

**EXTRA-TERRITORIAL SERVICE AND OFFSITE INFRASTRUCTURE
AGREEMENT BETWEEN [APPLICANT'S NAME]
AND THE CITY OF FRESNO**

THIS AGREEMENT is made and entered into effective the _____ day of _____ 20____, (Effective Date) by and between the CITY OF FRESNO, a California municipal corporation (CITY), and [APPLICANT'S NAME], a [APPLICANT'S ENTITY] (APPLICANT).

RECITALS

WHEREAS, the APPLICANT has requested the City to provide [WATER, WATER AND SEWER, OR SEWER] services (hereinafter Services) to a property located within the City's sphere of influence, but outside of the City's existing water service area, at [ADDRESS], which is associated with APN [APN NUMBER].

WHEREAS, the Services to be provided by the City will serve the demands for APPLICANT'S facilities on the property, which can generally be described as [Insert description of Applicant's residence, project, structure, facility, etc. on the property that requires service];

WHEREAS, both the City and APPLICANT agree that it is not necessary for the subject property to be annexed into CITY at this time, and the APPLICANT has filed an extension of services application with the Fresno Local Agency Formation Commission (LAFCo) and obtained the necessary approvals;

WHEREAS, LAFCo has reviewed the APPLICANT'S request for service extensions, and determined that if APPLICANT chooses not to annex the property to CITY, then an extension of CITY Services to the Applicant's property would be appropriate; and

WHEREAS, the CITY has sufficient capacity available to accommodate the APPLICANT'S demands at the subject property for the Services, construction shall be completed at APPLICANT'S sole expense and without reimbursement from the City; APPLICANT pay all required fees; and APPLICANT agrees to, and complies with, all of the provisions of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto, agree as follows:

- A. Provisions Specific to Water and Sewer Service. Connection to CITY's public water system and/or public sewer system by APPLICANT shall be subject to the following conditions when applicable to the Services sought by APPLICANT:
 - 1. Metered Service Connection. City shall require APPLICANT to install metered service connections for all domestic and irrigation water uses required for the subject property. The Water Capacity Fee shall be based on the number and size of water meters installed to serve the property.

2. Destruction of Existing Onsite Wells. If water service is sought, APPLICANT shall destroy any and all existing onsite wells in compliance with the State of California Well Standards, Bulletin 74-81 and 74-90 or current revisions issued by California Department of Water Resources and City of Fresno standards.
3. Fire Protection Upgrades. If water service is sought, APPLICANT shall be solely responsible in meeting any required fire protection upgrades beyond the Point of Connection by the City.
4. Payment of Fees to City. Prior to the Services being made available to the APPLICANT, the APPLICANT shall pay to CITY all required water and sewer fees as determined by the City, which may be amended from time to time.
5. Water Supply Redundancy. If water service is sought, for water supply redundancy purposes, the APPLICANT, at its sole expense and without reimbursement from the City, shall be required to connect to the City's public water system at two locations approved by the Director of Public Utilities or designee.
6. City to Provide Water and Sewer Service. Upon APPLICANT'S full and complete performance of all obligations and responsibilities, including payment of all fees required by the City under this Agreement, CITY agrees to provide APPLICANT with Services from CITY'S public water system and/or public sewer system.
 - a. CITY'S obligation is conditioned upon the APPLICANT obtaining consent of all applicable governmental agencies including, without limitation, approval of this Agreement by LAFCo and obtaining consent from Fresno County, including, without limitation, obtaining necessary encroachment permits or easements from Fresno County, or private property owners, to install new water lines and new sewer lines (Public Portion) along right of ways or across private property, as may be required to serve the APPLICANT'S property (Private Portion).
 - b. Should APPLICANT abandon irrigation well and request CITY provide landscape irrigation water through an additional meter, and upon payment of appropriate well abandonment and connection fees, the CITY agrees to provide APPLICANT with water from CITY'S municipal water system.
7. No Representation Regarding Water Service, Pressure, or Volume for any Private Portion of the New Water Pipeline. CITY does not make any representation, warranty or guarantee of any kind or nature and hereby specifically disclaims any kind of representation, warranty or guarantee any Private Portion of the water system will yield any specific volume of water or provide any specific water pressure to the APPLICANT'S property under static or dynamic water demand scenarios or for any use

by APPLICANT and its tenants, lessees, purchasers, successors or assigns. APPLICANT assumes full responsibility for the adequacy of volume of water and water pressure beyond the Point of Service into the Private Portion.

