1/17/2013

CITY OF FRESNO
City Clerk's Office (Original)

RE-ENACTMENT AND FIRST AMENDMENT TO AGREEMENT FOR PROVISIONS OF WATER SERVICE

THIS RE-ENACTMENT AND FIRST AMENDMENT TO AGREEMENT FOR PROVISION OF WATER SERVICE ("First Amendment") amends the Agreement for Provision for Water Service dated December 31, 1985 ("Agreement") heretofore entered into by and betweenthe City of Fresno ("City"), a California municipal corporation, and the Pinedale County Water District ("District"), a public entity created by and under the laws of the State of California. City and District may hereinafter be individually referred to as a "Party" and collectively as the "Parties." Regardless of the date of execution, this First Amendment is effective January 1, 2013.

RECITALS

A. District is a county water district providing water services pursuant to provisions of Water Code Section 30000 et seq.

B. A segment of State Route 41 running between Bullard and Herndon Avenues was constructed on or about 1985 and bisected a portion of District's water service area. As a result, District was required to abandon a well located in or near the route of State Route 41, leaving a service "island" separated by State Route 41 from the remainder of District's water delivery system but within District's water service area. This portion of District's service area generally consists of an area situated east of State Route 41, west of Fresno Street, south of Herndon Avenue and north of East Magill Avenue, and is more particularly depicted in Exhibit "A" ("Affected Area"). A list by Assessor Parcel Number of the District's customers currently in the Affected Area is attached as Exhibit "B."

C. On December 31, 1985, District and City entered into an Agreement for the Provision of Water Services (the "Agreement"), attached as Exhibit "C."

D. A connection was established at City's water main in Fresno Street, which was then used to supply water to District for its use and distribution through the District's infrastructure to its customers in the Affected Area. A connection was also established at City's water main in Herndon Avenue, which was then used to supply water to the District for its use and distribution through the District's infrastructure to its customer at 1470 West Herndon.

E. City receives a substantial portion of its water supply from the Federal Central Valley Project under a water service contract with the United States Bureau of Reclamation, dated August 18, 2005 and designated Contract No. 14-06-200-8901 ("CVP Water Contract"), as may be amended. Among others, the CVP Water Contract requires City to install water meters on all service connections. located within its service area on or before January 1, 2013, and requires City's charges to customers be based upon actual volume of deliveries as measured by a water meter or other water measuring device.

F. A dispute arose between the Parties regarding the provision of water services to the Affected Area, resulting in the filing of an action, *Pinedale County Water District v. City of Fresno*, Fresno County Superior Court Case No. 12 CE CG 03874, filed in the Fresno County Superior Court on December 13, 2012 (the "Action").

G. District and City now desire to enter into this First Amendment to the Agreement to allow for continued supply of water pursuant to this First Amendment to District for use in the Affected Area

APPROVED BY CITY COUNCIL
Jan 17, 2013
By Sherri L. Bedeitcher
DEPUTY

consistent with the City's obligations under the CVP Water Contract, state and federal law. Additionally, District and City now desire to settle the Action.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and promises hereinafter contained to be kept and performed by the respective Parties, it is mutually agreed the Agreement is amended and superseded by this First Amendment as follows:

1. Recitals. The above Recitals are incorporated into and made a part of this First Amendment.

2. Amendment of Agreement. This First Amendment amends and supersedes all terms of the Agreement except for Paragraphs 2 and 3 of Section III, which are specifically retained and incorporated herein.

3. District as Customer. City shall continue to provide water to District, as its customer, for District use and distribution to District's customers in the Affected Area.

4. Installation of Water Meter. City shall install a water meter or other water measuring device to be located upstream of the Service Connection to measure the volume of water to be provided to the District for its use and distribution to customers in the Affected Area. As used in this Agreement the term "Service Connection" shall mean and refer to the point at which the City water main connects to the District's infrastructure or water lines used to distribute water to the Affected Area. Within 30 days of being invoiced, District shall pay City the cost of installing the water meter and any related infrastructure, but in no event shall be required to pay more than $24,000. District shall take any reasonable steps necessary to allow the City to complete installation of the meter and related infrastructure including connecting the meter to District's infrastructure, if necessary. City shall own, operate, maintain and repair the water meter and assembly and any related infrastructure installed at District expense; District shall continue to retain its ownership, control and operations of its water service infrastructure located downstream of the Service Connection.

