WHEREAS, under the 1976 Agreement, Kings River water was available to City once lands within District boundaries with surface water allotments were annexed into City and were covered by the 1976 Agreement's contract rate for surface water delivery to City by District for those lands; and

WHEREAS, City and District now wish to limit the amount of Kings River water available to City to provide more certainty regarding water supply availability and to address City's current and anticipated needs and circumstances; and

WHEREAS, City and District are both committed to working cooperatively under the Sustainable Groundwater Management Act ("SGMA") so that the groundwater basin shared by City and District is sustainable and so that undesirable results (as defined in SGMA) are minimized or avoided; and

WHEREAS, City and District recognize that changes to the operations of the Central Valley Project have impacted the availability of water from said project; and

WHEREAS, City has heretofore used much of the water delivered to it under the 1976 Agreement for groundwater recharge because of City's historical reliance on groundwater, and therefore did not require delivery of water year around; and

WHEREAS, City desires to use more of its surface water for direct delivery to its water users and ratepayers while limiting its reliance on groundwater; and

WHEREAS, with the development of its surface water treatment facilities ("SWTFs") City now requires a long-term, reliable and certain surface water supply, deliverable continuously year around; and

WHEREAS, conveyance of raw surface water to the SWTFs on a continuous year around basis will require, among other things, (i) new conveyance infrastructure built by City to overcome certain operational challenges and/or interruptions to District's infrastructure to accommodate normal and routine maintenance of District's canals and pipelines than have historically delivered surface water to City, (ii) District to alter its operations and incur additional

costs to make Out of Season Deliveries, and (iii) the use of new management techniques by District, with the attendant costs, including without limitation water sales, purchases, transfers and exchanges, to meet the need for a continuous supply of surface water to City's SWTFs, all while addressing SGMA and other legal and regulatory requirements that impact the groundwater basin shared by District and City; and

WHEREAS, providing Out of Season Deliveries by District to City may also require the development of new water supplies and projects to provide the water being sought by City; and

WHEREAS, City acknowledges that District has a great depth of experience, knowledge and expertise in the management of surface water supply resources (including but not limited to water supply sales, purchases, transfers and exchanges); and

WHEREAS, City recognizes that the coordinated management of both District's and City's water supplies by District is desirable to maximize the use of the current water supplies and the future development of water supplies for both parties; and

WHEREAS, City has determined that it is in City's interest, and in the interest of its water users and ratepayers, to engage District to employ District's experience, knowledge and expertise on behalf of City in the management of City's Surface Water pursuant to the terms hereof in order to achieve City's and District's goals described herein and to accommodate City's desire for a continuous year around surface water supply, and District has agreed to be so engaged; and

WHEREAS, the changing conditions and manner of management of water supplies throughout the State of California, and other factors beyond the control of City and District, will require increased vigilance on the part of water purveyors in the Fresno area to cooperate with each other on long-range implementation strategies to improve the availability, reliability, and drought resiliency of water supplies; and

WHEREAS, through this Agreement and additional cooperative efforts, City, District and other entities in the region intend to capture of flood released waters, optimize existing water supply storage assets, develop new water supply storage assets, expand groundwater recharge capacities, engage in strategic water supply sales, transfers and exchanges and enhance the utilization of recycled and/or treated waters; and

WHEREAS, in light of SGMA, environmental regulations, water supply challenges and competition with other users and regions in the State for water supplies, City and District wish to further enhance their cooperative working relationship for the benefit of the water users and ratepayers they serve by entering into this Agreement to provide for strategic, long-range and coordinated water supply planning and management that will optimize water conservation, the efficient uses of water for agricultural and municipal uses, the capture of flood released water, the use of existing water supply storage assets, the development of new water supply storage assets, the expansion of groundwater recharge capacity, the effectiveness of strategic water supply sales, transfers, exchanges and purchases, and the enhancement of recycled water utilization.

NOW, THEREFORE, adopting the foregoing recitals as being applicable to this Agreement, it is mutually agreed as follows:

1. Term. The term of this Agreement shall be for a period commencing on the date it is executed by both District and City and ending at 12:00 o'clock p.m. on the last day of June in the year 2035, and thereafter until terminated by either party as of the last day of February of any subsequent year by written notice to the other party mailed prior to September 1st of the previous year. Upon the execution of this Agreement the 1976 Agreement and all amendments thereto shall be of no further force or effect, except that City agrees to pay District any monies owing or to become owing to District under and according to the terms of the 1976 Agreement, if any.

2. Agreement Subject to Other Obligations. This Agreement shall be at all times subject to all of the terms and conditions of the City Bureau Contract, the District Bureau Contract and the Kings River Agreements, and to the extent that any agreement contained herein is contrary to or inconsistent with any term or condition of those contracts or agreements, that contrary provision of this Agreement shall be unenforceable. In the event any such agreement contained herein shall become unenforceable, the entire Agreement may be terminated by the party adversely affected as of the last day of February of the next succeeding year, by written notice served upon the other party on or before the first day of September of the year preceding such termination.

3. Definitions. For the purpose of this Agreement, the following terms shall be defined as follows:

(a) "Agricultural Use" means the use of water primarily in the production of agricultural crops or livestock including but not restricted to domestic use incidental to such agricultural purposes, the watering of livestock, and underground water replenishment conducted by District.

(b) "City's Friant Supply" means all water to which City is entitled under the City Bureau Contract or otherwise as a result of City's status as a long-term repayment contractor for water service from the Friant Division of the Central Valley Project (CVP), including without limitation Class 1 water, Section 215 water, uncontrolled season water, unreleased restoration flows and recirculated water. City's Friant Supply shall not include any water available to District under the District Bureau Contract or as a result of District's status as a long-term repayment contractor in the Friant Division of the CVP, which water is not governed by this Agreement.

(c) "City's Kings River Supply" means the percentage of District's Kings River Supply available to be delivered to City in a Water Year under this Agreement.

(d) "District's Kings River Supply" means the Kings River water District may deliver to its water users under the Kings River Agreements and applicable judicial and regulatory decrees in a Water Year as the result of the calculated natural flow of the Kings River during that Water Year.

(e) "City's Surface Water" means all water available to City in a Water Year by means other than pumping from the underground water supply, including without limitation

City's Kings River Supply and City's Friant Supply and any surface water supply acquired or developed after the date of this Agreement.

(f) "City's Water Service Area" means all lands within the exterior boundaries of City, and also all lands outside such boundaries that are within the exterior boundaries of District, to which City now delivers water or hereafter consents to deliver water by means of the City Water System and that are not hereafter designated or assessed by District as lands receiving or to receive District Water Service.

(g) "City Water System" means the conduits, pipes and other facilities (including without limitation the SWTFs) owned by City and used by City to convey water to lands whether in or outside City.

(h) "District Water Service" means the furnishing of water by District directly to lands within District by means of the District Water System other than pumping conducted by a landowner or water user directly from the underground water supply upon the lands receiving such water.

(i) "District Water System" means the conduits, pipes, canals, pumping stations and other facilities owned and/or used by District to convey water to lands or facilities whether in or outside of District.

(j) "Excluded Areas" means those acres within the City's Water Service Area that are outside of the District's boundaries.

(k) "Included Acres" means those acres within the City's Water Service Area that are within the District's boundaries.

(l) "Municipal, Industrial and Domestic Uses" means the use of water other than for Agricultural Use, and underground water replenishment conducted by City.

(m) "Out of Season Deliveries" means deliveries of City's Surface Water via the District Water System during periods when District is not otherwise delivering irrigation water to its landowners or water users via the portions of the District Water System used to convey City's Surface Water to the points on the District Water System where City will assume physical control of the delivered water.

(n) "Point of Delivery" means, for water delivered to City via the District Water System, the headworks of the Gould Canal and the Fresno Canal as specified in the applicable schedule, for water delivered to City via the Friant-Kern Canal Raw Water Pipeline, the headworks of the Friant-Kern Canal Raw Water Pipeline, for water delivered to City via the South Raw Water Pipeline, the headworks of the Fresno Canal, and such other location(s) as City and District may mutually agree.

(o) "Transfer" means a water sale, transfer or exchange involving any of City's Friant Supply.

(p) "Water Year" means March 1 of one year through the last day of the following February when used in reference to City's Friant Supply and October 1 of one year through September 30 for the following year when used in reference to City's Kings River Supply or District's Kings River Supply.

4. Management of City's Surface Water. To fulfill the purposes of this Agreement, and to facilitate the continuous and year around supply of water to City's Water System and facilities, District shall undertake, and is hereby appointed by City as City's exclusive agent for the management of City's Surface Water pursuant and subject to the terms of this Agreement, including but not limited to subsection 4(f) below. District's management authority and responsibilities shall terminate with respect to any of City's Surface Water upon delivery of that water to City.

(a) The management authority hereby granted to District shall include without limitation the exclusive right to:

- i. Direct the storage and release of City's Surface Water;
- ii. Schedule, order and provide for the delivery of City's Surface Water to District's points of diversion;
- iii. Facilitate the reasonable and beneficial use of City's Surface Water and other water supplies available to City, while also providing for delivery of water to the applicable Point(s) of Delivery as specified in this Agreement;
- iv. Pursue and implement Transfers pursuant to this Agreement; and
- v. Take all other actions associated with the management and administration of City's Surface Water prior to its delivery to the applicable Point of Delivery in furtherance of the goals provided in subsection 4(f).

(b) District shall not voluntarily take any action that would:

- i. Breach City's Bureau Contract or any other agreement governing any of City's Surface Water;
- ii. Result in a long-term reduction in amount of City's Surface Water; or
- iii. Result in management or use of City Surface Water inconsistent with the goals provided in subsection 4(f) below, unless City provides prior written authorization of such management or use.

(c) Notwithstanding District's management of City's Surface Water, City shall be solely responsible for, and shall timely pay, all charges and other amounts payable in connection with any of City's Surface Water.

(d) Subject to the express rights of City under this Agreement, City shall take no action that interferes with District's management of City's Surface Water as long as District provides the deliveries thereof in accordance with Section 5.

(e) District shall coordinate with City to define and identify uses of City's Surface Water that benefit City's water users and ratepayers. This coordination shall be performed as described in this subsection.

- i. As frequently as appropriate and necessary, and at least annually, City and District shall confer to review available water supply information and data, including without limitation: precipitation, snow pack, and runoff conditions; water storage conditions; relevant environmental programs and projects; forecasted Municipal, Industrial and Domestic Uses; surface water delivery priorities for City; forecasted groundwater pumping required to meet City's forecasted Municipal, Industrial and Domestic Uses; and other pertinent information and data related to water supply availability and water demands for the relevant Water Year(s). City and District shall also confer regarding the anticipated availability of City's Friant Supply, if any, for Transfers.
- ii. City will be responsible for providing periodic updates to the City Council and City administration. At least annually, City staff shall provide an informational workshop to the City Council, summarizing ongoing water supply conditions, the implementation of this Agreement and fulfillment of the water supply goals as listed in 4(f), as well as any anticipated water supply issues of concern for the relevant Water Year(s). District shall make reasonable efforts to coordinate with City staff to provide any data, information, and materials required for this annual informational workshop to the City Council.
- iii. It is understood that during any given Water Year it may be necessary to adjust the water supply planning forecast established pursuant to the above described process as water supply availability and demands change, and additional information and data are obtained, reviewed, and assessed. City and District shall employ reasonable efforts to meet and confer as necessary to keep each party informed to the extent water supply conditions and plans may change through the relevant Water Year. City shall be responsible for providing informational updates to the City administration to the extent there are material changes to the water supply conditions in any given Water Year.

