

**EXTRATERRITORIAL WATER AND SEWER SERVICE AND OFFSITE
INFRASTRUCTURE
AGREEMENT BETWEEN FRESNO HUMANE ANIMAL SERVICES
AND THE CITY OF FRESNO**

THIS EXTRATERRITORIAL WATER AND SEWER SERVICE AND OFFSITE INFRASTRUCTURE AGREEMENT (Agreement) is made and entered into effective the _____ day of April 2018 (Effective Date), by and between the CITY OF FRESNO, a California municipal corporation (CITY), and FRESNO HUMANE ANIMAL SERVICES, a California corporation (APPLICANT).

RECITALS

WHEREAS, the APPLICANT has requested the CITY to provide water and sewer services to a property located within the CITY's sphere-of-influence, but outside of the CITY's existing municipal corporate limits, and which is associated with APN 504-081-02S and 504-081-03S (Extraterritorial Property);

WHEREAS, the water and sewer services to be provided by the CITY will serve the water and sewer demands for the APPLICANT'S facilities on the property, which can generally be described as an animal shelter occupying approximately 43,000 square feet of building space;

WHEREAS, California Government Code section 56133(b) permits a city to provide new or extended services by agreement outside its jurisdictional boundaries but within its sphere of influence, in anticipation of a later change of organization, and with written approval from the Fresno Local Agency Formation Commission (LAFCo);

WHEREAS, both the CITY and APPLICANT agree it is not necessary for the subject property to be annexed into CITY at this time, and APPLICANT has filed an extension of services application with LAFCo and obtained the necessary approvals;

WHEREAS, LAFCo has reviewed the APPLICANT'S request for water and sewer service extensions, and determined that if APPLICANT chooses not to annex the property to CITY, then an extension of CITY water and sewer services to the APPLICANT'S property would be appropriate upon an extension of services application filed with LAFCo; and

WHEREAS, the CITY has identified options to provide water supply and sewer capacity to accommodate the APPLICANT'S water and sewer demands at the subject property for the proposed purposes, provided APPLICANT meets certain conditions set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

A. Provisions Specific to Water and Sewer Service: Connection to CITY's public water system and public sewer system by APPLICANT shall be subject to the following conditions:

1. Water and Sewer Main Extensions. The APPLICANT, at its sole expense and without reimbursement from the CITY, shall be required to install water and sewer service mains as necessary to connect the Extraterritorial Property to the CITY's public water system and public sewer system. The CITY shall identify for the APPLICANT the point(s) of connection to the public water system and public sewer system, and the pipeline sizes required for the connections.
2. Metered Service Connection. APPLICANT shall install meters approved by the CITY for all domestic, irrigation, and all other uses required for the Extraterritorial Property.
3. Destruction of Existing Onsite Wells. APPLICANT shall destroy all existing onsite wells in compliance with the State of California Well Standards, Bulletins 74-81 and 74-90, or current revisions, issued by California Department of Water Resources, Fresno County standards, and CITY of Fresno standards. APPLICANT shall not apply any water obtained from onsite wells to the Extraterritorial Property. APPLICANT shall comply with Fresno Municipal Code (FMC) section 6-518, as may be amended from time to time.
4. Fire Protection Upgrades. APPLICANT shall be solely responsible in meeting any required fire protection upgrades beyond the point(s) of connection to the public water and sewer systems.
5. Payment of Fees to CITY. Prior to issuance of building permits, the APPLICANT shall pay to CITY all required water and sewer fees as determined by the CITY and set forth in the CITY's Master Fee Schedule, as may be amended from time to time, including the CITY's Water Capacity Fee. The Water Capacity Fee shall be based on the number and size of water meters installed to serve the Extraterritorial Property.

6. Water Supply Redundancy. For water supply redundancy purposes, the APPLICANT, at its sole expense and without reimbursement from the CITY, shall be required to connect to the CITY's public water system at two locations designated by the Director of Public Utilities or designee.

7. CITY to Provide Water and Sewer Service. Upon APPLICANT'S full performance of all obligations defined herein, including payment of all fees required by the CITY under this Agreement, CITY will provide APPLICANT with water and sewer service from CITY's public water system and public sewer system.

a. CITY's performance is conditioned upon the APPLICANT obtaining consent of all applicable governmental agencies including, without limitation, approval of this Agreement by LAFCo and obtaining consent from Fresno County, including, without limitation, obtaining necessary encroachment permits or easements from Fresno County, or private property owners, to install new water lines and new sewer lines (Public Portion) along right of ways or across private property, as may be required to serve the APPLICANT'S property (Private Portion).

b. The CITY shall withhold approval of APPLICANT'S water and sewer construction plans until all necessary approvals, permits, and easements have been legally obtained and duly recorded with Fresno County.

