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**FRESNO LOCAL AGENCY FORMATION COMMISSION (LAFCO)**  
**EXECUTIVE OFFICER'S REPORT**

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**AGENDA ITEM No. 7**

**DATE:** March 9, 2016

**TO:** Fresno Local Agency Formation Commission

**FROM:** David E. Fey, AICP, Executive Officer 

**SUBJECT:** **Consider Approval** - Memorandum of Understanding between the City of Fresno, the Malaga County Water District, and the Fresno Local Agency Formation Commission Related to Water Service North and South of North Avenue

**RECOMMENDATION:** **Authorize the Commission Chair to Sign the MOU**

**Executive Summary**

The Memorandum of Understanding will facilitate the extension of service process under Government Code section 56133 for projects within the Fresno Sphere of influence but outside of the city limit.

**Background**

Pursuant to Government Code (GC) section 56076, the Fresno Local Agency Formation Commission (LAFCo) determines spheres of influence for a local agency as "a plan for the probable physical boundaries and service area" of that agency.

Pursuant to GC section 56133(c) LAFCo may authorize a local agency to provide new or extended services outside of its jurisdictional boundaries and its sphere of influence to respond to an existing or impending threat to public health or safety so long as the following requirements are met: (1) the entity applying for the contract approval has provided LAFCo with documentation of a threat to the health and safety of the public or affected residences. (2) LAFCo has notified any alternative service providers of the request.

By its resolution No. 127, the LAFCo delegated to the executive officer the authority to authorize extension of service requests.

**Discussion**

North Avenue between Maple and Minnewawa Avenues is the respective limit of the Fresno and Malaga County Water District spheres of influence (SOI). Staff has been approached on several occasions by developers and District staff about projects that lie north of North Avenue in the Fresno SOI which were under County development review. The MCWD has sewer and water facilities in portions of North Avenue, and these facilities appear to property owners and developers as available to serve properties north of North Avenue. But in actuality, these services are only available to properties in the MCWD, not the City of Fresno. The City's infrastructure is not fully extended in this area.

Marketable unincorporated properties in the southern part of the Fresno SOI are frequently constrained by their distance from the city limits, and the relatively small project area often makes annexation infeasible. Complicating this is the lack of city services proximate to the project at the time it was reviewed by the County, and the availability of MCWD services in North Avenue.

Because the facilities are adjacent but not available to land within the Fresno SOI, developers have requested extension of MCWD services pursuant to CKH sec. 56133. The conflict this presents is that an extension outside of a SOI must be authorized based on evidence of “an existing or impending threat to the public health or safety of the residents of the affected territory.” Such a threat to public health or safety is unlikely to exist if the land is undeveloped, and the threat can be avoided by not constructing on the site.

Several options were considered:

- the lack of available municipal services could be the basis for denying the land use entitlement by the County;
- the County could approve the project conditioned on the development of a private well and septic system, though this could run afoul of the emerging effect of the Sustainable Groundwater Management Act;
- forming a special district is not feasible due to economic and policy constraints; or
- as proposed by the draft MOU, protocol is developed between the parties to permit approval by the County, service by the City, and the City contracts with the District to provide interim service until such time as the City is prepared to annex the property.

## **Proposal**

The draft MOU was developed after considerable discussion between representatives of the City of Fresno, the MCWD, and LAFCo to establish protocol that permits the City to remain as the service provider in its SOI north of North Avenue and allows for development of properties in this area. The effect of the protocol is that the development entitlements would be processed by the County of Fresno for unincorporated areas and the approval would, in part, be conditioned on the property owner/developer contracting with the City of Fresno for public utilities. The City would then contract with MCWD to provide services, and would bill the property owner for the services.

If approved, a property owner would contract with the City as a typical utility customer; the City would contract with the District to provide services; and the District would bill the City for service. The property owner would agree to not protest any future annexation. As part of this Agreement, LAFCo, through the Executive Officer, would not lose its discretion as each application for service must be submitted to and evaluated by LAFCo in a manner compliant with LAFCo law and local policy.

