

UNIVERSITY OF CALIFORNIA, MERCED
with
MERCED IRRIGATION DISTRICT

JOINT USE AND MAINTENANCE AGREEMENT

THIS JOINT USE and MAINTENANCE AGREEMENT (herein "Agreement") is made and entered on the last date hereinafter written and affixed by the parties executing this agreement. This agreement is entered by the Regents of the University of California, on behalf of its Merced campus (herein "University") and Merced Irrigation District, a California irrigation district, a political subdivision of the State of California, operating under its elected Board of Directors (herein "District").

RECITALS

A. The University is the owner of certain lands located in eastern Merced County commonly referred to as the UC Merced Campus site more specifically referred to and described in Exhibit A attached hereto and incorporated herein by this reference (hereinafter "UC Properties").

B. The District owns easements upon certain lands ("District Properties") in water conveyance facilities (facilities) which in turn traverse the UC Property in a meandering fashion. The easements are described as follows:

- Fairfield Canal: 150' Easement, Volume 2299, Page 963;
Recorded 10/7/1981
- Le Grand Canal: 150' Easement, Volume 2299, Page 963;
Recorded 10/7/1981
- Papazian Powerplant: 110' Easement Volume 2299, Page 963;
Recorded 10/7/1981
- Yosemite Lateral: Existing Lateral inclusive of toes and banks
Volume 12, Page 1

These facilities are commonly known to the District and the general public as the Yosemite Lateral, the Le Grand Canal and the Fairfield Canal. These facilities are more fully described in Exhibit B attached hereto and incorporated herein by this reference. The purpose of these facilities is to deliver water for multiple uses, principally agriculture, from the District regulating and storage reservoir, Lake Yosemite, adjacent to the UC Property, to lands within the southern and southeastern portions of the District. The LeGrand and Fairfield Canals are vital arteries, and comprise the only means of water conveyance by District to much

of the District's service area. These canals also operate as flood control facilities. The canals are large, require significant periodic maintenance, are vital to District operations and the economic well being of the region, and must therefore be preserved and eventually modified to improve capacity. The Yosemite Lateral, which also requires periodic maintenance, provides surface water to agricultural lands in the local area west of Lake Road and north of Yosemite Avenue.

C. The University will be constructing the Merced campus of the University of California on UC Property. As such the University will need to construct bridges and other crossings such as utilities, walk/bike ways, across the facilities at various locations determined from time to time. The University may also need storm drainage agreements and other construction, deferred construction or service agreements. The University also wishes to change the landscape of the campus area consistent with its design including some of the land occupied by district canals. The University's current plans regarding crossings are as described in the Plans and Specifications dated November 8, 2002 (revision 1). The University's plans regarding landscaping are currently under development. University's landscaping Plans and Specifications will be available to District upon completion

D. Both parties recognize that District also operates a small hydroelectric plant within a District easement located on the Fairfield Canal (a portion of district properties) This plant is operated by the passage of water released from the Le Grand Canal through a pipeline easement on the UC Property to the Fairfield Canal using the elevation difference to generate power. Occasionally, for a series of operational reasons, the power plant trips "off line". When this occurs the pipeline penstock from the higher Le Grand canal is automatically closed and the head-gate of the Le Grand canal automatically adjusts to maintain downstream flow. The head-gate instantly opens to increase the flow in the Fairfield Canal at Lake Yosemite between Lake Yosemite and the power plant to replace the water previously directed from the Le Grand canal to the Fairfield canal via the power plant pipeline/penstock.

The parties shall work together cooperatively to develop and implement mitigation measures which, while ensuring the preservation for the timely water delivery capacity of all of the canals, shall address the issue of significant sudden increases in flow in all of the canals, including the Fairfield Canal. The parties expect that the mitigation measures to be undertaken by the parties will be decided upon and in place prior to the opening of

the UC Merced campus. Mitigation measures which are solely intended to address the water flow issue and which do not also serve to upgrade District's facilities shall be at no cost to the District.

E. The District for its part desires to access District properties and facilities for operations and maintenance utilizing its easements by crossing UC Property using streets and pathways which shall be designated by University.

