

**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 28 day of May, 2010, by and between FRESNO METROPOLITAN FLOOD CONTROL DISTRICT, a California public agency (the "District"), and the CITY OF FRESNO, a municipal corporation (the "City").

**RECITALS**

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

WHEREAS, the City desires to reconstruct and signalize the Cedar Avenue and North Avenue intersection (the "Project") as depicted in Exhibit No. 1, attached hereto and incorporated herein by this reference; and

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

WHEREAS, the City is willing to include construction of the Master Plan Facilities as a part of the Project pursuant to the within Agreement; and

WHEREAS, the Project and the Master Plan Facilities collectively shall be referred to herein as the "Improvements"; and

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

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

WHEREAS, the District possesses the legal authority to accept such Master Plan Facilities, pursuant to Section 6 herein, and operational liability therefore.

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

1. The City shall construct the Improvements in accordance with (i) the City's and the District's respective Standard Plans and Specifications; and (ii) plans and specifications approved by District pursuant to Section 3 below.
2. The District shall reimburse the City for the cost of constructing the Master Plan Facilities. A description of the Master Plan Facilities and a preliminary estimate of their costs is described in Exhibit No. 2, attached hereto and incorporated herein by this reference. Final payment to the City shall be based on the City's actual cash expenditures for the Master Plan Facilities, subject to the provisions of Section 8 below.
3. The City shall provide to District the plans and specifications pertaining to the Improvements (the "Project Plans") no less than sixty (60) days before the commencement of construction on the Improvements. District shall have ten (10) days to

review and provide its written approval or disapproval of such Project Plans. The City's approval of Project Plans for the Improvements shall not be deemed final and complete until the District gives its final written approval thereof.

4. In the event the bid prices received by the City produce a total cost of the Master Plan Facilities greater than twenty percent (20%) above the total preliminary amount identified in Exhibit No. 2 hereof, the District shall have the right to review and approve or disapprove the bids for the Master Plan Facilities prior to award of a contract by the City for construction of the Improvements. The District shall review such bids and notify the City of its approval or disapproval thereof within ten (10) calendar days after the bids are provided to the District by the City. Should the District disapprove the bids for the Master Plan Facilities, the City may proceed with the award of a contract for the Improvements, but the City shall either (i) delete by change order the construction of the Master Plan Facilities or (ii) provide funding for any amounts which the District is not willing to fund above said twenty percent (20%).

5. The District shall have the right to periodically inspect as it deems appropriate and approve or disapprove the construction of the Master Plan Facilities prior to the City's final acceptance of the Improvements from the construction contractor. Upon completion of construction by City of the Master Plan Facilities, and within ten (10) calendar days after receipt of the notification of completion, District shall inspect the Master Plan Facilities and (i) accept, in writing, those facilities so constructed which conform in all material respects to the Project Plans, and (ii) notify the City in writing of any portion of the Master Plan Facilities which do not conform to the Project Plans, and

the specific respects in which they do not conform. In the event that any of the Master Plan Facilities so constructed do not conform in all material respects to the Project Plans, the City shall cause such nonconformity to be corrected, at no additional cost to the District, prior to the District's acceptance of those Master Plan Facilities. If the nonconformity cannot be corrected within a reasonable time, not less than sixty (60) calendar days, after receipt of such written notice by the District, the District may reject the nonconforming Master Plan Facilities, or may accept them in writing. If the District accepts any such nonconforming Master Plan Facilities, the reimbursement required pursuant to Section 2 hereof shall be adjusted as mutually determined by the District and the City to reflect the reduced value of the accepted nonconforming Master Plan Facilities. Those Master Plan Facilities that do not conform to the Project Plans and are not accepted by the District shall not be subject to any reimbursement.

6. Upon completion and final acceptance of the Improvements by the City and the District, ownership of the Master Plan Facilities shall be automatically transferred to the District for perpetual operation and maintenance.

7. Within sixty (60) days after final acceptance of the Improvements by the City and the District, the City shall provide the District with one twenty-four inch (24") by thirty-six inch (36") reproducible set of as-built drawings of the Improvements, including a cost schedule reflecting the final construction cost of the Master Plan Facilities.

