

**INTERAGENCY AGREEMENT FOR DESIGN AND CONSTRUCTION
OF MASTER PLAN FACILITIES**

THIS AGREEMENT FOR DESIGN AND CONSTRUCTION OF MASTER PLAN FACILITIES (“this Agreement”), is made and entered into this 12 of December, 2019, (the Effective Date), by and between FRESNO METROPOLITAN FLOOD CONTROL DISTRICT, a California public corporation (the “District”), and the CITY OF FRESNO, a municipal corporation (“the City”).

RECITALS

WHEREAS, District has adopted and is responsible for implementing its Storm Drainage and Flood Control Master Plan (“Master Plan”); and

WHEREAS, City desires to construct water main pipeline and water service connections in Popular, Scott and Del Mar Avenues (“Project”) as described in and depicted on Exhibit No. 1, attached hereto and incorporated herein by this reference; and

WHEREAS, District desires and City will include within the scope of the Project the construction of certain Master Plan Facilities (“Reimbursable Facilities”), as described in and depicted on Exhibit No. 1; and

WHEREAS, the District desires to reimburse the City for the cost of constructing the Reimbursable Facilities; and

WHEREAS, the Project and the Reimbursable Facilities collectively shall be referred to herein as the “Improvements”; and

WHEREAS, upon completion of the Improvements, City desires to transfer ownership of the Reimbursable Facilities to District for perpetual operation and maintenance; and

WHEREAS, District possesses the legal authority to accept ownership of and operational liability for such Reimbursable Facilities pursuant to Paragraph No. 6 herein.

NOW, THEREFORE, in consideration of the recitals set forth above, which are incorporated herein by this reference, and the mutual covenants and undertakings set forth herein, the mutual receipt and sufficiency of which is hereby acknowledged, District and City agree as follows:

1. Construction of Improvements. City shall construct the Improvements in accordance with (i) City's and District's respective Standard Plans and Specifications; and (ii) plans and specifications approved by District pursuant to Paragraph No. 3 below.

2. Cost Reimbursement. District shall reimburse City for the cost of constructing the Reimbursable Facilities. A description of the Reimbursable Facilities and a preliminary estimate of their costs are set forth in Exhibit No. 2, attached hereto and incorporated herein by this reference. Subject to the provisions of Paragraph No. 8 below, District's final payment to City shall not exceed the amount of City's actual cash expenditures for the Reimbursable Facilities.

3. Plans and Specifications. Not later than ninety (90) days before the commencement of construction of the Improvements, District shall provide to City the plans and specifications pertaining to the Reimbursable Facilities. The City shall be responsible for the plans and specifications as they pertain to the Project. The plans and specifications for the Improvements collectively shall be referred to as the "Project Plans". Thereafter, District and City shall each have ten (10) days to review and provide its written approval or disapproval of such Project Plans.

City's approval of Project Plans shall not be deemed final and complete until District gives its final written approval thereof.

4. Excess Costs. The City shall bid the Improvements as public works projects. In the event the total construction bid received by City for the Reimbursable Facilities exceeds twenty percent (20%) of the total preliminary estimate set forth in Exhibit No. 2 hereof (the "20% Threshold"), the City shall, prior to awarding the construction contract, notify the District of its right to review and approve or disapprove the proposed construction costs of the Reimbursable Facilities. The District shall have no more than ten (10) business days after receiving notice of the bids in excess of the 20% Threshold to notify the City of its approval or disapproval of those costs. In the event that the District disapproves the construction costs for the Reimbursable Facilities, City may proceed with the award of a contract for construction of the Improvements, on the strict condition that either (i) the City shall delete by change order the construction of the Reimbursable Facilities, or (ii) City shall provide all funding for any amount of construction costs for the total of the Reimbursable Facilities in excess of the 20% Threshold.

