

APPENDIX D3

FID Contract

COOPERATIVE AGREEMENT BETWEEN FRESNO IRRIGATION DISTRICT AND CITY OF FRESNO FOR WATER UTILIZATION AND CONVEYANCE

FRESNO COUNTY, CALIFORNIA
MAY 25 1976
H. L. MASINI, County Recorder

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1 THIS AGREEMENT, entered into as of this 25th day of
2 May, 1976, by and between the FRESNO IRRIGATION
3 DISTRICT, a public corporation, (herein called the "DISTRICT"),
4 and the CITY OF FRESNO, a municipal corporation, (herein called
5 "CITY");

6 W I T N E S S E T H:

7 WHEREAS, Fresno Irrigation District is an irrigation dis-
8 trict organized and existing under the laws of the State of
9 California and is the owner of certain water rights and a water
10 distribution system for the distribution of water within the
11 District, and the City of Fresno is a municipal corporation
12 wholly within the exterior boundaries of said District and is
13 the owner of a water distribution system delivering water to
14 lands both in and outside the exterior boundaries of said City;
15 and

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

21 WHEREAS, District and City wish to continue with said
22 cooperative program and to make and enter into a new contract for
23 water utilization and conveyance; and

24 WHEREAS, this agreement is specifically authorized by, and
25 entered into pursuant to Chapter 9 (commencing with Section 26670),
26 Part 10, Division 11 of the California Water Code; and

27 WHEREAS, by agreement dated January 12, 1961, between City
28 and the United States of America (herein called the "City Bureau
29 Contract"), City is required and/or is entitled to purchase
30 certain water herein called City's Bureau Water from the United
31 States, commencing in 1966; and

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To be recorded without fee on behalf of Fresno Irrigation District & City

1 WHEREAS, the District has entered into certain contracts
2 with the United States (herein called the "District Bureau
3 Contracts") for a supplemental supply of water from the Friant-
4 Kern Canal and for storage in Pine Flat Reservoir on the Kings
5 River, which said District Bureau Contracts are more particularly
6 described as follows:

7 Contract Between the United States of America
8 and Fresno Irrigation District Providing for
9 the Payment of the District's Share of the
10 Cost of Pine Flat Dam and Reservoir Allocated
11 to Irrigation, dated December 23, 1963,

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

15 Kings River Allocation Contract, dated
16 December 23, 1963,

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

20 Conveyance and Covenants in Compromise and
21 Settlement of Fresno Slough Claims, dated
22 April 23, 1965,

23 and has entered into other contracts with the members of the
24 Kings River Water Association (herein called the "District Intra-
25 Association Agreements"), relating to Kings River and storage in
26 Pine Flat Reservoir, which said contracts are more particularly
27 described as follows:

28 Water Right Indenture, dated May 3, 1927,

29 Administrative Agreement and Monthly Diversion
30 Schedule dated May 3, 1927,

31 Agreement Supplementing and Amending Water
32 Right Indenture Dated May 3, 1927, and
33 Supplementing and Amending Administrative
34 Agreement Dated May 3, 1927, Relating to
35 Kings River Water Association, and Amended
36 Monthly Diversion Schedule, dated June 1, 1949,

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

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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, and

WHEREAS, it is recognized by District and City that the District is primarily charged with the distribution and delivery of water within the 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 the District and the City that many inhabitants of the District also require water for domestic, industrial or fire protection purposes which may be supplied to them by the City, and

WHEREAS, it is recognized by District and City that both are charged with the protection and preservation of the underground water supply;

NOW, THEREFORE, 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 and ending at 12:00 o'clock p.m. on the last day of February in the year 1981 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. Forthwith upon the execution of this agreement the previous agreement between the parties above referred to dated August 12, 1970, and all amendments thereto shall be terminated and 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 said previous agreement.

2. Approval by United States. Immediately upon the execution of this contract by the parties hereto, it shall be

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presented to the United States for its approval and in the event of its disapproval by the United States it shall become ineffective and unenforceable 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 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 any such agreement contained herein shall become unenforceable, the entire contract 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. Definition. For the purpose of this agreement, the following words shall be defined as follows:

- a. "City Water Service Area" means all lands within the city limits of the City of Fresno, and also all lands outside the city limits of the City of Fresno which are within the exterior boundaries of District to which the City now delivers water or hereafter consents to deliver water by means of its City Water System and which are not hereafter designated or assessed by the District as lands receiving or to receive District Water Service from the District.
- b. "Included Area" means that portion of the City Water Service Area which is a part of the District.

