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5/5/11

CITY OF FRESNO
City Clerk's Office (Original)

**AUTOMATIC AID AGREEMENT
FOR FIRE PROTECTION, HAZMAT AND
URBAN SEARCH AND RESCUE SERVICES**

This Agreement is made and entered into on this 1st day of July, 2011, by and between 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."

WITNESSETH:

WHEREAS, in certain agreements between the parties hereto, dated February 1, 1979, June 9, 1981, and April 20, 1995, the parties agreed to provide emergency response services; and

WHEREAS, it is the mutual desire of the parties hereto that the provisions of this Agreement shall supersede the previous agreements and all notices provided thereunder; and

WHEREAS, each of the parties are parties to the California Disaster and Civil Defense Master Mutual Aid Agreement with the State of California pursuant to the California Emergency Services Act for purposes of requesting mutual aid in connection with any incident which cannot be handled adequately by the party's respective fire department; and

WHEREAS, CLOVIS and FRESNO declare it is in the public interest to enter into a reciprocal agreement to provide automatic aid to areas along their respective mutual borders; and

WHEREAS, the parties have the common power to provide fire protection, hazmat, and urban search and rescue services and desire to jointly exercise said power pursuant to the authority granted under Sections 6502 and 55632 of the California Government Code and Section 25400 of the California Health and Safety Code; and

WHEREAS, the parties desire to maximize the delivery of emergency services while minimizing the cost of delivering said services by responding with the appropriate nearest available apparatus necessary to protect life, property, and the environment.

AGREEMENT

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

SECTION I. TERM AND TERMINATION OF AGREEMENT.

(a) This Agreement shall be effective as of the day and year hereinabove written and shall end on June 30, 2016, unless extended by mutual written agreement of the parties or terminated pursuant to the following paragraph.

(b) This Agreement may be terminated by either party as to its rights and obligations under this Agreement upon 30 days prior written notice to the other party.

SECTION 2. 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) "Automatic aid" shall mean sending the nearest appropriate resource based on predetermined resource needs due to the type of incident without need for prior approval.

(b) "Emergency medical service" shall mean basic life support service, not including paramedic service.

(c) "Emergency response" shall mean immediate response and use of red lights and siren by responding units.

(d) "Fire apparatus" shall mean any engine company, truck company, urban search and rescue response vehicle and team, hazardous material response vehicle and team; each including apparatus, equipment and personnel.

(e) "Fire protection services" shall mean firefighting capacity to contain, control, and extinguish fires; the mitigation of fire-related hazards; and emergency medical services.

(f) "Hazardous materials response team" shall mean the personnel assigned as such and having no less than the hazardous materials technician level of training as required by the State of California and in conformance with 29 CFR 1910.120.

(g) "Hazardous materials response vehicle" shall mean a vehicle and the tools and associated equipment therein assigned, specifically designed for use at hazardous materials incidents.

(h) "Hazmat services" shall mean services provided at hazardous materials incidents by a hazardous materials response team.

(i) "Incident commander" shall mean the person in overall command at the incident as defined in the National Incident Management System, California Vehicle Code Sections 2453 and 2454, or by such other agreement as provided by law.

(j) "Mutual aid" shall mean request of resources based on the needs determined by the managers of the incident and subject to authorization by the responding party for each request.

(k) "Nearest available apparatus" shall mean the fire apparatus of the appropriate type closest in travel time to the incident.

(l) "Requesting party" shall mean any party to this Agreement who requests any fire protection, hazmat, or USR service response within its jurisdiction from another party pursuant to this Agreement.

(m) "Responding party" shall mean any party to this Agreement who receives a request for any fire protection, hazmat, or USR service response within the jurisdiction of the requesting party pursuant to this Agreement.

(n) "Urban search and rescue" and "USR" shall each mean and refer to the technical rescue of trapped person or persons by trained and equipped fire service personnel.

(o) "Urban search and rescue response team" shall mean firefighting personnel cross trained as specialized rescue personnel and having been trained and designated as such.

(p) "Urban search and rescue response vehicle" shall mean a vehicle with tools and associated equipment therein assigned, specifically designed for use at specialized rescue incidents.