(f) District's management of City's Surface Water shall at all times be in furtherance of one or more of the following water supply goals:

- i. Providing continuous year around water supply to City's SWTFs;
- ii. Improving the water supply reliability and drought-resiliency for City;

- iii. Improving the operation and utilization of City-owned recharge basins;
- iv. Implementing conjunctive-use water management strategies to comply with the SGMA that directly benefit City's water users and ratepayers and indirectly benefit groundwater users in the North Kings Subbasin.

(g) Included as a part of the management of City's Surface Water as described above, District shall diligently pursue Transfers of any of City's Friant Supply that City advises District that City will not require during a particular Water Year ("Temporarily Unused Friant Water").

- i. Upon identifying a potential Transfer opportunity, and prior to executing the Transfer, District shall notify City of the potential Transfer opportunity, and the water quantity, unit price, delivery dates and terms, and any other material matters associated with the Transfer. This is a notification procedure and not an approval procedure.
- ii. All Transfers of Temporarily Unused Friant Water pursued by District shall be in full conformance with City's water supply goals as described in Section 4(f) or otherwise agreed by City and District, and shall be limited to supporting Agricultural Use rather than urban growth or development in other jurisdictions.
- iii. City shall not be prohibited from unilaterally pursuing Transfers of Temporarily Unused Friant Water; provided, that any such Transfers shall first be discussed and coordinated with District before they are implemented and shall not be undertaken over District's reasonable objection and the benefits of any such Transfer shall be allocated in accordance with subsections (h), (i) and (j) below.
- iv. For avoidance of doubt, District's obligations under this Section 4(g) are limited to making reasonable and diligent efforts to pursue Transfers of Temporarily Unused Friant Water, and City acknowledges that no assurances can be provided by District that such Transfers can be made or arranged.

(h) The benefits resulting from Transfers shall be allocated in accordance with this subsection. For purposes of this Section 4, "benefits" of a Transfer include, without limitation:

- i. The difference between all costs incurred in connection with a Transfer and the amount(s) received as a result of the Transfer,
- ii. Water returned as a result of a Transfer, and
- iii. Water supply storage or conveyance capacities made available as a result of a Transfer.

To the extent benefits include payments, City shall be reimbursed for its actual and reasonable out of pocket expenses incurred for City's Friant Supply involved in the Transfer,

and each of the parties shall next be reimbursed for any actual and reasonable out of pocket expenses incurred in connection with the Transfer. The net revenue associated with a Transfer shall be the revenue remaining after all parties have been reimbursed their actual and reasonable expenses incurred for the Transfer.

(i) To the extent benefits of a Transfer consist of water supplies, water supply storage or conveyance capacities, the allocation of such benefits as between the parties shall be negotiated by the parties before the Transfer is implemented. In the event the parties cannot negotiate such allocation, the Transfer shall not be pursued.

(j) For each Transfer that generates net revenue, City and District agree that the net revenue shall be distributed and used as follows:

- i. 25-percent of the net revenue shall be deposited with City's water enterprise fund;
- ii. 25-percent of the net revenue shall be deposited with District for the inspection, operations, maintenance and repair of the District's Conveyance System, which City acknowledges provides a benefit to City ratepayers;
- iii. 50-percent off the net revenue shall be deposited into a Water Supply Development Fund to be used to finance water supply development programs and projects that mutually-benefit City and District.

The Water Supply Development Fund shall be a restricted-use fund to be used exclusively for water supply programs and projects that improve water supply availability, reliability and drought resiliency for both District and City. Programs and projects that may be financed from the Water Supply Development Fund include, but are not limited to, water supply purchases, transfers, and exchanges; groundwater storage; and groundwater recharge. Expenditures for water supply purchases, transfers, and exchanges may include any carryover charges and conveyance charges that may be assessed by the State of California, the United States, or other agency, to store, transport and deliver surface water, for the mutual benefit of City and District, using state or federal storage and conveyance facilities.

The Water Supply Development Fund may receive contributions from City, District, and other public agencies approved by both City and District. The Water Supply Development Fund may not receive contributions from private persons, companies, businesses, or organizations.

Prior to encumbering funds from the Water Supply Development Fund, District and City shall mutually agree in writing on the recommended expenditure and the amount to be financed with the Water Supply Development Fund.

District shall serve as the fiscal agent for the Water Supply Development Fund and implement generally accepted public agency or governmental accounting practices in managing the fund assets. District shall subject the fund to an annual audit by independent auditors during the course of District's annual audit of its financial statements. The audit shall

be conducted in accordance with the generally accepted auditing standards by the independent certified public accountant auditing District's financial statements. Upon presentation of District's comprehensive audit report to the District Board of Directors, District shall provide City with a copy of District's audit report. At any time during the term of this Agreement, City may, at its own cost, request to review and audit the financial and accounting records associated with the Water Supply Development Fund. District shall have 30 working days to submit the requested records to City for review and audit.

In the event this Agreement terminates and uncommitted amounts remain in the Water Supply Development Fund, one half of all such amounts shall be promptly distributed free of any restrictions to each of the parties.

(k) By the 25th day of each month, District shall provide City with a written summary of District's utilization of City's Friant Supply for the previous month in substantially the form attached hereto as **Exhibit A**. The written summary will identify water volumes delivered to recharge basins, surface water treatment facilities, other Points of Delivery designated by City, and Transfers. The written summary may be delivered to City by email, facsimile or U.S. mail. For Transfers, the monthly report shall include information regarding the parties involved in the Transfer, the water quantity, unit price, delivery dates and terms, and any other material matters associated with the Transfer.

5. Water Made Available to City.

(a) Subject to all other provisions of this Agreement, District shall deliver to City during each applicable Water Year, for distribution and use by City within City's Water Service Area, each day of each year on a continuous basis in accordance with Section 8 of this Agreement, the City's Surface Water available during relevant Water Year(s) that can be diverted by District at the headworks of the Gould Canal, the Fresno Canal or the Friant-Kern Canal Raw Water Pipeline. City acknowledges that the water delivered may not be City's Surface Water, but rather other water controlled by District in the District Water System of similar quality and equal quantity, including without limitation water recovered from water banks, other water for which City's Surface Water is exchanged, and/or water purchased by District for delivery to City at District's cost, and that references in this Agreement to deliveries of City's Surface Water shall include deliveries thereof of a substitute supply by means of one or more exchanges, transfers, purchases or combinations thereof. At all times, District shall have the right to exchange and to convey for City in place thereof other water of similar quality and equal quantity (except sewer effluent or industrial wastes) available to District.

(b) City's Surface Water shall be deemed delivered to City when it reaches the Point of Delivery specified in the applicable schedule provided and approved under Section 8 of this Agreement, provided that for deliveries made via the District Water System, District shall thereafter convey such water to the points on the District Water System where City will assume physical control of the delivered water.

(c) The parties acknowledge that there may be times when the City Water System is undergoing routine or emergency repairs and maintenance, or subject to other conditions, that preclude City from accepting deliveries under this Agreement. Similarly, the parties

acknowledge that there may be times when the District Water System is undergoing routine or emergency repairs and maintenance, or subject to other conditions, that preclude District from delivering water to City under this Agreement. The parties shall cooperate with the other to minimize the impacts of such events, but neither shall be in breach of this Agreement as a result thereof.

(d) Water delivered to City under this Agreement shall be used by City within City's Water Service Area only for Municipal, Industrial and Domestic Uses, Agricultural Uses incidental thereto, and within the boundaries of District for recharge of the underground water supply by percolation.

City shall not sell, transfer, deliver or exchange any surface water or groundwater to or with any other person or entity without written consent of District first had and obtained.

However, this provision shall not prevent City from entering into separate agreements with any other entity which may have a similar agreement with District for the distribution and use of water received from District under such agreements, provided such separate agreements are entered into with the written consent of District first had and obtained and are subject to all the terms and conditions of this Agreement and District's agreements with such other entities.

(e) District has entered into this Agreement with the understanding that it is, and will continue to be, City's policy to (i) require urban growth to occur sequentially in designated growth areas around City, (ii) promote infill development with City's existing boundaries and (iii) facilitate the successful implementation of SGMA within the groundwater basin shared by City and District by conditioning land use and annexation decisions on the existence of an available water supply to support new development in annexed areas. Consistent with that understanding, for the term of this Agreement, as a condition of the provision of City water service, City shall require the proponent of any proposed development project located outside of City's Water Service Area boundary as of the date of this Agreement to:

- i. Define the peak water demands, plus fire protection demands, required to meet the total water supply demands of the entire project at build-out conditions;
- ii. Obtain a perpetual surface water supply allocation, right, entitlement or similar from District, or other surface water supply agency, to meet the peak water demands, plus fire protection demands, at build out conditions; and
- iii. Dedicate, transfer or assign the perpetual surface water supply allocation, right, entitlement or similar to City.

Once the perpetual water supply has been dedicated, transferred, or assigned to City, the water supply shall be incorporated into City's Surface Water managed by District for City under this Agreement.

In addition, to improve, restore, and maintain the availability, reliability, and drought resiliency of the groundwater and surface water resources in the North Kings Subbasin,

City and District shall jointly advocate that all public water supply systems in the North Kings Subbasin should require the proponents of new development projects to obtain perpetual surface water supply rights, allocations, entitlements, and similar, in sufficient quantity, to meet the all demands at full build out.

(f) In furtherance of the parties' goals under this Agreement, City shall utilize City's Friant Supply to provide water to the City's SWTF served by the South Raw Water Pipeline (as defined below) for the purpose of serving the Excluded Area.

6. Raw Water Pipelines. As soon as reasonably practicable, City shall construct, at its sole cost and expense, two raw water pipelines to serve City's SWTFs (the "Raw Water Pipelines"). One Raw Water Pipeline shall be a direct connection from the Friant-Kern Canal to City's SWTF located at Mile Point 7.58 (the "Friant-Kern Canal Raw Water Pipeline"). The other Raw Water Pipeline shall be a direct connection from the Fresno Canal downstream of the headworks for such canal to City's SWTF located at Trimmer Spring Road (the "South Raw Water Pipeline"). City's T3 SWTF shall continue to be served by the Enterprise and Jefferson Canals that are a part of the District Water System. Once operational, the Raw Water Pipelines shall be used to convey portions of City's Surface Water directly to the SWTFs, and all costs of the operation, maintenance, repair and replacement of the Raw Water Pipelines shall be borne by City; provided, that District shall be entitled to utilize for its own purposes any capacity in the Raw Water Pipelines not required to deliver City's Surface Water, and District shall reimburse City upon demand for any operational costs incurred as a result of District's use of the Raw Water Pipelines. Any third-party property damages resulting from City's efforts and activities related to the operation, maintenance, repair, and replacement of the Raw Water Pipelines shall be received and processed by City in accordance with City's Risk Management policies and procedures.