5. Payment of Metered Rate. District shall be charged and pay to the City the fixed and variable fees and charges for water service pursuant to the rates set by City's Master Fee Schedule, as may be amended, applicable to customers of the City for planned communities with property owners' associations. This rate is currently identified in the Master Fee Schedule as the "Water, Metered Service Rate," including rates for "Standby charge, meter size (per month)" and "Customers Other Than Single Family Residential." The relevant excerpt of the Master Fee Schedule is attached in Exhibit "D" and is incorporated by reference. District shall be billed for, pay and shall be required to pay the same interest charges or penalties for late payment or nonpayment as are applicable to any other customer of the City for planned communities with property owners' associations according to City's Master Fee Schedule. At its sole discretion, the City may unilaterally amend or approve a revised Master Fee Schedule to adjust rates at any time, including the addition of tiered rates, consistent with any applicable local, state or federal laws.

6. Amendment to Address Potential Conflicts with Contractual, State or Federal Obligations. It is the Parties' intent First Amendment to the Agreement be in compliance with the CVP Water Contract, as may be amended, and City's obligations therein including the metering requirement. Additionally, the Parties acknowledge legislative and regulatory actions may be taken at the state and federal level that could impose obligations on City or District potentially inconsistent with this Agreement as modified by this First Amendment. Notwithstanding any other term of this First

Amendment, District and City agree that if any term or part of this Agreement as modified by this First Amendment is not enforceable or in conflict with any contractual or legal obligation of either Party, including the CVP Water Contract as may be amended, the Parties shall promptly re-open the Agreement and take all reasonable steps necessary to further amend the offending term or part in order to bring the Agreement into compliance with contractual or legal obligations of City or District. "Reasonable steps" shall not include requiring City or District to incur penalties, pay fines or otherwise be responsible for unreimbursed costs incurred as a result of such inconsistency. In the event the Agreement as modified by this First Amendment cannot be reasonably further amended to be consistent with any contractual or legal obligation of City or District, the Agreement, including this First Amendment, will terminate.

7. Provision of Water Services Outside the Affected Area: Except as expressly provided in this First Amendment, City shall not be obligated to provide water supply to District for use in District's service area except for the Affected Area. Currently, the only other location receiving water services from City within District's service area is 1470 West Herndon Avenue. District has infrastructure located in Fruit Avenue capable of serving this address. District will install the necessary infrastructure for District to provide all water services to 1470 West Avenue by March 1, 2013, and the City shall promptly discontinue water services upon notice from the District the necessary infrastructure has been installed. District shall coordinate and cooperate with City before and during the installation to ensure the integrity of any City infrastructure providing service to 1470 West Herndon.

8. Dismissal of Litigation and Satisfaction of Claims between the Parties. In full and final settlement and satisfaction of the Action, District agrees to dismiss the Action with prejudice within 30 days of the last Party to execute this First Amendment. It is expressly understood by the Parties, by reason of the consideration hereinabove mentioned, that the Parties admit absolutely no liability of any sort and have made no representations as to any liabilities or obligations and have made no agreements or promises to do or omit to do any act or thing not herein set forth. With regard to the Action and the negotiation and execution of this First Amendment in settlement of such Action, it is agreed that each Party shall bear its respective costs and attorneys' fees.

9. Indemnification.

(a) District 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, District 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 District or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement as modified by this First Amendment or otherwise associated with District's provision of water services to its customers in the Affected Area (including issues related to the District's maintenance, repair and repair of its infrastructure; provision of adequate fire flows to meet local and state requirements; or its compliance with Proposition 218 and other laws regulating the setting of fees). Nothing herein shall constitute a waiver by District of governmental immunities including California Government Code Section 810 et seq.

(b) City shall indemnify, hold harmless and defend District 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, District 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 City or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement as modified by this First Amendment or otherwise associated with City's provision of water services to District for use in the Affected Area (including issues related to the City's maintenance, repair and repair of its infrastructure; provision of adequate fire flows to meet local and state requirements; or compliance with Proposition 218 and other laws regulating the setting of fees); provided. Nothing herein shall constitute a waiver by City of governmental immunities including California Government Code Section 810 et seq.

