

DRY CREEK PRESERVE MASTER PLAN

POLICY xxxxxxxx FORM ANNEXATION AGREEMENT

RECORDING REQUESTED BY, AND)
WHEN RECORDED, MAIL TO:)
)
City of Clovis)
1033 Fifth Street)
Clovis, California 93612)
ATTN: City Manager)

(Space above provided for Recorder)
No recording or filing fee required; this document exempt from fee pursuant
to California Government Code sections 6103 and 27383.

DRY CREEK PRESERVE ANNEXATION AGREEMENT APN _____

This Agreement is entered into as of _____, 20__, between the City of Clovis, a California municipal corporation and general law city (“City”) and _____, [*an individual, husband and wife, joint tenants*] (“Owner”), including Owner’s successor, with respect to the following recitals, which are a substantive part of this Agreement.

RECITALS

- A. Owner owns certain property in the County of Fresno, State of California, described as APN _____ and located at _____ (“Property”).
- B. The Property is within an area commonly referred to as the “Dry Creek Preserve” which is within City’s Sphere of Influence and identified as “Focus Area 7” in the 2014 Clovis General Plan (“General Plan”).
- C. Dry Creek Preserve is generally bounded by Nees Avenue on the South, Shepherd Avenue on the North, Armstrong Avenue on the East, and Sunnyside Avenue on the West.¹ The area is zoned County R-R and designated as primarily rural residential in the General Plan. Substantial rural residential development exists in the area, with a few large vacant parcels remaining.
- D. The General Plan directs that a master plan be prepared for the entirety of the Dry Creek Preserve area (“Master Plan”) prior to any development, and that any development respect the rural residential character of the Dry Creek Preserve.

¹ The precise boundaries are Nees Avenue, the curved alignments of Fresno Irrigation District’s Enterprise Canal, and Dry Creek alignment.

E. Consistent with the General Plan, on June 4, 2018, City approved a Master Plan. The Master Plan includes a land use plan of development compatible with the rural residential nature of the area (“Land Use Plan”), design guidelines to preserve the rural residential character of the area (“Design Guidelines”), and an annexation program and policy (“Annexation Program”).

G. The Annexation Program is designed to address the annexation of the entire Dry Creek Preserve over a period of time as rural residential compatible developments are proposed. Part of the Annexation Program is an annexation agreement (“Annexation Agreement”) for those properties that are not part of a proposed development project but are either required to be annexed concurrently with the development project, or are expected to be annexed as part of the broader Annexation Program (“Non-Development Properties”).

NOW, THEREFORE, for the consideration set forth herein, the parties agree as follows:

SECTION 1 BENEFITS TO OWNER

As Owner of a Non-Development Property, the following benefits shall be provided to the Owner upon annexation:

1.1. Permitted Uses. The following uses shall be allowed on the Property:

- (a) Those uses lawfully allowed to exist under the applicable Fresno County Code at the time of annexation; or
- (b) Those uses permitted under the City’s Municipal Code after annexation.

Legally non-conforming uses under the County Code may only be allowed to continue if Owner can demonstrate that the legally non-conforming use was grandfathered in under a pre-existing County Code and the time to remove the legal non-conformity has not expired.

1.2. Farm Animals. Owner may keep farm animals to the extent the keeping of farm animals was lawfully allowed to exist under the applicable County Code for Rural Residential (“RR”) properties in the County at the time of annexation, or as otherwise lawfully allowed under City’s Municipal Code for the designated zoning upon annexation.

1.3. Use of Water Wells. Owner may continue to use existing water well(s) and defer connection to the Clovis water system, even if a City water service connection is available to the property. Use and maintenance of the system will remain the responsibility of the property owner and the well must be kept in a condition consistent with Fresno County Environmental Health Department standards as if the Property were still in the unincorporated portion of Fresno County.

If a new well becomes necessary, Owner may drill a new well provided Owner abandons all wells being replaced. The drilling, deepening, and abandonment of any wells shall be in accordance with State and County standards for wells in effect at the time. If Owner connects to

the Clovis water system, Owner may continue to use the existing well(s) on the Property, including maintenance or replacement consistent with this section, for landscaping and agricultural purposes so long as no cross connection is made between the well(s) and residence on the Property.

