

# REGULAR MEETING

June 29, 2023

## FRESNO CITY COUNCIL



### Supplemental Packet

#### ITEM(S)

**1-G File ID 23-1046** - Actions pertaining to temporary water service for fire suppression within Fancher Creek Town Center:

1. Adopt a finding of Categorical Exemption pursuant to Section 15301/Class 1 (Existing Facilities) of the California Environmental Quality Act (CEQA) Guidelines.
2. Approve a Temporary Water Service Agreement with Bakman Water Company

**Supplement Content: Staff Report and Agreement**

#### *Item(s)*

##### **Supplemental Information:**

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## REPORT TO THE CITY COUNCIL

**FROM:** GEORGEANNE A. WHITE, City Manager  
Office of Mayor & City Manager

BROCK D. BUCHE, PE, PLS, Director  
Department of Public Utilities

### SUBJECT

..Title

Actions pertaining to temporary water service for fire suppression within Fancher Creek Town Center:

1. Adopt a finding of Categorical Exemption pursuant to Section 15301/Class 1 (Existing Facilities) of the California Environmental Quality Act (CEQA) Guidelines.
2. Approve a Temporary Water Service Agreement with Bakman Water Company

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### RECOMMENDATION

Staff recommends that City Council adopt a finding of Categorical Exemption, pursuant to Sections 15301/Class 1 (Existing Facilities) of the California Environmental Quality Act (CEQA) Guidelines to provide temporary water service to the Bakman Water Company; approve a Temporary Water Service Agreement with Bakman Water Company; and authorize the City Manager, or designee, to sign the agreement on behalf of the City of Fresno (City).

### EXECUTIVE SUMMARY

The Fancher Creek Town Center (FCTC) is a mixed-use development located at Tulare and Clovis Avenues. Within FCTC, Brandhaven, a 180-unit affordable senior rental housing project is being constructed. This project is located within the Bakman Water Company (Bakman) service area, which currently lacks the infrastructure needed to meet required fire suppression requirements. The subject Temporary Water Service Agreement allows temporary access to a City fire hydrant in the event a fire were to occur at Brandhaven while Bakman constructs a water storage tank and booster pump station. City Council approval of the Temporary Water Service Agreement provides Bakman with an interim source of supplemental fire suppression water and allows issuance of occupancy for Brandhaven which in turn provides much needed affordable housing for residents in southeast Fresno.

### BACKGROUND

The Fancher Creek Town Center (FCTC) development project, is a mixed-use development, generally located east of Clovis Avenue and on the north and south side of Tulare Avenue. When the FCTC project was processed for development entitlements and CEQA compliance, Bakman conditioned the project, among other things, on FCTC's construction of a water storage tank and booster pump station, which is needed to provide adequate fire suppression for the entire FCTC project with FCTC paying its proportionate share of the cost.

For various reasons, there have been delays with FCTC and Bakman arriving at a mutual agreement. The Brandhaven housing project has now been completed and is awaiting issuance of a certificate of occupancy by the City. In an effort to expedite the issuance of the certificate of occupancy, the City

agreed to award Bakman funds for construction of the needed water storage tank and booster pump station. While the tank is under construction, a supplemental source of fire suppression water is required. It is the intent of the subject Temporary Water Service Agreement to allow the City of Fresno to utilize a fire hydrant owned by City, but within the Bakman service area, for fire suppression purposes, while the water storage tank and booster pump station are constructed. This agreement ensures the City's rate payers are kept whole while providing this temporary supplemental water service.

## **ENVIRONMENTAL FINDINGS**

Staff has performed an environmental assessment of this project and has determined it falls within the Categorical Exemption set forth in Section 15301/Class 1 (Existing Facilities). The project entails providing access to an existing fire hydrant and involves a negligible expansion of the City's water system. Bakman will temporarily establish a customer account with the City so that the specified hydrant may be accessed, by the City, to support fire suppression efforts in the event of a fire during the construction of the necessary water infrastructure. Water will not be drawn from the hydrant for any other purpose and no permanent or long-term customers are being added to the City's water system. Furthermore, staff has determined that none of the exceptions to Categorical Exemptions set forth in the CEQA Guidelines, Section 15300.2, apply to this project.

## **LOCAL PREFERENCE**

Local preference was not applicable as this item does not involve a bid or award of construction or services agreement.

## **FISCAL IMPACT**

There is no impact to the General fund. The Temporary Water Service Agreement stipulates Bakman Water Company will be invoiced monthly by the Water Division for water related fees and charges.