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- 1 c. "Excluded Area" means that portion of the City
- 2 Water Service Area which is not a part of the
- 3 District.
- 4 d. "City Water System" means the conduits, pipes and
- 5 other facilities owned by the City and used by the
- 6 City to convey water to lands whether in or outside
- 7 the City.
- 8 e. "District Water Service" means the furnishing of
- 9 water by the District directly to lands within the
- 10 District by means of canals, ditches or pipelines
- 11 owned or under the control of the District, or by
- 12 any means under the control of the District other
- 13 than pumping conducted by the water user directly
- 14 from the underground water supply upon the lands
- 15 receiving such water.
- 16 f. "Surface Water Supply" means all water available
- 17 or received by any means other than pumping from
- 18 the underground water supply.
- 19 g. "Agricultural Use" means the use of water primarily
- 20 in the production of agricultural crops or livestock
- 21 including but not restricted to domestic use
- 22 incidental to such agricultural purposes, the
- 23 watering of livestock and underground water
- 24 replenishment.
- 25 h. "Municipal, Industrial and Domestic Uses" means the
- 26 use of water other than for Agricultural Use.
- 27 i. "Water Year" means October 1st of one year through
- 28 September 30th of the next year.
- 29 4. Determination of Areas. A map showing the City
- 30 Water Service Area, the Included Area and the Excluded Area
- 31 and clearly indicating the total number of acres in each area
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1 as of the first day of March, 1976, entitled "City Water Service
2 Area, Included Area and Excluded Area as Defined in Cooperative
3 Agreement Between Fresno Irrigation District and City of Fresno,"
4 shall be prepared in duplicate by the Water Division of the City
5 of Fresno and approved in duplicate and in writing upon said map
6 by the Director of Public Works of the City and by the Manager
7 of the District. When so approved, said map shall be in-
8 corporated herein by reference as Exhibit A and shall become a
9 part hereof. One duplicate so approved shall be kept in the
10 office of the City and one in the office of the District. Said
11 map shall be amended and reapproved by both parties as of the
12 first day of March, 1977, and as of the first day of March of
13 each succeeding year thereafter; provided, however, that the
14 City shall keep the District currently advised on a monthly
15 basis of any new lands outside of the Fresno City Limits to
16 which it commences or consents to deliver water and the District
17 shall keep the City so advised as to any new lands designated
18 or assessed by it as lands receiving or to receive District
19 Water Service. When so amended and reapproved as of the first
20 day of March of each year, said map shall conclusively establish
21 the boundaries of and the acreage in each area for all purposes
22 of this agreement.

23 In computing the acreage in each of the areas above
24 referred to, the entire acreage shall be measured including
25 properties that may be exempt from assessment for taxation and
26 including adjacent streets, alleys, roads, highways and other
27 public ways to the center lines thereof.

28 Said map shall also show the area within which the
29 District's water shall be made available to the City under
30 Paragraph No. 6 hereof. Said area shall be designated on said
31 map as "District's Water Delivery Area".
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5. Payment by City to District. The City shall pay to the District each year in which this contract is effective, in lieu of assessments by the District upon lands in the Included Area (pursuant to Water Code Section 26671, subdivision 1 b) a total sum of money calculated as follows:

a. A sum calculated by multiplying the number of acres in the Included Area as of the first day of March of that year by the assessed value per acre generally assigned by the District in that year to other lands in the District receiving District Water Service (not including the assessed value assigned to lands where the service is obtained by the pumping of water from the District's canals) multiplied by the assessment rate determined by the District in that year for the next year's District operations, and also

b. A sum calculated by multiplying the number of acres in the Excluded Area as of the first day of March of that year by the assessed value per acre generally assigned by the District in that year to other lands in the District (not including lands in Freewater County Water District, or lands annexed from Trimmer Springs Water District or other lands which for any reason are subject to specially assessed valuations) which do not receive District Water Service, multiplied by the assessment rate determined by the District in that year for the next year's District operations.

Said payment shall be paid each year as follows:

60% of each said payment shall be paid on or before the 20th day of December, and the remaining 40% shall be paid on or before the 20th day of June, of the next succeeding year.

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1 In the event of the disapproval of this agreement by the United
2 States or of any other termination of this agreement during any
3 calendar year, the total amount to be paid on or before
4 December 20th of that year and/or June 20th of the next year
5 shall still be paid.