Upon any intensification of use as set forth in the Change in Use section of this Agreement, or this Agreement otherwise terminating, Owner will be required to connect to Clovis' water system if it is available.

A water service connection will be deemed available to the Property if (a) the Property is within the City limits, and (b) a water service connection has been constructed and is available for use in any public street, alley, easement, or right-of-way adjacent to a lot or within one hundred feet (100') of the Property. Owner shall be responsible for paying all costs associated with connection to the Clovis water system.

1.4. Use of Septic System. Owner may continue to use and maintain their existing septic system on the property, even if a City sewer service connection is available to the property, for a period of three (3) years after annexation. Use and maintenance of the system will remain the responsibility of the Property owner and the septic system must be kept in a condition consistent with Fresno County Environmental Health Department standards as if the Property were still in the unincorporated portion of Fresno County.

If a septic system fails and City sewer service connection is not available, or if City sewer service is available but Owner has obtained a deferral per the criteria set forth below, the onsite septic system may be replaced in accordance with State and County standards for septic systems in effect at the time.

Within three years after annexation and of a sewer service connection being available to the Property, Owner shall either connect to the City sewer system or obtain a deferral under the criteria set forth below. Connection or deferment is only required upon City notification to the Owner of the need to connect to the City system.

Upon any intensification of use as set forth in the Change in Use section of this Agreement, or this Agreement otherwise terminating, Owner will be required to connect to Clovis' sewer system if it is available.

A sewer service connection will be deemed available to the Property if (a) the property is within the City limits, and (b) a sewer service connection has been constructed and is available for use in any public street, alley, easement, or right-of-way adjacent to a lot or within one hundred feet (100') of the Property. Owner shall be responsible for paying all costs associated with connection to the Clovis sewer system.

Deferral Criteria

- (a) The septic system must comply with current State standards.
- (b) The septic system may not have leach fields or tanks within areas that are flood irrigated.

(c) The owner must provide a diagram of the septic system's location and proof that the septic system is in good working order. The diagram and acceptable proof may be provided by having a licensed septic company inspect the septic system and provide documentation that the system is functioning properly and of a design that meets State standards.

(d) Deferments must be renewed every ten (10) years.

1.5. Solid Waste Service. Owner shall have the choice of changing to City solid waste service immediately, or staying with their existing franchised service provider through the County for up to five (5) years from the date of annexation.

City's basic residential refuse and recycling service is centered on urban waste production. Rural residential properties can generate waste material in quantities or types that require additional services above City's standard waste pickup. Therefore, when Owner is ready to change to City service it will be necessary to work directly with City's solid waste division to determine the best way City can service Owner's solid waste needs.

1.6. Irrigation Water. In the ordinary course, City requires that as a condition of connection to the City water system, a property owner agree to transfer to City all rights and privileges to the use of surface water supplies through FID. Based upon the unique nature of the Dry Creek Preserve and existing rural usage of the Property, City agrees to allow Owner the option to continue existing use of surface water supplies through FID after annexation and connection to the City water system under the following terms and conditions:

(a) Before connection to the City water system, either prior to or after annexation, Owner, in its sole and absolute discretion, shall elect one of the following options:

OPTION A: Owner shall transfer any and all access, rights and privileges to the use of surface irrigation supplies through FID on the Property, to the extent the same exists, to the City of Clovis, and shall pay to the City of Clovis the then-applicable non-refundable "Water Supply Fee" as if the Property was within the jurisdiction of FID, in addition to any other applicable fees and charges. (Based on the May 4, 2015 Master Development Fee Schedule, the Water Supply Fee within the jurisdiction of FID is \$1,250 per unit, based on a density of 0.5 Units/Acre.)