8. The District shall make progress payments to the City as billed by the City to meet City's actual cash expenditures, which shall not exceed ninety-percent (90%) of the total amount to be reimbursed pursuant to Section 2 herein. Payment shall be made

within thirty (30) calendar days after the City submits a bill therefor to the District. The District shall reimburse the City the final ten percent (10%) of the amount to be reimbursed pursuant to Section 2 within thirty (30) days after the later of either (i) the receipt by the District of the submittals required pursuant to Section 7, or (ii) receipt of final billing by the City. In the event that the District does not accept a portion of the Master Plan Facilities or accepts the Master Plan Facilities at a reduced value, the City shall return to the District any funds previously paid to the City related to this Agreement in an amount equal to the greater of either (i) the cost of the rejected portion of the Master Plan Facilities, or (ii) the amount of the reduced value to the District of Master Plan Facilities not conforming to the approved plans as determined by the District pursuant to Section 5 hereof. The return of such funds shall occur within thirty (30) days after receipt of billing by the District therefor.

9. Indemnity.

(a) City shall indemnify, defend, and hold harmless District and District's officers, agents, employees, and volunteers from and against any claim, liability, loss, or damage caused by any willful misconduct or negligent act or omission of the City or City's officers, agents, employees, volunteers, vendors, or contractors arising out of the City's rights and obligations pursuant to this Agreement, except to the extent such claim, liability, loss, or damage is caused in whole or in part by the negligence or willful misconduct of District.

(b) District shall indemnify, defend, and hold harmless City and City's officers, agents, employees, and volunteers from and against any claim, liability, loss, or damage

caused by any willful misconduct or negligent act or omission of the District or District's officers, agents, employees, and volunteers arising out of the District's rights and obligations pursuant to this Agreement, except to the extent such claim, liability, loss, or damage is caused in whole or in part by the negligence or willful misconduct of City.

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) Notice. 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 Section 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 4:30 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**

2600 Fresno Street, Room 4019  
Fresno, CA 93721  
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. In lieu of any such illegal, invalid, or unenforceable provision herein, there shall be automatically added as a part of this Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

(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. 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 to be executed this 28 day of May, 2010.

"City"

CITY OF FRESNO  
A Municipal Corporation

By: *Patrick Wiemiller*  
PATRICK WIEMILLER  
PUBLIC WORKS DIRECTOR  
Print Name & Title

City's Counsel

By: *R. Loyle 4-22-10*

"District"