SECTION 3. AUTOMATIC AID IN GENERAL AND OF FIRE PROTECTION SERVICES. The party with the nearest available apparatus appropriate to the incident shall furnish fire protection services within the jurisdiction of the party requesting such service pursuant to the following provisions:

(a) The specific details of providing the fire protection services under the terms of this Agreement shall be determined by the respective Fire Chiefs of each party. It is understood fire protection services shall adhere as closely as practical to the "nearest available apparatus" concept, which forms the basis for this Agreement. It is the intent of the parties to this Agreement to send the appropriate nearest available apparatus to all emergency incidents.

(b) The territories covered by this Agreement are generally defined to be the incorporated limits of the respective cities, including such areas as may be annexed to such limits from time to time.

(c) The responding party shall respond with the nearest available apparatus requested, however, provided such fire apparatus is closer to the incident than that of the requesting party.

(d) The responding party is not obligated to furnish any service if apparatus, equipment, personnel, or any combination thereof is not available as determined by the responding party's Fire Chief or his/her designated representative.

(e) The first fire unit to arrive at the scene of the incident shall initiate appropriate action. The officer in charge of the first unit to arrive at the requesting party's jurisdiction shall cause to be reported to the requesting party all pertinent information about the conditions encountered at the scene of the incident. The officer in charge of any such unit shall be the incident commander until the officer is relieved by an arriving battalion chief.

(f) The officer of a single unit response to a requesting party's jurisdiction shall gather all necessary information to complete required reports and forward the information to the requesting party, following normal reporting protocol.

(g) The "nearest available apparatus" concept shall not be affected by any other contractual services, which may be in affect now or in the future.

SECTION 4. FURNISHING URBAN SEARCH AND RESCUE RESPONSE TEAM AND VEHICLE. Notwithstanding Section 3, above, the responding party shall respond with its urban search and rescue response team and vehicle to the requesting party's jurisdiction pursuant to the following provisions:

(a) The responding party shall respond with the urban search and rescue response team and the urban search and rescue response vehicle into the requesting party's jurisdiction

by official request of the requesting party's duly authorized representative. The responding party reserves the right, however, not to respond or to discontinue response to the requesting party's jurisdiction should it be in the opinion of the responding party's Fire Chief that the urban search and rescue response team and urban search and rescue response vehicle are needed for such service in the responding party's jurisdiction.

(b) Upon response to such request, the responding party shall furnish an urban search and rescue response vehicle and urban search and rescue response team consisting of three on-duty technicians or, if unavailable, two technicians and one additional firefighter, and specialized equipment as may be requested on a special call basis, as may be available.

(c) The requesting party shall provide an incident commander and such other personnel as may be available and necessary to mitigate the incident.

(d) The urban search and rescue response team shall report to the incident commander. Such team shall recommend courses of action and assist in mitigation of the incident.

SECTION 5. FURNISHING OF HAZARDOUS MATERIALS RESPONSE TEAM AND VEHICLE. Notwithstanding Section 3 above, the responding party shall respond with its hazardous materials response team and vehicle to the jurisdiction of the requesting party pursuant to the following provisions:

(a) The responding party shall respond with the hazardous materials response team and the hazardous materials response vehicle into the requesting party's jurisdiction by official request of the requesting party's duly authorized representative. The responding party reserves the right, however, not to respond or to discontinue response to the requesting party's jurisdiction should it be in the opinion of the responding party's Fire Chief that the hazardous materials response team and hazardous materials response vehicle are needed for such service in the responding party's jurisdiction.

(b) Upon response to such request, the responding party shall furnish a hazardous materials response vehicle and hazardous materials response team consisting of three on-duty hazardous materials technicians or, if unavailable, two hazardous materials technicians and one additional firefighter, and specialized equipment as may be requested on a special call basis, as may be available.

(c) The requesting party shall provide an incident commander and such other personnel as may be available and necessary to mitigate the incident.

(d) The hazardous materials response team shall report to the incident commander. Such team shall recommend courses of action and assist in mitigation of the hazard. Such team shall not be responsible for any cleanup actions and shall not take custody of any material for disposal.