F. The parties intend to use their best efforts to use the UC Property and District properties together to meet their joint goals without interference with the main purposes each party has for its own property.

WITH THESE PURPOSES, and in consideration of the promises and the mutual covenants hereinafter set forth, University and District do hereby mutually agree as follows:

AGREEMENT

1.0 Use of Properties.

1.1 University and District agree that each party shall have a joint use in common, of certain areas where the District (fee titled, and easement) Property used for canals, pipelines, laterals and appurtenant structures, traverses, divides, or abuts the University property.

1.2 The University shall not have joint use of any facility used for the generation of electricity, nor shall it have any joint use of District facilities inside the banks of any canal, lateral or other water delivery system nor any pipeline or water delivery structure.

1.3 The purpose of the joint use is limited on the part of the University to landscaping and maintenance thereof on certain portions of District easements that will be further described from time to time by the parties and reduced to written form as the campus develops. Such further written description when executed by the University and the General Manager of District specifically referencing this agreement shall act as an amendment to this agreement thereafter.

The purpose of the joint use is limited on the part of the District to those easements described in paragraph B of the

Recitals to this Agreement and the access to those easements contemplated in Recital E.

1.4 In no event shall the joint use of the property of one party by the other under this agreement in any way unreasonably impact or interfere with such other party's use of its own property to carry out the obligations and purposes of such party.

1.5 Any action or use by the University of District Properties which the University could reasonably foresee as having the effect of materially delaying or preventing management or maintenance of District facilities; materially impairing in any way the ability of District to convey the maximum design capacity of water through its canals, laterals and pipelines; or delaying or preventing an increase to the design capacity of such facilities within District properties; shall be deemed an unreasonable use by University if undertaken without the prior separate written consent of the District.

1.6 In a like fashion any action or use by District of UC Property for any reason other than access to District property across routes to be designated by the parties in a process substantially similar to that set forth in Section 1.3, or the occasional incursion of a minor nature upon UC Property in the operation and maintenance of District's property, shall be deemed unreasonable if undertaken without the prior written consent of University separately obtained.

1.7 Where either party seeks prior written consent for a joint use as required herein, such permission shall not be unreasonably withheld.

1.8 The parties have tentatively agreed that, as the university campus grows, the University may find it desirable to relocate the Yosemite Lateral, described as item 4 of Exhibit B, "District Properties". To the extent that relocation is completed pursuant to District property specifications, then in effect for projects of a similar nature, is constructed at University cost and at a time of year which does not interfere with District operations of the Yosemite Lateral, such relocation will be granted.

2.0 Costs of Use.

2.1 Neither party shall be obligated to pay the other party for the joint uses contemplated herein. However, in all uses hereunder, including but not limited to uses pursuant to future amendments of this agreement or construction agreements provided

for herein, should either party damage the property of the other during the joint use of such property, the party whose act or omission directly resulted in the damage shall repair, cause to be repaired or pay for repairs reasonably necessary to eliminate the damage. It is anticipated that from time to time such damage could include but is not hereby limited to, canals, canal banks, water delivery fixtures, sidewalks, pavement, pipelines or other conduits or infrastructure, and landscaping.

2.2 The parties contemplate that Landscaping may be placed by the University upon a portion of District properties as the parties may agree pursuant to section 1.3 hereof. The maintenance by District of its facilities often requires heavy equipment to traverse the banks of such canals/laterals and results in the extraction from the facilities of silt, weed vegetation, and other debris. The usual practice of District is to place the debris on the banks of the canal/lateral to dry, followed days later by disking the material into the banks thereby preserving their elevation and the hydraulic capacity of the conveyance facility. This process could result in damage to landscaping. If such damage is on UC Property, outside District Easements, it will be repaired or replaced by District. If such landscaping is damaged within District Properties, District shall have no obligation to repair or replace such damage.

Similarly, University shall not be required to repair or replace any improvements placed upon its property by District should damage occur to such improvements from the use of University Property by University for its own purposes, even if written permission for such improvements was previously granted.