7. City's Friant Supply. While this Agreement is in effect, City (i) shall not convey any interest in the City Bureau Contract to any party other than District, (ii) shall at all times maintain the City Bureau Contract in effect and (ii) shall not voluntarily decrease the quantity of City's Friant Supply to be made available to City thereunder without the written consent of District. City will use every effort to obtain its maximum entitlement to City's Friant Supply annually as it may become available, and will seek to maximize any other surface water opportunities that may be available to City via the Friant Division of the Central Valley Project. Nothing in this Agreement conveys any ownership interest in the City Bureau Contract to District, which shall at all times remain the sole property of City, nor does this Agreement convey any interest in the District Bureau Contract to City, which shall at all times remain the sole property of District.

8. Schedules of Delivery and Conveyance of Water.

(a) District shall deliver City's Surface Water to City in accordance with schedules provided from time to time by City for approval by District, which approval shall not be unreasonably withheld, delayed or conditioned. Such schedules shall set forth the amounts of water desired by City, the desired timing of deliveries, the facilities by which such water is to be delivered, and the point(s) on the District Water System where City will assume physical control of the delivered water. Deliveries of water by District will take into consideration all relevant

factors, including without limitation (i) the capacity and condition the applicable portions of the District Water System, (ii) City's Bureau Contract, (iii) the District Bureau Contract, (iv) the Kings River Agreements, (v) actual and anticipated water supply conditions, (vi) the requirements of other contracts between the District and third parties (including without limitation the City of Clovis and Fresno County Waterworks District No. 19) and (vii) all other factors pertaining to the distribution, apportionment and use of water available to District.

(b) All schedules submitted by City during each Water Year shall provide for the delivery during that Water Year of all of City's Surface Water that becomes available to City during that Water Year. Notwithstanding the foregoing, City may schedule up to 10,000 acre feet of City's Surface Water that becomes available to City during one Water Year for delivery in the succeeding Water Year ("Rescheduled Water"). City shall timely pay in full all costs imposed by third parties, including without limitation the United States Bureau of Reclamation, as the result of any Rescheduled Water requests or deliveries.

9. Conveyance Losses. City shall bear all losses incurred in the District Water System downstream of the applicable Point of Delivery; provided, that no such losses shall be assessed against City when District is delivering irrigation water to its landowners or water users via the portions of the District Water System used to convey City's Surface Water to the points on the District Water System where City will assume physical control of the delivered water. Conveyance losses chargeable to City shall be computed by multiplying the losses in that portion of any canal used for conveyance of City's Surface Water during the period such water is being so conveyed by the total amount of water being conveyed for City in that canal during such time, divided by the total amount of water flowing in that portion of that canal during the same period.

10. Use by District of Water Not Used by City.

(a) Except for Rescheduled Water, in the event City is unable to use or does not use any of City's Kings River Supply in any Water Year, City shall lose the right to receive such water, and District shall have the right to take and use such water for Agricultural Use in such manner as it may determine.

(b) Except for Rescheduled Water, in the event City is unable to use or does not use any part of City's Friant Supply and District reasonably concludes that it cannot effect a Transfer for all of such unused water as Temporarily Unused Friant Water as described in Section 4(g), City shall nevertheless take and pay for such unused water and District shall have the right to use such water for Agricultural Use, but City may require District to so use such water at such locations as City may direct; provided, however, in the event City does not direct the location at which said water shall be used in time that it may be so used or in the event the District Water System will not permit the conveyance of such water to such location when so directed, or if for any other reason the conveyance of such water to such location at that time is not feasible or practicable, District shall have the right to use such water upon the same conditions as are provided in Section 10(a). Such use of any such water by District shall not relieve City from any payments required to be made by it under the City Bureau Contract or under the terms of this Agreement and its use by District shall not require any payment from District to City.

(c) Except for Rescheduled Water, in the event City is unable to use or does not use any of City's Surface Water that is neither City's Kings River Supply or City's Friant Supply in any Water Year, City shall lose the right to receive such water, and District shall have the right to take and use such water for Agricultural Use in such manner as it may determine. In such event, insofar as the District Water System will permit, and insofar as otherwise may be practicable and equitable as to other landowners, District will use such water for irrigation or percolation in areas in City or east or northeast of City, and will discuss its use with City before it is used elsewhere. However, the ultimate decision concerning such use of such water shall be within the discretion of District.

11. Water Rights Not Transferred. As was the case under the 1976 Agreement, City acknowledges that its rights to City's Kings River Supply under this Agreement are contractual rights and not water rights. Nothing in this Agreement authorizes or shall be construed or deemed to constitute the sale or transfer of a water right from either party to the other and nothing in this Agreement shall constitute the dedication by either party of water or storage to a public use. No right in any water, storage right or water right owned by District or City shall be acquired or lost by virtue of this Agreement or the actions contemplated hereby. At no time shall City make any claim, assert any right or otherwise seek, confirm or perfect in any forum any legal or beneficial interest, right or title to any of District's water supply or storage rights except as expressly set forth herein.

12. City's Sewage Effluent. City shall retain its sewage effluent and recycled water within the boundaries of District for the term of this Agreement, except with the written consent of District first had and obtained. It is the intent of City and District to develop and execute a new agreement addressing such effluent and recycled water use, and this Agreement is to be interpreted so as to be consistent with such new agreement if and when it is executed by the parties.

13. Acreages and City's Kings River Supply.

(a) City's Water Service Area consists of Included Acres and Excluded Acres, and on an annual basis City and District shall prepare a map showing the total number of acres in each area as of the first day of March of each year. When so approved, said map shall be incorporated herein by reference as **Exhibit B** and shall become a part hereof. Said map shall be amended and reapproved by both parties as of the first day of March each year and added to this Agreement as an updated **Exhibit B**. However, City shall keep the District currently advised during the year of any new lands outside of City's Water Service Area to which it commences or consents to deliver water, and District shall keep City so advised as to any new lands designated or assessed by it as lands receiving or to receive District Water Service. When so amended and reapproved as of the first day of March of each year, said map shall conclusively establish the boundaries of and the acreage in each area for all purposes of this Agreement.

(b) City's Kings River Supply shall be the herein-contracted for percentage of District's Kings River Water Supply. Such percentage shall be based on the ratio of Included Acres within City's Water Service Area to the total acres within District's boundaries. In computing the acreage within the Included Acres, the entire acreage shall be measured including properties that may be exempt from assessment for taxation and including adjacent streets,

alleys, roads, highways and other public ways to the center lines thereof. As of the execution of Agreement, and based on the land area sizes defined above, City's Kings River Supply is 25.54 percent of the District's Kings River Supply.

(c) Notwithstanding any other provision of this Agreement, and notwithstanding increases in the Included Acres, City's Kings River Supply shall be limited to 29.00 percent of District's Kings River Supply. At such time when the ratio of Included Acres within City's Water Service Area to the total acres within District equals 29.00 percent, City's Kings River Supply shall remain fixed at 29.00 percent. City and District mutually agree that the increase percentages reflected in this Section 13 include allowances for moderate growth in Growth Area 1 of City's Sphere of Influence as shown in Exhibit C (as depicted as Figure IM-2 of the Fresno General Plan).

(d) To improve, restore, and maintain the availability, reliability, and drought resiliency of the groundwater and surface water resources in the North Kings Subbasin, District shall support, and to the extent it has the legal authority to do so shall require, the establishment of water supply limits on all municipal water systems in the North Kings Subbasin.

District acknowledges that it may enter into surface water utilization and conveyance agreements similar to this one with other municipalities in the Kings Subbasin that provide for the delivery of portions of District's Kings River Supply. Subject to the following paragraph of this Agreement, all such agreements entered into after the date of this Agreement shall provide that the percentage of District's Kings River Supply made available to the municipality entering into such agreement shall be determined in a manner similar and comparable to that applied to City in this Agreement.

Should the District enter into such a water utilization and conveyance agreement with another municipality in the Kings River Subbasin after the date of this Agreement that makes available a percentage of District's Kings River Supply to such municipality determined in a manner that is not similar and comparable to that applied to City in this Agreement, at City's request the parties shall negotiate in good faith an adjustment in City's Kings River Supply to apply the same methodology used, and provide the same percentage increase, as granted to the other municipality; provided, that to the extent such other municipality provides additional consideration to District for such different methodology, City shall provide comparable consideration if it requests that such different methodology be used for this Agreement. Any disputes arising as a result of such negotiation shall be resolved pursuant to Section 19.

14. Payment by City to District. In consideration of the water supplies and services provided by District to City under this Agreement, City shall pay to District each Water Year in which this Agreement is effective the following:

(a) The sum calculated by multiplying the number of Included Acres by the per acre assessment imposed as of March 1 of that Water Year on lands in District receiving District Water Service, plus the sum calculated by multiplying the number of Excluded Acres by the per acre assessment imposed as of March 1 of that Water Year on lands in District not receiving District Water Service. Amounts payable to District pursuant to this Section 14(a) shall be paid by City 60% on or before the 20th day of December preceding the Water Year for which such

amounts are due, and the remaining 40% shall be paid on or before the 20th day of June of the following Water Year. City and District acknowledge that during the term of this Agreement, District may convert its rate structure to include a volumetric charge. Concurrently with such a rate structure modification, the parties shall negotiate modifications to this Section 14 so that charges imposed on City under the revised District rate structure are equitable and comparable in proportion and magnitude to the charges imposed on other District customers receiving water for Agricultural Use. Without limiting the foregoing, any volumetric charges imposed on City shall be determined in the same manner as volumetric charges imposed on other District customers receiving water for Agricultural Use.

(b) An out of season water delivery fee determined in accordance with the procedure described in the attached **Exhibit D** for each acre foot of water delivered to City under this Agreement as an Out of Season Delivery (the "Water Delivery Fee"). The Water Delivery Fee shall be payable within 30 days after District delivers City an invoice for such fee indicating the amount of water delivered during the invoice period and the total Water Delivery Fee due. City acknowledges that such fee is in part to compensate District for additional costs and risks incurred for operating its system to make Out of Season Deliveries. No such fee shall be due for water deliveries to City under this Agreement that are not Out of Season Deliveries.

(c) A rescheduling fee for each acre foot of Rescheduled Water determined in accordance with the procedure described in the attached **Exhibit E** (the "Rescheduling Fee"). The Rescheduling Fee shall be payable annually after March 1 of each Water Year within 30 days after District delivers City an invoice for such fee indicating the amount of Rescheduled Water for the applicable Water Year and the total Rescheduling Fee due. City acknowledges that the Rescheduling Fee is necessary to compensate District for additional costs and risks incurred to reschedule water for City from one Water Year to the succeeding Water Year. The Rescheduled Water Fee shall not be applied to any of City's Friant Supply carried over in Millerton Lake, as the Bureau has established a separate fee schedule for City to reschedule City's Friant Water Supply from one Water Year to the succeeding Water Year.