(c) In the event of concurrent negligence on the part of District or any of its officers, officials, employees, agents or volunteers, and City 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) Notwithstanding the preceding paragraphs (b) and (c) of this Paragraph 9, City shall not be liable for damage or loss caused by any failure of the City water system to deliver water to the Affected Area, whenever such failure is caused by, or results from, any natural disaster including drought, shortages of water delivered or available to City, act of God, riot or insurrection, act of war or sabotage, fire, flood, epidemic, quarantine restriction, or other condition which is beyond the control and without the fault of City in the exercise of good and efficient management and maintenance of the City water system.

(e) This Paragraph shall survive expiration or termination of this Agreement.

10. Attorney's Fees and Costs. If either Party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of the Agreement as modified by this First Amendment, the prevailing Party in such proceeding or action shall be entitled to recover from the other Party its reasonable attorney's fees, costs and legal expenses.

11. Termination by Mutual Agreement. The Agreement as modified by this First Amendment shall be perpetual and may not be cancelled or terminated except by mutual written consent of the Parties hereto.

12. Compliance With Law. The Parties shall at all times comply with all applicable laws of the United States and the State of California, 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 the Agreement as modified by this First Amendment.

13. Interpretation. The Parties acknowledge that this First Amendment in its final form is the result of the combined efforts of the Parties and that, should any provision of this First Amendment 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 prevailing rules of contract interpretation not otherwise in conflict with this Paragraph 13.

14. Precedence of Documents. Each Exhibit referenced in this First Amendment, except for the Agreement as already addressed in Paragraph 2, is, by reference, incorporated into and made a part of this First Amendment. In the event of any conflict between the text of this First Amendment or

any Exhibit, the terms and conditions of the text of this First Amendment shall control and take precedence over the terms and conditions expressed within the Exhibit.

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

16. Extent of Agreement. Each Party acknowledges that they have read and fully understand the contents of this First Amendment. The Agreement as modified by this First Amendment 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.

17. Counterparts. This First Amendment may be executed in two or more counterparts, by facsimile or scanned document sent by email, and with originals following by mail or express delivery. In the event of a dispute, a facsimile or scanned copy sent by email shall be deemed to be an original.

IN WITNESS WHEREOF, the Parties have executed this First Amendment at Fresno, California, the day and year first above written.

City of Fresno,
a California municipal corporation

By: _____
Patrick Wiemiller, Director
Department of Public Utilities

Pinedale County Water District,
a public entity created by and under the laws of the State of California