FRESNO METROPOLITAN FLOOD  
CONTROL DISTRICT

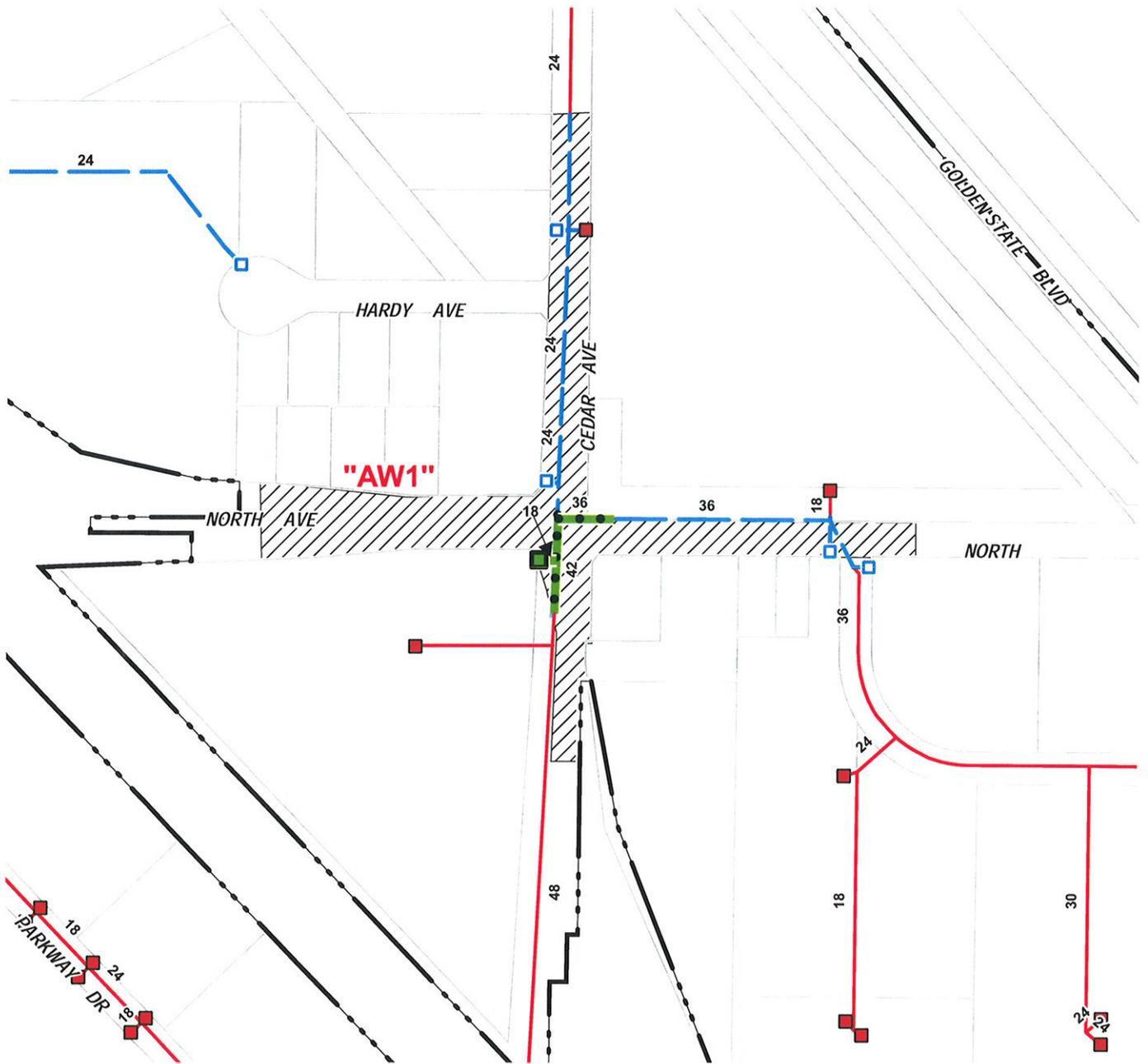
By: *Bob Van Wyk*  
Bob Van Wyk, General Manager

ATTEST:  
REBECCA E. KLISCH  
CITY CLERK

By: *Cindy Bauer 6/16/10*  
Deputy

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CITY OF FRESNO  
PUBLIC WORKS DEPT



## LEGEND

-  Extents of City of Fresno Cedar Avenue And North Avenue Intersection Project
-  Master Plan Facilities To Be Constructed By The City With The Cedar Avenue And North Avenue Intersection Project
-  Existing Facilities
-  Future Facilities
-  Drainage Area Boundary



1" = 300'

**AGREEMENT No. 1619(D)-AW1-13**  
**CEDAR AVENUE AND**  
**NORTH AVENUE INTERSECTION**  
**PROJECT**

**EXHIBIT No. 1**

**PRELIMINARY COST ESTIMATE FOR  
MASTER PLAN FACILITIES ELIGIBLE FOR  
REIMBURSEMENT TO CITY BY DISTRICT**

**DRAINAGE AREA "AW<sub>1</sub>"  
CONTRACT "AW<sub>1</sub>-13"**

<u>Item</u>	<u>Description</u>	<u>Quantities</u>	<u>Unit Prices</u>	<u>Amount</u>
1.	42" RCP Class IV	29 L.F.	\$ 130 / LF	\$ 3,770
2.	42" RCP Class III	160 L.F.	\$ 115 / LF	\$18,400
3.	36" RCP Class III	89 L.F.	\$ 100 / LF	\$ 8,900
4.	24" RCP Class III	5 L.F.	\$ 85 / LF	\$ 425
5.	18" RCP Class III	21 L.F.	\$ 65 / LF	\$ 1,365
6.	Type "A" Case II Manhole w/Steps and Eccentric Cone	2 EA.	\$ 4,500 / EA	\$ 9,000
7.	Type "B" Manhole	1 EA.	\$ 3,000 / EA	\$ 3,000
8.	Type "D" Inlet	1 EA.	\$ 3,500 / EA	\$ 3,500
9.	Worker Protection	1 L.S.	\$ 3,000 / EA	<u>\$ 3,000</u>
<b>Subtotal</b>				<b>\$51,360</b>
Primary Engineering Inspection Fee				<u>\$ 4,080</u>
<b>Total</b>				<b>\$55,440</b>

**Exhibit No. 2**