(d) While this Agreement is in effect, District shall not impose District assessments or other charges on landowners within City's Water Service Area or adopt special "municipal and industrial" assessments, rates or charges that would be imposed on or as a result of water deliveries to City under this Agreement. Only the amounts described in this Agreement shall be imposed on any party as a result of deliveries of City's Surface Water by District to City.

(e) Time shall be of the essence for the making of the payments described in this Section 14. If any such payment is not made on the date provided, City shall pay to District in addition to said payment costs, penalties and interest equal to those provided by law to be paid by landowners within District for the late payment of assessments. Such costs, penalties and interest are in addition to any other remedy which District may have against City because of City's failure to pay said payment as above provided.

(f) City acknowledges and agrees that the amounts payable by City pursuant to this Section 14 will vary from year to year and may increase over time. City further acknowledges that, while some of such amounts will be determined with reference to District assessments on its landowners, no amounts payable by City under this Agreement are assessments on City's

landowners. City further agrees that, as they relate to City, such amounts will be imposed as a matter of contract and are not assessments, fees or charges to which Article XIII D of the California Constitution applies. City shall be permitted to participate in public hearings and meetings held in connection with rate-setting, but City shall not assert that Article XIII D of the California Constitution applies to payments required under this Agreement. If City makes such an assertion, this Agreement may be terminated by District in its entirety as of the last day of February of the next succeeding year by written notice served upon City. City shall be responsible to set its rates to its utility users in accordance with applicable law, and shall indemnify and defend District against any claims or legal actions commenced by City's water users or ratepayers to challenge the amounts payable by or to City.

15. Re-negotiations. City and District acknowledge that changed circumstances in the future may:

- i. Result in material changes in the size of City's Water Service Area, the number of Excluded Acres and/or the number of Included Acres, and/or
- ii. Render the amount of City's Kings River Supply as an increasing percentage of District's Kings River Water Supply inequitable.

Such changed circumstances could result from, among other causes:

- i. Annexations or detachments from City and/or District;
- ii. Updates in City's Urban Water Management Plan or the Fresno General Plan;
- iii. Significant regional economic development projects that require the extension of the City Water System outside of City's Water Service Area. Significant regional economic development projects shall be those that qualify for federal, state, county, or local economic development incentives; or
- iv. New legal, regulatory, or environmental requirements placed on water supply agencies by a state or federal government agency.

Should either party to this Agreement determine after January 1, 2036 that such changed circumstances have arisen, it may notify the other of such determination and request that the parties meet to discuss mutually acceptable changes in the number of Excluded Acres, the number of Included Acres and/or the percentage used to determine City's Kings River Supply. Neither party shall be required to engage in such discussions prior to January 1, 2036.

The parties shall thereupon meet in good faith in an attempt to reach agreement on such changes; provided, that if no such agreement is reached within 180 days of the initial meeting, neither party shall be obligated to continue such meetings.

The number of Excluded Acres, the number of Included Acres and City's Kings River Supply shall remain unchanged pending agreement on the changes, and therein documented by a written amendment to this Agreement and executed by both parties.

16. Protection of District Facilities. City shall not permit the development of any parcel of land or the use of any public utility or other easements affecting land within its boundaries if any of the District Water System is located on, under or adjacent to such parcel until City, the landowner and/or the developer enters into an agreement acceptable to District for the repair, rehabilitation, relocation, replacement, reconfiguration or pipelining of the facilities on the parcel, and on any adjacent parcels, all as District determines is necessary or appropriate in order to (i) avoid disruption of District operations or maintenance activities as a result of the development, (ii) make District facilities suitable for operation within a developed area, or (iii) address public safety concerns.

17. No Warranty of Quality. City recognizes that City's Surface Water will be "raw," non-potable and untreated, and that the amount of water included in City's Surface Water will vary from year to year due to a variety of factors beyond the control of District. City further recognizes that wastewater (both treated and untreated) and drainage water are sometimes discharged into the District's canals, and that such discharges from a number of sources will occur and/or continue during the term of this Agreement. Accordingly, except as expressly set forth in this Agreement, District makes no representations or warranties regarding the quality of the water or the amount of water to be delivered to City each Water Year. City recognizes that the treatment of City's Surface Water to make it potable shall be the sole responsibility of City, and City shall assume all risk and responsibility therefor. The character or quality of the water furnished or conveyed hereunder may vary from time to time for reasons including, but not restricted to, the application by District of chemicals to control aquatic and ditch bank weeds, and the open canals of District are always subject to possible pollution from outside sources. District does not guarantee in any respect or assume any responsibility for the chemical, bacterial or other quality of the water made available to City through the District Water System.

18. Indemnity. City and District each agree to indemnify the other and save the other free and harmless of and from any and all liability, damage, loss, cost or expense, incurred or suffered by the other, by reason of damage to the property of the other or injury to any other person or property arising out of its own conduct, acts, omissions or faults, in connection with any matter related to this contract.

19. Dispute Resolution.

(a) District and City staff shall exercise every effort to resolve disputes through the development of a consensus.

(b) To the extent District and City staff cannot promptly resolve an issue in dispute; the parties shall promptly convene a meeting of senior party representatives to attempt to resolve the dispute. Either party may request a dispute resolution meeting pursuant to this section by providing written notice to the other party, including a summary of the issue in dispute. District representatives shall be its Board chair or president and another Board member. City representatives shall be the Mayor and City Council President. These senior party representatives shall make reasonable efforts to meet as frequently and as promptly as possible to negotiate the terms and conditions of a resolution. If these party representatives are unable to resolve the dispute through this informal process within a reasonable period, either party may pursue any remedy it may have under law or equity.

(c) The dispute resolution process described above shall be limited to material disputes regarding matters related to Transfers, expenditures from the Water Supply Development Fund, changes in City's Kings River Supply, revisions of this Agreement pursuant to Section 13(d), City's Friant Supply, changes proposed for **Exhibits B or C**, calculation procedures for fees for Out Of Season Deliveries and Rescheduling Fees, and similar matters.

(d) In cases where a dispute arises between the parties that, if unresolved, may result in imminent danger to the public, health, safety or welfare, the parties shall not be obligated to engage in dispute resolution pursuant to this Section 19.

20. Defense of Agreement. In the event of litigation this Agreement, the parties shall cooperate to provide a joint defense of the litigation. Each party shall bear its own costs of such litigation, including attorneys' fees and expert witness fees.

21. No New Agency. This Agreement is not intended to create a new joint powers authority or other entity. Each party shall conduct itself under this Agreement in good faith, using its diligent best efforts to comply with this Agreement and to achieve the objectives of the parties set forth herein. Each party shall make its personnel and resources reasonably available as required to achieve the purposes of this Agreement.

22. Approvals. Except as expressly provided in this Agreement, compliance with all legal/regulatory requirements and governmental or other third party restrictions on the use or delivery of City's Surface Water to its City water users shall be the responsibility of City. District shall be excused from delivering any water supply under this Agreement if, by so doing, District would become subject to additional legal requirements or third party restrictions imposed on deliveries of water to City's water users.

23. Entire Agreement. This Agreement and each of the exhibits referred to herein, which are incorporated by this reference, constitute the entire agreement between the parties pertaining to the subject matter hereof and supersede all prior and contemporaneous agreements and/or obligations concerning these obligations which are merged into this Agreement. Each party has made its own independent investigation of the matters settled and is not relying upon any representation not specified herein.

24. Applicable Law. This Agreement shall be construed under and shall be governed by the laws of the State of California. Any action to interpret or enforce any aspect of this Agreement shall be brought in the California Superior Court of Fresno County, California. City and District hereby expressly waive any right to remove any action to a county other than Fresno County as permitted pursuant to California Code of Civil Procedure Section 394.

25. Construction of Agreement. This Agreement is the product of negotiation and preparation by and among each party hereto and its attorneys, and the parties agree that this Agreement shall not be deemed to have been prepared or drafted by any one party. Accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

26. Modification of Agreement. No supplement, modification, waiver, or amendment with respect to this Agreement shall be binding unless executed in writing by the party against whom enforcement of such supplement, modification, waiver or amendment is sought.

27. Counterparts. This Agreement may be signed in any number of counterparts by the parties, each of which shall be deemed to be an original, and all of which together shall be deemed one and the same instrument. Facsimile or other electronic signatures shall be binding.

28. Further Acts. The parties shall reasonably cooperate with each and take such further actions as may be necessary, including the execution of all necessary further documents, to carry out the purpose and intent of this Agreement. Each of the parties shall diligently and in good faith proceed to negotiate such other agreements as may be necessary to implement this Agreement.

29. Binding Effect. This Agreement shall be of binding legal effect only when it has been executed by all of the parties. No rights or duties under this Agreement may be assigned or delegated by a party without the express written consent of the other party, which may be withheld in the sole and absolute discretion of such other party. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties.

30. Notice to Parties. Any notice or other communication given under the terms of this Agreement shall be in writing and shall be given personally, by facsimile or by certified mail, postage prepaid and return receipt requested. Any notice shall be delivered or addressed to the parties at the addresses or facsimile numbers set forth below or at such other address or facsimile numbers as shall be designated by notice in writing in accordance with the terms of this Agreement. The date of receipt of the notice shall be the date of actual personal service or facsimile transmission with written confirmation of successful transmission, or three days after the postmark on certified mail. All notices required under or regarding this Agreement shall be made in writing addressed as follows:

Fresno Irrigation District
2907 S Maple Avenue
Fresno, CA 93725
Attn: General Manager
Facsimile No.: 559-233-8227

City of Fresno
2600 Fresno Street
Fresno, CA, 93721
Attn: Director of Public Utilities
Facsimile No.: 559-498-1304

31. Attorneys' Fees. In the event of any action or arbitration between the parties seeking enforcement or interpretation of any of the terms and conditions of this Agreement, the prevailing party in such action shall be awarded, in addition to damages, injunctive or other relief, its reasonable costs and expenses, including, but not limited to, taxable costs and reasonable attorneys' fees.

32. Cumulative Rights; Waiver. No failure by any party to exercise, and no delay in exercising any rights, shall be construed or deemed to be a waiver thereof, nor shall any single or partial exercise by any party preclude any other or future exercise thereof or the exercise of any other right. Any waiver of any provision or of any breach of any provision of this Agreement

must be in writing, and any waiver by a party of any breach of any provision of this Agreement shall not operate as or be construed to be a waiver of any other breach of that provision or of any breach of any other provision of this Agreement.

33. Severability. Subject to the parties' rights under Section 2 of this Agreement, if any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, such provision shall be automatically reformed so as to be valid, legal and enforceable to the maximum extent permitted and the balance of this Agreement shall remain in full force and effect notwithstanding such invalidity, illegality or unenforceability.

34. No Third Party Beneficiaries. This Agreement does not create, and shall not be construed to create, any rights enforceable by any person, partnership, corporation, joint venture, limited liability company, district or other form of organization or association of any kind that is not a party. Without limiting the generality of the foregoing, landowners, residents, water users and ratepayers of the parties are not intended to be third party beneficiaries of this Agreement.

