

Fresno-Clovis Water System Interconnection Agreement

AGREEMENT

FOR INTERCONNECTION OF MUNICIPAL POTABLE WATER SYSTEMS
FOR TEMPORARY SERVICE AND EMERGENCY BACK UP

This Agreement is made and entered into this 15th day of May, 2007, the effective date, by and between the CITY OF FRESNO, a municipal corporation, hereinafter called "FRESNO" and the CITY OF CLOVIS, a municipal corporation, hereinafter called "CLOVIS".

RECITALS

WHEREAS, the Cities of FRESNO and CLOVIS are municipal corporations in the State of California incorporated under the laws of said State with FRESNO being a Charter City and CLOVIS functioning under the general laws thereof; and

WHEREAS, said Cities have in common the legal power to construct, maintain, repair and replace potable water production and distribution facilities within the territorial boundaries of said Cities and in unincorporated areas in proximity thereto, and to provide potable water services and facilities to residences, commercial and business establishments, public properties and industries; and

WHEREAS, the legislative bodies of each said Cities have and do find and determine that it is in the best interest and advantage of said Cities to authorize and provide for interconnection of the respective Cities potable water distribution systems at two locations, Leonard Avenue at the Gould Canal Alignment and Behymer Avenue at Willow to provide short term service and on going emergency back up, all as herein provided; and

WHEREAS, said Cities each have the power under the joint operation of powers provisions of California Government Code sections 54980 and 54981, and under the general powers conferred on said Cities by law to enter into perpetual agreements relative to providing potable water and the maintenance, operation, and replacement of potable water facilities necessary for delivery of the provided water; and

WHEREAS, the Cities of CLOVIS and FRESNO recognize the emergency benefits to be derived for the residents of each jurisdiction by providing interconnections between the municipal potable water distribution systems of each city; and

WHEREAS, the local geology and ground water characteristics are confined and limited making the development of sufficient potable

groundwater supplies within the southeast area of FRESNO identified as the Urban Growth Management (UGM) 501s service area, formidable, and

WHEREAS, FRESNO is currently experiencing growth in the southeastern area of the City, bounded by UGM 501s service area, and the use of treated surface water in-lieu of groundwater would mitigate the potential condition of overdraft within the UGM 501s service area; and

WHEREAS, with the construction of a Leonard Avenue interconnection, FRESNO will be able to temporarily serve the UGM 501s area and gain additional time to effectively plan, site and construct sufficient surface water treatment facilities to permanently serve the water demands of the area, and

WHEREAS, CLOVIS anticipates to begin development of CLOVIS' proposed Northwest Urban Center by 2008 to 2010; and

WHEREAS, the local geology and ground water characteristics are confined and limited making the development of sufficient potable groundwater supplies within the northwest area of CLOVIS identified as the Northwest Urban Center in CLOVIS' 1993 General Plan Update formidable, and

WHEREAS, with the construction of a Behymer Avenue interconnection, CLOVIS will be able to temporarily serve the Northwest growth area and gain additional time to effectively site and construct sufficient facilities to permanently serve the water demands of the area.

NOW, THEREFORE, in consideration of the foregoing recitals, it is mutually agreed that:

1. Definitions. Unless the particular provision or context otherwise requires, the definitions contained in this section shall govern the construction, meaning and application of words and phrases used in this Agreement.
 - a. "Construction" means the physical erection, assembly, integration, coordination, testing, warrantee, and purchasing of all components necessary for a fully functional water system interconnection.
 - b. "Cost Estimate(s)" means the engineering cost estimates including all cost to be reimbursed (e.g., materials, construction, inspection, construction management, engineering) prepared by either City or its respective consultant.

