

1 AMENDMENT TO JOINT POWERS AGREEMENT BETWEEN
2 THE COUNTY OF FRESNO AND THE CITY OF FRESNO

3 THIS AMENDMENT TO THE JOINT POWERS AGREEMENT made and
4 entered into this 25th day of June, 1974, between the COUNTY
5 OF FRESNO, a political subdivision of the State of California,
6 hereinafter referred to as "County", and the CITY OF FRESNO, a
7 municipal corporation, hereinafter referred to as the "City";

8 W I T N E S S E T H:

9 WHEREAS, the County and the City have heretofore on the
10 4th day of February, 1969, entered into a Joint Powers Agreement
11 relating to sewer connections, use, and rates to be charged by
12 the City to residents of the unincorporated Fresno Metropolitan
13 area of the County; and

14 WHEREAS, it appears to be in the public interest that said
15 Agreement be modified as hereinafter more particularly set forth;

16 NOW, THEREFORE, the parties hereto agree that the
17 hereinafter stated articles set forth in the original Agreement
18 dated February 4, 1969, be amended in their entirety to read as
19 follows:

20 "ARTICLE IV. COUNTY AGREEMENT TO IMPLEMENT. It is basic
21 to this agreement, and a condition to the obligation of the City
22 to perform hereunder, that the County Mandatory Sewer Ordinance
23 remain in effect and not be repealed or so amended as to materially
24 affect its substance. The County agrees that it will forthwith
25 institute an administrative program invoking the provisions of the
26 County Mandatory Sewer Ordinance as aforesaid, including the
27 initiation of giving of 'Notices to Connect' pursuant to said
28 ordinance where sewers are now available within the definition of
29 said ordinance and to continue such program with due diligence;
30 to start a program of extending collector and branch sewers to
31 serve premises where required, using an appropriate improvement
32 district therefor where indicated and to continue with reasonable

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APPENDIX III B

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1 diligence to use all means necessary to ultimately accomplish the
2 connection of all residences and other establishments within the
3 herein-described area with public sanitary sewers and to integrate
4 such program with the City's ability to handle, treat and dispose
5 of such sewage. This Amended Agreement contemplates that, on
6 or before July 1, 1978, not less than 24,000 units, exclusive of
7 new subdivisions, will be connected to the City's sewer system
8 in the area not within the City limits as of February 4, 1969.
9 As used in this Amended Agreement, 'Unit' has the same definition
10 as shown in the Municipal Code of Fresno Section 9-501(u)."

11 "ARTICLE XI. TERMINATION. In the event either party
12 breaches this Agreement in any material respect and fails within
13 a reasonable time to correct such breach after notice and demand
14 therefor by the other, then in addition to any other remedy
15 provided by law, the party not so breaching this agreement may
16 elect to treat it as terminated, in which event it shall be
17 released from all further performance hereunder. In the event the
18 County repeals the County Mandatory Sewer Ordinance, or so amends
19 it as to materially affect its substance, or in any manner
20 authorizes, permits, or sanctions the construction, location, or
21 use of any sewer treatment plant by any entity other than the City
22 for the purpose of providing sewer service within the herein-
23 described area; then the City may elect to treat this agreement
24 as terminated, in which event the City shall be released from all
25 further performance under this agreement. In the event the number
26 of sewer connections, exclusive of new subdivisions, hereinafter
27 set forth in subsection A are not made to the City's sewer system
28 in the areas not within the City limits on Feb. 4, 1969, by the date
29 indicated, then the payments provided in subsections B and C below
30 shall be made.

31 A. CONNECTION SCHEDULE.

- 32 1. By July 1, 1975, 15,000 units.

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- 1 2. By July 1, 1976, 18,000 units.
- 2 3. By July 1, 1977, 21,000 units.
- 3 4. By July 1, 1978, 24,000 units or all units within the
- 4 unincorporated area which are subject to the County's Mandatory
- 5 Sewer Ordinance.

