

**AGREEMENT TO REIMBURSE CITY OF CLOVIS
FOR
Phase II of the Southern Water Main Interconnection**

The CITY OF FRESNO, a municipal corporation, hereinafter referred to as "FRESNO" and the CITY OF CLOVIS, a municipal corporation, hereinafter referred to as "CLOVIS", enter into this Agreement to reimburse CLOVIS for infrastructure and relevant duties related to Phase II of the Southern Water Main Interconnection (hereinafter "AGREEMENT") effective this 12th day of June, 2008.

RECITALS

WHEREAS, CLOVIS and FRESNO agree that water main interconnections between the cities will enhance the reliability of the respective water systems by providing interim supplies, emergency backup in the event of power failures, high fire-flow events, or production equipment failures; and

WHEREAS, FRESNO and CLOVIS entered into an agreement, dated the 27TH day of October, 2005, for the construction by CLOVIS, and reimbursement of CLOVIS by FRESNO, of a 16 inch potable water main that generally extends within the existing right-of-way of Leonard Avenue from Gettysburg Avenue to the south side of Ashlan Avenue and making the appropriate connections to the CLOVIS water system, hereinafter referred to as "Phase I"; and

WHEREAS, Phase I has been completed and FRESNO has reimbursed CLOVIS for all costs for Phase I as described in such agreement; and

WHEREAS, FRESNO and CLOVIS now desire to complete "Phase II" which consists of the extension of the 16 inch potable water main from the south side of Ashlan Avenue approximately 3,200 feet to the south side of the Gould Canal including all appropriate valves, metering, telemetry, structures, and connection to Phase III as described below, hereinafter referred to as the "PROJECT;" and

WHEREAS, the entire PROJECT is located within CLOVIS' city limits and shown as "PHASE II" in Exhibit A, attached hereto and incorporated by reference herein.

WHEREAS, PHASE II is an essential component of the overall project for final connection to FRESNO which contemplates one additional phase, Phase III, as shown on Exhibit A; and

WHEREAS, based on the best available information at this time, which is subject to change, Phase III is expected to be designed and constructed by FRESNO's contractor and connected to Phase II at the south side of the Gould Canal, and extended southerly within the Leonard alignment, turning west within the Shields alignment making the final point of connection to FRESNO's water system at the intersection of Locan and Shields Avenues; and

WHEREAS, CLOVIS' Council approved the PROJECT on March 7, 2005 and FRESNO'S Council approved the PROJECT on March 15, 2005; and

WHEREAS, FRESNO and CLOVIS agree that the PROJECT shall be undertaken by



CLOVIS on behalf of both cities; and

WHEREAS, the total estimated cost to CLOVIS to design, construct, inspect and conduct construction management duties for the PROJECT is \$1,152,600, including a contingency amount for change orders; and

WHEREAS, FRESNO agrees to reimburse CLOVIS the actual PROJECT costs not to exceed \$1,152,600; and

WHEREAS, the purpose of this AGREEMENT, is to identify the costs for the PROJECT and formalize the reimbursement to CLOVIS for undertaking the PROJECT.

AGREEMENT

NOW THEREFORE BE IT RESOLVED, that based upon the covenants and representations contained herein, FRESNO and CLOVIS agree as follows:

1. **Incorporation of recitals.** The recitals to this AGREEMENT are incorporated and made a part of this AGREEMENT.
2. **Tasks.** CLOVIS agrees to design, construct, inspect and provide construction management services for the PROJECT and complete the PROJECT within 12 months of the execution of this AGREEMENT by both parties. CLOVIS will coordinate with FRESNO's designated contractor for design of the connection point at the south side of the Gould Canal.
3. **Reimbursement.** FRESNO agrees to reimburse CLOVIS a total amount not exceeding \$1,152,600 for CLOVIS' total actual costs for PROJECT design, construction, inspection, and construction management. Within 15 days of the execution of this AGREEMENT by both parties, FRESNO shall pay CLOVIS an initial payment of \$25,000 to defray the actual costs related to a portion of the PROJECT. As the PROJECT reaches completion, invoices from CLOVIS shall incrementally exhaust this \$25,000 payment. Upon exhaustion of said \$25,000 payment, FRESNO shall pay subsequent invoices within 30 days of receipt of the respective invoice. CLOVIS shall provide FRESNO with an itemized breakdown of the actual costs for the PROJECT with each invoice.
4. **Notification.** CLOVIS agrees to notify the FRESNO Assistant Director of Public Utilities prior to the time when actual costs exceed the estimates. CLOVIS also agrees to notify FRESNO Assistant Director of Public Utilities and obtain his/her approval prior to the issuance of any change orders that are related to the PROJECT.
5. **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 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 directly or indirectly from the negligent acts or omissions or intentional misconduct of CLOVIS or any of its officers, officials, employees, agents, volunteers, architects, engineers, consultants, contractors,