University and District will use their best efforts within their customary and usual practices for the operation/maintenance and use of their property to avoid any damage to the property of the other party.

3.0 Facilities Construction and Maintenance.

3.1 The parties acknowledge that several infrastructure improvements by university, crossings and/or relocating District facilities/easements, must occur to accommodate University development. Such improvements and/or relocations or alterations shall be undertaken according to the then current process for facility impacts established by District.

3.2 Each facility and/or improvement shall be engineered to the then current specifications established by District and

undertaken pursuant to a construction agreement properly executed by the parties. A copy of such construction agreement, in the usual form is attached hereto and incorporated herein by this reference as Exhibit C as an example only.

3.3 University is aware that District intends, and reserves to itself the right, to increase the maximum water conveyance capacities of both the Le Grand and Fairfield Canals, which may involve extending the canals to the boundaries of the easements. Facilities crossing such canals shall therefore be designed with a view to accommodating such additional capacity.

3.4 University will appoint a specific University representative as a primary contact point for purposes of this agreement. The District shall likewise appoint its representative. Each representative shall inform the other representative of his or her agency's activities under this agreement. The representatives are encouraged to, but shall not be required to, create a joint schedule for routine and periodic activities in the joint use areas. However, no prior permission shall be required from the other party prior to either party conducting operations maintenance or management upon its own property.

3.5 Should University determine that it is required or desirable to relocate the District Yosemite Lateral, University and District will work cooperatively to achieve such relocation. All costs of relocation and/or removal shall be done by University.

4.0 Indemnity.

4.1 District shall defend, indemnify, and hold University, its officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of District, its officers, employees or agents.

4.2 University shall defend, indemnify, and hold District, its officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the

negligent or intentional acts or omissions of University, its officers, employees, agents or invitees.

5.0 Insurance Requirements.

5.1 District, at its sole cost and expense, shall insure its activities in connection with this agreement and obtain, keep in force and maintain insurance as follows:

a. Commercial Form General Liability Insurance (contractual liability included) with minimum limits as follows:

1. Each Occurrence	\$1,000,000
2. Products/Completed Operations Aggregate	\$5,000,000
3. Personal and Advertising Injury	\$1,000,000
4. General Aggregate	\$5,000,000

b. Business Automobile Liability Insurance for owned, non-owned, or hired automobiles with a combined single limit of not less than one million dollars (\$1,000,000) per occurrence.

c. Workers' Compensation as required by California law.

d. Such other insurance in such amounts which from time to time may reasonably be required by the mutual agreement of the University and the District against other insurable hazards relating to this agreement.

The coverages referred to under a. and b. of this Section 5.1 of Article 5 shall include University as an additional insured.

Such a provision shall apply only in proportion to and to the extent of the negligent acts or omissions of District, its officers, agents or employees.

The coverages required herein shall not limit the liability of District.

5.2 University, at its sole cost and expense, shall insure its activities in connection with this agreement and obtain, keep in force and maintain insurance as follows:

a. General Liability Self-Insurance Program (contractual liability included) with minimum limits as follows:

1. Each Occurrence	\$1,000,000
2. Products/Completed Operations Aggregate	\$5,000,000
3. Personal and Advertising Injury	\$1,000,000
4. General Aggregate	\$5,000,000

b. Business Automobile Liability Self-Insurance Program for owned, non-owned, or hired automobiles with a combined single limit of not less than one million dollars (\$1,000,000) per occurrence.

c. Workers' Compensation as required by California law.

d. Such other insurance in such amounts which from time to time may reasonably be required by the mutual agreement of the University and the District against other insurable hazards relating to this agreement.

The coverages referred to under a. and b. of this Section 5.1 of Article 5 shall include District as an additional insured. Such a provision shall apply only in proportion to and to the extent of the negligent acts or omissions of University, its officers, agents, employees and invitees.

The coverages required herein shall not limit the liability of University.

6.0 Dispute Resolution.

6.1 Should a dispute arise between the parties in the application and/or interpretation of this agreement, the parties agree to attempt a good faith settlement of such dispute. The representative of the University shall initially be the Vice Chancellor for Administration and for the District, the General Manager. Either party may nominate a replacement representative by written notification to the other party.