OPTION B: Owner shall retain any and all access, rights and privileges to the use of surface irrigation supplies through FID on the Property, to the extent the same exists, and shall pay to the City of Clovis the then-applicable non-refundable "Water Supply Fee" as if the Property was outside the jurisdiction of FID, in addition to any other applicable fees and charges. (Based on the May 4, 2015 Master Development Fee Schedule, the Water Supply Fee outside the jurisdiction of FID is \$3,875 per unit, based on a density of 0.5 Units/Acre.)

(b) If Owner elects to retain any and all access, rights and privileges to the use of surface irrigation supplies through FID on the Property, the City of Clovis shall not restrain, restrict, curtail, or divest the exercise of such access, rights and privileges provided such exercise is in accordance with applicable laws, rules, and regulations of the State of California, the County of Fresno, and FID. The City shall have the right to implement requirements imposed on the City under the Sustainable Groundwater Management Act (SGMA) and any regulations adopted by

the North Kings Ground Water Sustainability Agency, including those that arise from the Groundwater Sustainability Plan (GSP).

(c) If subsequent to connection to the City water system, use of the Property intensifies (as that term is defined in Section 1.8 of this Agreement), Owner shall transfer any and all access, rights and privileges to the use of surface irrigation supplies through FID on the Property, to the extent the same exists, to the City of Clovis.

1.7. Addressing. Owner acknowledges that as part of the annexation process, the address of each property within an annexed area will be required to change from a County address to a City address. The address change will be pursuant to City policy. Changing to a City address will allow Clovis Police and Fire to correctly dispatch calls for service to these areas without delay.

1.8. Change in Use. The provisions of this Agreement shall remain in effect and run with the land so long as use of the Property does not intensify. Intensification means:

(a) Subdivision of the land into any density greater than 0.5 Units/Acre (2 acre parcels). If after annexation Owner subdivides the Property into a density greater than 0.5 Units/Acre as allowed by the Master Plan, but retains Owner's original primary residence on a remainder rural residential parcel, the remainder parcel shall not be considered intensified and this Agreement shall run with the remainder parcel. The newly created parcels shall be subject to applicable provisions of City's Development Code.

(b) The addition of additional residential units, except that up to one second residential unit shall be allowed on the Property as permitted by City's accessory dwelling unit ordinance.

(c) The division, or development of commercial, office or industrial uses on the Property, except that rural residential compatible uses shall be allowed as provided for in Section 1.1.

Should use of the Property intensify following annexation, this Agreement shall terminate, and all Clovis ordinances and standards in effect at the time shall govern and be complied with by Owner, or Owner's successors, heirs, and assigns.

1.9. Subdivision into Rural Residential Parcels. If after annexation Owner subdivides the Property into 0.5 Units/Acre or lower density rural residential parcels, the following shall be applicable:

(a) The subdivision shall be subject to applicable provisions of Fresno County's Development Code at the time of approval of the subdivision as if the property were still in the unincorporated portion of Fresno County or Owner may elect to be apply City's Development Code.

(b) No new water wells shall be constructed if a City water connection is available, as defined in Section 1.3, at the time a building permit is pulled for any structure on the newly created parcel. Any new water well shall be in compliance with State and County standards as applicable, and the provisions of section 1.3.

Exception: Even if a City water connection is available, a well may be constructed solely for landscaping purposes. The construction of such well shall be in compliance with State and County standards as applicable. No well shall become operational unless, and until, City has had an opportunity to verify that the well is not used for potable purposes and there are no cross connections with City's water system.

(c) No new septic systems shall be constructed if a City sewer connection is available, as defined in Section 1.4, at the time a building permit is pulled for any structure on the newly created parcel. Any new septic system shall be in compliance with State and County standards as applicable, and the provisions of section 1.4.

(d) If an owner of the subdivided parcel has acquired any rights and privileges to the use of surface water supplies through FID, the new owner shall comply with the provisions of Section 1.6.

(e) Nothing in this section is intended to confer more rights to Owner than would have existed had the Property remained in the unincorporated portion of Fresno County.

1.10. Term of Agreement. This Agreement shall run with the Property, subject to the provisions of Sections 1.8 (Change in Use).