35. Force Majeure. Notwithstanding any other provision of this Agreement, neither party shall be liable for any failure to perform resulting from any cause outside the reasonable control of that party. For purposes of this Agreement, routine and emergency repairs and maintenance of the District Water System shall be deemed causes outside of the reasonable control of District (including without limitation the annual shut down of the Enterprise Canal for maintenance), provided that District shall use reasonable efforts to schedule routine maintenance so as to avoid interference with deliveries of City's Surface Water.

//

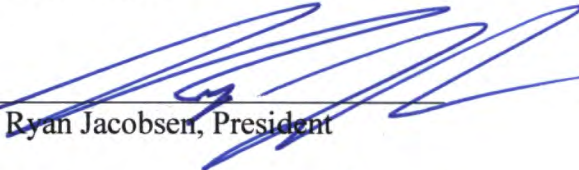
IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date first above written.


“District”

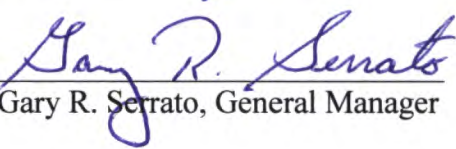
“City”

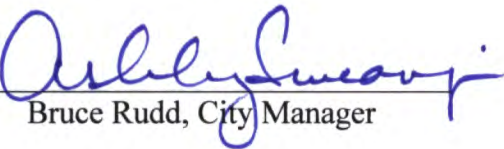
The Fresno Irrigation District, a California irrigation district

The City of Fresno, a municipal corporation

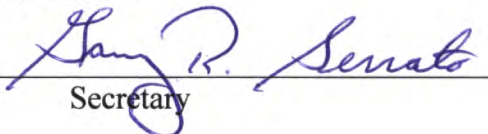
By 
Ryan Jacobsen, President

By: 
Ashley Swearengin, Mayor

By 
Gary R. Serrato, General Manager

By 
Bruce Rudd, City Manager

ATTEST:



Secretary

ATTEST:

Yvonne Spence, CMC
City Clerk

By:  1/11/17
Deputy

APPROVED AS TO FORM:
City Attorney, Douglas Sloan

By:  12/22/16
AMANDA FREEMAN, DEPUTY

ATTACHMENTS:

EXHIBITS

- Exhibit A – Monthly Water Supply Utilization Report
- Exhibit B – City Water Service Area Map
- Exhibit C – Fresno General Plan Map
- Exhibit D – Out of Season Delivery Cost Methodology
- Exhibit E – Rescheduled Water Cost Methodology

EXHIBIT A

EXHIBIT B

City of Fresno
Water Service Area Boundary
Exhibit "B"
December 13, 2016

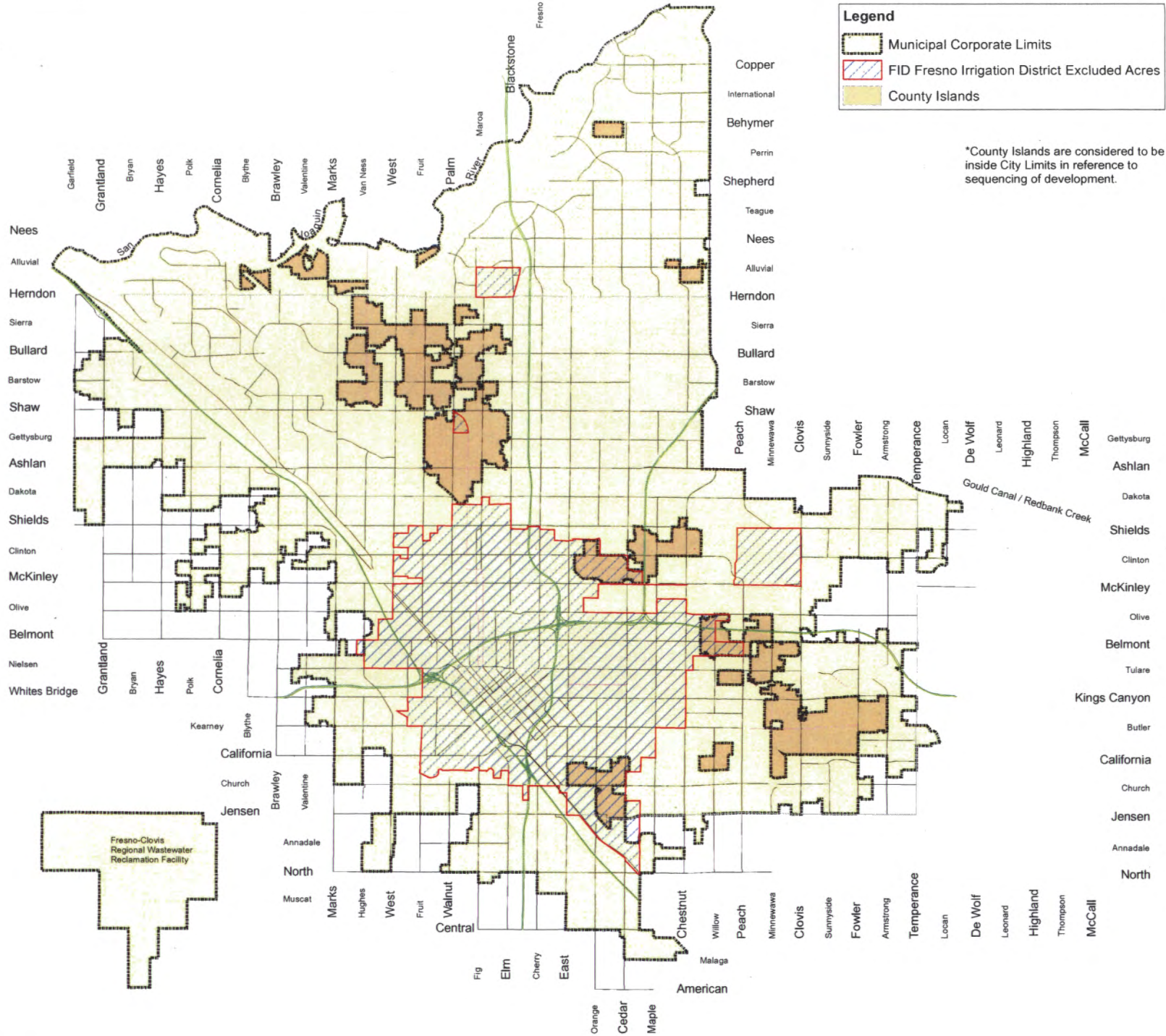
"The City's Water Service Area consists of Included Acres and Excluded Acres, and on an annual basis City and District shall revised this Exhibit B map to show the total number of acres in each area as of the first day of March of each year."



Legend

- Municipal Corporate Limits
- FID Fresno Irrigation District Excluded Acres
- County Islands

*County Islands are considered to be inside City Limits in reference to sequencing of development.

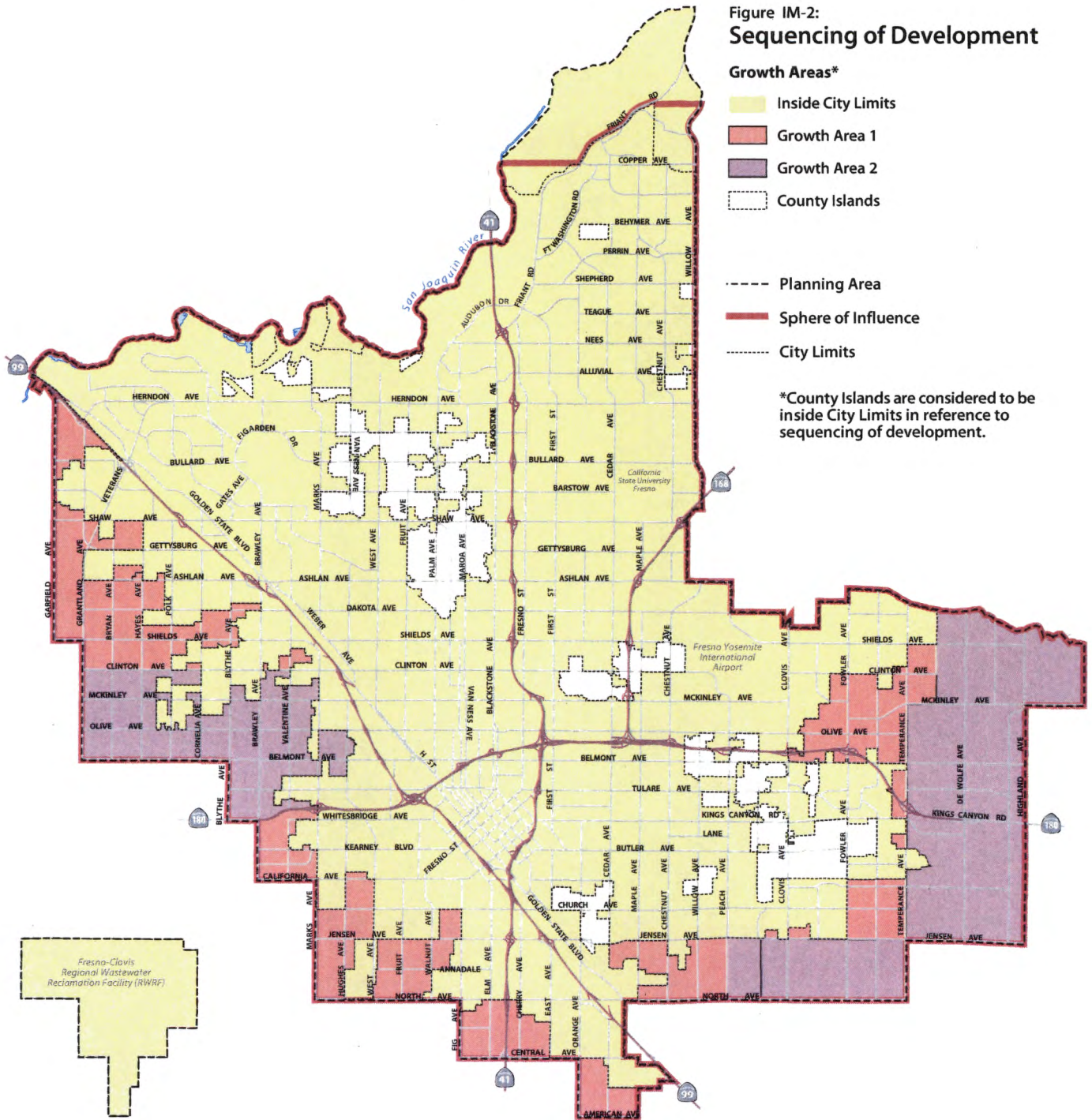


Fresno-Clovis
 Regional Wastewater
 Reclamation Facility

EXHIBIT C

EXHIBIT C

Figure IM-2:
Sequencing of Development



Growth Areas*

- Inside City Limits
- Growth Area 1
- Growth Area 2
- County Islands

- Planning Area
- Sphere of Influence
- City Limits

*County Islands are considered to be inside City Limits in reference to sequencing of development.