6 Time shall be of the essence for the making of the above
7 payments. If any such payment is not made on the date provided,
8 the City shall pay to the District in addition to said payment
9 costs and penalties equal to those provided by law to be paid by
10 landowners within the District for the late payment of assess-
11 ments. These penalties are in addition to any other remedy
12 which the District may have against the City because of the City's
13 failure to pay said payment as above provided.

14 6. Water Made Available to City. Subject to all other
15 provisions of this agreement, the District shall make available
16 to the City during each calendar year (pursuant to Water Code
17 Section 26671, subsection 2) for distribution and use within the
18 Included Area of the City, at such times as shall be determined
19 by the Manager of the District, that proportion of the total
20 water diverted by the District from the Surface Water Supply
21 available to it for such year, as the acreage of the Included
22 Area, appearing on the map designated as Exhibit A, as of the
23 first day of March preceding that water year, bears to the
24 acreage of the total area in the District (including the Included
25 Area) receiving a Surface Water Supply from the District. Said
26 water shall be made available to the City in the District's
27 canals at such point or points along such canals within the area
28 designated on Exhibit A as "District's Water Delivery Area" as
29 may be designated by the City and approved by the District and
30 shall be taken from the District's canals by and at the expense
31 of the City in a manner approved by District. The City must act
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1 reasonably in designating such points or points of delivery and
2 the District must act reasonably in approving or disapproving
3 such point or points of delivery. The District shall not be
4 required to make such water available to the City at any point or
5 points which will interfere with the operation or maintenance
6 of the District's distribution system or water delivery schedule.
7 Such water may be used by the City only within the Included Area
8 for Municipal, Industrial and Domestic Uses and for Agricultural
9 Uses incidental thereto, and within the District's Water Delivery
10 Area for recharge of the underground water supply by percolation.

11 No water which has been received by the District either
12 as Class 1 or Class 2 water under its contract with the United
13 States for water service from the Friant-Kern Canal, dated
14 July 20, 1964, or which has been stored by the District in Pine
15 Flat Reservoir under the District's contracts with the United
16 States providing for such storage, dated December 23rd, 1963,
17 shall be made available to the City.

18 The City shall not sell, transfer or exchange any of
19 said water to or with any other person or entity. However, this
20 provision shall not prevent the City from entering into separate
21 agreements with any other entity which may have a similar
22 agreement with the District for the distribution and use of
23 water received from the District under such agreements, provided
24 such separate agreements are entered into with the written
25 consent of the District first had and obtained and are subject
26 to all the terms and conditions of this agreement and the
27 District's agreements with such other entities.

28 7. Water Entitlements of Lands in Included Area. The
29 owners of lands within the Included Area covered by this agree-
30 ment shall each year be entitled to receive and use from the
31 water so made available by the District to the City, or from
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1 other water available to the City, an amount of water sufficient
 2 to supply his reasonable and beneficial needs, limited however to
 3 his proportionate share of the water made available by the
 4 District to the City under this agreement based upon the ratio
 5 which the number of acres owned by him bears to the total number
 6 of acres of land within the Included Area. The City may charge
 7 such rates as it may determine for the service of water to such
 8 lands; provided, however, no distinction shall be made between
 9 the rate charged for water received by the City from the District
 10 under this agreement and water obtained by the City from other
 11 sources.

12 8. Conveyance of City's Bureau Water. Under the City's
 13 contract with the United States providing for Water Service,
 14 dated January 12, 1961, the City may, under the circumstances
 15 therein provided, decrease the quantity of City's Bureau Water
 16 required to be furnished each year to the City by the United
 17 States pursuant to said contract. City agrees that so long as
 18 this contract with District remains in effect, it will not
 19 decrease the quantity of City's Bureau Water to be accepted and
 20 paid for by it under Schedule A in Paragraph 3(A) of said
 21 contract with the United States, without the consent of District.

22 At the request of the City, the District shall convey
 23 for the City, in the District's canals, all or such portion
 24 of the City's Bureau Water which the City shall receive from
 25 the United States under the City Bureau Contract and which is
 26 not conveyed by other means. City's Bureau Water shall be
 27 taken into the District's canals at the diversion point or
 28 points on the Friant-Kern Canal where water is delivered to the
 29 District or the City under their agreements with the United
 30 States, and shall be conveyed in such canals and delivered to the
 31 City at such points along such canals as may be designated by the
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1 City and approved by the District. The City must act reasonably
2 in designating such point or points of delivery and the District
3 must act reasonably in approving or disapproving such point or
4 points of delivery. The District shall not be required to make
5 such water available to the City at any point or points which
6 will interfere with the operation or maintenance of the District's
7 distribution system or water delivery schedule. Such water shall
8 be received by the City in the District's canals and taken from
9 the District's canals by and at the expense of the City in a
10 manner approved by the District.

