

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

THIS AGREEMENT FOR DESIGN AND CONSTRUCTION OF MASTER PLAN FACILITIES AND IMPROVEMENTS (this "Agreement"), is made and entered into this _____ day of _____ 20____, by and between FRESNO METROPOLITAN FLOOD CONTROL DISTRICT, a California public agency (the "District"), and the CITY OF FRESNO, a California 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 street improvements around McKinley Elementary School on McKinley Avenue and Blythe Avenue ("Project") as described in and depicted on Exhibit No. 1 attached hereto and incorporated herein by this reference; and

WHEREAS, City desires to perform road paving, construct curb, gutter, and sidewalk, and install traffic signals as part of the Project (collectively, the "Street Improvements"), and

WHEREAS, District desires to have City include within the Project the construction of certain Master Plan Storm Drainage Facilities ("Reimbursable Facilities"), as described in and depicted on Exhibit No. 1; and

WHEREAS, City desires to include, within the Project, the construction of certain storm drainage facilities that are not included in the Master Plan ("Non-Reimbursable Facilities"), as described in and depicted on Exhibit No. 1; and

WHEREAS, City is willing to construct the Reimbursable Facilities and Non-Reimbursable Facilities as a part of the Project pursuant to this Agreement; and

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

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

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

WHEREAS, District possesses the legal authority to accept ownership of and operational liability for such 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 (i) in accordance with City’s and District’s respective Standard Plans and Specifications; and (ii) only upon final approval of the plans and specifications by the District described in Paragraph No. 3 below.

2. Cost Reimbursement. Pursuant to the terms of this Agreement, District shall reimburse City for the cost of designing and constructing the Reimbursable Facilities. A description of the preliminary estimate for the cost of the Reimbursable Facilities is set forth in Exhibit No. 2, which is 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 as set forth in Exhibit No. 2.

3. Plans and Specifications. No later than ninety (90) days before the commencement of construction of the Improvements, City shall provide the District with the plans and specifications for the Improvements ("Project Plans"). Thereafter, District shall have ten (10) days to review and provide its written approval, disapproval, or requested modification of such Project Plans. Only upon receipt of final written approval by the District of the Project Plans, may the City deem the Project Plans final and complete.

4. Excess Costs. The City shall bid the Improvements as public works project subject to California prevailing wage. In the event that the bid prices received by City result in the total cost for construction of the Reimbursable Facilities to be greater than twenty percent (20%) above the total preliminary estimate set forth in Exhibit No. 2 hereof (the "20% Threshold"), then prior to award of a contract by City for construction of those Improvements, District shall have the right to review and approve or disapprove the proposed construction costs of the Reimbursable Facilities. Within ten (10) calendar days after the bids for those construction costs are provided to District by City, District shall review such bids in which the bid amount is greater than the 20% Threshold for those construction costs and notify the City of its approval or disapproval of those costs. In the event that the District (i) disapproves the construction costs for the Reimbursable Facilities or (ii) fails to respond within ten (10) days, the 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, or otherwise, all work related to 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 and Non-Reimbursable Facilities. Upon completion of construction by City of the Reimbursable Facilities and Non-Reimbursable Facilities and within ten (10) calendar days after receipt of the notification of such completion, District shall inspect the Reimbursable Facilities and Non-Reimbursable Facilities and (i) accept, in writing, those Reimbursable Facilities and Non-Reimbursable Facilities so constructed that conform in all material respects to the Project Plans, or (ii) notify City in writing of any portions of the Reimbursable Facilities and Non-Reimbursable Facilities that do 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 cost to the District, prior to the District's acceptance of those Reimbursable Facilities and Non-Reimbursable Facilities. If the nonconformity cannot be corrected within a reasonable time, no less than sixty (60) calendar days after receipt of the Notice of Non-Conformity, the District may either reject the nonconforming Reimbursable Facilities and Non-Reimbursable Facilities or may accept them in writing. If District accepts any such nonconforming Reimbursable Facilities, the reimbursement required pursuant to Paragraph No. 8 hereof shall be adjusted as mutually agreed upon 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 and Non-Reimbursable Facilities by

District, City shall and hereby does transfer to District unencumbered ownership of the Reimbursable Facilities and Non-Reimbursable Facilities for perpetual operation and maintenance by District, and City shall pay the District a Non-Conforming Facilities Fee, in the amount specified in Exhibit No. 2, for the District's perpetual maintenance of the Non-Master Plan Facilities.