Source: City of Fresno, 2014.

EXHIBIT D

EXHIBIT D

The City will be responsible for paying the District for all costs associated with delivering water Out of Season Deliveries which will include but not limited to:

- i. Staff time to deliver water (includes salary wage, labor burden and overhead).
- ii. Cost to operate vehicles to operate and inspect the canal system.
- iii. Power costs associated with running District's SCADA/Telemetry system, automated gate valves, flow meters, automated trash screens, etc.
- iv. Repairs to the canals system which are caused by water running outside the normal irrigation season. Repairs may include but not limited to canal lining, gate replacement, structure replacement, earthwork (grading, dredging, etc.) weed treatment (aquatic or terrestrial), all-weather road maintenance, trash/debris removal, etc.

EXHIBIT E

EXHIBIT E

The Rescheduling Fee for each rescheduling request here under shall be equal to the last Friant carry over charge assessed for a water year prior to the date to the request.

47087

RECORDED IN OFFICIAL RECORDS OF
FRESNO COUNTY, CALIFORNIA
AT 41 MIN. PAST 3
JUN 24 1974
H. L. MASINI, County Recorder

AGREEMENT BETWEEN FRESNO IRRIGATION DISTRICT AND
CITY OF FRESNO FOR EXCHANGE OF RECYCLED WATER

This agreement entered into this 20th day of June
1974, by and between FRESNO IRRIGATION DISTRICT, a public corpora-
tion (herein called "District"), and the CITY OF FRESNO, a municipi-
pal corporation (herein called "City");

WITNESSETH:

WHEREAS, Fresno Irrigation District is the owner of water
rights on the Kings River and a water distribution system for the
distribution of irrigation waters for agricultural use within the
District and has entered into contracts with the United States for
an additional supply of water from the Friant-Kern Canal and for
storage in Pine Flat Reservoir on the Kings River for the purpose
of supplementing the water available for such use within the
District; and

WHEREAS, the City of Fresno is located entirely within the
exterior boundaries of the District and is the owner of a water
distribution system used by City for delivering water to persons
and lands both within and outside its City limits for municipal,
industrial and domestic uses and is also the owner of a liquid
waste treatment plant located within the District southwest of
the city limits which is used for the treatment, percolation,
purification, recycling and other disposition of liquid effluent
from the City and intends to enlarge and improve said facilities
and to produce by such treatment, percolation, purification and
recycling, water which is of a quality suitable for agricultural
use; and

WHEREAS, the entire area represented by the District and
by the City is a water deficient area and the District is in need
of additional waters for agricultural use and the City is in need
of additional water for municipal, industrial and domestic uses;
and

31
PAGE

To be recorded without fee on behalf
of Fresno Irrigation District. *L. J. ...*

WHEREAS, the amount of water available to the District for agricultural use may be increased by the use of water recycled by the City as above described and the amount of water available to the City for use in its water distribution system for municipal, industrial and domestic uses may be increased by the exchange of such recycled water for the use by District of additional Kings River and/or Friant-Kern Canal water in that portion of the District northeast of the City; and

WHEREAS, City is desirous of maintaining a water level under its liquid waste treatment plant that will provide for maximum efficiency in the operation of its said plant; and

WHEREAS, a greater beneficial use and more economical utilization of all of the waters available to both the District and to the City can be obtained by the use of such waters as herein provided and both parties believe it is in the best interests of all the landowners and inhabitants within the District and within the City to enter into such an agreement;

NOW, THEREFORE, it is mutually agreed as follows:

1. Approval by United States and State Water Quality Board. Immediately upon the approval of this contract by the parties hereto, it shall be presented to the United States, and also to the California Regional Water Quality Control Board, or its successor agency, for their approval and shall not become effective for any purpose until such approval has been obtained.

This contract shall be at all times subject to all of the terms and conditions of the City Bureau Contract, the District Bureau Contracts and the District Kings River Intra-Association Agreements and to the extent that any agreement contained herein is contrary to or inconsistent with any term or condition of those contracts or agreements, this contract shall be unenforceable.

In the event the performance of any agreement contained herein shall become unenforceable or shall be in violation of any Federal

State or local statute or ordinance or of any decision of any court of competent jurisdiction, the entire contract may be terminated by either party upon written notice mailed to the other party.

2. Definitions. For purposes of this agreement the following words and phrases shall be defined as follows:

(a) "Agricultural use" means the use of water primarily in the production of agricultural crops, including the irrigation of lands and underground water replenishment.

(b) "Recycled water" means water which has been treated and percolated into the underground water supply under the City's liquid waste treatment plant in the southwest portion of the District which is thereafter pumped from said underground water supply.

(c) "City Bureau Contract" means that certain contract between the United States and the City of Fresno providing for water service dated January 12, 1961.

(d) "District Bureau Contracts" means those certain contracts between the United States and Fresno Irrigation District more particularly described as follows:

Contract between the United States of America and Fresno Irrigation District Providing for the Payment of the District's Share of the Cost of Pine Flat Dam and Reservoir Allocated to Irrigation, dated December 23, 1963.

Contract for Operation and Maintenance of Irrigation Storage Space of Pine Flat Reservoir dated December 23, 1963.

Kings River Allocation Contract, dated December 23, 1963.

Conveyance and Covenants in Compromise and Settlement of Fresno Slough Claims, dated April 23, 1965.

Contract between the United States and Fresno Irrigation District Providing for Water Service, dated July 20, 1964.

(e) "District Kings River Intra-Association Agreements" means those certain contracts relating to Kings River and storage in Pine Flat Reservoir more particularly described as follows:

Water Right Indenture, dated May 3, 1927.

Administrative Agreement and Monthly Diversion Schedule dated May 3, 1927.

Agreement Supplementing and Amending Water Right Indenture Dated May 3, 1927, and Supplementing and Amending Administrative Agreement Dated May 3, 1927, Relating to Kings River Water Association, and Amended Monthly Diversion Schedule, dated June 1, 1949.

Agreement Admitting Kings River Water District As a Member of Kings River Water Association and Agreement Re: Centerville Bottoms Schedule, dated September 10, 1963.

Agreement Supplementing and Amending Water Right Indenture Dated May 3, 1927, and Administrative Agreement Dated May 3, 1927, Each as Amended and Supplemented June 1, 1949, Relating to Kings River Water Association, dated September 10, 1963.

3. Agreement to Deliver and Accept Recycled Water. During the term of this agreement City agrees to deliver and District agrees to accept from City recycled water pumped by City from the area under its liquid waste treatment plant in amounts and under the terms and conditions hereinafter provided. When so delivered to District said water shall become the property of the District to be used for agricultural purposes and for underground water replenishment in the southwest portion of the District as the District shall see fit.

4. Water Quality. The City shall not deliver to District or discharge into District's canals any such recycled water which is not of a quality suitable for all agricultural use or which shall be deleterious to plant or animal life and all water so delivered shall meet all the quality standards of the California Regional Water Quality Control Board, or its successor agency, for agriculture and irrigation use and any other federal, state or local agency having jurisdiction or control over water quality standards. City agrees at its expense to make such periodical tests to determine the quality of the water discharged into District's canals at the point where said water is so discharged as may be required by any such board or agency or as may be required by the District's manager and to submit the results

of such tests in writing to the District forthwith after such tests are made. City further agrees that any complaint that said recycled water does not meet the above standards, including but not limited to complaints from any such board or agency, the County of Fresno, any mosquito abatement district or any user of such recycled water, must be corrected and resolved to the satisfaction of District before any further discharge of water into said canals shall be made without the express consent of the District.

5. Exhibit A. A map showing the exterior boundaries of the District, the District's canal system, the city limits of the City of Fresno, the location of City's liquid waste treatment plant site, the exact locations at which City may discharge water into the District's canal system, the type and capacity of the discharge facilities by which each such discharge may be made, the location of observation wells as provided in Paragraph 9, and those portions of the District designated by the parties as the "easterly" and "westerly" portions of the District for purposes of this agreement shall be prepared by the District's engineering department and approved in writing upon said map by the authorized representatives of the District and the City. When so approved said maps shall be incorporated herein by reference as Exhibit A and shall become a part hereof. One duplicate so approved shall be kept in the office of the City and one in the office of the District. Said map may be amended in writing upon said map and reapproved in writing as above set forth.

6. Place and Time of Delivery. City will deliver all such water to the District during the District's irrigation season which may at the election of the District be extended to accommodate the recycled water received under this agreement. Said water delivered by the City to the District shall be discharged by the City into the District's Dry Creek Canal No. 77 and/or Houghton

Canal No. 78 at the locations approved by the District and shown on the map marked Exhibit A and at no other location or locations.

7. Amount to be Delivered. The City shall deliver to the District under this agreement, subject to District's acceptance as provided herein, recycled water pumped by the City, which shall be delivered at a minimum rate of delivery of 100,000 acre feet in each ten-year period of this contract, provided, however, such delivery will not exceed the amount of 30,000 acre feet in any one year except that such maximum may be increased upon agreement between the District's manager and the Director of Public Works of the City. ^{10 Bells} At least 10 days prior to the first day of each calendar month during the term of this agreement City will submit to District in writing a schedule of the daily amount of such water proposed to be delivered to District at each discharge point during that month and the rate of flow indicated in cubic feet per second at which said water will be delivered. Upon receiving said schedule District's manager will approve the amount of such water the District is willing to accept at each said discharge point during each day of that month and thereafter City shall deliver to District the daily amount of such water so approved. Said daily deliveries shall be at a continuous and constant rate of flow during the entire 24 hour period of each said day. In no event shall the discharge into Dry Creek Canal No. 77 in any one month be in excess of one-half of the total amount delivered to District in that month or the discharge into the Houghton Canal No. 78 in any one month be more than two-thirds of the total amount delivered to the District in that month and in no event shall the rate of discharge of water into Dry Creek Canal No. 77 exceed 60 c.f.s. or the rate of discharge into Houghton Canal No. 78 exceed 120 c.f.s. No such discharges shall be made into District's canals until said discharges have been approved

gives immediate notice thereof to the District. In such event City shall use all reasonable effort to immediately restore the delivery of water to the level approved by District's manager as provided in paragraph 7. District's manager may refuse to agree to any such change in schedule or to accept water under such changed schedule if he reasonably determines that such change may result in damage to a District canal or to other property of the District or any other person or will interfere with the operation, alteration, repair or maintenance of the canal into which said discharge is to be made or will interfere with some other operation or function of the District.

9. Ground Water Level. City shall not pump said recycled water from the underground water reservoir in such a manner or to the extent that it will adversely affect the elevation of the water table in the area surrounding its liquid waste treatment plant as determined by the District. Such effect shall not be deemed to be adverse if the ground water level is not lowered below the gradients established by the District as existing on August 1 of the previous year. City agrees to monitor ground water levels in the area from which said recycled water is pumped on a monthly basis by means of observation wells located within an area surrounding its liquid waste treatment plant. The number and location of said wells shall be agreed upon by the City and the District, and when so agreed upon shall be shown on Exhibit A as provided in paragraph 5. Each month at the time City submits its schedule of proposed discharges, City shall supply District with the results of said observations and shall also supply District with a statement of the amounts discharged into District's canals during the previous month. Said schedule and said information shall be given to District upon a standard form approved by District's manager.