By: _____
David Rodriguez, Board President,
Pinedale County Water District

ATTEST:
Yvonne Spence
City Clerk

By: Sherri L. Bedertscher
Deputy 1/18/2013

APPROVED AS TO FORM:
Francine M. Kanne
Interim City Attorney

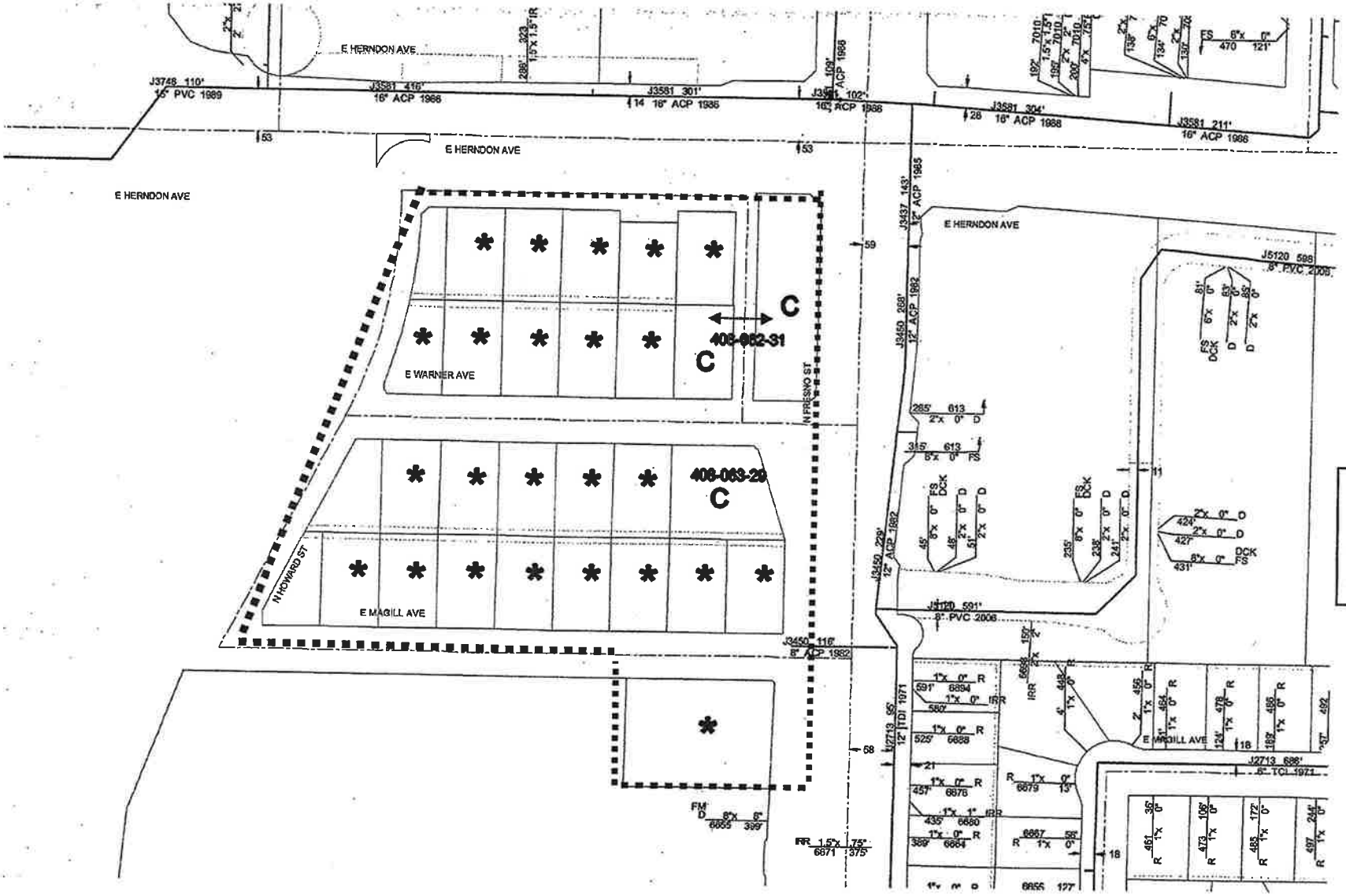
By: _____
Shannon L. Chaffin
Senior Deputy City Attorney

APPROVED AS TO LEGAL FORM:
Costanzo and Associates

By: _____
Neal E. Costanzo, Esq.
Attorney for Pinedale County Water District

Attachments:

1. Exhibit A – Map of Affected Area.
2. Exhibit B – List of Customers in Affected Area.
3. Exhibit C – Agreement for Provisions of Water Service dated December 31, 1985.
4. Exhibit D – City of Fresno Master Fee Schedule, page 137.



Affected Area

*=Residential

C=Commercial

Exhibit "B"

Assessor Parcel Numbers of the District's Customers in the Affected Area:

1. 408-062-18
2. 408-062-17
3. 408-062-16
4. 408-062-15
5. 408-062-31 (formerly 408-062-12, 408-062-13 and 408-062-14)
6. 408-062-25
7. 408-063-06
8. 408-063-07
9. 408-063-08
10. 408-063-09
11. 408-063-10
12. 408-063-29 (formerly 408-063-11 and 408-063-12)
13. 408-062-07
14. 408-062-08
15. 408-062-09
16. 408-062-10
17. 408-062-11
18. 408-063-20
19. 408-063-19
20. 408-063-18
21. 408-063-17
22. 408-063-16
23. 408-063-15
24. 408-063-14
25. 408-063-13
26. 408-070-08

Exhibit "C"

AGREEMENT FOR THE PROVISION OF WATER SERVICE

THIS AGREEMENT is made and entered into on this 31st day of DECEMBER, 1985, by and between PINEDALE COUNTY WATER DISTRICT (hereinafter the "District", and the CITY OF FRESNO (hereinafter the "City"), agree as follows:

RECITALS

WHEREAS, the District is furnishing water service to customers pursuant to the provision of Water Code 30.000 et seq within the County of Fresno and City of Fresno;

WHEREAS, the service area within which the District provides water service (hereinafter the "service area"), is located within Fresno County and portions of the City; and

WHEREAS, the District and the City desire to provide water service to their respective customers in the most efficient and economical way;

NOW, THEREFORE, in consideration of the mutual promises and covenants recited herein, the parties agree as follows:

I

Covenants of the City

1. When mutually agreeable, the City will provide water to customers within the District service area.

2. The water service charges to the customer in the district service area, shall be billed by the district in accordance with the districts schedules of fees and charges.