Attachment: Temporary Water Service Agreement

## **TEMPORARY WATER SERVICE AGREEMENT**

This Agreement for Temporary Water Service ("Agreement") is made and entered into on this 29<sup>th</sup> of June, 2023 ("Effective Date") by and between the City of Fresno, a California municipal corporation ("City"), and Bakman Water Company ("Bakman"), a California corporation.

### **RECITALS**

- A. Bakman is the owner of a water distribution system, delivering water to lands both inside and outside of the municipal limits of the City, which is regulated by the California Public Utilities Commission ("CPUC").
- B. FCTC Senior, LP ("Developer") has built Brandhaven, a 180-unit affordable senior rental housing project as part of a larger plan known as Fancher Creek Town Center ("FCTC"), which is within the area serviced by Bakman.
- C. FCTC is located within the City's municipal limits but is within Bakman's CPUC approved tariff boundaries. Bakman has been identified as the exclusive water provider for FCTC. The City has a fire hydrant within close proximity to FCTC.
- D. The City of Fresno Fire Department has determined that the current infrastructure serving FCTC does not provide the minimum fire flow required for fire suppression during fire events.
- E. As a condition of service of FCTC, it has been determined that a water storage tank, a booster pump station, and additional structures are necessary and must be constructed (collectively, "Improvements") to provide domestic water and fire flow service to FCTC.
- F. In connection with the construction of Improvements, Bakman and Steve Dovali Construction, Inc. ("Contractor") have entered into that certain Construction Agreement, executed on February 23, 2023. Bakman stands ready to begin the construction of the Improvements pending execution of a separate agreement between Bakman and Developer for payment to Bakman, by Developer, of Developer's portion of the costs of the Improvement (in excess of funds to be contributed by the City), pursuant to Bakman's Tariff Rule No. 15, Section (D)(3) and CPUC Decision 23-02-031.
- G. In order for the City to grant the Developer the privilege of obtaining a Certificate of Occupancy at Brandhaven prior to completion of the Improvements, there is a need to ensure the required fire flow for purposes of fire suppression.
- H. City and Bakman now desire to set forth the terms by which the City Hydrant (defined hereinafter) may be temporarily accessed for FCTC fire suppression purposes.

## AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and promises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

1. Recitals. The above recitals are true and correct and are hereby incorporated into this Contract.
2. Hydrant Access. The City hereby grants Bakman the right to temporarily receive water from the City fire hydrant located at 144 N. Manila Avenue ("City Hydrant") as a supplemental source on standby for fire suppression purposes only, if needed during a fire event until that time that the Improvements have been completed. The Parties acknowledge and agree that Bakman is entering into this Agreement to temporarily accommodate the Developer's request that Bakman utilize the City Hydrant for ensuring required fire flow for fire suppression purposes at FCTC while construction of the Improvements is underway.

Consistent with Fresno Municipal Code section 6-534, no person other than a duly authorized employee of the City shall use water from, or connect any apparatus to, a fire hydrant without first obtaining a permit from the City of Fresno, Water Division. Bakman and its employees, contractors, and/or agents are not authorized to access any City fire hydrant for any purpose without obtaining all required permits.

3. City Responsibilities. The Parties acknowledge and agree that the (i) City shall be responsible for maintaining and repairing in good condition the City Hydrant and investigating and ensuring the specifications, fitness, merchantability, usefulness, functionality and suitability of the City Hydrant for its intended purposes; and (ii) no responsibility has been or is assumed by Bakman or by any officer, person, agent, or representative acting or purporting to act on behalf of City Hydrant as to any matters concerning the City Hydrant.
4. No Extension of Service. The Parties acknowledge and agree that this Agreement is not an extension of service and is being entered into for the benefit of providing affordable housing within the City. This Agreement is not to be interpreted as an "Out of Agency Agreement" or "Extra-Territorial Water Service Agreement" and therefore is not intended to comply with California Government Code Section 56133(b). The City covenants and agrees that it has not and will not obtain approval from the Fresno Local Agency Formation Commission and is not required in order to enter into this Agreement.
5. Water Volume Measurement. Should the City be required to utilize water from the City Hydrant for fire suppression purposes within FCTC, the City's Department of Public Utilities shall, in its sole and absolute discretion, determine the volumetric use.
6. Water Charges. Commencing on the Effective Date, Bakman shall pay the minimum charge per month for water drawn from the City Hydrant for the

purposes of FCTC, as set forth in the then current version of the Master Fee Schedule. Bakman shall pay the minimum charge until this Agreement expires or is terminated. During the term of this Agreement, should the City be required to utilize the City Hydrant for fire suppression purposes within FCTC, Bakman shall pay the volumetric charge (\$2.33 per 1,000 gallons) for the volumetric use, as determined by the City of Fresno, Department of Public Utilities pursuant to Section 5 of this Agreement.

a. Payment of Water Charges. Bakman shall establish a customer account with the Water Division and will receive monthly invoices containing the water related fees and charges owed.