5. Inspection; Conformity. Prior to City's final acceptance of the Improvements from the construction contractor, District shall have the periodic right to inspect as it deems appropriate and approve or disapprove the construction of the Reimbursable Facilities. Upon completion of construction by City of the Reimbursable Facilities and within ten (10) calendar days after receipt of the notification of such completion, District shall inspect the Reimbursable Facilities and (i) accept, in writing, those Reimbursable Facilities so constructed that conform in all material respects to the Project Plans, and (ii) notify City in writing of any portion of the Reimbursable Facilities that does not conform to the Project Plans, and the specific reasons why those portions do not so conform (the "Notice of Non-Conformity"). Upon its receipt

of the Notice of Non-Conformity, City shall cause the nonconformity to be corrected, at no additional cost to the District, prior to the District's acceptance of those Reimbursable Facilities. If the nonconformity cannot be corrected within a reasonable time, not less than sixty (60) calendar days after receipt of the Notice of Non-Conformity, the District may reject the nonconforming Reimbursable Facilities, or may accept them in writing. If District accepts any such nonconforming Reimbursable Facilities, the reimbursement required pursuant to Paragraph No. 2 hereof shall be adjusted as mutually determined by District and City to reflect the reduced value of the accepted nonconforming Reimbursable Facilities. District shall have no obligation to reimburse City for those Reimbursable Facilities that do not conform to the Project Plans and are not accepted by the District.

6. Transfer of Ownership. Upon completion and final acceptance of the Improvements by City and of the Reimbursable Facilities by District, City shall and hereby does transfer to District unencumbered ownership of the Reimbursable Facilities for perpetual operation and maintenance by District.

7. As-Built or Record Drawings. Within ninety (90) days after final acceptance of the Improvements by City and District, City shall provide to District in electronic or hard copy format one (1) twenty-four inch (24") by thirty-six inch (36") reproducible set of as-built or record drawings of the Improvements, including a cost schedule accurately setting forth the final construction cost of the Reimbursable Facilities.

8. Payment; Refunds. District shall make progress payments to City as set forth in invoices presented to District by City to reimburse City's actual cash expenditures for construction of the Reimbursable Facilities, but those payments shall not exceed ninety-five percent (95%) of the total amount to be reimbursed pursuant to Paragraph No. 2 hereinabove.

Within thirty (30) calendar days after City submits an invoice for such portions of the construction cost to District, District shall pay ninety-five percent (95%) of that amount of that invoice. Within thirty (30) days after the later of either (i) the receipt by District of the submittals required pursuant to Paragraph No. 7, or (ii) receipt of a final invoice from City, District shall reimburse City the final five percent (5%) of the amount subject to Paragraph No. 2. In the event that District does not accept a portion of the Reimbursable Facilities or accepts the Reimbursable Facilities at a reduced value due to the Non-Conformity with the Project Plans, City shall return to District any funds previously paid to City pursuant to this Agreement in an amount equal to the greater of either (i) the cost of the rejected portion of the Reimbursable Facilities, or (ii) the amount agreed upon by the parties of the reduced value to the District of Reimbursable Facilities not conforming to the approved Project Plans as determined by the District pursuant to Paragraph No. 5 hereof. Within thirty (30) days after receipt from District of an invoice setting forth the amount owed by City to District, City shall return such funds to District.

9. Indemnity.

(a) 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 District, City or any other person, and from any and all claims, demands and actions in law or equity, arising or alleged to have arisen directly or indirectly from the negligent or intentional acts or omissions, or willful misconduct of City or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement; provided nothing herein shall constitute a waiver by

City of governmental immunities including California Government Code Section 810 et seq.

(b) 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, arising or alleged to have arisen directly or indirectly from the negligent or intentional acts or omissions, or willful misconduct of District or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement; provided nothing herein shall constitute a waiver by District 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 officials, officers, agents, employees or volunteers and City or any of its officers, officials, agents, 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) Subparagraphs 9(a), (b) and (c) shall survive termination or expiration of the Agreement.

10. Miscellaneous.

(a) Entire Agreement. This Agreement (including the Exhibits hereto) contains the entire Agreement between District and City in regard to the subject matter hereof, and no oral statements or prior written documents not specifically incorporated into this Agreement shall be any force or effect.

(b) Modifications. This Agreement may be modified only by a written document executed by both parties hereto.

