

**AGREEMENT TO REIMBURSE FRESNO IRRIGATION DISTRICT FOR ACTIVITIES  
RELATED TO THE IMPLEMENTATION OF RECHARGE FRESNO PROJECTS, AND  
FOR CERTAIN DEPOSITS IN CONNECTION WITH SUCH PROJECTS**

This Agreement is effective this \_\_\_\_\_ day of June 2016 ("Effective Date") between the CITY OF FRESNO, a municipal corporation ("CITY") and the FRESNO IRRIGATION DISTRICT, a California irrigation district ("DISTRICT").

**RECITALS**

WHEREAS, on February 26, 2015, the CITY adopted a five-year water utility rate plan to finance the construction of a five-year water capital plan totaling approximately \$429 million commonly referred to as Recharge Fresno Projects; and

WHEREAS, the five-year capital plan is intended to implement a more robust conjunctive-use water resource management plan strategy which will allow the CITY to use more surface water, in lieu of groundwater, to meet the many and varied water demands of the residents, businesses, industries, and institutions in the CITY's service area; and

WHEREAS, the implementation of the Recharge Fresno Projects will require CITY to work closely with the DISTRICT on the planning, permitting, designing, and construction of new groundwater recharge facilities, new raw water conveyance facilities, new surface water treatment facilities, and new finished water distribution pipelines ("Recharge Fresno Projects"); and

WHEREAS, DISTRICT must review and approve the construction drawings, issue construction permits, and provide construction inspection services to ensure that CITY's projects do not adversely impact the structural integrity, hydraulic capacity, or operational performance of DISTRICT's water delivery system; and

WHEREAS, DISTRICT's anticipated involvement related to CITY's Recharge Fresno Projects is outside the customary service that is provided to DISTRICT constituencies and DISTRICT will incur substantial expenses for matters relating to CITY's Recharge Fresno Projects or which do not otherwise fall under a specific agreement; and

WHEREAS, DISTRICT's estimated total administrative and staff costs related to planning, permitting, designing, and construction inspection activities associated with the Recharge Fresno Projects is not anticipated to exceed \$200,000 ("Budget"); and

WHEREAS, CITY agrees to reimburse DISTRICT an amount not anticipated to exceed \$200,000 for reasonable and actual costs (including costs for staff time, contractors, and consultants) for planning, permitting, design, and construction inspection activities caused by the Recharge Fresno Projects; and

WHEREAS, DISTRICT customarily requires that contractors who work on DISTRICT facilities for the benefit of third parties to deposit certain amounts with DISTRICT to ensure the timely and satisfactory completion of such work; and

WHEREAS, the parties desire for CITY to provide such deposits to DISTRICT on behalf of CITY's contractors; and

WHEREAS, the purpose of this Agreement is to formalize the reimbursement and deposit arrangements with DISTRICT.

### **AGREEMENT**

NOW, THEREFORE, that based upon the covenants and representations contained herein, CITY and DISTRICT agree as follows:

1. **Incorporation of recitals.** The recitals to this Agreement are incorporated and made a part of this Agreement.
2. **DISTRICT's Obligation.** DISTRICT shall participate in planning, permitting, design, and construction inspection activities associated with the CITY's implementation of the Recharge Fresno Projects as DISTRICT deems necessary to prevent adverse impacts to DISTRICT's water delivery system. DISTRICT understands and agrees this Agreement shall not encompass any physical construction or building activities, and any such physical activities shall be completed only after entering a separate agreement. DISTRICT shall invoice CITY monthly during periods of substantial activity and at DISTRICT's discretion during less active periods for all actual and reasonable costs incurred (including administrative overhead and payroll overhead). DISTRICT invoices shall include documentation evidencing all staff hours and activities (including overhead), contractor costs, and consultant costs related to CITY'S Recharge Fresno Projects. CITY acknowledges and agrees that DISTRICT's activities under this Agreement (i) are solely for the benefit of DISTRICT, (ii) shall not assign to DISTRICT any responsibility for the safe and proper construction of any CITY facilities, and (iii) shall not result in DISTRICT's assumption of any liability for any CITY facilities.
3. **City Obligation.** CITY agrees to reimburse DISTRICT a total amount not anticipated to exceed \$200,000 for DISTRICT's actual costs associated with CITY's implementation of the Recharge Fresno Projects. CITY shall pay invoices within 30 days of receipt of the respective invoice. If actual DISTRICT costs are anticipated to exceed \$200,000 to reasonably perform said planning, permitting, designing, and construction activities related to the CITY's Recharge Fresno Projects, CITY agrees to immediately negotiate with DISTRICT an amendment to this agreement to increase reimbursement Budget limits. Due to potential administrative processing delays from when an agreement amendment is negotiated to when the CITY's Council is able to approve said amendment, CITY understands that it may need to negotiate with DISTRICT and seek Council approval for an amendment earlier than necessary. DISTRICT reserves the right to pause its involvement with and approval of CITY's Recharge Fresno Projects until the reimbursement Budget is increased to a reasonable amount.
4. **Notification.** DISTRICT agrees to provide CITY invoices identifying total DISTRICT costs to date compared to the current Budget. DISTRICT agrees to notify CITY's Director of Public Utilities if the reimbursement Budget may need to be increased prior to the time when actual DISTRICT costs will exceed the not-to-exceed estimate in Section 3 of the Agreement.