construction managers, subcontractors, suppliers or vendors 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 directly or indirectly from the negligent acts or omissions or intentional misconduct 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.

6. **Insurance.** It is understood and agreed that CLOVIS and FRESNO maintain insurance policies or self-insurance programs to fund their respective liabilities. The parties agree that such respective programs or policy coverage for Workers' Compensation shall contain a waiver of subrogation as to the other party and each of its officers, officials, agents, employees and volunteers. Evidence of Insurance, Certificates of Insurance or other similar documentation shall not be required of either party under this AGREEMENT.

7. **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.

8. **Assignment.**

(a) This AGREEMENT is personal to CLOVIS and there shall be no assignment by CLOVIS of its rights or obligations under this AGREEMENT without the prior written approval of FRESNO's City Manager or his/her designee. Any attempted assignment by CLOVIS, its successors or assigns, shall be null and void unless approved in writing by FRESNO's City Manager or his/her designee.

(b) CLOVIS hereby agrees not to assign the payment of any monies due CLOVIS from FRESNO under the terms of this AGREEMENT to any other individual(s),



corporation(s) or entity(ies). FRESNO retains the right to pay any and all monies due CLOVIS directly to CLOVIS.

9. **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.

10. **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 fees and legal expenses.

11. **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 FRESNO and CLOVIS.

12. **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.

13. **Headings.** The section headings in this AGREEMENT are for convenience only and do not explain, modify, or add to the meaning of this AGREEMENT.

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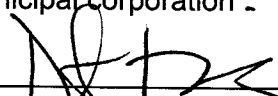
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[Signatures on page 5]

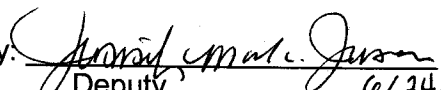


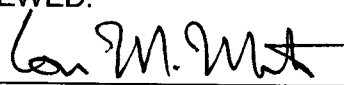
IN WITNESS WHEREOF, the parties have executed this AGREEMENT effective on the day and year first above written.

CITY OF FRESNO,
a municipal corporation

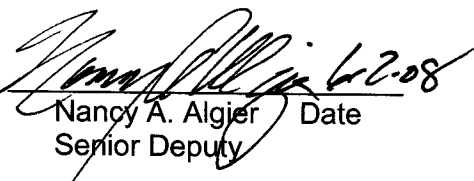
By: 
Rene Ramirez, Director
Department of Public Utilities

ATTEST:
Rebecca E. Klish
City Clerk, City of Fresno

By: 
Deputy 6/24/08

REVIEWED:
By: 
Lon M. Martin
Water System Manager
City of Fresno

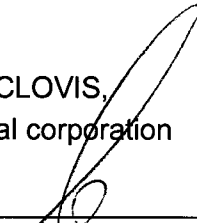
APPROVED AS TO FORM:
James C. Sanchez
City Attorney

By: 
Nancy A. Algier Date
Senior Deputy


Addresses:

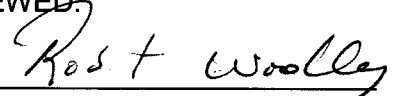
City of Fresno, Water Division
Attn: Lon Martin, Water System Manager
1910 E. University Ave.
Fresno, CA 93703

CITY OF CLOVIS,
a municipal corporation


By: 
Steven White, City Engineer

ATTEST:

By: 
John Holt, Clovis City Clerk

REVIEWED:
By: 
Kathy Millison, Clovis City Manager

APPROVED AS TO FORM:

By: 
David J. Wolfe, Clovis City Attorney

Attachment: Exhibit "A" – map of proposed Intertie connection