- c. "Final Cost Estimate" means the Cost Estimate submitted prior to bidding that has been accepted in writing by the city making reimbursement.
- d. "Days" means calendar days.
- e. "A.M. Peak Hour" means the highest one hour period of water demand between 12:00 am and 11:59 am.
- f. "P.M. Peak Hour" means the highest one hour period of water demand between 12:00 pm and 11:59 pm.
- g. "Surface Water Treatment Plant Operation Cost" means all actual costs incurred for chemicals, materials, power and labor required to treat and deliver treated surface water.
- h. "Distribution System Maintenance Cost" means all actual costs incurred for labor and materials to satisfy obligations described in Sections 7 or 8 and 9.
- i. "Reporting Cost" means all actual additional costs incurred for labor and materials as a result of the interconnections when preparing the annual consumer confidence report.
- j. "Raw Water Cost" means the actual cost for untreated Kings River water to be supplied from FRESNO's entitlement for treatment and use by the City of CLOVIS.
- k. "Fee" means "Rate" multiplied by the amount of water delivered divided by 1,000 gallons. The units for Fee shall be dollars per 1,000 gallons.
- l. "Rate" means the sum of Surface Water Treatment Plant Operation Cost, plus Distribution System Maintenance Cost, plus Reporting Cost. The Rate Calculation for FRESNO can include the Raw Water Cost if CLOVIS chooses to use this option.
- m. "Project" means a fully functional water system interconnection.

- n. "Water Distribution System" means each City's network of water mains used to deliver potable water to their customers including the water system interconnection.
2. Commencing with the effective date of this Agreement, CLOVIS and FRESNO agree to construct two system interconnections, one on Leonard Avenue at the Gould Canal and a second on Behymer Avenue at Willow Avenue as described below
- a. Leonard Avenue connection shall include:
 - i. The construction of a 16 inch diameter water main including appropriate isolation valving, in Leonard Avenue from Donner Avenue south to the Gould Canal,
 - ii. Construction of a pressure regulation station at Gould Canal that will include a multidirectional flow meter, Pressure regulating valve, air/vacuum release valve, and appropriate ancillary plumbing, and
 - iii. Installation of a 16 inch diameter water main from the pressure regulating station under the Gould Canal terminating with a 12 inch diameter blow off on the west side of Leonard Avenue south of the Gould Canal Easement..
 - b. Behymer Avenue connection shall include:
 - i. Use of capacity in the existing 24 inch diameter water main, and installation of appropriate isolation valving, in Behymer Avenue from Chestnut Avenue to Willow Avenue,
 - ii. Construction of a pressure regulation station near the intersection of Behymer Avenue and Willow Avenue that will include a multidirectional flow meter, pressure regulating valve, air/vacuum release valve, and appropriate ancillary plumbing, and
 - iii. Installation of a 24 inch diameter water main from the pressure regulating station to the east side of Willow Avenue terminating with a 12 inch diameter blow off on the east side of Willow Avenue at Behymer Avenue.
3. CLOVIS shall construct all improvements identified in Section 2. a. i., ii, and iii. and FRESNO shall pay all cost of design and installation for the Construction of said improvements. CLOVIS shall schedule with FRESNO two design review meetings, (60% & 90% design) which are to include Construction Cost Estimates. Prior to bid, CLOVIS shall supply FRESNO with a Final Cost Estimate, FRESNO shall indicate in writing

acceptance of the Final Cost Estimate. In the event the lowest responsive and responsible bid received exceeds the Final Cost estimate by 10%, CLOVIS shall not award the project. FRESNO shall be notified within 10 Days of the award that the bids exceed the Final Cost Estimate by 10%. FRESNO shall have 30 Days to determine if the project is to be awarded. If CLOVIS does not receive notification from FRESNO to award the project within 30 Days, CLOVIS will reject all bids. All change orders are subject to review and approval by FRESNO.

4. FRESNO shall construct all improvements identified in Section 2. b. i., ii, and iii. and CLOVIS shall pay all cost of design and installation for the Construction of said improvements. FRESNO shall schedule with CLOVIS two design review meetings, (60% & 90% design) which are to include Construction Cost Estimates. Prior to bid, FRESNO shall supply CLOVIS with a Final Cost Estimate, CLOVIS shall indicate in writing acceptance of the Final Cost Estimate. In the event the lowest responsive and responsible bid received exceeds the Final Cost estimate by 10%, FRESNO shall not award the project. CLOVIS shall be notified within 10 Days of the award that the bids exceed the Final Cost Estimate by 10%. CLOVIS shall have 30 Days to determine if the project is to be awarded. If FRESNO does not receive notification from CLOVIS to award the project within 30 Days, FRESNO will reject all bids. All change orders are subject to review and approval by CLOVIS.