6 B. ADVANCE TO THE CITY FOR MAJOR FACILITIES SEWER CHARGE.

7 As the City is dependent on the timely payment of Major
8 Facility Sewer Charges to meet its capital responsibilities, the
9 County agrees within a reasonable time to advance to the City
10 the amount of \$140.00 for each unit not timely connected according
11 to the schedule in subsection A above, except as hereinafter
12 provided.

13 It is understood that there are now 14,318 parcels in the
14 unincorporated area, as shown on Exhibit "A" attached hereto,
15 which are either exempted from payment of the Major Facility Sewer
16 Charge if connected to the system prior to January 1, 1976, or
17 have previously paid the Major Facility Sewer Charge. It is
18 understood that these 14,318 parcels are exempted from or have
19 paid only one Major Facility Sewer Charge for each parcel and if
20 at the time of connection to the sewer system more than one unit
21 per parcel is connected additional appropriate Major Facility
22 Sewer Charges must be paid. The County will not be responsible
23 for any advance for such exempt parcels which connect before
24 January 1, 1976, nor will the County be responsible for advancing
25 monies for any parcels in the future which may prepay said Major
26 Facility Sewer Charge before the connection of any units to the
27 City's sewer system. When considering deficiencies in subsection
28 A above, all such exempted parcels prior to January 1, 1976, and
29 all prepayments shall be considered as 'connected' as far as the
30 Major Facilities Sewer Charge is concerned.

31 If the County advances to the City any funds for Major
32 Facility Sewer Charge according to this article and the City

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1 thereafter receives Major Facility Sewer Charge for units which
2 will bring the number of units connected back into compliance
3 with the schedule of subsection A above, the City shall return
4 to the County said amounts advanced in accordance with the
5 schedule. It shall be the obligation of the City to collect
6 from an owner of a unit at or before the time of connection any
7 Major Facility Sewer Charge which has not been previously paid
8 by the owners thereof; provided, however, if the County issues
9 a permit to connect before the appropriate charges have been paid to
10 the City, the County will make every effort, legally possible, to
11 make the collections.

12 C. PAYMENT TO THE CITY IN LIEU OF SERVICE CHARGE.

13 As the City is dependent on sewer service charges to provide
14 for the maintenance and operation of its sewerage facilities, the
15 County agrees to a quarterly in-lieu payment of \$10.80 or such
16 other appropriate amount if the sewer service charge is changed
17 in accordance with Article V of this Agreement, for each unit not
18 timely connected according to the schedule in subsection A above
19 using the average quarterly quota deficiency. The City will
20 furnish to the County quarterly records of all units connected.
21 These in-lieu payments, if any, will be based on the last quarter's
22 total. At anytime, if the number of units connected meet or
23 exceed the totals in subsection A, in-lieu payments will stop.

24 D. EXCEPTION TO OBLIGATION OF COUNTY.

25 In the event a court of competent jurisdiction determines
26 that the provisions of the County's Mandatory Sewer Connection
27 Ordinance is not enforceable for any reason as to any unit,
28 including the financial inability of a property owner to cause
29 such connection to be made, then the County shall have no
30 obligation to the City to pay the Major Facility Sewer Charge or
31 the in-lieu service charge for such unit."

32 IT IS FURTHER AGREED that said original Joint Powers

1 Agreement, dated February 4, 1969, shall remain in full force and
2 effect, except as hereinabove provided.

3 IN WITNESS WHEREOF, the parties hereto have by these
4 presents caused this Amended Agreement to be duly executed as of
5 the day and year first hereinabove written pursuant to
6 appropriate resolutions of their respective governing bodies
7 authorizing and directing the same.

COUNTY OF FRESNO

8
9 BY *John R. [Signature]*
10 CHAIRMAN, Board of Supervisors

11 ATTEST:

12 H. L. MASINI, County Clerk

13 BY *James A. Brandon*
14 Deputy

CITY OF FRESNO

15 BY *[Signature]*

16 JACQUELINE L. RYLE,
17 CITY CLERK

18 BY *[Signature]*
19 Deputy

RALPH W. HANLEY
Chief Administrative Officer

20 APPROVED AS TO FORM
21 SPENCER THOMAS, JR., City Attorney

22 BY *[Signature]*
23
24 *[Signature]*