7.0 Term.

7.1 This agreement shall continue from its commencement until otherwise terminated.

7.2 This agreement may be terminated by mutual agreement of the parties.

7.3 This agreement may be terminated by either party upon the material breach of the other party, provided that the breaching party fails to cure the material breach after written notice of such material breach by a party to the other party setting forth the facts of the breach. The party alleged to have committed such material breach shall have not less than thirty (30)

days to cure such breach. If such breach is cured this agreement shall not terminate.

7.4 If this Agreement does terminate the rights of District to traverse the designated access points across University Property to access the District Properties where reasonably required because of the presence of a University improvement (such as a bridge) on the District Easement blocking or impeding Districts prior access, shall survive the termination. The rights and obligations of Article 4 shall also survive such termination.

8.0 Miscellaneous.

8.1 This document represents the entire agreement of the parties and supercedes any and all other agreements regarding the joint use of property (except previously approved construction agreements, if any) whether oral or written.

8.2 This agreement may not be assigned by either party without the prior written consent of the other.

8.3 Should a dispute arise regarding this agreement each party shall bear its own costs and attorney's fees.

8.4 The failure of either party to exercise its rights hereunder or to defend such rights shall not constitute a waiver thereof.

8.5 This agreement is subject to ratification of the governing boards of each party. When signed the person executing this agreement represents that he or she has full authority to do so.

8.6 Notices required hereunder shall be considered given when personally delivered on the third day after deposit to the U.S. Mail first class postage prepaid to:

University The University of California, Merced
 Attn: Lindsay A. Desrochers,
 Vice Chancellor for Administration
 P.O. Box 2039
 Merced, CA 95344

Facsimile No. (209) 724-4424

District: Merced Irrigation District
744 W. 20th Street
P.O. Box 2288
Merced, CA 95344-0288

Facsimile No. (209) 722-0935

Notice may not be given by electronic device except by facsimile (fax) delivery as set forth above.

IN WITNESS WHEREOF, the Parties have caused these presents to be executed in duplicate by their respective officers previously duly authorized.

MERCED IRRIGATION DISTRICT
an Irrigation District

UNIVERSITY OF CALIFORNIA, MERCED
a campus of the Regents of
the University of California

Date: 4.15.03

Date: 

By: 
President

By: April 11, 2003
Vice Chancellor
Administration

Date: 4.15.03

By: 
General Manager

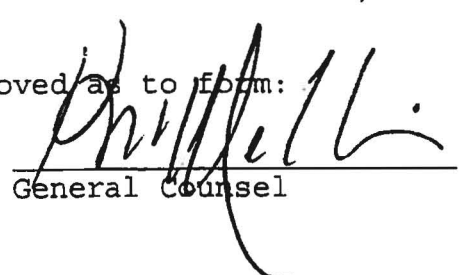
Approved as to form: 
General Counsel

Exhibit A

**Description of
UC Merced Campus Site**

EXHIBIT "A"

Parcel A:

Parcel 1 as shown on that "Parcel Map for Merced County Board of Education as Trustee of the Testamentary Trust of Virginia Smith" recorded June 10, 1987 in Book 59 of Parcel Maps, Pages 1 & 2, Merced County Records, and being a division of Sec. 13, 24, 25, 26, 35, 36 and portions of 27 and 34, T. 6 S. R. 14E., M.D.B. & M. and Sec. 19 and portions of Sections 17, 18, 20, 29, 30 and 31 T. 6 S. R. 15 E. M.D.M., Merced County Records.

Assessors Parcel No.: 052-270-012 and 052-270-014

Parcel B:

Parcels 1, 2 and 3 and all that portion shown as remainder Parcel as per map for "Merced Community Golf Association" recorded November 5, 1997 in Book 83 of Parcel Maps, Pages 9, 10, 11 and 12, Merced County Records, being a division of Parcel 2 recorded in Book 59 of Parcel Maps, Page 1, Merced County Records.