8. No Representation Regarding Water Service, Pressure, or Volume for any Private Portion of the New Water Pipeline. CITY does not make any representation, warranty or guarantee of any kind or nature, and hereby specifically disclaims, any kind of representation, warranty or guarantee that any Private Portion of the water system will yield any specific volume of water or provide any specific water pressure to the Extraterritorial Property under static or dynamic water demand scenarios, or for any use by APPLICANT and its tenants, lessees, purchasers, successors or assigns. APPLICANT assumes full responsibility for the adequacy of volume of water and water pressure beyond the Point of Service into the Private Portion.

9. Building Permits Withheld. The CITY will not issue any building permits for the APPLICANT'S Extraterritorial Property until the APPLICANT has paid all fees and met all obligations set forth in this Agreement.

10. No Water Rights Created or Transferred. Nothing in this Agreement creates, transfers, or conveys to APPLICANT any property right, water right, or any other right not expressly set forth herein.

11. Maintenance and Repair. APPLICANT shall be responsible for operation, maintenance, repair, and replacement of all Private Portions of the water system and sewer system beyond the CITY's Point of Service. Under no circumstances shall CITY be required or accountable to maintain, repair or replace the Private Portion of the water system or sewer system unless and until CITY may, at its sole discretion and option, accept dedication of the water system or sewer system, or any portion thereof in increments or otherwise, at some future date. APPLICANT'S obligation to maintain, repair and replace the Private Portion of the water system and sewer system shall include, without limitation, any operation and maintenance, repair, replacement or modification of the Private Portion of the water system and sewer system as may be required by CITY. Should APPLICANT fail to operate, maintain, repair and replace the Private Portion of water system or sewer system as needed for proper operation of the Public Portion, the CITY shall have the right, but not the obligation to stop providing water and sewer service.

- a. Leak Repairs. APPLICANT shall respond to and repair leaks, breaks, or overflows caused by unforeseen conditions or damage to any Private Portion receiving water and sewer service from the CITY, including those caused by APPLICANT, other parties, or acts of God. As part of its duty to maintain such Private Portion, APPLICANT shall promptly repair all leaks, breaks, and overflows, no matter how said leaks, breaks or overflows may be caused at its sole cost and expense. APPLICANT acknowledges unrepaired leaks, breaks, and overflows of waste water may cause property damage, and adversely impact public health, safety and welfare. If APPLICANT fails to promptly repair all leaks, breaks, and overflows, CITY, at its sole discretion, may stop providing water and sewer service at the Point of Service or otherwise. Thereafter, CITY shall have no obligation to provide water and sewer service until APPLICANT repairs the leaks, breaks, or overflows to the Private Portion.
- b. Right to Inspect Water and Sewer System. CITY shall have the right to inspect and examine the Public Portion at any time, including during construction and operation of the water system and sewer system.

- c. Right to Access and Inspect Water Meters. CITY shall have the right of entry to access and inspect all water meters for compliance with American Water Works Association (AWWA) standards, whether located on the Private or Public Portions.
- 12. Exclusive Use of Private Portion. The Private Portion is for the exclusive use of APPLICANT on the Extraterritorial Property. After connection to the Public Portion, APPLICANT shall not permit the Private Portion to be used, either directly or indirectly, to provide water service or sewer service to any other property regardless whether the other property is owned by APPLICANT or a third party.
- 13. Reduction of Property Water Consumption. To the extent possible, APPLICANT shall implement efforts to reduce water consumption. Efforts would include use of low-flow fixtures, consideration for areas of artificial turf, use of xeriscaping landscapes, and public awareness on water conservation measures. APPLICANT shall at all times comply with local and state mandated water conservation measures, or be subject to fines and penalties as allowed by law.
- 14. Construction of Public Water and Sewer Facilities. All public water and sewer facilities shall be constructed in accordance with CITY's Public Works Department's Standard Specifications, as may be amended from time to time.

