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Agenda Item: ID16-1306 (2-C)

Date: 12/1/16

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## FRESNO CITY COUNCIL

CITY CLERK, FRESNO CA



### Supplemental Information Packet

Agenda Related Item(s) – ID16-1306 (2-C)

#### Contents of Supplement: Amended Agreement Item(s)

Attached please find a Supplement to File ID16-1306. The title of the item is as follows:

BILL – (For introduction) – Amending Subsection (d) of Section 6-507 of the Fresno Municipal Code relating to the deferment of water system connection and related charges.

#### **Supplemental Information:**

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

#### **Americans with Disabilities Act (ADA):**

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

Recording Requested By:  
Public Utilities Department, City of Fresno  
Attn: Doug Hecker  
No Fee-Govt. Code Sec. 610

When Recorded Mail To:  
City Clerk, City of Fresno  
2600 Fresno Street  
Fresno, CA 93721

APN # [APN]

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Account # [Account Number]

**AGREEMENT AND LIEN**  
**Payment of Water Connection and Related Charges**  
**FMC 6-507(d) and 6-305**

**THIS AGREEMENT** is entered into by and between [Property Owner] (hereinafter "Owners" whether singular or plural) who are all the record owners of [Property Address] Fresno, California [zip code] (the "Property"), and the CITY OF FRESNO (hereinafter "City").

**RECITALS:**

**WHEREAS**, Owners desire that their real property located at [Property Address], in Fresno, California, the "Property," be connected to the City water system for the purpose of allowing property to receive service from such water system; and

**WHEREAS**, Owners' Property is as legally described in Appendix "A" attached hereto and incorporated herein by reference as if set forth herewith in full; and

**WHEREAS**, Owners are required to pay all applicable water connection charges for connecting to the City water system under Article 3 of Chapter 6 of the Fresno Municipal Code, as amended; and

**WHEREAS**, Owners seek to defer payment of water connection charges, public water service connection, private water service line installation, and/or well destruction charges, by entering into an agreement with the City to finance these charges over a period of not more than twenty years at a variable rate of interest, adjusted annually on July 1, each year, as provided for in Section 6-507(d) and 6-305(c)(1) of the Fresno Municipal Code, and the Master Fee Schedule as amended from time to time; and

**WHEREAS**, Owners hereby warrant that any and all parties having record title interest in the Property which may ripen into a fee have subordinated to this Agreement; and all such instruments of Subordination, if any, are attached hereto and made a part of this Agreement.

## **AGREEMENT:**

**NOW, THEREFORE,** Owners, in consideration of all the foregoing and said water connection and allowed use of the water, agree as follows:

1. Owners shall pay public water service connection, private water service line installation, on site water system, and well destruction charges for Property as set forth in Appendix "A," which shall be paid in substantially equal monthly installments amortized over a period of not more than twenty years, at a variable rate of interest, adjusted annually on July 1, each year, which shall not be less than the rate the City would otherwise be able to receive by placing such amount in investment accounts as periodically established by the City Controller and adopted by the Council of the City of Fresno in the Master Fee Resolution. The amount to be financed shall not be greater than \$20,000 for any Property.

2. Owners reserve the right to accelerate and pay, at any time, the whole or any part of the full remaining balance of said charges due to City. In case of any default hereunder, the Controller of the City of Fresno may declare the entire remaining balance due.

3. The charges set forth in Appendix "A" and any balance thereof due, and any delinquencies thereof, including accumulated interest and service charges attaching thereto, shall be a lien upon Property, which lien shall be as described in, and shall be enforceable in any manner provided in law or equity including private foreclosure and sale of property as provided in Civil Code Section 2924, as amended.

4. This Agreement shall apply to all applicable public water connection charges, private water service line connection costs, on site water system, meter charge, and frontage charge. This Agreement shall also apply to well destruction, and transmission grid main charges for water mains, within the extended edges of Property.

5. If at any time Owners abandon any well on Owner's property, as defined by the Department of Water Resources Bulletins 74-81 and 74-90 (together, the "Water Well Standards"), Owners will destroy the well pursuant to the Water Well Standards. If Owners fail to destroy an abandoned well, City reserves the right to arrange, and invoice Owners for, such destruction.

6. This Agreement shall constitute a covenant running with the land, shall be in favor of and for the benefit of City and its property, shall be enforceable thereby, and shall be binding upon the successors and heirs of Owners.

7. In the event that there is a sale or transfer of property by Owners, Owners shall be required to pay the entire balance, including accumulated interest and service charges, on or before the date of the recording of such sale or transfer. If payment is not made, the City shall not release the lien upon the Property, and shall retain the option to pursue any and all legal remedies available to obtain payment.

8. If either party is required to commence any proceeding or legal action to enforce or interpret any term 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 fees and legal expenses. For the purposes of this Agreement, "attorneys' fees" and "legal expenses" include, without limitation, paralegals' fees and expenses, attorneys, consultants fees and expenses, expert witness fees and expenses, and all other expenses incurred by the prevailing party's attorneys in the course of the representation of the prevailing party in anticipation of and/or during the course of litigation, whether or

not otherwise recoverable as "attorneys' fees" or as "costs" under California law, and the same may be sought and awarded in accordance with California procedure as pertaining to an award of contractual attorneys' fees.