Assessors Parcel No.: 052-270-010/ Portion Parcel B; 052-270-012/ Portion parcel B; 052-270-015/Portion Parcel B; 052-300-003/Portion Parcel B; 052-300-006/Portion Parcel B; 052-300-016/ Portion Parcel B; 053-030-001/ Portion Parcel B; 053-030-002/ Portion Parcel B; 053-030-005/ Portion Parcel B; 053-030-006/ Portion Parcel B; 053-050-011/ Portion Parcel B; 053-050-012/Portion Parcel B; 053-050-013/Portion Parcel B; 053-300-020 Old/ 053-300-018 new Portion Parcel B/ 053-300-005 old/ 052-300-019 new portion Parcel B; 052-300-014 old/ 052-300-020 new/ 052-300-021 new; 052-300-022n new portion of Parcel B/ 052-300-016 old; 052-300-017 new portion of Parcel B.

Parcel C:

All that portion of Section 12, Township 6 South, Range 14 East, M.D.B.&M., lying Southerly of the Northerly line of Hornitos Road as said road was conveyed to Merced County by Deed recorded June 5, 1929 in Book 254, Official Records, Page 260, Merced County Records.

Excepting the interest of the County of Merced in and to the Northerly 60 feet as acquired for road purposes by Deed recorded June 5, 1929 in Book 254, Official Records, Page 260, Merced County Records.

Assessors Parcel No.: 052-250-010

Parcel D:

All that portion of Section 7, Township 6 South, Range 15 East, M.D.B.&M., lying Southerly of the Northerly line of Hornitos Road as said road was conveyed to Merced County by Deed recorded June 5, 1929 in Book 254, Official Records, Page 260, Merced County Records.

Excepting therefrom all that portion of said Section 7, which lies Easterly and Northeasterly of a line commencing at the Northwest corner of the Southwest quarter of Section 6, Township 6 South, Range 15 East, M.D.B.&M.; thence South 9 1/2 deg. East 27.25 chains, thence South 33 1/2 deg. East 135.97 chains to the Southeast corner of the Northeast quarter of Section 18, Township 6 South, Range 15 East, M.D.B.&M.

Also excepting therefrom the interest of the County of Merced in and to the Northerly 60 feet

as acquired for road purposes by Deed recorded June 5, 1929 in Book 254, Official Records, Page 260, Merced County Records.

Assessors Parcel No.: 053-010-011

Exhibit B

**Description of
District Facilities**

Description of District Facilities

1. **Fairfield Canal:** 150' Easement, Volume 2299, Page 963; Recorded 10/7/1981
2. **Le Grand Canal:** 150' Easement, Volume 2299, Page 963; Recorded 10/7/1981
3. **Papazian Powerplant:** 110' Easement Volume 2299, Page 963; Recorded 10/7/1981
4. **Yosemite Lateral:** Existing Lateral inclusive of toes and banks, Volume 12, Page 1

Exhibit C

Sample Construction Agreement

Recorded at the Request of
and Return to:

Merced Irrigation District
Engineering Department
744 W. 20th Street
P. O. Box 2288
Merced, California 95344

CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT (herein "AGREEMENT") is made this ____ day of _____, 2003, by and between the MERCED IRRIGATION DISTRICT, an irrigation district existing by virtue of the laws of the State of California, whose address is 744 W. 20th Street, Merced, California 95340, (hereinafter called the "MID"), and, The Regents of the University of California, on behalf of its Merced Campus whose address is, P.O. Box 2039, Merced, California 95344 (herein "University").

RECITAL

WHEREAS, University has submitted to MID a University of California, Merced Campus 2008 Site Development (Bid Package 2-Addendum #1) for the development of land owned by University (herein "development"); and

WHEREAS, University has entered into an agreement with Swinerton Builders, Inc. to perform pre-construction and construction services for the UC Merced Site and Infrastructure project;

WHEREAS, University desires to construct, through its contract with Swinerton Builders, Inc. certain permanent improvements hereinafter specified for the following described parcel of land (herein said "real property"), as shown on Exhibit "A" and as described on Exhibit "B", attached hereto and incorporated herein; and