B. Additional Provisions:

The following provisions shall apply to this entire Agreement:

1. Continuing Obligations and Responsibilities of APPLICANT. APPLICANT agrees to promptly pay to CITY any and all fees for any water or sewer service supplied by CITY to APPLICANT. All fees listed in CITY's Master Fee Schedule are regularly updated and amended from time to time by CITY's Council. APPLICANT is responsible to pay the fees and rates as set forth by the Master Fee Schedule, unless otherwise specified in Sections A(5) and A(9). APPLICANT agrees to maintain its water and sewer service accounts with CITY in a current status. APPLICANT acknowledges and agrees that should its utility account with CITY become sixty days delinquent, CITY shall have the right, at CITY's sole option, to discontinue water and sewer service to the Extraterritorial Property.

2. FID Approval Required. This Agreement is subject to the approval of the Fresno Irrigation District, as evidenced by authorized signature on the Signature Page. Fresno Irrigation District is not a party to this Agreement.

3. No Opposition to Annexation of Property. Owners agree not to oppose, protest, or otherwise object to any proceeding involving CITY's annexation of the Property in the future, no matter whether such proceeding is before LAFCo, the Council of the CITY of Fresno, or any other legislative body, board, or commission. Owners understand and agree that this Agreement and the covenants contained herein are intended to be and shall act as a complete and irrevocable waiver of all such protest rights, whether or not such protest rights are sought to be exercised either as Owners of the Property, which is the subject of the annexation proceedings, or as a registered voter residing on the property which is the subject of the annexation proceedings. Owners shall not be responsible for any charges or fees associated with or related to annexation proceedings solely due to the fact that the Property is part of an area proposed for annexation by the CITY. However, if Owners propose a development for annexation by the CITY, whether or not including the Property, Owners may be subject to charges and fees associated with or related to such annexation proceedings, and nothing in the Agreement shall operate otherwise.

Owners further agree that in the event they or any other person or legal entity hereafter succeeding the Owners' interest in and to the Property or a part thereof seeks to protest the annexation contrary to and in breach of the provisions of this Agreement, CITY shall be entitled to take the following actions:

a. In the event a protest to the annexation is filed with the CITY, such protest shall be null and void and shall be disregarded by the CITY in determining the value of all protests to such annexation.

b. In the event a protest to the annexation is filed with LAFCo or any other board or commission, this Agreement shall act as a complete bar to the acceptance and consideration of such protest by LAFCo or other board or commission at such time as the CITY files a copy of this Agreement with LAFCo or other board or commission.

4. Consent to Construct Offsite Improvements to CITY Standards. As a condition of extending water and sewer facilities to the Extraterritorial Property, which is outside of the CITY's municipal corporate limits but within the CITY's sphere-of-influence, APPLICANT shall construct all required offsite improvements in accordance with the CITY's Department of Public Works' Standard Specifications, as may be amended from time to time. The CITY will

not approve connection of the Extraterritorial Property to CITY's public water or sewer systems until all required offsite improvements are complete and approved by all applicable entities. A specific listing of the offsite improvements subject to this condition are set forth in **Exhibit A**. APPLICANT acknowledges approval by the County of Fresno may be required for such improvements, and such approval will not supplant this requirement for approval by the CITY. APPLICANT shall be responsible for all inspections, maintenance, and repairs of such offsite improvements until such time that Extraterritorial Property is annexed into the CITY.

5. Covenants Running with the Land. APPLICANT acknowledges and agrees the covenants, agreements, promises, representations, and warranties set forth in this Agreement will be covenants running with the Extraterritorial Property as defined in the applicable provisions of Sections 1457 *et seq.* of the California Civil Code. APPLICANT'S covenants, agreements, promises, representations and warranties as contained in this Agreement, shall burden APPLICANT'S successors and assigns and all parties and persons claiming under them. Within thirty days of execution by the last party to sign this Agreement, APPLICANT agrees to record a copy of this Agreement as a covenant running with the land.

6. Successors and Assigns. The covenants and agreements contained in this Agreement shall be binding upon and shall inure to the benefit of the heirs, successors, and assigns of the parties hereto. APPLICANT may not assign its rights and/or obligations under this Agreement without the prior written consent of the CITY, which consent shall not be unreasonably withheld. Any such consent by CITY shall not, in any way, relieve APPLICANT of its obligations and responsibilities under this Agreement.