SECTION 6. CONTROL OF APPARATUS. In connection with furnishing emergency services hereunder, it is agreed by both parties that the apparatus, equipment, and personnel responding to such request shall come under the direct command and control of the incident commander within whose jurisdiction an incident occurs.

SECTION 7. COMMAND SYSTEM. All hazardous materials incidents shall be managed by using an incident command system, as per 29 CFR 1910.120. The on-duty battalion chief shall be notified when any hazardous materials personnel respond to any out-of-jurisdiction incidents.

SECTION 8. MUTUAL COOPERATION. There shall be no obligation or liability on the part of either party hereto for failure to respond to request for any hazmat or USR services or equipment, or to furnish any protection requested under the terms thereof, the purpose of this Agreement being to enable and authorize mutual cooperation within the limits of and ability of each of the parties hereto.

SECTION 9. PRIVILEGES AND IMMUNITIES. The provisions of this Agreement and performance of the parties hereunder are specifically intended by the parties to be subject to the provisions of Chapter 6.9, Division 20, of the California Health and Safety Code and Article 2, Chapter 4, Part 2, Division 2, Title 5, of the California Government Code, providing for the application of all privileges and immunities from liabilities, exemptions from laws and rules, and all pension, relief, disability, worker's compensation, and all other benefits granted the responding party performing within its jurisdiction to such performance within the requesting party's jurisdiction, and while traveling to and from such requesting party's jurisdiction under and by virtue of this Agreement.

SECTION 10. WAIVER OF CHARGES. It is specifically agreed that no charge for use of equipment or apparatus shall be made by either party hereto except for such costs that could be assigned to a responsible party as provided by law. The consideration for waiver of such charges shall be the mutual agreement encompassed herein and the right of each party to use the equipment of the other as herein provided.

SECTION 11. INDEMNIFICATION.

(a) 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 or willful misconduct of CLOVIS or any of its officers, officials, employees, agents, or volunteers in the performance of this Agreement.

(b) 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 or willful misconduct of FRESNO or any of its officers, officials, employees, agents, or volunteers in the performance of this Agreement.

(c) 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.

(d) This section shall survive termination or expiration of this Agreement.

SECTION 12. 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 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 (e.g., Certificates of Insurance or other similar documentation) shall not be required of either party under this Agreement.

SECTION 13. GENERAL PROVISIONS.

(a) Administration of Agreement. This Agreement shall be administered through the mutual agreement of the parties acting by and through their respective Fire Chiefs.

(b) Third Parties. This Agreement shall not be construed as or deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any rights or action hereunder for any cause whatsoever.

(c) Independent Contractor

(1) In the furnishing of the services provided for herein, each party is acting solely as an independent contractor. Neither party, nor any of its officers, agents, or employees shall be deemed an officer, agent, employee, joint venturer, partner, or associate of the other party for any purpose.

(2) Because of its status as an independent contractor, each party and its officers, agents, and employees shall have absolutely no right to employment rights and benefits available to the other party's employees. Each party shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare, and retirement benefits. In addition, together with its other obligations under this Agreement, each responding party shall be solely responsible, indemnify, defend, and save the requesting party harmless from all matters relating to employment and tax withholding for and payment of responding party's employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes, and payment; and (ii) any claim of right or interest in requesting party's employment benefits, entitlements, programs, and/or funds offered employees of requesting party whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory.

(d) 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.

(e) Binding. Once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each party's respective heirs, successors, assigns, transferees, agents, servants, employees, and representatives; except no party shall assign this Agreement without the prior written consent of the other party.

(f) 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.

(g) Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and, 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 either party, but rather by construing the terms in accordance with their generally accepted meaning.

(h) 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.

(i) 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.

(j) 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.

(k) Extent of Agreement. This Agreement for automatic aid emergency services represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral, including the aforementioned February 1, 1979, June 9, 1981, and April 20, 1995, agreements between the parties. This Agreement may be modified only by written instrument duly authorized and executed by all parties to this Agreement.

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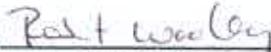
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IN WITNESS WHEREOF, the parties hereto have executed the Agreement in Fresno County, California, the day and year first above written.