Dated: This [Day] day of [Month], [Year]

\_\_\_\_\_  
[Property Owner]

\_\_\_\_\_  
[Property Owner]

\_\_\_\_\_  
[Property Owner]

**CITY OF FRESNO**  
Department of Finance

By: \_\_\_\_\_  
Michael Lima  
City Controller

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA    )  
  ) ss.  
COUNTY OF FRESNO    )

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public personally appeared

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who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity (ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under **PENALTY OF PERJURY** under the laws of the State of California that the foregoing paragraph is true and correct.

**WITNESS** my hand and official seal.

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Signature

(Seal)

**SUBORDINATION**

The undersigned as holder of the beneficial interest in and under that certain Deed of Trust recorded on \_\_\_\_\_, in the office of the Fresno County Recorder as Document No. \_\_\_\_\_ of \_\_\_\_\_ which the Deed of Trust in by and between: \_\_\_\_\_, as Trustor, \_\_\_\_\_, as Trustee, and \_\_\_\_\_, as Beneficiary, hereby expressly subordinates said Deed of Trust and its beneficial interest thereto to the foregoing AGREEMENT AND LIEN, Payment of Water Connection and Related Charges, FMC 6-507(d) and 6-305.

DATED: \_\_\_\_\_, 201\_\_

**BENEFICIARY**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

(Beneficiary to print/type document information, Name, Title and attach Notary Acknowledgment)

**WATER CONNECTION CHARGES**

Attachment to Water Connection Charges Agreement, FMC 6-305 & 6-507(d)

**Owners' Name:** \_\_\_\_\_

**Mailing Address:** \_\_\_\_\_

**Telephone Number:** \_\_\_\_\_

**Address of Property to be connected:** \_\_\_\_\_

**Assessor's Parcel Number (A.P.N.):** \_\_\_\_\_

Legal Description of Property Connected:

The following are connection charges for water service to the described property:

1. **SERVICE & METER CHARGE**  
 \_\_\_\_\_ Inch Service & Meter.....( )Existing.....( )Install..... \$ \_\_\_\_\_
2. **FRONTAGE CHARGE**  
 \_\_\_\_\_ L.F. @ \$6.50/L.F..... \$ \_\_\_\_\_
3. **TRANSMISSION GRID MAIN CHARGE**  
**For UGM areas: U.G.M. Service Area: \_\_\_\_\_**  
 For Parcels Under 5 Gross Acres  
 \_\_\_\_\_ 0.00 Net Acres @ \$804.00/ac. .... \$ \_\_\_\_\_
4. **TRANSMISSION GRID MAIN BOND DEBT SERVICE CHARGE** (\$100.00 min. charge)  
 For Parcels Under 5 Gross Acres  
 \_\_\_\_\_ 0.00 Net Acres @ \$304.00/ac. .... \$ \_\_\_\_\_
5. **WELLHEAD TREATMENT FEE**  
 \_\_\_\_\_ Wellhead Treatment Service Area  
 \_\_\_\_\_ Units @ \$ 0.00 /Unit..... \$ \_\_\_\_\_
6. **RECHARGE AREA FEE**  
 \_\_\_\_\_ Recharge Service Area  
 \_\_\_\_\_ Units @ \$ 0.00 /Unit..... \$ \_\_\_\_\_
7. **1994 BOND DEBT SERVICE FEE**  
 \_\_\_\_\_ 1994 Bond Debt Service Area  
 \_\_\_\_\_ Units @ \$ 0.00 /Unit..... \$ \_\_\_\_\_
8. **U.G.M. WATER SUPPLY FEE**  
 Water Supply Area No.: \_\_\_\_\_  
 \_\_\_\_\_ Gross Acres @ \$ 0.00 /gross acre..... \$ \_\_\_\_\_  
 \_\_\_\_\_ Units @ \$ 0.00 /Unit..... \$ \_\_\_\_\_

One of more of following costs are necessary for providing water service to the described property:

- 1. ON-SITE PRIVATE WATER LINE INSTALLATION
2. ON-SITE WATER SYSTEM
3. ON-SITE WATER WELL DESTRUCTION

TOTAL WATER CONNECTION CHARGE OBLIGATION..... \$

Public Works/Land Section By: Date:

Less Down Payment (if any) .....

Balance to be Financed .....

The balance of \$ is to be financed by a lien agreement for a period of twenty [20] years at an initial variable rate of interest of % per annum on the unpaid principal balance during the first year of the agreement as provided for by the Fresno Municipal Code Section 9-503.1 and the Master Fee Schedule.

Please note:

This is a VARIABLE RATE of interest and it changes each JULY 1. If this agreement is effective during the months of either MARCH or APRIL, there may be only ONE PAYMENT DUE at the rate % and for the amount of \$ shown above.

If this agreement is effective during the months of either MAY or JUNE, there may be NO PAYMENTS DUE at the rate % and for the amount \$ shown above.

All borrowers are notified by the City of Fresno Finance Department of their new rate and their new payment amount in JUNE of each year.

If you have any questions, please call the City of Fresno Finance Department at 621-7023.



If total charges are to be paid in Cash or Check, take this form to the Development Department. If any portion is to be paid under deferred payment plan, take this form to the Finance Department, Enterprise Accounting Section.

Appendix "A"