11 It is agreed that if and when the City shall establish a
12 diversion point and/or facility of its own on the Friant-Kern
13 Canal for the purpose of receiving its Bureau Water, the District
14 shall have the right to use said diversion facility for its own
15 purposes as well as for the purpose of receiving the City's
16 Bureau Water for conveyance into the District, providing that
17 City's Bureau Water shall take precedence of use of the diversion
18 facility.

19 Whenever the City's Bureau Water is requested by the City,
20 the District shall have the right to exchange and to convey for the
21 City in place thereof other water in similar quality and equal
22 quantity at the point of delivery (except sewer effluent or indus-
23 ~~trial wastes~~) available to the District, and to take and use such
24 water available under the City's Bureau Contract for its own uses
25 at such times and in such manner as may be determined by the District.

26 It is understood that the conveyance by the District of
27 its own water to landowners served by it within the District
28 (including lands within the City in the Included Area) shall
29 have priority over the conveyance of the City's Bureau Water and
30 that nothing herein contained shall require the District to
31 convey City's Bureau Water at any time when, because of lack of
32 canal capacity or otherwise, the conveyance of such water would

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1 make it impossible or impractical for the District to convey its
2 own water upon the schedules established by the District. How-
3 ever, it is understood that in determining whether at any time
4 the District's canals have the capacity to convey the City's
5 Bureau Water, the conveyance of that water shall have priority
6 over the conveyance of any water brought into the District by
7 the City of Clovis, or the Fresno County Waterworks District
8 No. 19, or any other entity with which the District may have a
9 similar contract; provided, however, that in the event additional
10 canal capacity is provided by the City or any other such entity
11 at its expense to accommodate its own water, that entity's water
12 shall have priority in that additional space.

13 If it becomes necessary, the City and the District will
14 consider the enlargement of the District's canals for the pur-
15 pose of conveying City's Bureau Water, the City to pay that
16 portion of the cost of such enlargement as is for its benefit.
17 In the event of such enlargement, all lands or easements acquired
18 in connection therewith, and all additions or improvements in or
19 to the District's canals shall become the property of the
20 District but the City shall have priority in the use of such
21 additional capacity during the term of this contract. The
22 District shall not be bound to so enlarge any of its said canals,
23 and neither party shall be required to participate in or pay for
24 any such enlargement, without its consent.

25 9. Schedules of Delivery and Conveyance of Water. The
26 District will make available to and convey for the City the
27 water herein agreed to be made available to the City pursuant
28 to paragraph 6, at such times during the water year as shall be
29 determined by the District. Insofar as practicable and feasible,
30 the District will attempt to make such water available to City
31 from the District's water supply on the same water schedule that
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1 other landowners in the District receive water and in such a
2 manner as to provide the same in a continuous flow at all times
3 when water is running in the canal or canals by which such water
4 is conveyed for the City's use, but in making such determination
5 the District will take into consideration the capacity and
6 condition of said canals, the availability of water which may be
7 taken or used by the City under the terms of this agreement and
8 under the terms of the District's contracts with the United
9 States and the rules, regulations and directives of the Bureau of
10 Reclamation in connection therewith, the needs and requirements
11 of other landowners in the District, including the needs and
12 requirements of excess landowners, the entitlements of the
13 District to natural flow or unstored water from the Kings River,
14 the requirements of the contracts between the District and the
15 City of Clovis and Fresno County Waterworks District No. 19 and
16 all other factors pertaining to the distribution, apportionment
17 and use of water available to the District. Such delivery and
18 conveyance schedules may be adjusted from time to time by the
19 District in a manner reasonably calculated to best serve the needs
20 of the District and the City.

21 Subject to the same limitations of feasibility, the
22 District will convey City's Bureau Water at such times as the
23 City may request; provided, however, that the District shall
24 not be required to convey water for the City in any canal at
25 any time when work is being done upon said canal for construction,
26 improvement or maintenance and if the City requests the District
27 to convey water in any canal during any time when water is not
28 being run in said canal for other landowners, the District may
29 condition the conveyance of its said water upon payment by the
30 City of any additional cost incurred by the District because
31 thereof.