8. Maintenance and Repair. APPLICANT shall be responsible for operation, maintenance, repair, and replacement of all Private Portions of the water system and sewer system beyond the CITY's Point of Service. Under no circumstances shall CITY be required or accountable to maintain, repair or replace the Private Portion of the water system or sewer system unless and until CITY may, at its sole discretion and option, accept dedication of the water system or sewer system, or any portion thereof in increments or otherwise, at some future date. APPLICANT'S obligation to maintain, repair and replace the Private Portion of the water system and sewer system shall include, without limitation, any operation and maintenance, repair, replacement or modification of the Private Portion of the water system and sewer system as may be required by CITY. Should APPLICANT fail to operate, maintain, repair and replace the Private Portion of water system or sewer system as needed for proper operation of the Public Portion, the CITY shall have the right, but not the obligation to stop providing water and sewer service.
 - a. Leak Repairs. APPLICANT shall respond and repair leaks, breaks, or overflows caused by unforeseen conditions or damage to any Private Portion receiving water and sewer service from the City, including those caused by APPLICANT, other parties or acts of God. As part of its duty to maintain such Private Portion, APPLICANT shall promptly repair all leaks, breaks, and overflows, no matter how said leaks, breaks or overflows may be caused at its sole cost and expense. APPLICANT acknowledges unrepaired leaks, breaks, and overflows waste water, may cause property damage, and adversely impact public health, safety and welfare. If APPLICANT fails to promptly repair all leaks, breaks, and overflows, CITY, at its sole discretion, may stop providing water and sewer service at the Point of Service or otherwise. Thereafter, CITY shall have no obligation to provide water and sewer service until APPLICANT repairs the leaks, breaks, or overflows to the Private Portion.
 - b. Right to Inspect Water and Sewer System. CITY shall have the right to inspect and examine the Public Portion at any time, including during construction and operation of the water system and sewer system.
 - c. Right to Access and Inspect Water Meters. CITY shall have the right of entry to access and inspect all water meters for compliance with AWWA standards, whether located on the Private or Public Portions.

9. Exclusive Use of Private Portion. The Private Portion is for the exclusive use of APPLICANT. After connection to the Public Portion, APPLICANT shall not permit the Private Portion to be used, either directly or indirectly, to provide water service or sewer service to any other property regardless whether the other property is owned by APPLICANT or a third party.
10. Reduction of Property Water Consumption. To the extent possible, APPLICANT shall implement efforts to reduce water consumption. Efforts would include use of low-flow fixtures, consideration for areas of artificial turf, use of xeriscaping landscapes, and public awareness on water conservation measures.
11. Construction of Public Water and Sewer Facilities. All public water and sewer facilities shall be constructed in accordance with CITY's Public Works Department Standard Specifications and Drawings, standards, specifications, and policies.
12. Assignment of Water Entitlements. As a condition of water service from the CITY's public water system, APPLICANT shall provide water usage offsets to CITY through a water service entitlement exchange. APPLICANT shall take all required and necessary actions to transfer and assign all water entitlements associated with the APPLICANT'S property, including water entitlements with the Fresno Irrigation District, to CITY. APPLICANT is solely responsible for all costs, fees, and expenses associated with transfer and assignment of water entitlements to CITY. The City will withhold the issuance of building permits until all surface water entitlements have been transferred and assigned from the APPLICANT to the City.

B. Additional Provisions:

The following provisions shall apply to this entire Agreement:

1. Continuing Obligations and Responsibilities of APPLICANT. APPLICANT agrees to promptly pay to CITY any and all fees for any water supplied by CITY to APPLICANT. All fees listed in CITY's Master Fee Schedule are regularly updated and amended from time to time by CITY's Council. Notwithstanding any other section of this Agreement, the fees and rates set forth by the Master Fee Schedule, as currently in effect or as it may be amended, are incorporated herein and shall have precedence over the fees listed in this Agreement and attached exhibits. APPLICANT is responsible to pay the fees and rates as set forth by the Master Fee Schedule, except as otherwise specified in Section A(2), A(5), and A(14) above. APPLICANT agrees to maintain its water and sewer service accounts with CITY in a current status. APPLICANT acknowledges and agrees that should its water service account with CITY become sixty (60) days delinquent, CITY shall have the right, at CITY's sole option, to discontinue water and sewer service to APPLICANT'S property.