## **Individuals and Agencies Receiving this Report**

- Ken Price, LAFCo Counsel
- Bernard Jimenez, Deputy Director of Public Works and Planning
- Jim Anderson, General Manager, MCWD
- Thomas Esqueda, Public Utilities Director, City of Fresno

## ATTACHMENT 1

### MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF FRESNO, THE MALAGA COUNTY WATER DISTRICT, THE COUNTY OF FRESNO, AND THE FRESNO LOCAL AGENCY FORMATION COMMISSION RELATED TO WATER SERVICE NORTH AND SOUTH OF NORTH AVENUE

THIS "MEMORANDUM OF UNDERSTANDING" is entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, (the "Effective Date") by and between the City of Fresno ("City"), the Malaga County Water District ("District"), the County of Fresno ("County"), and the Fresno Local Agency Formation Commission ("Fresno LAFCo"). The City, District, County and Fresno LAFCo may be referred to herein as the "Parties."

#### RECITALS

**WHEREAS**, the jurisdictional boundaries and spheres of influence of the City and the District are coterminous along North Avenue between Minnewawa Avenue on the east and Golden State Avenue on the west; and

**WHEREAS**, the District has water facilities in North Avenue to serve its customers within its service area, including south of North Avenue from Peach Avenue to approximately midway between Chestnut and Maple Avenues, with planned extensions east to Minnewawa Avenue and west to Golden State Avenue; and

**WHEREAS**, the County has jurisdiction over the implementation of its general plan outside of the incorporated boundaries of the City; and

**WHEREAS**, the Fresno LAFCo is an independent public agency established by the Legislature to establish and change the boundaries of cities and special districts; discourage urban sprawl; preserve open-space and prime agricultural lands; assess the efficiencies of service delivery; and perform studies to contribute to the logical and development of local agencies in Fresno County; and

**WHEREAS**, the City water service in North Avenue is limited to the area within the current Fresno city limit, west of Maple Avenue; and

**WHEREAS**, the Fresno city limits north of North Avenue extend east only to Maple Avenue and the City's sphere of influence extends further east along the north side of North Avenue to Temperance Avenue; and

**WHEREAS**, several developers have made applications for industrial and commercial projects to the County for development entitlements on unincorporated land within the City's sphere of influence north of North Avenue, and approval of these projects will require municipal services; and

**WHEREAS**, under the terms of the 2003 Amended and Restated Memorandum of Understanding between the County of Fresno and the City of Fresno (hereafter

"City/County MOU"), the County is obligated to refer new urban commercial and industrial development projects to the City for annexation; and

**WHEREAS**, because these proposed developments are not contiguous to the City, it is not possible to annex these parcels to the City as provided for in the City/County Memorandum of Understanding and the projects are referred back to the County to be processed under County jurisdiction; and

**WHEREAS**, due to the distance to connect the proposed developments to necessary municipal services provided by the City, and the requirement that the initial extension of services be sized appropriately to accommodate the capacity not just of the proposed development, but of planned industrial development in this portion of the Fresno General Plan, the expense of extending to the proposed developments is in excess of the economies of scale of individual parcel developers; and

**WHEREAS**, at this point in time, in the absence of available capital funding on the part of either the City or District to extend municipal service infrastructure in anticipation of future development to serve properties described herein as those properties exist or are developed , would be cost prohibitive for both agencies; and

**WHEREAS**, such municipal services provided by the District to its current and future customers are already in place in North Avenue; and

**WHEREAS**, City and District are each agencies of the State, formed pursuant to general law or principal act, for the local performance of governmental or proprietary functions within limited boundaries, and in areas outside City or District boundaries when authorized by Fresno LAFCo pursuant to Government Code Section 56133; and

**WHEREAS**, Government Code Section 56133(a) states that a city or district may provide new or extended services by contract or agreement outside its jurisdictional boundaries only if it first requests and receives written approval from the LAFCo in the affected county; and

**WHEREAS**, pursuant to Government Code Sections 56133(b) and (c), the Fresno LAFCo may authorize a city or district to provide new or extended services outside its jurisdictional boundaries but within its sphere of influence in anticipation of a later change of organization, and may authorize a city or district to provide new or extended services outside its jurisdictional boundaries and outside its sphere of influence to respond to an existing or impending threat to the public health or safety of the residents of the affected territory if certain requirements are met; and

**WHEREAS**, the Fresno LAFCo has expressed concerns to the City, District, and County regarding development pressure to connect to proximate services that may also lie outside certain jurisdictional boundaries and spheres of influence; and

**WHEREAS**, properties in the City and District may be developable if services were available, and though the municipal services proximate to these properties are otherwise unavailable because they lie in the sphere of influence of the other agency, and because the properties are not developed and frequently uninhabited, there currently is no basis for an extension of service to resolve any existing or potential threat to public health and safety; and

**WHEREAS**, it is the desire of the City and District to enter into an agreement to facilitate development and provide municipal services to properties within their respective service areas and spheres of influence in a manner that complies with the intent of Government Code Section 56133; and

**WHEREAS**, such an agreement, establishing a service and billing procedure that addresses the interests of the Parties, complies with the provisions of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 related to extension of services beyond local agencies' service areas but within that city's spheres of influence, and institutes orderly protocol for transition of service delivery to the City when deemed appropriate by that agency.