10. Construction and Maintenance of Facilities. All

discharge facilities to be used by City in discharging said water into said canals and suitable measuring devices required to measure the amount of water discharged into District's canals shall be constructed by City at its expense according to plans and specifications approved by District and shall thereafter be maintained in good operating and working condition by and at the expense of City. Said discharge facilities shall have a discharge capacity not greater than that shown on said map marked Exhibit A and shall be equipped with positive shut-off controls by which any and all discharges of water into District's canal system may be shut off immediately and at any time. City shall at all times protect said canals and their banks from any damage, injury or erosion at the locations of said facilities into said canals and any such damage or injury at such locations shall be repaired at the expense of City. If City fails to do so District shall be entitled to make said repairs and the expense thereof shall forthwith be reimbursed by City.

11. Use of Water Available to District. In consideration of the agreements of the City herein contained, District agrees that insofar as feasible and practical, it will make available from its Kings River water or from the water received by it under its Bureau Contracts an additional amount of water equivalent to 46% of the water received by it from the City under this agreement for agricultural use and for ground water replenishment in the easterly portion of the District as indicated on Exhibit A. The term "additional amount of water" as above used shall mean water in addition to the amount of water which would have been made available for use in that area if said recycled water had not been received by the District and used in the westerly portion of the District as indicated on Exhibit A. If the District shall determine that the use of said water in said area is not feasible or practicable it may, after discussion with the City, use such

water elsewhere. If in the future it is deemed desirable to do so, City, with the approval of District, may cause the dividing line between the easterly portion of the District and the westerly portion of the District to be moved to the west and the percentage of water to be made available in said easterly portion of the District to be increased in proportion to the increase in the area of land within said easterly portion.

12. District's Representative. Wherever it is provided in this agreement that District's manager shall do and act or exercise his discretion in respect to any particular matter said act and said exercise of discretion may be performed by any other representative of the District to whom such authority shall be delegated either by the District's Board of Directors or by said manager. In exercising his said discretion, the District's manager or his authorized representative shall weigh and balance the equities of the parties in respect to the interests of each and the necessities of District's operations in relation to those of the City. However, in any such case, his decision shall be final.

13. Ownership of District's Water Rights, Canals and Storage. Nothing contained in this agreement shall in any way affect District's ownership of its canal system or of its water right or its right to storage in Pine Flat Reservoir or give City any right or interest therein.

14. Expense of Performance. The performance of all terms and conditions of this agreement to be performed by City shall be at the expense of City and the performance of all terms of this agreement to be performed by District shall be at the expense of District.

15. Indemnity. City agrees to indemnify District and save District harmless of, from and against any loss, cost, expense, liability or attorney's fees incurred by District as the result of

any claim made by any third party because of the City's pumping from the underground water supply as above described or in any way arising out of the execution or performance of this agreement unless such loss, cost, expense or liability is caused by independent negligence on the part of the District in performing the terms and conditions of this agreement on its part to be performed.

16. Successors and Assigns. This agreement shall be binding upon the successors and assigns of the parties hereto provided that City's right to discharge water into District's canal system is not transferable or assignable and shall not pass to any successor in interest without the consent of District. This agreement is not made for the benefit of any person, firm, corporation or public entity not a party hereto and no person, firm, corporation or public entity except a party hereto or its successor or assign shall have any right to enforce said agreement under California Civil Code §1559 or otherwise.

17. Amendments. Except as otherwise provided herein this agreement may not be amended except by the written agreement of the parties hereto.

18. Term. Termination. The term of this contract shall be twenty years from its date, except that it may be cancelled upon mutual agreement between the parties hereto. The contract shall continue in effect after the end of said term except that it may be terminated thereafter by either party upon one year's written notice of such termination. Notwithstanding the foregoing, this contract may be terminated at any time, upon sixty days' written notice by either party, given on and because of substantial breach by the other party, which breach is not repaired or corrected before the end of said sixty-day period.

IN WITNESS WHEREOF, the parties hereto have executed this

agreement the day and year first above written.

FRESNO IRRIGATION DISTRICT

By Winston Strong
President

By Arlys T. Gorder
Secretary

ATTEST:

CITY OF FRESNO

Paula Douglas
City Clerk Deputy

By F. W. Hanley
Chief Administrative Officer

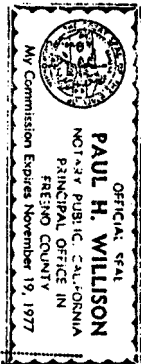
State of California }
County of Fresno } ss.

On this 20th day of June in the year one thousand nine hundred and seventy-four, before me, Paul H. Willison a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Winston Strong President and Arlys T. Gorder Secretary of the Fresno Irrigation District the corporation that executed the within instrument, and known to me to be the person S who executed the executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in said County, the day and year in this Certificate first above written.

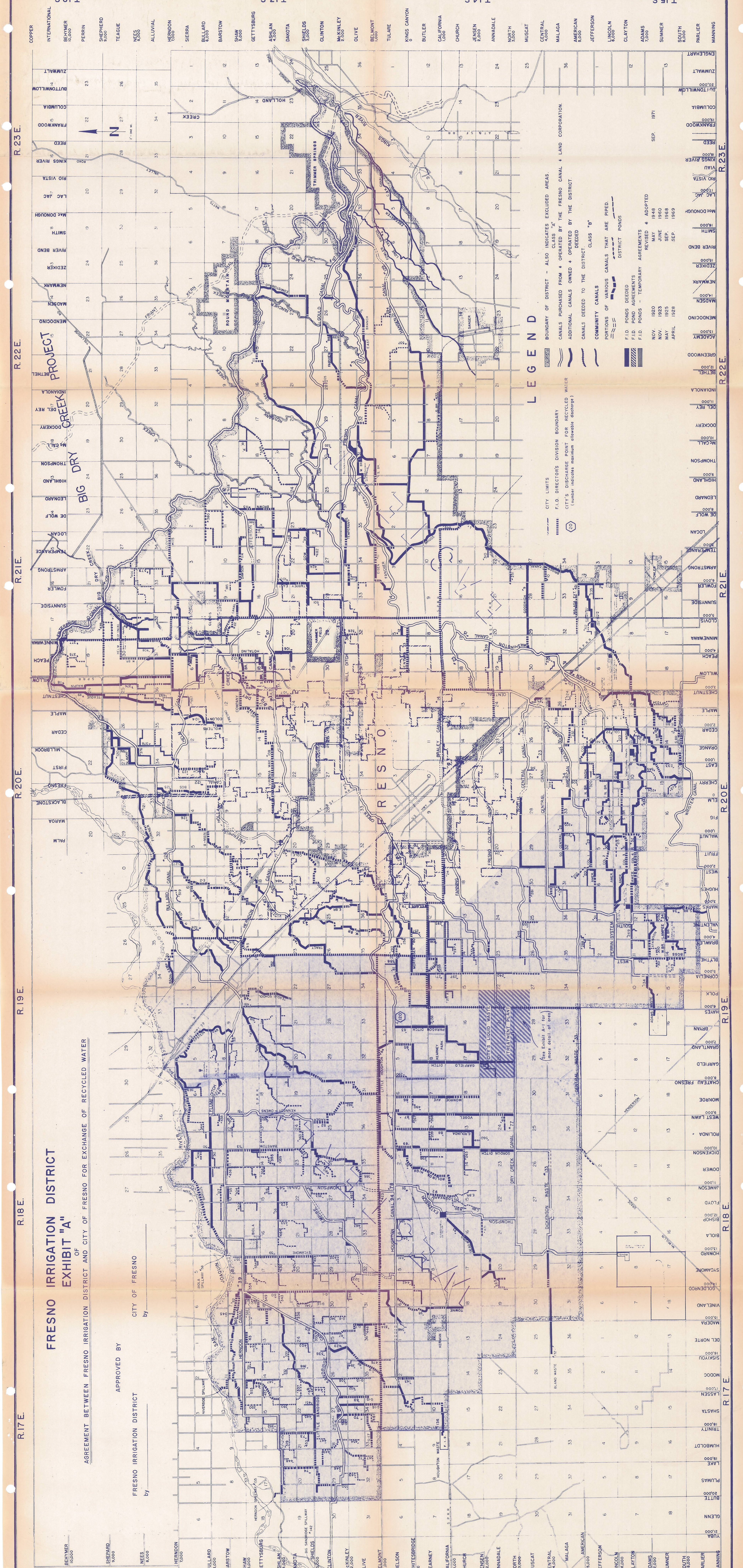
CORPORATION ACKNOWLEDGMENT
Kilner Stationery Co.
1916 Echo

Paul H. Willison
Notary Public in and for said County and State



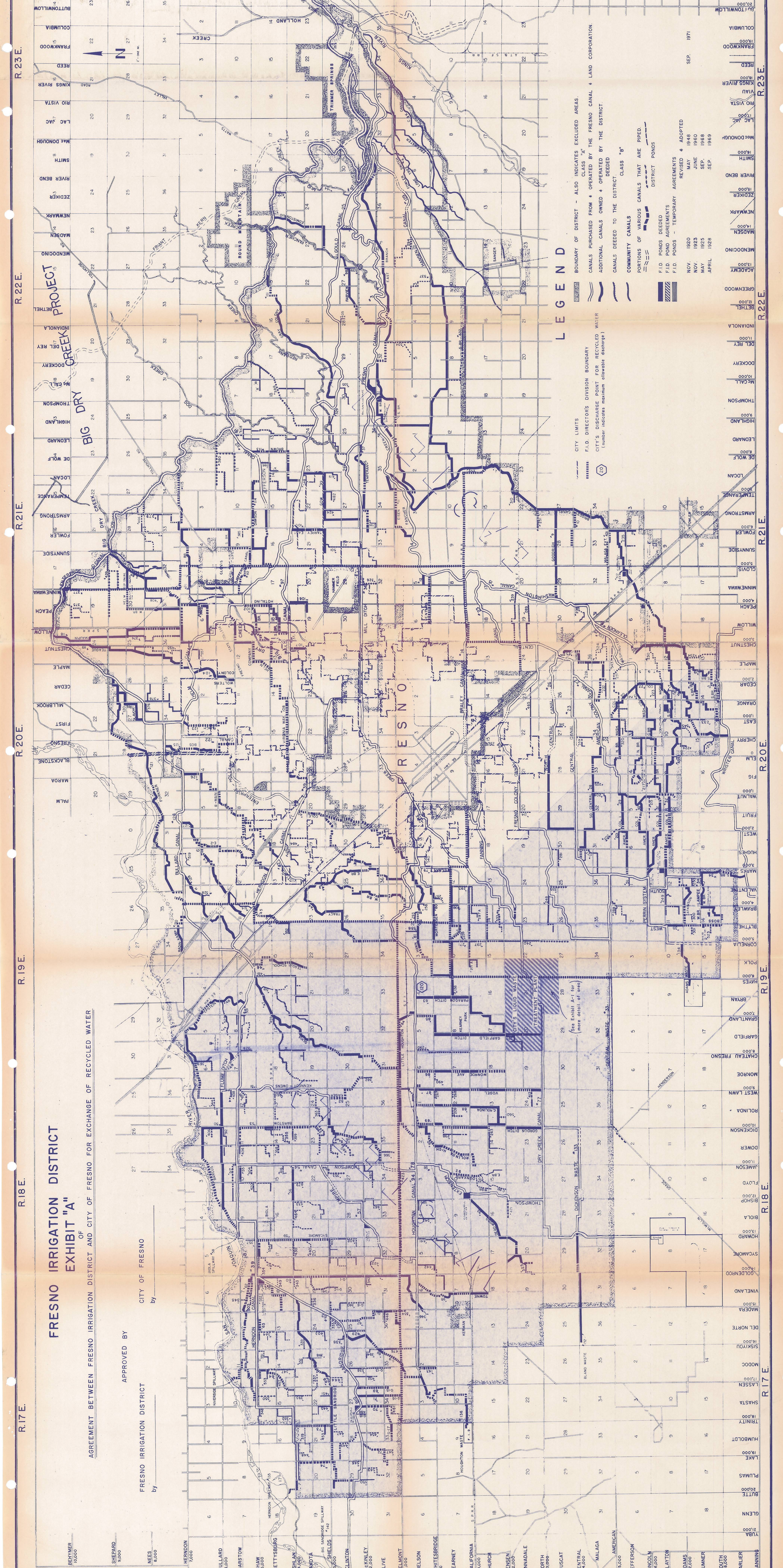
APPROVED AS TO FORM
SPENCER THOMAS, JR., City Attorney