(c) Notices. All notices required or permitted by this Agreement or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, and shall be deemed sufficiently given if served in a manner specified in this subparagraph 10(c). The addresses noted below shall be that party's address for delivery or mailing of notices. Either party may by written notice to the other specify a different address for notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, two (2) days after the postmark thereon. If sent by regular mail the notice shall be deemed given forty-eight (48) hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given twenty-four (24) hours after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means shall be deemed delivered upon telephone confirmation of receipt (confirmation report from fax machine is sufficient), provided a copy is also delivered via delivery or mail. If notice is received after

4:00 p.m. in the time zone in which the party is located or on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

City of Fresno

Scott Mozier, Public Works Director
2600 Fresno Street
Fresno, CA 93721-3623
Fax Number: 559-488-1045

Fresno Metropolitan Flood Control District

5469 East Olive Avenue
Fresno, CA 93727
Fax Number: 559-456-3194

(d) **Severability**. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable, and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision were not a part hereof, and the remaining provisions hereof shall remain in full force and effect.

(e) **Construction**. The parties hereto acknowledge that each party has, or has had the opportunity to have, counsel of its own choosing review and revise this Agreement, such that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

(f) **Governing Law and Venue**. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for the purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

(g) Waiver. No failure or delay by a party to insist on the strict performance of any provision of this Agreement, or to exercise any right or remedy consequent on a breach thereof, shall constitute a waiver of any breach or subsequent breach of such provision. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

(h) Assignment. Neither party hereto shall assign this Agreement, or any interest therein, without the prior written consent of the other. Any such attempted assignment in violation of this Agreement shall be null and void.

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(i) Binding Effect. Once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, contractors, subcontractors, transferees, agents, servants, employees, and representatives.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement No. 1907(G)-DD-53 to be executed this 12 day of December, 2019.

"City"

CITY OF FRESNO
A Municipal Corporation

By: [Signature]
Scott Mozier, Public Works Director

"District"

FRESNO METROPOLITAN FLOOD
CONTROL DISTRICT

By: [Signature]
Alan Hofmann, General Manager-Secretary

ATTEST:
Yvonne Spence, CRM MMC
City Clerk
Approved as to form:

Approved as to form:
District's Counsel
Baker Manock & Jensen, PC

By: _____
Date
Deputy

By: [Signature]
Kenneth J. Price
2329529v1 / 4496.4299

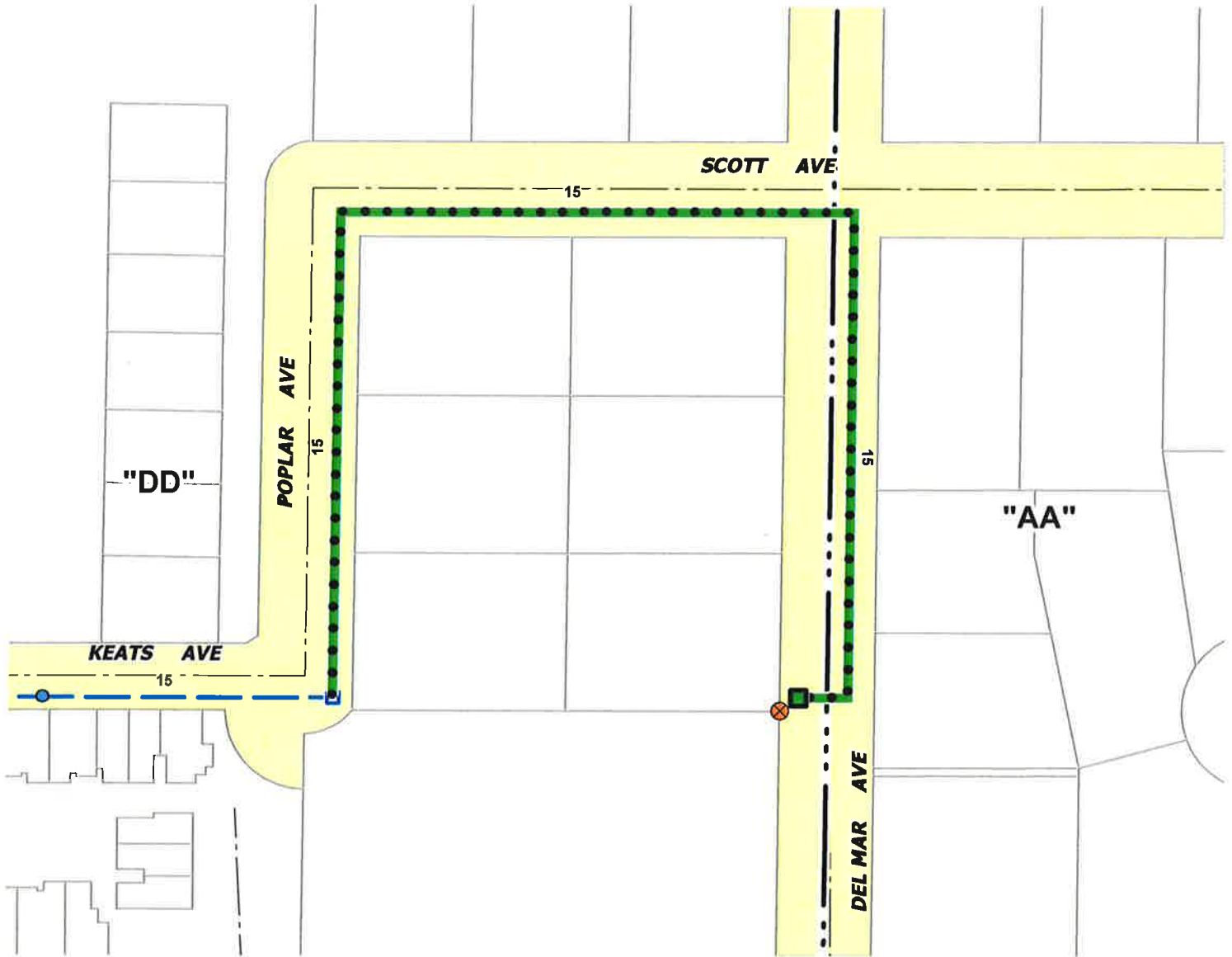
APPROVED AS TO FORM:
Douglas T. Sloan
City Attorney