2. Consent to Future Annexation. In further consideration of CITY's agreement to provide water services from CITY's public water system and or sewer service from the City's publicly owned treatment works (POTW) in accordance with the provisions of this Agreement, APPLICANT agrees not to oppose or protest, in any way, the future annexation of APPLICANT's property to CITY and to pay APPLICANT's share of all applicable fees and charges CITY or any other governmental agency may require at the time of annexation of APPLICANT's property to CITY. APPLICANT will sign a petition to annex the property when asked by CITY.
3. Covenants Running with the Land. APPLICANT acknowledges and agrees that all of APPLICANT's covenants, agreements, promises, representations, and warranties as set forth in this Agreement are covenants running with APPLICANT's property as defined in the applicable provisions of Sections 1457 et seq. of the California Civil Code. APPLICANT'S covenants, agreements, promises, representations and warranties as contained in this Agreement, shall run with APPLICANT'S successors and assigns and all parties and persons claiming under them. Within 30 days of execution by the last party to sign, APPLICANT agrees to record a copy of this Agreement as a covenant running with the land.
4. Successors and Assigns. The covenants and agreements contained in this Agreement shall be binding upon and shall inure to the benefit of the heirs, successors, and assigns of the parties hereto. APPLICANT may not assign its rights and/or obligations under this Agreement without the prior written consent of the CITY, which consent shall not be unreasonably withheld. Any such consent by CITY shall not, in any way, relieve APPLICANT of its obligations and responsibilities under this Agreement.
5. Notice. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notice served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.
6. Binding. Subject to Section 19, below, once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.
7. Compliance With Law. In providing the services required under this Agreement, APPLICANT shall at all times, comply with all applicable laws of the United States, the State of California and CITY, and with all

applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

8. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.
9. Indemnification of City. To the furthest extent allowed by law, APPLICANT shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time, and property damage) incurred by CITY, APPLICANT or any other person, and from any and all claims, demands, liabilities, damages and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of the performance of this Agreement and the performance of any or all work to be done in and upon the street rights-of-way or within APPLICANT's property boundary, and premises adjacent thereto, pursuant to this Agreement, or arising or alleged to have arisen directly or indirectly in any way related to the construction, installation and operation of the new supply pipeline or its appurtenances by anyone occupying any portion of APPLICANT's property including, without limitation, any such claims, causes of action, damages, liabilities, fees, costs, expenses, and attorney fees arising from water quality compliance, a lack of volume of water, inadequate fire flow, lack of water pressure in, from or delivered to the new water supply pipeline, or lack of flow capacity in the new water supply pipeline. APPLICANT's obligations under the preceding shall apply regardless of whether CITY or any of its officers, officials, boards, employees, agents or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or the willful misconduct, of CITY or any of its officers, officials, employees, agents or volunteers.
10. Public Health, Safety, and Welfare. Nothing contained in this Agreement shall limit CITY's authority to exercise its police powers, governmental authority or take other appropriate actions to address threats to public health, safety and welfare, including temporarily suspending water services as deemed appropriate by CITY in its sole determination and discretion.
11. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply

the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

12. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify, or add to the interpretation or meaning of the provisions of this Agreement.
13. Severability. The provisions of this Agreement are severable. The invalidity or unenforceability of any one provision in this Agreement shall not affect the other provisions.
14. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provisions of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.
15. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceedings or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.
16. Exhibits. Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement
17. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.
18. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.
19. No Third Party Benefits. The rights, interests, duties, and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.
20. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations,

representations or agreements, either written or oral. This Agreement may be modified only by written agreement duly authorized and executed by both CITY and APPLICANT.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS THEREOF, the parties have executed the Agreement at Fresno, California, the day and year first above written.

CITY OF FRESNO,
a California municipal corporation

APPLICANT

By: _____
Michael Carbajal
Director of Public Utilities

By: _____
[Applicant]
Authorized Signatory

ATTEST:
YVONNE SPENCE, MMC CRM
City Clerk

Address:
[Name]
[Street Address]
[City, State Zip]

By: _____
Deputy

No signature of City Attorney required.
Standard Document #DPU-S 12.0 has
Been used without modification, as certified
by the undersigned.

By: _____
[City Certifier Name]
[City Certifier Title]
Department of Public Utilities

REVIEWED BY:

[Name], [Title]
Department of Public Utilities

Address:
City of Fresno
Attn: Director of Public Utilities
Department of Public Utilities
2600 Fresno Street, Room 4019
Fresno, CA 93721
Phone: (559) 621-1622

Attachments:
Attachment A – Property Deed
Attachment B – Department of Public Utilities, Master Water Service Fee Schedule