By Robert Macomber
Senior Deputy



COPPER INTERNATIONAL BEHYMER 10,000 FERRIN 3,000 SHEPHERD 3,000 TEAGUE 3,000 NEEDS 3,000 ALLUVIAL HERNDON 7,000 SIERRA BULLARD 6,000 BARSTON SHAW 3,000 GETTYSBURG ASHLAN 4,000 DAKOTA SHIELDS 3,000 CLINTON MCKINLEY 2,000 OLIVE BELMONT 1,000 TULARE KINGS CANYON BUTLER CALIFORNIA 1,000 CHURCH EISEN 2,000 ANNADALE NORTH 3,000 MUSCAT CENTRAL 4,000 MALAGA AMERICAN 6,000 JEFFERSON LINCOLN 6,000 CLAYTON ADAMS 7,000 SUMNER SOUTH 8,000 PARLER MANNING

ZUMWALT BUTTONWILLOW COLUMBIA FRANKWOOD REED KING'S RIVER RIO VISTA LAC JAC SMITH MAC DONOUGH MAC DONOUGH RIVER BEND ZEDNER NEWMARK MADSEN MENDOCINO ACADEMY GREENWOOD RICHIE INDIANOLA DEL REY DOCKERY MCKILL THOMPSON HIGHLAND LEONARD DE WOLF LOCAL TEMPERANCE AMSTRONG FOMER SUNNYSIDE PEACH MINNEWAWA CLOVIS WILLow CHESTNUT MAPLE CEDAR MILLBROOK FIRST MARO PALM WEST VALNTE BRAMLEY BLYTHE CONNELLA POLK HANES BRYAN GRANFIELD CHATEAU FRESNO MORROE WEST LAMN ROLINDA DICKENSON DOWER JAMSON FLOYD SICKOP BOLLA HOWARD SYCAMORE GOLDENROD VINELAND MAERA DEL NORTE SISKIYOU MOODO LASSSEN SHASTA HUMBOLDT TRINITY PLUMAS BUTTE GLENN YUBA



R. 23 E. R. 22 E. R. 21 E. R. 20 E. R. 19 E. R. 18 E. R. 17 E. T. 1 S. T. 2 S. T. 3 S. T. 4 S. T. 5 S. T. 6 S. T. 7 S. T. 8 S. T. 9 S. T. 10 S. T. 11 S. T. 12 S. T. 13 S. T. 14 S. T. 15 S. T. 16 S. T. 17 S. T. 18 S. T. 19 S. T. 20 S. T. 21 S. T. 22 S. T. 23 S. T. 24 S. T. 25 S. T. 26 S. T. 27 S. T. 28 S. T. 29 S. T. 30 S. T. 31 S. T. 32 S. T. 33 S. T. 34 S. T. 35 S. T. 36 S.

LEGEND
 BOUNDARY OF DISTRICT - ALSO INDICATES EXCLUDED AREAS.
 CANALS PURCHASED FROM & OPERATED BY THE FRESNO CANAL & LAND CORPORATION.
 ADDITIONAL CANALS OWNED & OPERATED BY THE DISTRICT.
 CANALS DEEDED TO THE DISTRICT. CLASS "B"
 COMMUNITY CANALS
 PORTIONS OF VARIOUS CANALS THAT ARE PIPED.
 DISTRICT PONDS
 F.I.D. PONDS DEEDED
 F.I.D. PONDS - TEMPORARY AGREEMENTS * ADOPTED
 REVISED * 1920
 NOV. 1923
 NOV. 1925
 MAY 1928
 APRIL 1928
 SEP. 1971
 CITY LIMITS
 F.I.D. DIRECTOR'S DIVISION BOUNDARY
 CITY'S DISCHARGE POINT FOR RECYCLED WATER
 (number indicates maximum allowable discharge)
 CITY'S LIQUID WASTE TREATMENT PLANT
 (See Exhibit A-1 for more detail of area)
 GENERAL WASTE TREATMENT PLANT

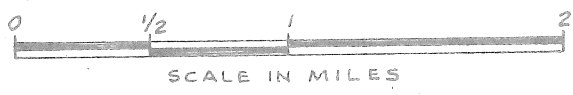
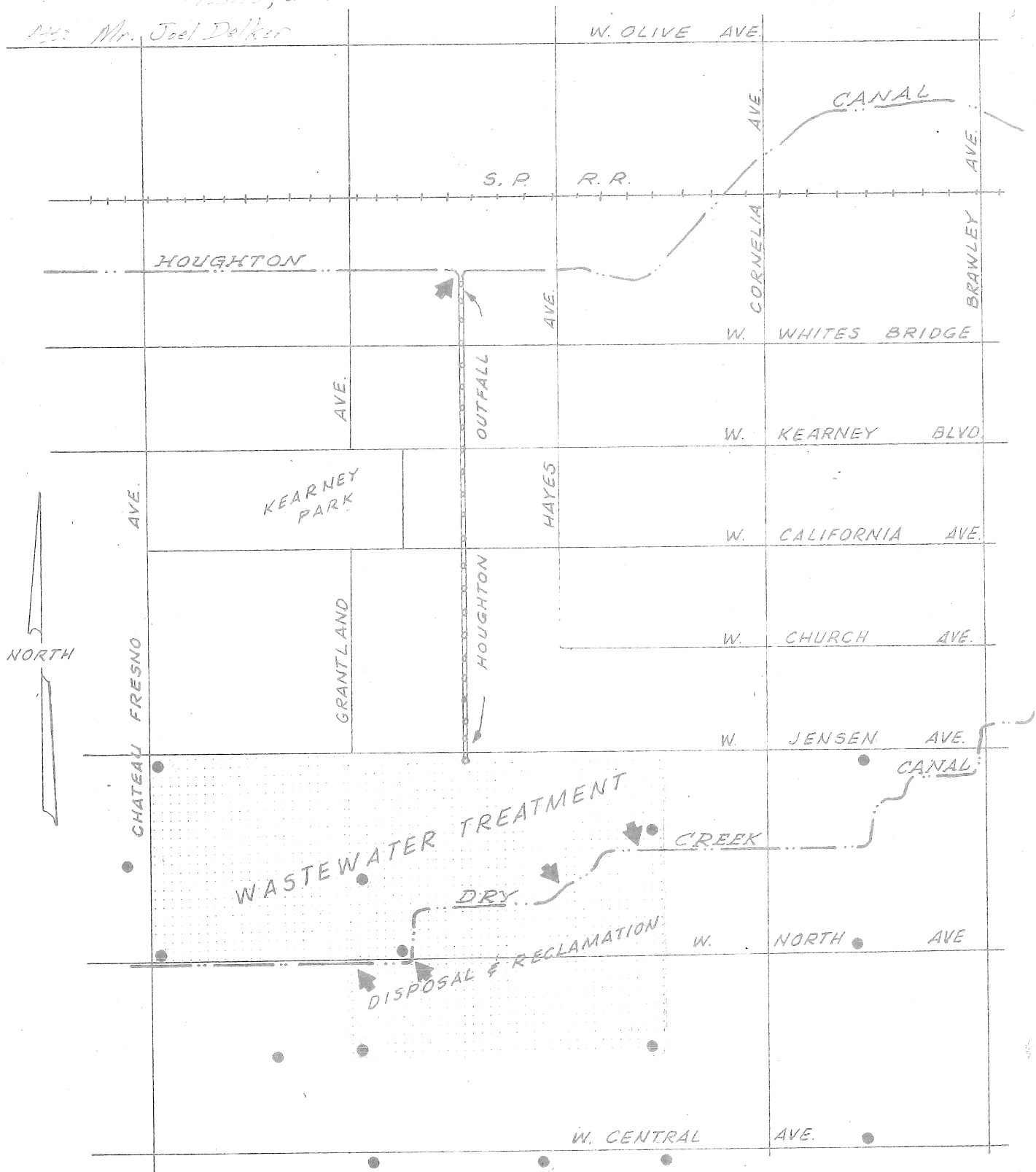
APPROVED BY _____
 by _____
 FRESNO IRRIGATION DISTRICT
 CITY OF FRESNO

FRESNO IRRIGATION DISTRICT
EXHIBIT "A"
OF
AGREEMENT BETWEEN FRESNO IRRIGATION DISTRICT AND CITY OF FRESNO FOR EXCHANGE OF RECYCLED WATER

R. 23 E. R. 22 E. R. 21 E. R. 20 E. R. 19 E. R. 18 E. R. 17 E. T. 1 S. T. 2 S. T. 3 S. T. 4 S. T. 5 S. T. 6 S. T. 7 S. T. 8 S. T. 9 S. T. 10 S. T. 11 S. T. 12 S. T. 13 S. T. 14 S. T. 15 S. T. 16 S. T. 17 S. T. 18 S. T. 19 S. T. 20 S. T. 21 S. T. 22 S. T. 23 S. T. 24 S. T. 25 S. T. 26 S. T. 27 S. T. 28 S. T. 29 S. T. 30 S. T. 31 S. T. 32 S. T. 33 S. T. 34 S. T. 35 S. T. 36 S.

Mail to: City of Fresno Waste Water Treatment Plant
 5607 W Jensen Avenue
 Fresno, Ca. 93706

Attn: Mr. Joel DeKker



LEGEND
 POINT OF DISCHARGE
 City's recycled water
 into F.I.D. Canal
 ● OBSERVATION WELLS

EXHIBIT A-1