7. Term. The term of this Agreement shall commence on the Effective Date and shall terminate upon the earlier of: (i) eighteen (18) months after the Effective Date; or (ii) the date on which Bakman provides written notice to the Director of Public Utilities, that the Improvements have been completed and received the Building Final Inspection Approval from the City. Bakman shall provide the Director of Public Utilities with copies of the approved permit card with the written notice of completion. The Parties may extend the term of this Agreement by written agreement.

8. Mutual Indemnity.

Except to the extent caused by the gross negligence or willful misconduct of Bakman, the City forever releases and discharges Bakman, and agrees to assume liability for, to defend and to indemnify and hold harmless Bakman, its directors, officers, agents, and employees, from and against any and all claims, damages, and liability for death or injury to any person including employees and agents of the City or third persons, or damage to any property, including property of the City, Developer FCTC, or third persons, occurring as a result of or in connection with this Agreement, the use or failure to use the City Hydrant and/or water pressure.

Except to the extent caused by the gross negligence or willful misconduct of the City, Bakman forever releases and discharges the City, and agrees to assume liability for, to defend and to indemnify and hold harmless the City, its directors, officers, agents, and employees, from and against any and all claims, damages, and liability for death or injury to employees and agents of Bakman, or damage to property of Bakman, occurring as a result of or in connection with this Agreement.

9. Attorneys' Fees. If any legal action or proceeding arising out of or relating to this Agreement is brought by either party to this Agreement, the prevailing party shall be entitled to receive from the other party, in addition to any other relief that may be granted, the reasonable attorneys' fees, costs, and expenses incurred in the action or proceeding by the prevailing party.

10. 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 or deposited into the United States mail, with postage prepaid, 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.

11. 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 provision 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 any party, but rather by construing the terms in accordance with their generally accepted meaning.
12. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. 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, California.
13. 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 parties.
14. Severability. The provisions of this Agreement are severable. The invalidity or unenforceability of any one provision or part thereof shall not affect the validity or invalidity of any other provisions.
15. No Third-Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the Parties and their successors and assigns. No other Person shall have any right of action based upon any provision of this Agreement.
16. Binding Effect. This agreement shall be binding upon the Parties and upon their heirs, administrators, successors and assigns.
17. Counterparts; Electronic Signatures. This Agreement may be executed in two or more identical counterparts, each of which shall be deemed to be an original and each of which shall be deemed to be one and the same instrument when each Party signs each such counterpart. The Parties acknowledge that executed copies of this Agreement may be exchanged by facsimile or other electronic format (e.g. "pdf," "tif," "jpg" or "DocuSign") and that the signatures on such copies shall be deemed to be effective and valid as original signatures.
18. Incorporation of Attachments. All recitals and attachments to this Agreement, including all Exhibits referenced herein, and all subparts thereto, are incorporated herein by this reference.
19. Modification in Writing. This Agreement may be modified only by written agreement of each Party affected by such modification.

[SIGNATURES ON FOLLOWING PAGE.]

IN WITNESS WHEREOF, the Parties have executed this Agreement at Fresno, California, on the day and year first above written.

CITY OF FRESNO,  
A California municipal corporation

BAKMAN WATER COMPANY,  
a California corporation

By: \_\_\_\_\_  
Georgeanne A. White  
City Manager

DocuSigned by:  
By: Tim Bakman 6/28/2023  
\_\_\_\_\_  
Tim Bakman  
President

APPROVED AS TO FORM:  
ANDREW JANZ  
City Attorney

DocuSigned by:  
By: Shay Bakman 6/28/2023  
\_\_\_\_\_  
Shaymus Bakman  
Secretary

DocuSigned by:  
By: Jennifer Quintanilla 6/28/2023  
\_\_\_\_\_  
Jennifer M. Quintanilla Date  
Senior Deputy City Attorney

ATTEST:  
TODD STERMER, CMC  
City Clerk

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

Addresses:  
CITY:  
City of Fresno  
Attention: City Manager  
2600 Fresno Street  
Fresno, CA 93721  
Phone: (559) 621-7770

BAKMAN:  
Bakman Water Company  
Attention: Shaymus Bakman  
5015 East Belmont Avenue  
Fresno, CA 93727  
Phone: (559) 255-0324  
Email: [shay@bakmanwater.com](mailto:shay@bakmanwater.com)