CITY OF FRESNO,
a municipal corporation

CITY OF CLOVIS,
a municipal corporation

By: 
Joel L. Aranaz, Fire Chief
Fresno Fire Department

By: 
Rob Woolley, Interim City Manager

ATTEST:
Rebecca E. Klisch
City Clerk

ATTEST:
John Holt
Assistant City Manager

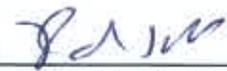
By: 
Deputy 5/5/11 Date

By: 
John Holt

APPROVED AS TO FORM:
James C. Sanchez
City Attorney

APPROVED AS TO FORM:
Attorney for City of Clovis

By: 
Nancy A. Algier 3/24/11 Date
Senior Deputy

By: 
David J. Wolfe

Addresses:

CITY:
City of Fresno Fire Department
Chief Joel L. Aranaz
911 H Street
Fresno, CA 93721
Phone: (559) 621-4199
FAX: (559) 498-4261

City of Clovis
Interim City Manager Rob Wooley
1033 Fifth Street
Clovis, CA 93612
Phone: (559) 324-2060
FAX: (559) 324-2840

May 5, 2011

FROM: JOEL L. ARANAZ, Fire Chief
Fire Department

SUBJECT: AGREEMENT FOR FIRE PROTECTION SERVICES BETWEEN THE
CITY OF FRESNO AND THE CITY OF CLOVIS

RECOMMENDATION

Staff recommends the City Council approve the Agreement for Fire Protection Services between the City of Fresno and the City of Clovis.

EXECUTIVE SUMMARY

Fresno and Clovis enjoy a long history of providing automatic aid to one another in the areas of fire suppression, emergency medical response, hazardous material, and urban search and rescue response. Fresno and Clovis are co-located in the same dispatch center, which provides for several advantages in dispatching inter-departmental apparatus and personnel to all emergency incidents. The Clovis Fire Department is similar to the Fresno Fire Department in its levels of training, certification, and staffing.

The Agreement for Fire Protection Services will assure the citizens of Fresno and Clovis will be receiving the closest and most appropriate apparatus and personnel regardless of jurisdiction. The current agreement with the City of Clovis expires on June 30, 2011 (Attached). This agreement will extend services under the same terms and conditions for a five-year period ending June 30, 2016 (Attached).

BACKGROUND

The cities of Fresno and Clovis have a long history of providing automatic aid to one another's jurisdiction. The oldest agreement between Fresno and Clovis for the provision of mutual aid dates back to February 1979. Since then the two cities have engaged agreements for the provision of fire suppression, emergency medical response, hazardous materials response, and urban search and rescue response.

Beginning in May 2007, The Clovis Fire Department joined the EMS Dispatch Center along with the Fresno Fire Department. Being co-located in the same dispatch center offers each jurisdiction certain advantages. Foremost is the sharing of the same Computer Aided Dispatch (CAD), Automatic Vehicle Locator (AVL), Mobile Data Terminals (MDT), and terminology.

Through shared systems of CAD, AVL, and MDT, dispatchers and field personnel are in constant contact with one another. The assignment and dispatch of inter-jurisdictional resources assures the closest units respond to the emergency in a quick and seamless process.

Presented to City Council
Date 5/5/11
Disposition Approved

Report to City Council

Agreement for Fire Protection Services between the City of Fresno and the City of Clovis

May 5, 2011

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Like Fresno, the Clovis Fire Department is a fully paid, professional department which staffs its fire apparatus with a minimum of three personnel: one fire captain, one engineer, and one firefighter. All Clovis firefighters are certified to the Office of the State Fire Marshal (OSFM) Firefighter I level. Clovis maintains constant staffing on a daily basis.

This five-year Agreement for Fire Protection Services will assure the citizens of Fresno and Clovis will receive the closest, most appropriate fire apparatus and professional personnel regardless of the emergency at hand.

FISCAL IMPACT

No immediate fiscal impact. Long-term impact of shared resources may reduce the need for up to two new fire stations and personnel along the Fresno/Clovis borders.

JLA/mc 032311 041411

Attachment: Agreement

Agreement (Current, expires June 30, 2011)

Agreement (New, expiring June 30, 2016)