5. CLOVIS shall provide water to FRESNO as follows:
 - a. From date of this agreement through 2014
 - i. Based on an agreed schedule, CLOVIS shall make available water flow twice each day, during the A.M. Peak Hour and during the P.M. Peak Hour, as follows:
 1. Upon Project completion and for two (2) years thereafter (approximately 2008 and 2009):
3,000gpm (max.)
 2. And for three (3) years thereafter (approximately 2010, 2011 and 2012):
2,500gpm (max.)
 3. And for two (2) years thereafter (Approximately 2013 and 2014):
2,000gpm (max.)
 4. At all other times upon Project completion FRESNO may purchase any additional water supply available from CLOVIS. Availability will

be determined by City of CLOVIS based on the water volume and pressure demands of the CLOVIS Water Distribution System.

5. As a condition precedent to CLOVIS' obligation to make available water flow under this section, FRESNO shall provide to CLOVIS a written schedule and plan for the construction of capital improvements to the FRESNO water system that are designed to provide permanent potable water service to the area of FRESNO temporarily provided service per this agreement. If the schedule and plan changes over time, FRESNO shall provide timely written updates to CLOVIS.
- ii. Commencing seven (7) years after Project completion (approximately 2015), FRESNO shall only utilize the Leonard Avenue interconnection as an emergency backup as follows:
 1. FRESNO may purchase any additional water supply available from CLOVIS. Availability will be determined by City of CLOVIS based on the water volume and pressure demands of the CLOVIS Water Distribution System.
 2. If FRESNO deems there is an emergency need for a back-up supply of water, FRESNO will notify CLOVIS as early as possible and will work in good faith coordinating additional surface water deliveries with FRESNO Irrigation District.
 - iii. By mutual written agreement, FRESNO and CLOVIS may extend the schedule identified in Sections 5.a.i and 5.a.ii. If CLOVIS is unable to agree to an extension because it lacks capacity to provide a water supply to FRESNO after 2014, the parties agree to negotiate in good faith regarding an agreement whereby FRESNO would pay to CLOVIS the capital cost to construct additional water treatment facilities in CLOVIS that would provide the necessary capacity.
 - iv. To provide CLOVIS with the ability to perform its obligations under Section 5.a.i and 5.a.ii, FRESNO shall provide sufficient raw water from FRESNO's surface water entitlement(s), delivered to CLOVIS' surface water treatment plant via the Enterprise

Canal, for CLOVIS to process and deliver the treated water to FRESNO through the Leonard Avenue interconnection,

b. The performance obligations of CLOVIS under this Section 5 shall be excused in each of the following events:

- i. Insufficient raw water is supplied to the surface water treatment plant.
- ii. The surface water treatment plant is shut down due to equipment failure or for maintenance and repairs.
- iii. The combination of ground water and surface water facilities make it impossible to provide all or a portion of the herein described flows and maintain minimum system pressures of 35 psi at the metering station.

CLOVIS will make every effort reasonable to ensure the delivery of water according to Section 5ai, 5aii and 5aiii and will act timely to mitigate any of the events identified in Section 5bi, 5bii and 5biii and will provide the earliest notice possible to FRESNO if such event occurs.

c. FRESNO shall pay CLOVIS a fee per 1,000 gallons of water delivered in accordance with the following formula

i. $\text{Fee} = \text{Rate} * (\text{amount of water delivered} / 1,000 \text{ gallons})$

- a. Surface Water Treatment Plant Operation Cost (SWTPOC) per 1,000 gallons
- b. Distribution System Maintenance Cost (DSMC) per 1,000 gallons
- c. Reporting Cost (RC) per 1,000 gallons
- d. $\text{Rate} = (\text{SWTPOC}) + (\text{DSMC}) + (\text{RC})$

ii. The initial rate will be adjusted annually by CLOVIS as necessary to fully capture the true cost of each component and shall be reported to FRESNO by March 1 of each successive year following the effective date of this agreement

6. FRESNO shall provide water to CLOVIS as follows:

a. From date of this agreement through 2015

i. Based on an agreed schedule, FRESNO shall make available water flow twice each day, during the A.M. Peak Hour and during the P.M. Peak Hour, as follows:

1. Upon Project completion and for two (2) years thereafter (approximately 2009 and 2010):
3,000gpm (max)

2. And for three (3) years thereafter (approximately 2011, 2012 and 2013):
2,500gpm (max)
 3. And for two (2) years thereafter (approximately 2014 and 2015):
2,000gpm (max)
 4. At all other times upon Project completion, CLOVIS may purchase any additional water supply available from FRESNO. Availability will be determined by City of FRESNO based on the water volume and pressure demands of the FRESNO Water Distribution System.
 5. As a condition precedent to FRESNO's obligation to make available water flow under this section, CLOVIS shall provide to FRESNO a written schedule and plan for the construction of capital improvements to the CLOVIS water system that are designed to provide permanent potable water service to the area of CLOVIS temporarily provided service per this agreement. If the schedule and plan changes over time, CLOVIS shall provide timely written updates to FRESNO.
- ii. Commencing seven (7) years after Project completion (approximately 2016), CLOVIS shall only utilize the Behymer Avenue interconnection as an emergency backup as follows:
 1. CLOVIS may purchase any additional water supply available from FRESNO. Availability will be determined by FRESNO based on the water volume and pressure demands of the FRESNO Water Distribution System.
 - iii. By mutual written agreement, FRESNO and CLOVIS may extend the schedule identified in Sections 6.a.i and 6.a.ii. If FRESNO is unable to agree to an extension because it lacks the capacity to provide a water supply to CLOVIS after 2015, the parties agree to negotiate in good faith regarding an agreement whereby CLOVIS would pay to FRESNO the capital cost to construct additional water treatment facilities in FRESNO that would provide the necessary capacity.
 - iv. To provide FRESNO with the ability to perform its obligations under Section 6.a.i and 6.a.ii, CLOVIS shall provide sufficient raw water from CLOVIS'

surface water entitlement(s), delivered to FRESNO's surface water treatment plant via the Enterprise Canal, for FRESNO to process and deliver the treated water to CLOVIS through the Behymer Avenue interconnection or if mutually agreed in writing, FRESNO may treat and deliver to CLOVIS water from entitlements available to FRESNO.

- b. The performance obligations of FRESNO under this Section 6 shall be excused in each of the following events:
 - i. Insufficient raw water is supplied to the surface water treatment plant.
 - ii. The surface water treatment plant is shut down due to equipment failure or for maintenance and repairs.
 - iii. The combination of ground water and surface water facilities make it impossible to provide all or a portion of the herein described flows and maintain minimum system pressures of 35 psi at the metering station.

FRESNO will make every effort reasonable to ensure the delivery of water according to Section 6ai, 6aii and 6aiii and will act timely to mitigate any of the events identified in Section 6bi, 6bii and 6biii and will provide the earliest notice possible to CLOVIS if such event occurs.

- c. CLOVIS shall pay FRESNO a fee per 1,000 gallons for water delivered in accordance with the following formula
 - i. $Fee = Rate * (amount\ of\ water\ delivered / 1,000\ gallons)$
 - a. Surface water treatment plant operation cost (SWTPOC) per 1,000 gallons.
 - b. Distribution System Maintenance Cost (DSMC) per 1,000 gallons.
 - c. Reporting Cost (RC) per 1,000 gallons.
 - d. Raw Water Cost (RWC) per 1,000 gallons.
 - e. $Rate = (SWTPOC) + (DSMC) + (RC) + (RWC)$
 - ii. The initial rate will be adjusted annually as necessary to fully capture the true cost of each component and shall be reported to CLOVIS by March 1 of each successive year following the effective date of this agreement

- 7. CLOVIS shall operate and maintain the pressure control and meter station at the Leonard Avenue interconnection and shall establish the CLOVIS system pressure criteria as CLOVIS deems appropriate.

