

Kings River Watershed and Enterprise Canal Sanitary Survey Agreement

AGREEMENT

FOR FUNDING OF A SANITARY SURVEY UPDATE

This Agreement is made and entered into this 7th day of October, 2013, 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, a sanitary survey of the Kings River Watershed and the possible contaminants of the Enterprise Canal Documents were conducted in 1998, 2002 and 2008, and the Department of Public Health requires that these Documents be updated every five years; and

WHEREAS, FRESNO and CLOVIS both have surface water treatment plants which utilize the Enterprise Canal as the source of the water for these plants and therefore are each responsible to update these Documents; and

WHEREAS, the Cities of CLOVIS and FRESNO recognize the benefits to be derived for the residents of each jurisdiction by sharing in the cost of preparing the update to these Documents;

NOW, THEREFORE, in consideration of the foregoing recitals, which recitals are contractual in nature, the mutual promises contained, and for other good and valuable considerations hereby acknowledge it is mutually agreed that:

1. CLOVIS shall contract with a consulting engineer to prepare the update to the sanitary survey documents and CLOVIS shall provide FRESNO with a copy of said documents.
2. FRESNO shall reimburse CLOVIS 66.67% of the cost of the consulting engineer's expenses to prepare said sanitary survey documents.
3. The estimated total cost of the work to be provided by the consulting engineer including a ten-percent contingency is \$27,500. FRESNO's proportionate estimated share is \$18,333.

If the cost for the work exceeds 110% of the estimated cost, CLOVIS agrees to meet with FRESNO, prior to proceeding, to discuss needed scope changes or additional funding.

4. CLOVIS shall provide an invoice to FRESNO for its proportionate share and FRESNO shall pay said invoice within 30 days of billing.
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 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.

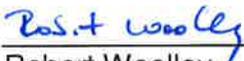
This section shall survive termination or expiration of this Agreement.

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

ATTEST:

CITY OF CLOVIS
A Municipal Corporation

By: 
City Clerk, City of Clovis

By: 
Robert Woolley
Clovis City Manager

APPROVED AS TO FORM:

By: 
David J. Wolfe
Clovis City Attorney

ATTEST:
Yvonne Spence

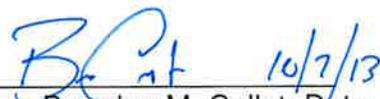
CITY OF FRESNO
A Municipal Corporation

By: 
City Clerk, City of Fresno
10/10/13

By: 
Patrick N. Wiemiller
Director of Public Utilities

APPROVED AS TO FORM:

Douglas T. Sloan
Fresno City Attorney

By:  10/7/13
Brandon M. Collet Date
Deputy City Attorney