



REPORT TO THE CITY COUNCIL

AGENDA ITEM NO.	1K
COUNCIL MEETING	6/10/08
APPROVED BY	
DEPARTMENT DIRECTOR	<i>[Signature]</i>
CITY MANAGER	<i>[Signature]</i>

June 10, 2008

FROM: RENE A. RAMIREZ, Director
Department of Public Utilities *[Signature]*

BY: LON M. MARTIN, Assistant Director *L.M.*
Department of Public Utilities

SUBJECT: APPROVE AGREEMENT TO REIMBURSE CITY OF CLOVIS \$1,152,600 FOR PHASE II OF THE SOUTHERN WATER MAIN INTERCONNECTION

KEY RESULT AREA

Resource Management

Presented to City Council
 Date: 6-10-08
 Disposition: Approved

RECOMMENDATION

Staff recommends that the City Council:

1. Approve agreement to reimburse City of Clovis \$1,152,600 for Phase II of the Southern Water Main Interconnection.

EXECUTIVE SUMMARY

On March 15, 2005 Council approved a water main interconnection program for two different locations, between the Cities of Fresno and Clovis. The first connection is primarily for Southeast Fresno and will take place within the Leonard Avenue alignment. The second connection is primarily for Northwest Clovis and will take place within the Behymer Avenue alignment. Council also approved a cost reimbursement agreement with the City of Clovis (Clovis) to construct Phase I of the Southeast connection, the first of three phases. Now that Phase I is complete, both Cities are prepared to initiate design and eventually construct Phase II of the Southern Water Main Interconnection (Agreement). Approval of the Agreement will extend Phase I, a 16-inch water main 3,200 feet in Leonard Avenue terminating on the south side of the Gould Canal, the Fresno-Clovis City limits. The Agreement will reimburse Clovis actual expenditures, including contingencies, not to exceed \$1,152,600 for all engineering, construction management, inspection and construction costs. The Agreement has been reviewed by the City Attorney's Office and it has been approved as to form.

KEY OBJECTIVE BALANCE

Long-term planning and construction of this water main will allow for fire protection and distribution of potable water throughout portions of Southeast Fresno. Council action on this matter optimizes the three key objectives of customer satisfaction, employee satisfaction, and financial management by allowing the Division to partner with our neighboring City, maximizing each other's infrastructure. Customer satisfaction is achieved by constructing infrastructure that provides safe and reliable drinking water and fire protection services.

• SUBJECT TO MAYOR'S VETO

REPORT TO THE CITY COUNCIL

Phase II Fresno-Clovis Waters System Interconnection Agreement

June 10, 2008

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BACKGROUND

As development continues to fill the vacant land between the Cities of Clovis and Fresno there is an intrinsic benefit to constructing infrastructure that has the capability for supporting both communities. A feasibility study conducted by Provost and Pritchard was completed in November of 2004, which evaluated and identified the best water system interconnection alternatives, Southeast Fresno and Northwest Clovis. On March 15, 2005 Council authorized a cost reimbursement agreement for Phase I of the Southern Water Main Interconnection with Clovis. Phase I was completed later that year (2005). Now both Cities are ready to initiate Phase II of the project. Phase II will connect to the termination point of Phase I, the intersection of Ashlan and Leonard Avenues and proceed south 3,200 feet along Leonard Avenue and cross under the Gould Canal. Phase III will continue the pipeline in Leonard Avenue to Shields Avenue, turning west until connecting to the Fresno water system at Locan Avenue. Phase III of the project will be construct as a condition of development for Tract 5717. Staff is currently finalizing and will bring before Council a request to approve a cost reimbursement agreement with Granville Homes to reimburse them the cost to design and construction of Phase III.

Of equal importance is the actual treatment and delivery of water. On May 15, 2007 Council approved the Fresno-Clovis Water System Interconnection Agreement facilitating the transportation of water from City to City. For the Southern water main interconnection, the process will start with the delivery of a portion of Fresno's surface water to the Clovis' surface water treatment facility. There the water will be treated and delivered to Southeast Fresno through the Southern water main interconnection. At that connection a water meter will track the volume of water delivered and Fresno will reimburse Clovis for the actual cost of treatment and delivery. The Fresno-Clovis Water System Interconnection Agreement outlines three water delivery conditions. The first water delivery condition provides a maximum amount of water during peak demands periods, one hour in the morning and one hour in the evening. The peak hour delivery of water to Southeast Fresno will range in flow from 3,000 gpm to 2,000 gpm starting in 2008 and extending to 2014. The second water delivery condition is based on effective water resource management. Fresno may choose to maximize the direct treatment of surface water verses using groundwater. Therefore, upon request by Fresno and if Clovis has the capacity within their system additional surface water can be treated and delivered in-lieu of Fresno using groundwater. The third water delivery condition is for mutual aid providing short term service as a result of maintenance operations or emergencies.

FISCAL IMPACT

The Water Division's budget included \$1,877,500 for this project this fiscal year (Fund 40116, Org 4115001, Project WC00056). If the agreement is approved, the Water Division will encumber \$1,152,600 for this project.

1K
6/10/08

**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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[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: [Signature]
Rena Ramirez, Director
Department of Public Utilities

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

By: [Signature]
Deputy 01/24/08

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

APPROVED AS TO FORM:
James C. Sanchez
City Attorney

By: [Signature] 6-2-08
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: [Signature]
Steven White, City Engineer

ATTEST:

By: [Signature]
John Holt, Clovis City Clerk

REVIEWED:
By: [Signature]
Kathy Millison, Clovis City Manager

APPROVED AS TO FORM:

By: [Signature]
David J. Wolfe, Clovis City Attorney

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

June 11, 2008

Council Adoption: 6/11/08

RECEIVED

Mayor Approval:

TO: MAYOR ALAN AUTRY

Mayor Veto:

FROM: REBECCA E. KLISCH, CMC
City Clerk

EEK

2008 JUN 19 PM 4:06

Override Request:

CITY CLERK, FRESNO CA

SUBJECT: TRANSMITTAL OF COUNCIL ACTION FOR APPROVAL OR VETO

At the Council meeting of 6/11/08, Council took legislative action entitled **Appv agrmnt to reimburse Clovis \$1,152,600, Phase II of water main interconnection**, Item No. 1K, by the following vote:

Ayes	:	Calhoun, Caprioglio, Dages, Duncan, Perea, Sterling, Xiong
Noes	:	None
Absent	:	None
Abstain	:	None

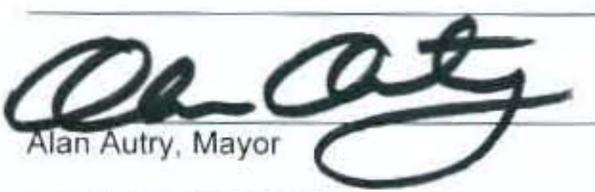
Please indicate either your formal approval or veto by completing the following sections and executing and dating your action. Please file the completed memo with the Clerk's office on or before June 23, 2008. In computing the ten day period required by Charter, the first day has been excluded and the tenth day has been included unless the 10th day is a Saturday, Sunday, or holiday, in which case it has also been excluded. Failure to file this memo with the Clerk's office within the required time limit shall constitute approval of the ordinance, resolution or action, and it shall take effect without the Mayor's signed approval.

Thank you.

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APPROVED:

VETOED for the following reasons: (Written objections are required by Charter; attach additional sheets if necessary.)


Alan Autry, Mayor

Date: 6/19/08

COUNCIL OVERRIDE ACTION:

Date: _____

Ayes	:	
Noes	:	
Absent	:	
Abstain	:	