WHEREAS, the MID consents to said development, to the extent of the proposed permanent improvements hereinafter specified, and subject to the terms herein set forth; and

WHEREAS, the MID's consent is conditioned upon the University's improvement of a portion of the Fairfield Canal, as hereinafter set forth; and

WHEREAS, MID now enjoys the following interest and improvements in or adjacent to said real property:

An earthen channel within a 150-foot wide permanent easement as described in Volume 2299 of Official Records, Page 963 and filed for record October 7, 1981, Merced County Records; and

WHEREAS, University and MID anticipates the execution of a Joint Use Agreement, which will also impact this project; and

WHEREAS, University and MID anticipate the execution of a Joint Use and Maintenance Agreement which will govern this agreement; and

WHEREAS, the MID's consent is conditioned upon;

- A. The construction by University of a reinforced concrete bridge and appurtenances spanning the MID's Fairfield Canal right-of-way in accordance with the latest applicable MID Standards, all in conjunction with the approval of the MID Engineer and as shown on the MID approved plans, called University of California, Merced Campus 2008 Site Development (Bid Package 2-Addendum #1), Main Street Bridge Over Fairfield Canal.

NOW, THEREFORE, in consideration of MID's consent to said construction conditioned upon University's promises hereinafter set forth, the University and the MID do hereby mutually agree as follows:

AGREEMENT

I. AGREEMENT BINDING ON SUCCESSORS IN INTEREST

This Agreement is an instrument affecting the title or possession of the real property described herein. All the terms, covenants and conditions herein imposed shall be an interest of University, and upon the subsequent sale or division of the property described herein the terms of this Agreement shall apply and the University or owners of said property or parcel or any part thereof shall succeed and be bound by the obligations imposed on University by this Agreement.

II. FLOOD CONTROL-USE OF SUBJECT FACILITY

University specifically agrees and represents to MID that University acknowledges and understands that the Fairfield Canal subject to this Agreement serves a vital and important function as a storm drainage and flood control facility pursuant to the requirements of State and Federal agencies for the run-off of natural and artificial waters. Use of the waterway as such is therefore continuous and year round including the non-irrigation season when rains are heaviest.

University therefore agrees to conduct all work hereunder in a manner that will not interfere with the use of said canal as a flood control channel or water conveyance facilities and agrees to defend, indemnify and save the MID harmless as set forth in Paragraph VIII hereunder.

III. MID IMPROVEMENTS

A. University agrees to construct the following permanent improvements (herein "said improvements"), on the property described herein, and as shown on Exhibit "C", attached hereto and made a part hereof, in the manner set forth in this Agreement, namely University shall provide and construct:

1. A reinforced concrete bridge and appurtenances spanning the MID's Fairfield Canal right-of-way in accordance with the latest applicable MID Standards, all in conjunction with the approval of the MID Engineer and as shown on the MID approved plans, called University of California, Merced Campus 2008 Site Development (Bid Package 2-Addendum #1), Main Street Bridge Over Fairfield Canal.
2. The bridge shall be single span with no flow restrictions.
3. The bridge span shall accommodate for future MID widening of the Fairfield Canal within the above described MID existing 150-foot wide easement.

B. University shall provide said improvements at University's sole expense, without notice, upon the commencement of improvements to said property and in all events prior to any subsequent property divisions, subdivisions or splits of said property, or sale of any parcel of said property or the whole of said property.

C. University shall cause a signature/approval block, for the signature of the MID Engineer, to be placed on the cover sheet of the University of California, Merced Campus 2008 Site Development (Bid Package 2-Addendum #1), Main Street Bridge Over Fairfield Canal of said real plans.

D. An on-site pre-construction meeting between MID representatives and the construction manager, and the project engineer if deemed necessary, shall take place not less than 2 working days and not more than 10 working days prior to the commencement of construction. University, or construction manager, shall notify MID at least 2 working days prior to said meeting. The parties acknowledge that a preconstruction meeting has taken place as of the execution of this agreement. The parties acknowledge that future meetings may be required to facilitate proper execution of the work described in paragraph III.A

E. Construction between March 1, 2003 and October 31, 2003 shall not encroach into existing MID embankments, levees, or rights-of-way without express written approval from the MID Manager of Engineering, Water Resources or his designee. The parties acknowledge that encroachment is taking place as of the execution of this document, with the approval of the MID

F. Construction shall not commence without written consent of MID. MID shall not unreasonably withhold consent to commence construction. MID acknowledges that time is of the

essence and that the University will incur monetary damages as the result of withholding said consent.