3. The City agrees to accept as payment for water used, an amount equal to 60% of the applicable City rate(s).

4. The City agrees to a bi-monthly payment and billing cycle.

5. ~~The City agrees to pay the District any service charges, or portions thereof collected in accordance with this agreement, within 45 days of close of billing period.~~

6. The City agrees to be responsible for maintenance of city owned mains and services.

7. The City agrees, the attached Exhibit "A" is the list of customers in the city service area served by the District.

8. The City agrees, the attached Exhibit "A" and "B", may be changed by addendum; adding, or deleting items listed.

BY _____ Pinedale District

BY _____ City of Fresno

Addenda shall be signed by the City and District Water Manager.

II

Covenants of the District

1. When mutually agreeable, the District will provide water service to customers within the City service area.

2. The water service charges to the customer in the city service area, shall be billed by the City in accordance with the City's schedule of fees and charges.

3. The District agrees to accept as payment for water used, an amount equal to 60% of the applicable district rate(s).

4. The District agrees to a bi-monthly payment and billing cycle.

5. ~~The District agrees to pay the City any service charges, or portions thereof, collected in accordance with this agreement, within 45 days of close of billing period.~~

6. The District agrees to be responsible for maintenance of district owned mains and services.

7. The District agrees, the attached Exhibit "B" is the list of customers in the district service area served by the city.

8. The District agrees, the attached Exhibits "A" and "B", may be changed by addendum; adding, or deleting items listed. Addenda shall be signed by the City and District Water Managers.

III

Other Provisions

1. This agreement shall continue unless terminated by the first one of the following events: (a) adoption of an agreement superceding this agreement; (b) the delivery of a notice of termination, 180 days minimum by either party.

2. This Agreement shall be binding upon and to the benefit of the District and the City and their respective successors and assigns.

3. This Agreement shall be deemed to be a contract under the law of the State of California and for all purposes shall be construed in accordance with the laws of said state.

4. Articles and section headings used in this Agreement are for convenience only and shall not affect the construction of this agreement.

BY _____ Pinedale District

BY _____ City of Fresno

5. This Agreement may be executed in counterparts, each of which once so executed and delivered shall be deemed to be an original and all of which together shall constitute but one and the same Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers and representatives as of the day and year recited hereinbelow, which shall be the effective date of this Agreement.

CITY OF FRESNO
a municipal corporation

Date: 1/3, 1986 By

Pinedale County Water District

DATE: Sept 17, 1985 By Victor Cooper

BM/rg
8/7/85

APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE

By: Denise M. Kerner
Deputy

ATTEST:
JACQUELINE L. RYLE, C.M.C.
CITY CLERK

By
Deputy

EXHIBIT "A"

Customers in the City Service Area served by the district

Service Size/Type	Name/Address	APN

EXHIBIT "B"

Customers in the District service area served by the City

DATE	SERVICE Size/Type	NAME/ADDRESS	APN
1/86	4" Fire Service	Kingsview Corp. 1470 W. Herndon Fresno, CA 93711	405-370-01
1/86	2" Commercial Water Service	Kingsview Corp. 1470 W. Herndon Fresno, CA 93711	405-370-01

CITY OF FRESNO
a municipal corporation

Date: 1-3-86, 1986 By Ronald J. Garner

Pinedale County Water District

Date: Jan 3, 1985 By Don McCorkle

EXHIBIT "B"