8. FRESNO shall operate and maintain the pressure control and meter station at the Behymer Avenue interconnection and shall establish the FRESNO system pressure criteria as FRESNO deems appropriate.
9. Both Cities shall be required to diligently repair any pipes, meters, valves or related facilities within their jurisdictional areas necessary for the interconnections to function properly within 10 days of becoming aware of the failure/malfunction. Appropriate notification shall be made to the City that will not longer be capable of receiving water due to the repair.
10. If necessitated by lack of usage of either interconnection, both Cities shall conduct appropriate flushing once every six months to keep chlorinated water in the system at no expense to the other City.
11. This Agreement shall remain in force until terminated as set forth herein:
 - a. Upon 24 months written notice, either City may terminate this agreement at its own discretion or when conditions encountered during the term of this agreement make it impossible or impractical to proceed, or when either City is prevented from proceeding with the contract by an act of God, by law, or by official action of a public authority.
 - b. Following January 1, 2016, either city may terminate this agreement by providing the other City with a minimum of 180 day written notice of desire to terminate.
12. In the event that a notice of termination is issued by either City:
 - a. FRESNO shall be required to physically separate the two municipal water systems at Behymer Avenue by removal of a section of above ground piping and/or meter , and install appropriate plugs and blowoffs, and
 - b. CLOVIS shall be required to physically separate the two municipal water systems at Leonard Avenue by removal of a section of above ground piping and/or the meter ,and install appropriate plugs and blowoffs.
13. Indemnification

CLOVIS shall indemnify, hold harmless and defend FRESNO 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 the FRESNO, CLOVIS or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly from the negligent or intentional acts or omissions of CLOVIS or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement; provided nothing herein shall constitute a waiver by CLOVIS of governmental immunities including California Government Code Section 810 et seq.

FRESNO shall indemnify, hold harmless and defend CLOVIS 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 FRESNO, CLOVIS or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly from the negligent or intentional acts or omissions of FRESNO or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement; provided nothing herein shall constitute a waiver by FRESNO of governmental immunities including California Government Code Section 810 et seq.

In the event of concurrent negligence on the part of CLOVIS or any of its officers, officials, employees, agents or volunteers, and FRESNO or any of its officers, officials, employees, agents or volunteers, the liability for any and all such claims, demands and actions in law or equity for such losses, fines, penalties, forfeitures, costs and damages shall be apportioned under the State of California's theory of comparative negligence as presently established or as may be modified hereafter.

This section shall survive termination or expiration of this Agreement.

14. Unless otherwise specified in this agreement, neither Fresno nor CLOVIS shall incur any financial responsibility for maintenance of the Water system within the other's jurisdiction beyond the Fee paid for potable water received or as defined by the Distribution System Maintenance Cost.
15. FRESNO shall be obligated to reimburse CLOVIS actual costs for labor, materials, system cleanup and conformation testing

required for California Department of Health Services mandated notification(s) as a result of a primary drinking water standard violation that results from water provided by FRESNO to CLOVIS through the system interconnection.

16. CLOVIS shall be obligated to reimburse FRESNO actual costs for labor, materials, system cleanup and conformation testing required for California Department of Health Services mandated notification(s) as a result of a primary drinking water standard violation that results from water provided by CLOVIS to FRESNO through the system interconnection.
17. CLOVIS shall invoice FRESNO for the water received monthly. Such invoices shall be supported with sufficient and adequate information as required by FRESNO. FRESNO shall pay CLOVIS within 45 days of receipt of invoice. Failure to remit payment within 60 days shall be grounds for CLOVIS to shut off and lock the interconnection between the Cities until full payment is received.
18. FRESNO shall invoice CLOVIS for the water received monthly. Such invoices shall be supported with sufficient and adequate information as required by CLOVIS. CLOVIS shall pay FRESNO within 45 days of receipt of invoice. Failure to remit payment within 60 days shall be grounds for FRESNO to shut off and lock the interconnection between the Cities until full payment is received.

Executed by the Cities hereto as of the day and year first hereinbefore written.

ATTEST:

CITY OF CLOVIS
A Municipal Corporation

By: *Diana Steier for*
City Clerk, City of Clovis

By: *K Millison*
Kathy Millison
Clovis City Manager

Approved as to form, By

By: *TJR*
Thomas J. Riggs
Clovis City Attorney

ATTEST:

CITY OF FRESNO
A Municipal Corporation

By: *Sherrie L. Badestocher*
City Clerk, City of Fresno
5/23/07

By: *Andrew T. Souza*
Andrew T. Souza
Fresno City Manager

Approved as to form,

By: *Rene A. Ramirez*
Rene A. Ramirez
Director of Public Utilities

By: *James C. Sanchez for*
James C. Sanchez
Fresno City Attorney