7. As-Built or Record Drawings. Within ninety (90) days after final acceptance of the respective 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") permanent reproducible set of as-built or record drawings of the Improvements, including a cost schedule accurately setting forth the final construction cost paid for the items eligible for reimbursement. District shall not pay for any items eligible for reimbursement unless and until City completes the submittals required by this Paragraph No. 7. District shall establish the final date of this Agreement, using the date of receipt of the last submittal, only after District reviews and approves all of the City's submittals required in this Agreement.

8. Payment: Refunds. District shall make progress payments to City pursuant to invoices presented to District by City in order 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. District is obligated to make such payment within thirty (30) days of its receipt of invoices from City, on the condition that such invoices contain a sufficient description of the completed work. 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%) retention remaining as stated in 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 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 in this Agreement. Within thirty (30) days after receipt by City 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, contractors, 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, contractors, 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, contractors, or volunteers, and City or any of its officers, officials, agents, employees, agents, contractors, 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 this Agreement.

10. Miscellaneous.

(a) Entire Agreement. This Agreement (including the Exhibits hereto) contains the entire agreement between District and City regarding 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. 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 to be received on the next business day.

City of Fresno
Public Works Director
2600 Fresno Street
Fresno, CA 93721-3623
Attn: Scott Mozier
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.

(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.

2219(G)-AN-26 to be executed this _____ day of _____, 20____.

“City”

CITY OF FRESNO
A California municipal corporation

By: _____
Scott Mozier, Public Works Director Date

ATTEST:
Amy Aller,
Interim City Clerk

By: _____
Date

APPROVED AS TO FORM:
Andrew Janz
City Attorney

By: _____
Jennifer M. Quintanilla Date
Senior Deputy City Attorney

“District”