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1 10. Conveyance Losses. The City shall assume and bear
2 all conveyance losses for all water furnished by the District to
3 the City or conveyed by the District for the City under this
4 agreement. Conveyance losses chargeable to the City shall be
5 computed by multiplying the losses in that portion of any canal
6 used for such conveyance, during the period such water is being
7 so conveyed, by the total amount of water being conveyed for
8 the City in that canal during such time, divided by the total
9 amount of water flowing in that portion of that canal during the
10 same period.

11 11. Use by District of Water Not Used by City. In the
12 event the City is unable to use or does not use any part of the
13 water made available to it by the District within the area
14 designated on Exhibit A as "District's Water Delivery Area" under
15 this agreement for the purposes, at the times and in the manner
16 herein provided, the City shall lose the right to receive such
17 water, and the District shall have the right to take and use such
18 water for purposes of irrigation and percolation in such manner as
19 it may determine. In such event, insofar as the canals and
20 facilities of the District will permit, and insofar as otherwise
21 may be practicable and equitable as to other landowners, the
22 District will use such water for irrigation or percolation in areas
23 in the City or east or northeast of the City, and will discuss its
24 use with the City before it is used elsewhere. However, the
25 ultimate decision concerning such use of such water shall be
26 within the discretion of the District.

27 In the event the City is unable to use or does not use any
28 part of City's Bureau Water it is required to take under its
29 City Bureau Contract when and as required under that contract
30 or under the terms of this agreement, the City shall nevertheless
31 take and pay for said water and the District shall have the right
32 to use such water for purposes of irrigation and percolation but

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1 the City may require the District to so use such water at such
2 locations as it may direct; provided, however, in the event the
3 City does not direct the location at which said water shall be
4 used in time that it may be so used or in the event the canals
5 and facilities of the District will not permit the conveyance of
6 such water to such location when so directed, or if for any
7 other reason the conveyance of such water to such location at
8 that time is not feasible or practicable, District shall have
9 the right to use such water upon the same conditions as are
10 provided in the previous paragraph for water made available to
11 the City by the District.

12 Such use of any such water by the District as provided in
13 this paragraph shall not relieve the City from any payments
14 required to be made by it under the City Bureau Contract or
15 under the terms of this agreement and its use by the District
16 shall not require any payment from the District to the City.

17 12. Water Rights Not Transferred. Nothing in this agree-
18 ment authorizes or shall be construed or deemed to constitute the
19 sale or transfer of a water right from either party to the other.

20 13. City's Sewage Effluent. The City will retain its
21 sewage effluent within the boundaries of the District for the
22 term of this contract, except with the written consent of the
23 District first had and obtained.

24 14. No Warranty of Quality. The character or quality of
25 the water furnished or conveyed hereunder may vary from time to
26 time for reasons including, but not restricted to, the application
27 by the United States or the District of toxic chemicals to
28 control aquatic and ditch bank weeds, and the open canals of the
29 District are always subject to possible pollution from outside
30 sources. The District does not guarantee in any respect or
31 assume any responsibility for the chemical, bacterial or other
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1 quality of the water made available to the City or conveyed for
2 the City through the District's facilities.

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

10 CITY OF PRESNO, A Municipal
11 Corporation

12 By: [Signature]
13 Title: Director of Public Works

14 Attest:

15
16 [Signature]
17 City Clerk

18 (City)

19 FRESNO IRRIGATION DISTRICT

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

22 By: Wayne N. Witzky
Assistant

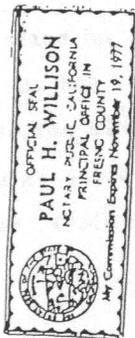
23 By: F A Preuss
President

24 Date: MAY 20 1976

Attest: [Signature]
Secretary

(District)

State of California,
County of Fresno



ss. On this 25th day of May in the year one thousand nine
hundred and seventy-six before me, Paul H. Willison
a Notary Public in and for said County and State, residing therein, duly commissioned and sworn,
personally appeared: F. A. Preuss
known to me to be the President, and
Ardys T. Gorder
known to me to be the 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 within instrument on behalf of the corporation therein named, and acknowledged to me that such cor-
poration executed the within instrument pursuant to its by-laws or a resolution of its board of directors.
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 above written.

[Signature]
Notary Public in and for said County and State