5. **Deposit.** CITY shall deposit the sum of \$60,000.00 with DISTRICT prior to the start of any construction on DISTRICT facilities in connection with the Recharge Fresno Projects, in lieu of any deposit that District might otherwise require from contractors to ensure the timely and satisfactory completion of such work (the "Deposit"). DISTRICT will return the Deposit after completion of all Recharge Fresno Projects affecting DISTRICT facilities, subject to deduction for the following fees:
- a. Work on DISTRICT facilities that will not impact water deliveries shall be subject to a late completion fee of \$200 per week (or fraction thereof) that DISTRICT's facilities are out of service after the completion date for such work agreed upon between DISTRICT and CITY.
  - b. Work on DISTRICT facilities that will impact water deliveries, or otherwise beginning 30 days prior to DISTRICT's scheduled water delivery periods, shall be subject to (i) a facility shutdown fee of \$300 per day for each day (or fraction thereof) such facility is out of service, and (ii) a late completion fee of \$500 per day for each day (or fraction thereof) that such facility is out of service after the completion date for such work agreed upon between DISTRICT and CITY.

The foregoing fees will be deducted from the Deposit as each project is completed. In the event the amount of the Deposit is reduced to \$0 prior to the completion of all Recharge Fresno Projects affecting DISTRICT facilities, DISTRICT reserves the right to require the deposit of such additional amounts as DISTRICT deems reasonably necessary to ensure the timely and satisfactory completion thereof.

6. **Notices.** 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. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.
7. **Assignment.**
- a. This AGREEMENT is personal to DISTRICT and there shall be no assignment by DISTRICT of its rights or obligations under this AGREEMENT without the prior written approval of CITY's City Manager or his/her designee. Any attempted assignment by DISTRICT, its successors or assigns, shall be null and void unless approved in writing by CITY's City Manager or his/her designee.
  - b. DISTRICT hereby agrees not to assign the payment of any monies due DISTRICT from CITY under the terms of this AGREEMENT to any other

individual(s), corporation(s) or entity(ies). CITY retains the right to pay any and all monies due DISTRICT directly to DISTRICT.

8. **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.
9. **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 proceeding or action shall be entitled to recover from the other party its reasonable attorney's fee and legal expenses.
10. **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 instrument duly authorized and executed by both CITY and DISTRICT.
11. **Governing Law and Venue.** California law governs this AGREEMENT and its provisions will be construed according to California laws. Venue for filing any action to enforce or interpret this AGREEMENT will be Fresno, California.
12. **Headings.** This section heading in this AGREEMENT are for convenience only and do not explain, modify, or add to the meaning of this AGREEMENT.

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IN WITNESS WHEREOF, the parties have executed this Agreement effective on the day and year first above written.

CITY OF FRESNO,  
a California municipal corporation

FRESNO IRRIGATION DISTRICT,  
a California irrigation district

By: \_\_\_\_\_  
Thomas C. Esqueda, Director  
Department of Public Utilities

By: \_\_\_\_\_  
Ryan Jacobsen  
President

ATTEST:  
YVONNE SPENCE, CMC  
City Clerk

By: \_\_\_\_\_  
Gary Serrato  
Secretary

By: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

By: Amanda B. Freeman 5/31/16  
Amanda B. Freeman Date  
Deputy