FRESNO METROPOLITAN FLOOD
CONTROL DISTRICT

By: _____
Peter Sanchez, General Manager-Secretary

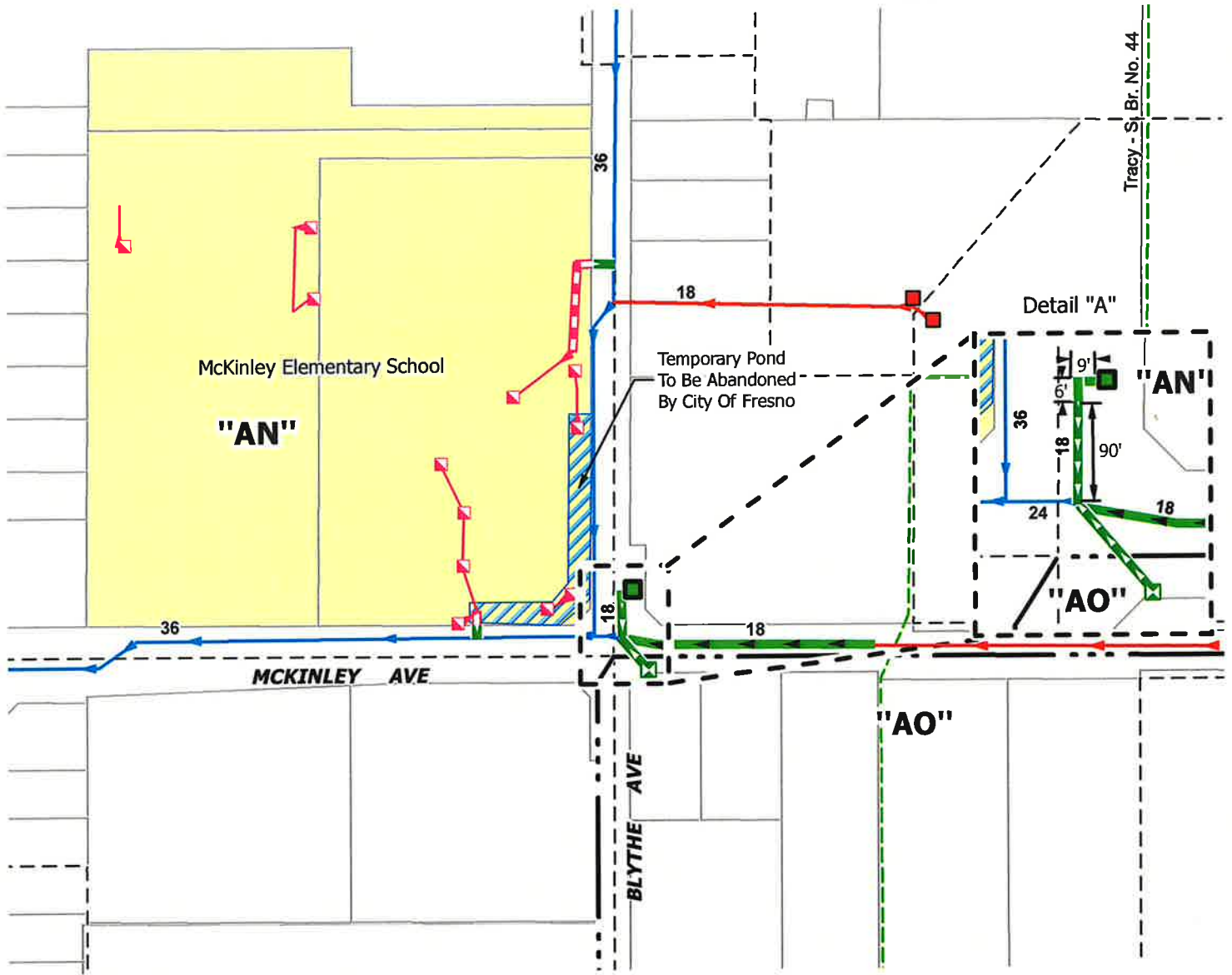
APPROVED AS TO FORM:
District's Counsel
Baker Manock & Jensen, PC

By: _____
Lauren D. Layne, Legal Counsel

Engineering Department Review	
Approved by:	
<u>BHS</u>	and <u>JMT</u>
BHS	JMT



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



LEGEND

- Reimbursable Facilities (Master Plan Facilities To Be Constructed By The City Of Fresno)
- Non-Reimbursable Facilities (Non-Master Plan Facilities To Be Constructed By The City Of Fresno)
- Existing Master Plan Facilities
- Future Master Plan Facilities
- Private Facilities To Be Constructed
- Private Facilities
- Drainage Area Boundary
- Existing FID Facilities



1" = 200'

**AGREEMENT 2219(G)-AN-26
MCKINLEY AND BLYTHE
STREET IMPROVEMENTS
DRAINAGE AREA "AN"**



**EXHIBIT NO. 1
FRESNO METROPOLITAN FLOOD CONTROL DISTRICT**

**PRELIMINARY COST FOR
REIMBURSABLE FACILITIES
DRAINAGE AREA "AN"
CONTRACT "AN-26"**

<u>Item</u>	<u>Description</u>	<u>Quantities</u>	<u>Unit Prices</u>	<u>Amount of Reimbursable Facilities</u>
1.	18" Reinforced Concrete Pipe, Class III, in Place and Backfilled	15 LF	\$ 180/LF	\$ 2,700
2.	18" Reinforced Concrete Pipe, Class IV, in Place and Backfilled	280 LF	\$ 200/LF	\$ 56,000
3.	Type "A" Case I Manhole, in Place and Complete	2 EA	\$ 10,000/EA	\$ 20,000
4.	Type "D" Inlet, in Place and Complete	1 EA	\$ 8,500/EA	<u>\$ 8,500</u>
Total =				\$ 87,200
17% Design and Inspections =				\$ 14,824
Non-Conforming Facilities Fee =				<u>\$ (3,910)</u>
Preliminary Amount Eligible for Reimbursement =				\$ 98,114