By: [Signature] 11-7-19
~~Brandon M. Collet~~ Date
Senior Deputy City Attorney
FAJ SINGH BADHESHA






Engineering Department Review	
Approved by:	
<u>PS</u>	or <u>BAS</u>
PCS	BHS

Attachments:
Exhibit No. 1
Exhibit No. 2

NOTE: THIS MAP IS SCHEMATIC. DISTANCES, AMOUNT OF CREDITABLE FACILITIES, AND LOCATION OF INLET BOUNDARIES ARE APPROXIMATE.



LEGEND

-  Limits Of City Of Fresno Water Main & Services Replacement Project
-  Master Plan Facilities To Be Constructed By The City Of Fresno - Pipeline (Size Shown), Inlet & Lateral (Reimbursable Facilities)
-  Existing Dry Well To Be Removed
-  Existing Master Plan Facilities
-  Drainage Area Boundary



1" = 100'

**AGREEMENT
1907(G)-DD-53
DRAINAGE AREA "DD"**

EXHIBIT NO. 1



FRESNO METROPOLITAN FLOOD CONTROL DISTRICT

Prepared by: keithr

Date: 1/9/2019

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**PRELIMINARY COST FOR
REIMBURSABLE FACILITIES**

DRAINAGE AREA "DD"

Contract "DD-53"

<u>Item</u>	<u>Description</u>	<u>Quantities</u>	<u>Unit Prices</u>	<u>Amount of Reimbursable Facilities</u>
1.	15" RCP Class III Storm Drain Pipe	996 LF	\$ 80/LF	\$ 79,680
2.	Type "A" Case I Manhole	4 EA	\$ 4,500/EA	\$ 18,000
3.	Type "D" Inlet	1 EA	\$ 4,500/EA	\$ 4,500
4.	Reconstruction of Existing Sewer Service	5 EA	\$ 2,000/EA	\$ 10,000
5.	Temporary Trench Resurfacing	90 LF	\$ 10/LF	\$ 900
6.	Permanent Trench Resurfacing	1,007 LF	\$ 40/LF	\$ 40,280
7.	Traffic Control	1 LS	\$ 5,000/LS	\$ 5,000
8.	Dust Control	1 LS	\$ 500/LS	\$ 500
9.	Worker Protection	1 LS	\$ 3,000/LS	\$ 3,000
10.	Miscellaneous Facilities And Operations	1 LS	\$ 13,841/LS	\$ 13,841
Total =				\$175,701
7% Administration and Inspection =				\$ 12,299
Preliminary Amount Eligible for Reimbursement =				\$188,000

EXHIBIT NO. 2