SECTION 2 BENEFITS TO CITY

In consideration of City providing the benefits to Owner in Section 1, City shall receive the following benefits:

2.1. Acceptance of Master Plan. Owner recognizes and accepts the Master Plan as establishing the framework for development in Dry Creek Preserve.

2.2. Acceptance of Annexation Program. Owner recognizes and accepts the Annexation Program as establishing the probable framework for annexation of properties within Dry Creek Preserve.

2.3. Consent to Annexation. Owner consents to annexation of Owner's Property in accordance with the Annexation Program. In that regard, Owner agrees to do the following: (1) sign any request by the City, the County, LAFCo, or a developer to consent to annexation of the Property; and (2) not oppose or protest annexation of the Property in any formal LAFCo or City proceeding.

2.4. Failure to Consent to Annexation. If Owner fails to consent to annexation as set forth in Section 2.3, or if Owner, any subsequent owner of the Property, or any registered voter residing on the Property objects to or withdraws consent to City's annexation of the Property, this Agreement shall be null and void even if annexation is ultimately approved and the Property is annexed. Merely expressing concerns with a project, as opposed to registering a protest or objection as part of a formal LAFCO or City proceeding, will not affect the Agreement

2.5. Effectiveness of Agreement; Termination of Agreement. This Agreement will only be effective if the Property is annexed into the City of Clovis. Termination of this Agreement after annexation of the Property shall have no effect on the annexation.

2.6. Loss of Owner Benefits. If this Agreement becomes null and void or terminates, Owner shall not be entitled to the benefits set forth in Section 1 of this Agreement. Applicable provisions of the Municipal Code shall apply.

2.7. Non-Precedent Setting. This Agreement is unique to Dry Creek Preserve and the circumstances surrounding Dry Creek Preserve and in no way shall be considered precedent setting, persuasive, or binding on City in any other circumstance.

SECTION 3 MISCELLANEOUS

3.1. Voluntary Agreement; Construction; Authority. The parties represent that they have read this Agreement in full and understand and voluntarily agree to all of its provisions. The parties each further declare that prior to signing this Agreement they apprized themselves of relevant information through sources of their own selection, including but not limited to consulting or having the opportunity to consult with legal counsel of their own choosing. In executing this Agreement, neither party has relied upon any statements of the other party or any third party concerning the meaning or import of this Agreement or any portion thereof. This Agreement was negotiated between the parties at arm's length and was prepared by and among each party and/or their duly appointed attorneys. Accordingly, the parties expressly waive the provisions of Civil Code section 1654 and acknowledge and agree that the Agreement shall not be deemed prepared or drafted by any one party, and shall be construed accordingly. The parties further represent that they have, as of the date of execution of this Agreement, the legal capacity and authority to sign this Agreement.

3.2. Severability. If any section of this Agreement is found by competent authority to be invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of such section in every other respect and the remainder of this Agreement shall continue in effect so long as the Agreement still expresses the intent of the Parties. However, if the intent of the parties cannot be preserved, this Agreement shall be renegotiated.

3.3. Integration. The Recitals set forth above are hereby incorporated in and made a part of this Agreement by this reference. This Agreement contains the entire and only understanding between the Parties with respect to the subject matter hereof and supersedes any prior or collateral agreements, negotiations and communications in connection with the subject matter covered herein, whether oral or written, and any warranty, representation, promise, or condition in connection therewith not incorporated herein shall not be binding upon either party.

3.4. Recording of Agreement. Owner consents to Clovis recording this Agreement in the Office of the County Recorder of the County of Fresno.

3.5. Conflict with State or Federal law. To the extent this Agreement contains provisions in conflict with State or federal law, including judicial or administrative decisions, the State or federal law shall control.

WHEREFORE, the parties hereto, by their signatures below, enter into this Agreement.

CITY OF CLOVIS

OWNER

Signed: _____
By: Luke Serpa , City Manager
Dated: _____

Signed: _____
By: _____
Dated: _____

ATTEST:

Signed: _____
By: _____
Dated: _____

Signed: _____
By: John Holt, City Clerk

Dated: _____