**Now, therefore**, in consideration of the recitals set forth above, and the mutual covenants and undertakings set forth herein, the mutual receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. That the foregoing recitals are true and correct and incorporated herein by this reference as though fully set forth.
2. This Memorandum of Understanding and its terms shall apply to the unincorporated territories bound by North Avenue, Minnewawa Avenue, Annadale Avenue, and the current and future corporate limits of the City of Fresno (the "Agreement Area").
3. The purpose of this Memorandum of Understanding is to document how the City would be permitted to extend municipal services to serve lands within its sphere of influence, by contracting with the District to provide such services on an interim basis.
4. Notwithstanding the provisions of the City/County MOU, any development entitlement processed by the County in the "Agreement Area," shall be referred to the City and the District for an evaluation of the project's municipal service demand, and the service plan of the agencies.
5. Upon receipt of the County referral, the City shall make the following determinations within the time prescribed by Article IV of the City/County MOU:
  - (a) whether it is feasible to annex the subject property;
  - (b) whether it is feasible to provide municipal services to the subject property; and
  - (c) whether it is feasible to extend municipal services to the subject property.

6. Upon receipt of the County referral, the District shall make the following determinations within 60 days of receipt:

- (a) whether it is feasible to annex the subject property;
- (b) whether it is feasible to provide municipal services to the subject property;  
and
- (c) whether it is feasible to extend municipal services to the subject property.

7. If the City determines that it is neither feasible to annex the subject property; to provide municipal services to the subject property; nor to extend municipal services to the subject property, and if the District determines that it is feasible to provide municipal services to the subject property, then the provisions and terms of this Memorandum of Understanding may be exercised by the agencies.

8. The City shall make application to the Fresno LAFCo requesting that it authorize the City to provide new or extended services by contract or agreement outside its jurisdictional boundaries, but within its sphere of influence in anticipation of a later change of organization, pursuant to the terms of this Memorandum of Understanding.

9. Fresno LAFCo will evaluate each complete request for an extension of services pursuant to Government Code Section 56133.

10. If authorized by Fresno LAFCo to provide municipal services outside of the city limit, the City will direct the property owner to establish a City of Fresno Public Utility account for the necessary municipal services.

11. The City will then contract with the District to purchase necessary municipal services.

12. The property owner is responsible for all expenses associated with implementing an agreement between the City and District, as contemplated by this Memorandum of Understanding, including, but not limited to, construction, maintenance, replacement, improvement, and abandonment of the municipal service connection(s) to the subject property within the Agreement Area.

13. The term of this Memorandum of Understanding shall commence on the Effective Date and shall continue unless rescinded in writing by all Parties.

14. This Memorandum of Understanding may be executed in counterparts and all separately executed copies of this Memorandum of Understanding shall be read and interpreted as one document. Signatures may be provided by PDF or facsimile.

15. The record owner of title to the subject property within the Agreement Area shall record a covenant, in a form acceptable to the City, stating that the record owner, and all subsequent owners of the subject property, shall not protest the future annexation of the subject property if such annexations are not subject to conditions, excluding the

facts pertaining to the annexation itself or the extension of water service, which might materially prejudice those holding an interest in the real property.

WHEREFORE, the Parties have entered into this Memorandum of Understanding as of the Effective Date above.

MALAGA COUNTY WATER DISTRICT:

By:\_\_\_\_\_

Name/Title: \_\_\_\_\_

Dated:\_\_\_\_\_

CITY OF FRESNO:

By:\_\_\_\_\_  
Thomas C. Esqueda, Public Utilities Director

Dated:\_\_\_\_\_

FRESNO LOCAL AGENCY  
FORMATION COMMISSION:

By:\_\_\_\_\_

Dated:\_\_\_\_\_

APPROVED AS TO FORM:

By:\_\_\_\_\_

Name/Title: \_\_\_\_\_

Dated:\_\_\_\_\_

APPROVED AS TO FORM:

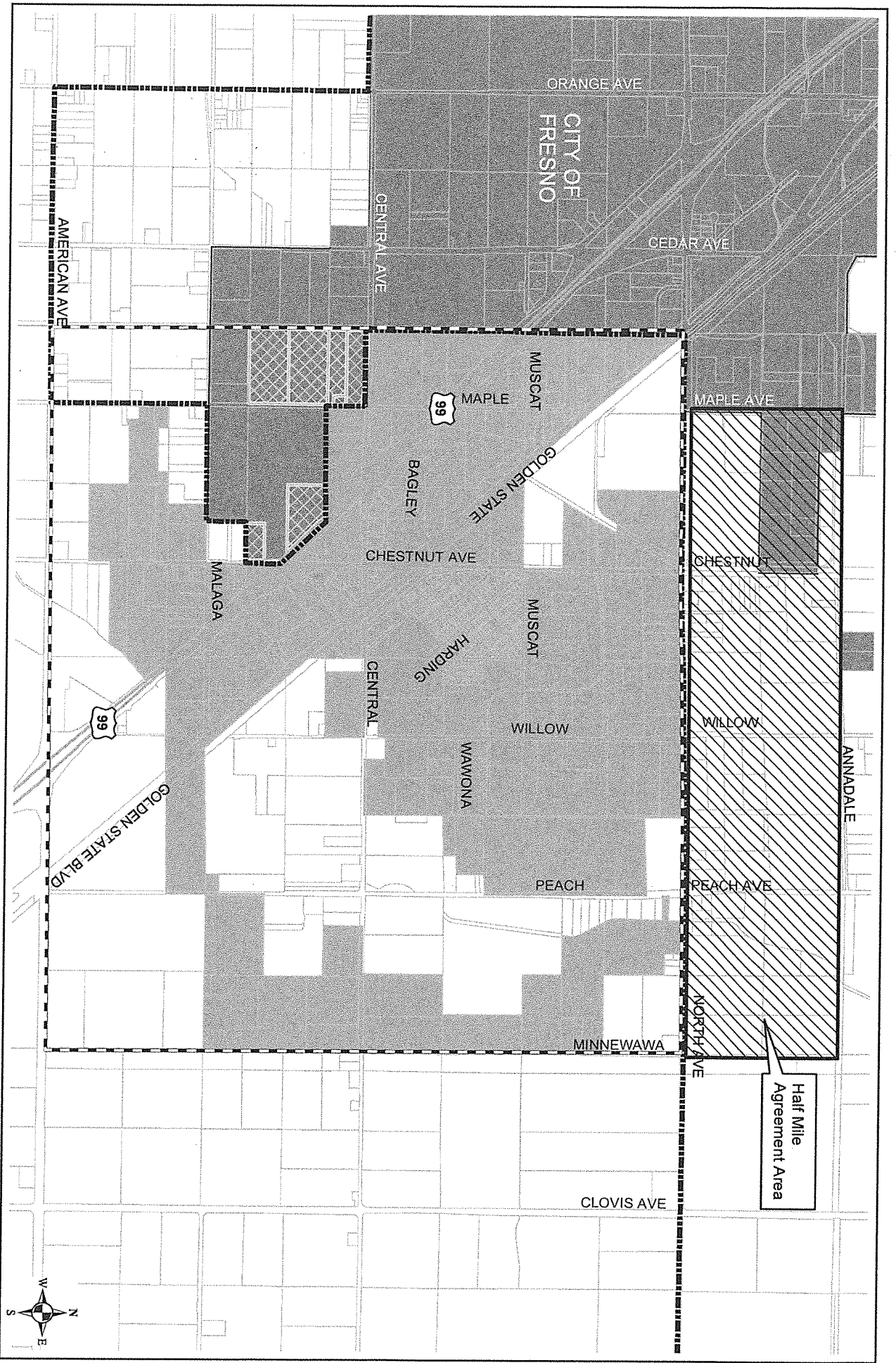
By\_\_\_\_\_  
City Attorney

Dated:\_\_\_\_\_

APPROVED AS TO FORM:

By:\_\_\_\_\_  
LAFCo Counsel

Dated:\_\_\_\_\_



# **Fresno Local Agency Formation Commission** **Malaga County Water District**

District Formed: 1958  
 SOI Adopted: 4/23/1975  
 SOI Updated: 10/10/2007

Map Date: March 2016  
 District Area: 1,624 Acres  
 Sphere Area: 2,674 Acres