Customers in the District service area served by the City

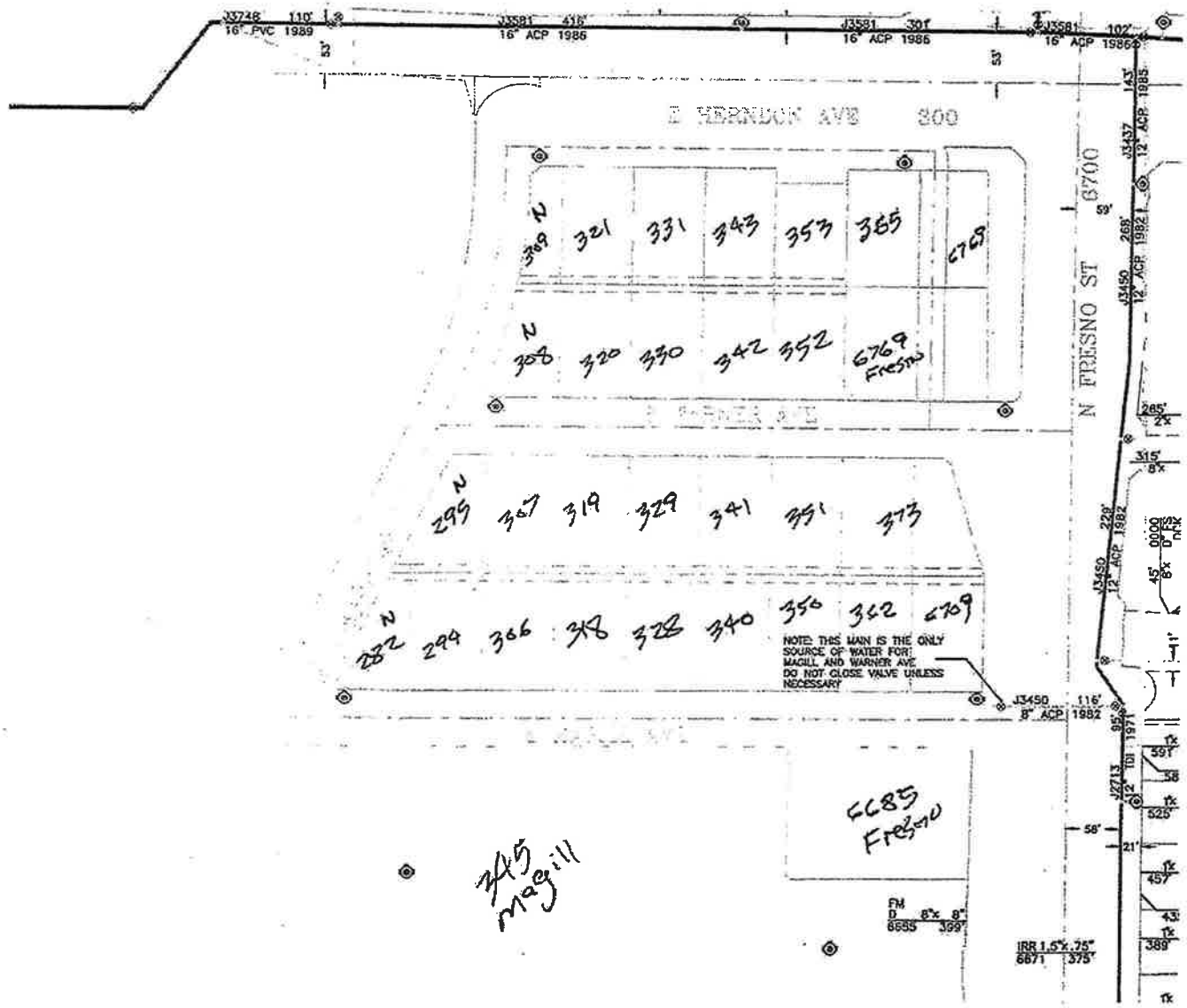
DATE	SERVICE	NAME/ADDRESS	APN
3/86	All 1" or 3/4" residential services	320 E. Warner Avenue	408-062-18
		330 E. Warner Avenue	408-062-17
		342 E. Warner Avenue	408-062-16
		~~On PCWD water line~~ - ~~352 E. Warner Avenue~~	~~408-062-15~~
		~~On PCWD water line~~ - 364 E. Warner Avenue	408-062-14 Kardasian
		~~On PCWD water line~~ - ~~374 E. Warner Avenue~~	~~408-062-13~~
		308 E. Warner Avenue	~~408-062-25~~
		307 E. Warner Avenue	408-063-06
		319 E. Warner Avenue	408-063-07
		329 E. Warner Aveneu	408-063-08
		~~341 E. Warner Avenue~~	~~408-063-09~~
		351 E. Warner Avenue	408-063-10
		~~363 E. Warner Avenue~~	~~408-063-11~~
		a lot - 373 E. Warner Avenue	408-063-12
		321 E. Herndon Avenue	408-062-07
		~~331 E. Herndon Avenue~~	~~408-062-08~~
		a lot - 343 E. Herndon Avenie	408-062-09
		~~353 E. Herndon Avenue~~	~~408-062-10~~
		365 E. Herndon Avenue	~~408-062-11~~
		a lot - 375 E. Herndon	408-062-12
		~~294 E. Magill~~	~~408-063-20~~
		306 E. Magill	408-063-19
		~~318 E. Magill~~	408-063-18
		~~328 E. Magill~~	~~408-063-17~~
		340 E. Magill	408-063-16
		350 E. Magill	~~408-063-15~~
		362 E. Magill	408-063-14
		~~6709 N. Fresno St.~~	~~408-063-13~~
		6685 N. Fresno St.	408-070-08
		1470 W. Herndon	