7. Notice. 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. Notice 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. Binding. Subject to Section B(19) below, once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

9. Compliance With Law. In providing the services required under this Agreement, APPLICANT shall at all times, comply with all applicable laws of the United States, the State of California, and CITY, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

10. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

11. Indemnification of CITY. To the furthest extent allowed by law, APPLICANT shall indemnify, hold harmless and defend CITY 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 CITY, APPLICANT or any other person, and from any and all claims, demands, liabilities, damages and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of the performance of this Agreement, and the performance of any or all work to be done in and upon the street rights-of-way or within APPLICANT's property boundary, and premises adjacent thereto, pursuant to this Agreement, or arising or alleged to have arisen directly or indirectly in any way related to the construction, installation and operation of the new supply pipeline or its appurtenances by anyone occupying any portion of APPLICANT's property including, without limitation, any such claims, causes of action, damages, liabilities, fees, costs, expenses, and attorney fees arising from water quality compliance, a lack of volume of water, inadequate fire flow, lack of water pressure in, from or delivered to the new water supply pipeline, or lack of flow capacity in the new water supply pipeline. APPLICANT's obligations under the preceding sentence shall apply regardless of whether CITY or any of its officers, officials, boards, employees, agents or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages

caused by the active or sole negligence, or the willful misconduct, of CITY or any of its officers, officials, employees, agents or volunteers. This section shall survive termination of this Agreement.

12. Public Health, Safety, and Welfare. Nothing contained in this Agreement shall limit CITY's authority to exercise its police powers, governmental authority or take other appropriate actions to address threats to public health, safety and welfare, including temporarily suspending water services as deemed appropriate by CITY in its sole determination and discretion.

13. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. 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 County, California.

14. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify, or add to the interpretation or meaning of the provisions of this Agreement.

15. 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.

16. 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 provisions 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 either party, but rather by construing the terms in accordance with their generally accepted meaning.

17. 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 proceedings or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

18. Exhibits. Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement

19. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

20. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

21. No Third Party Benefits. The rights, interests, duties, and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

22. 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 agreement duly authorized and executed by both CITY and APPLICANT.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS THEREOF, the parties have executed the Agreement at Fresno, California, the day and year first above written.

CITY OF FRESNO,
a California municipal corporation

By: _____
Wilma Quan-Schechter
City Manager

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
CITY Attorney

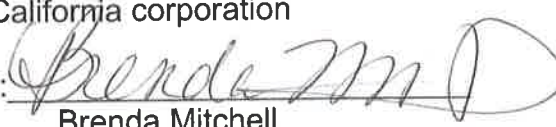
By: 
Amanda Freeman
Deputy City Attorney


ATTEST:
YVONNE SPENCE, MMC
City Clerk

By: _____
Deputy

Address:
City of Fresno
Attn: Director of Public Utilities
Department of Public Utilities
City of Fresno
2600 Fresno Street, Suite 4019
Fresno, CA 93721
Phone: (559) 621-5300
FAX: (559) 488-1024

FRESNO HUMANE ANIMAL
SERVICES,
a California corporation

By: 
Brenda Mitchell
Chief Executive Officer

By: 
Robert Mayorga
Chief Financial Officer

Address:
Fresno Humane Animal Services
Attn: Robert Mayorga
621 W. Fallbrook Avenue
Fresno CA 93711

Attachments:

Exhibit A – Offsite Improvements - Infrastructure Requirements

EXHIBIT A
Offsite Improvements
Fresno Humane Animal Services (APPLICANT)

The offsite improvements listed below shall be constructed by the APPLICANT along North Grantland Avenue. The offsite improvements shall be constructed along the entire frontage of the Extraterritorial Property and continue south to the intersection of West Tenaya Way and North Grantland Avenue. The offsite improvements shall be constructed to City Standard Specifications and approved by the CITY prior to CITY permitting APPLICANT's connection to CITY's public water and sewer systems:

1. Curb & Gutter
2. Sidewalk, monolithic, 10' pattern
3. Street lighting per E-1 and E-7 divided arterial spacing standards with LED fixtures (150W HPS equivalent)
4. Tie-in paving per arterial street standards
5. Signing and striping as required
6. Installation of Fresno Metropolitan Flood Control District Master Plan pipe from the Intersection of West Tenaya and North Grantland Avenue south approximately 1,000 linear feet to the existing FMC storm drain pipe system located in North Grantland Avenue.
7. Drainage inlets where required per FMFCD master plan
8. Dedication of public street easements per City standards