G. Approved "As Built" plans shall be submitted to MID prior to the release of the "Warranty Bond" of item VI following. Failure to provide said "As Built" plans may defer or affect the amount and the release time of said "Warranty Bond".

H. University agrees that this agreement shall also be governed by the term of the Joint Use and Maintenance Agreement executed, or to be executed by the University and MID, unless the terms of the two agreements are inconsistent on any matter, in which case the terms of this agreement shall apply exclusively to such inconsistent matter.

IV. PERFORMANCE OF THE IMPROVEMENTS

University agrees to perform the improvements set forth herein, or as may be reasonably modified by the MID. University shall cause, at University's expense, plans and specifications for the improvements to be prepared by competent persons legally qualified and licensed by the State of California to do the work and to submit improvement plans and specifications for approval prior to commencement of the work described in the notice and to pay all City/County and Merced Irrigation District review, study, map and inspection fees. The work shall be done in accordance with Merced Irrigation District Standards in effect at the time said improvements are proposed. University agrees to commence the work as soon as possible following the execution by University and MID of this Agreement and complete the work on or before April 30, 2003, or this Agreement shall terminate. MID acknowledges that delays resulting from actions by MID, including withholding consent to begin construction, shall be added to said completion date, so long as no interference to MID operations occurs. All work within the channel wetted perimeter and adjacent structural support embankment(s) shall be completed by March 15, 2003. MID acknowledges that delays resulting from actions by MID, including withholding consent to begin construction, shall be added to said completion date, so long as no interference to MID operations occurs. Under no circumstances shall the construction described in this agreement compromise the structural integrity of the Fairfield Canal. University shall notify the MID at least 2 working days prior to the start of any work, and 2 working days prior to the re-start of any work after any work stoppages. MID shall also be notified a minimum of 2 working days prior to all construction scheduled on a holiday or weekend [Phone: (209) 722-5761]. In no event will the work of said improvements interfere with the delivery or drainage of water by the MID, or be done between March 1 and October 31 without the written approval from the MID Engineering Department, Water Resources.

V. REVIEW OF REQUIREMENTS

If University disagrees with the requirements set forth in any notice to commence installation of improvements, University shall, within ten (10) days of the date the notice was mailed, request a review of the requirements by the Merced Irrigation District Board of Directors. The decision of the Merced Irrigation District Board of Directors shall be binding upon both MID and University.

VI. BONDS

University is a self-insured agency of the State of California for which construction bond is waived.

VII. INSURANCE

A. University shall provide, and shall require any contractor engaged to perform the work to maintain, at all times during the performance of the work called for herein and for all periods for which liability insurance for the work hereunder may exist, public liability insurance, or an equivalent program of self insurance that will fully protect the MID against claims of any and all persons for personal injury, death or property damage. The following minimum requirements must be met in respect to insurance required under this Agreement:

Minimum Scope of Insurance, or an equivalent program of self insurance:

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001.)
2. Insurance Services Office form number CA 0001 (ed. 1/87) covering Automobile liability, code 1 (any auto).
3. Employer's Liability insurance and Workers' Compensation insurance as required by the State of California.
4. Course of Construction insurance form providing coverage for "all-risks" of loss.

Minimum Limits of Insurance, or an equivalent program of self insurance:

Owner shall maintain limits no less than:

1. General Liability: **\$1,000,000** per occurrence for bodily injury, personal injury, and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: **\$1,000,000** per accident for bodily injury and property damage.
3. Employer's Liability: **\$1,000,000** per accident for bodily injury or disease.