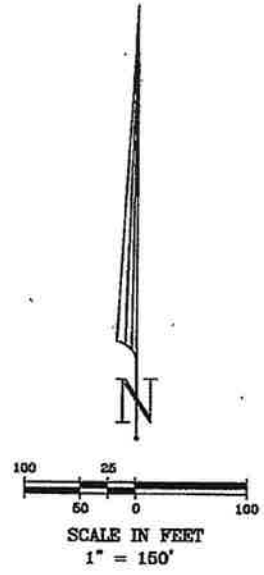
CITY OF FRESNO
a municipal corporation

Date: 4-15-86, 1986 By R. W. Miller

Pinedale County Water District

Date: 4-16-86, 1986 By Dan McPherson





DEPARTMENT OF PUBLIC UTILITIES
December 14, 2011

LEGEND

- 2" & 4" PIPE
- 6" PIPE
- 8" & 10" PIPE
- 12" & ABOVE
- RAW WATER PIPE
- PIPE CASING
- PRIVATE PIPE
- BUTTE GATE
- OTHER
- FIRE H
- BLOWO
- FITTING
- WELL

Exhibit "D"

CITY OF FRESNO
MASTER FEE SCHEDULE

PUBLIC UTILITIES DEPARTMENT

Water, Metered Service Rate total charge shall be standby charge plus quantity charge based on usage.		Amend Effective 9/1/2008
Standby charge, meter size (per month):		
3/4-inch or smaller	10.03	
1-inch	13.51	
1-1/2-inch	18.89	
2-inch	27.09	
3-inch	45.07	
4-inch	63.02	
6-inch	99.01	
8-inch	152.96	
10-inch	179.83	
Quantity charge:		
Customers Other Than Single Family Residential		
Each 100 Cubic Feet (HCF)	0.745	
1,000 gallons	0.995	
Single Family Residential		487
Each 100 Cubic Feet (HCF)	0.610	Effective
1,000 gallons	0.810	3/1/2010
Water drawn from a fire hydrant / Minimum per month	29.97	
Wells, private (used for irrigation or commercial purposes when required to be metered)		
Each HCF	0.218	
1,000 gallons	0.290	
Backflow Prevention, Service Inspection, and Maintenance		In-Lieu 06/05
Double-check and/or pressure vacuum breaker assemblies (per month):		
3/4- and 1-inch	6.70	
1-1/4-, 1-1/2-, and 2-inch	8.92	
2-1/2-, 3-, and 4-inch	17.83	
6- and 8-inch	26.73	
10-inch	44.57	
Reduced pressure principle assemblies (per month):		
3/4-inch	6.70	
1-inch	8.92	
1-1/4-inch	11.12	
1-1/2- and 2-inch	13.42	
2-1/2- and 3-inch	15.62	
4-inch	17.83	
6-inch	26.73	
8-inch	35.65	
10-inch	53.48	

* Rates effective 9/1/08

** Rates shall be adjusted annually by staff during the budget process to reflect the rates in effect as per Res. No. 2007-79