Self-Insurance

University is self-insured, with a self-insured retention of five million dollars (\$5,000,000). MID is aware that University is self-insured and agrees to accept

University's program of self-insurance. University's General and Automobile Liability program of self-insurance is described in University of California Business and Finance Bulletin No. 75, which is attached hereto as Exhibit D.

Other Insurance Provisions:

The general liability and automobile policies are to contain, or be endorsed to contain the following provisions:

1. The MID, its officers, officials, employees, agents and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the University, products and completed operations of the University; premises owned, occupied or used by the University; or automobiles owned, leased, hired or borrowed by the University, but only in proportion to and to the extent that such liability is caused by or results from the negligent or intentional acts or omissions of University, its officers, employees or agents. For the purposes of this agreement the Hallmark Group, LLC shall be considered an agent of the University.
2. For any claims related to this project, the University insurance shall be primary insurance as respects the MID, its officers, officials, employees, agents or volunteers, but only in proportion to and to the extent that such liability is caused by or results from the negligent or intentional acts or omissions of University, its officers, employees or agents. .
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the MID, its officers, officials, employees, agents or volunteers.
4. The University's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested has been given to the MID.

Course of Construction policies shall contain the following provisions:

1. MID shall be named as loss payee.
2. The insurer shall waive all rights of subrogation against the MID.

Acceptability of Insurers:

University's program of self-insurance is acceptable.

Verification of Coverage:

Contractor shall furnish the MID with certificates of coverage and endorsements effecting coverage required by this clause. The MID reserves the right to request

original policies. All documents are to be received and approved by the MID prior to the commencement of work.

Subcontractors:

University shall include all contractors or subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each contractor or subcontractor involved in the project.

B. No cancellation provision in any insurance policy shall be construed in degradation of the continuous duty of University or Contractor to furnish insurance during the term of this Agreement. At least thirty (30) days prior to the expiration of any such policy, a signed complete certificate of insurance, with all endorsements required by Section VI. Insurance, of this Agreement, showing that such insurance coverage has been renewed or extended shall be filed by University or Contractor with the MID.

C. University or Contractor shall be solely liable for and shall pay and all deductible amounts provided for in said policies of insurance and for any self-insured amounts of such policies as maintained by University or Contractor.

VIII. INDEMNITY

University shall defend, indemnify, and hold MID, its officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of University, its officers, employees, agents or invitees.

IX. PAYMENT OF FEES

University agrees to pay to the MID the following amounts:

1. \$200.00 non-refundable for engineering and administrative costs associated with the preparation and filing of this agreement.
2. \$500.00 deposit for engineering services, including but not limited to site review, plan checking, construction inspection, testing, and follow-up, to be charged at the following MID Engineering Department rates: \$52.00/hour for engineering time, \$42.00/hour for technical time, and \$0.35 per mile for vehicle usage. The fees charged, may or may not exceed deposit amount. Balance of any funds are refundable at the satisfactory completion of the job. Fees charged in excess of the deposit will be billed by MID and payable by University upon receipt.

X. ATTORNEY'S FEES

In the event of any action, legal or equitable, by either party hereto to enforce the within Agreement or any of its provisions, the prevailing party shall be allowed a reasonable attorney's fee to be fixed by the Court and their costs in said action.

XI. JOINT AND SEVERAL LIABILITY

The obligations of University and successors in interest shall be joint and several, and the MID shall pursue remedy against Owner or anyone or more owners or successors in interest without suit against them all. In the event litigation is required, any cross-complaint or offset for indemnity by one owner against the other shall be severed from the initial MID action and no delays shall occur thereby to the MID in pursuit of remedy.

XII. AMENDMENTS

The provisions of this Agreement may be waived, altered, amended, or repealed, in whole or in part, only on the written consent of all parties to this Agreement.

IN WITNESS WHEREOF, the University has executed this Agreement as of the _____ day of _____, 200__

UNIVERSITY:

By: _____
Lindsay A. Desrochers
Vice Chancellor for Administration

IN WITNESS WHEREOF, the MID has executed this Agreement as of the _____ day of _____, 200__.

MERCED IRRIGATION DISTRICT

By: _____
Ross Rogers
General Manager