

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

THIS AGREEMENT FOR DESIGN AND CONSTRUCTION OF MASTER PLAN FACILITIES AND IMPROVEMENTS (“this Agreement”), is made and entered into this _____ day of _____, 20____, (the Effective Date), by and between FRESNO METROPOLITAN FLOOD CONTROL DISTRICT, a California public corporation (the “District”), and the COUNTY OF FRESNO, a political subdivision of the State of California (“the County”).

RECITALS

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

WHEREAS, the County desires to construct traffic signal improvements at the intersection of Olive Avenue and Fowler Avenue in Fresno to improve traffic circulation and reduce emissions caused by congestion (“Project”) as described in and depicted on Exhibit No. 1, attached hereto and incorporated herein by this reference; and

WHEREAS, County desires to widen the intersection with paving and construct asphalt concrete dikes as part of the Project incorporated herein by this reference (the “Street Improvements”); and

WHEREAS, District desires and County 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 Street Improvements and the Reimbursable Facilities collectively shall be referred to herein as the “Improvements”; and

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

WHEREAS, upon completion of the Improvements, County 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 Section 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 County agree as follows:

1. Construction of Improvements. County shall construct the Improvements in accordance with (i) County’s and District’s respective Standard Plans and Specifications; and (ii) plans and specifications approved by District pursuant to Section No. 3 below. To the extent that there is a direct conflict between certain provisions in the Standard Plans and Specifications of County and District, the District's Standard Plans and Specifications will take precedence only with respect to the Reimbursable Facilities. However, the parties will work cooperatively to amicably address such conflicts.

2. Cost Reimbursement. District shall reimburse County for the cost of designing and constructing the Reimbursable Facilities as provided herein. 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 Section No.

8 below, District's final payment to County shall not exceed the amount of County'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, and prior to advertising the plans and specifications to prospective bidders, County shall provide to District the plans and specifications pertaining to the Reimbursable Facilities. The County 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 County shall each have ten (10) days to review and provide its written approval or disapproval of such Project Plans. County's approval of Project Plans shall not be deemed final and complete until District gives its final written approval thereof. With regard to all change orders during construction of the Improvements: (i) those within County's jurisdiction shall be reviewed and approved in writing by the County Director of Public Works and Planning or his/her designee; and (ii) those within FMFCD's jurisdiction shall be reviewed and approved in writing by FMFCD's General Manager-Secretary or his/her designee. No change orders shall be issued pursuant to this Agreement without the prior written approval of the appropriate party, as specified in the immediately preceding sentence; and any change effected by a change order for which such prior written approval was not obtained shall not be chargeable against that party.

4. Excess Costs. The County shall bid the Improvements as public works projects. In the event the total construction bid received by County for the Reimbursable Facilities exceeds twenty percent (20%) of the total preliminary estimate set forth in Exhibit No. 2 hereof (the "20% Threshold"), the County 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 County of its written approval or disapproval of those costs. In the event that the District disapproves the construction costs for the Reimbursable Facilities, County may proceed with the award of a contract for construction of the Improvements, on the strict condition that either (i) the County shall delete by change order the construction of the Reimbursable Facilities, in which event the Reimbursable Facilities shall not be constructed, or (ii) County shall provide all funding for any amount of construction costs for the total of the Reimbursable Facilities in excess of the 20% Threshold (District shall pay for all construction costs for the Reimbursable Facilities up to the 20% Threshold).

5. Inspection; Conformity. Prior to County'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 County 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 County 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, County 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 Section No. 2 hereof shall be adjusted as mutually determined by District and County to reflect the reduced value of the accepted nonconforming Reimbursable Facilities. District shall have no obligation to reimburse County 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 County and of the Reimbursable Facilities by District, County 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 County and District, County shall provide to District in electronic or hard copy format one (1) twenty-two inch (22") by thirty-four inch (34") 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 County as set forth in invoices presented to District by County to reimburse County'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 Section No. 2 hereinabove. Within thirty (30) calendar days after County 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 Section No. 7, or (ii) receipt of a final invoice from County, District shall reimburse County the

final five percent (5%) of the amount subject to Section 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, County shall return to District any funds previously paid to County 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 Section No. 5 hereof. Within thirty (30) days after receipt from District of an invoice setting forth the amount owed by County to District, County shall return such funds to District.

9. Indemnity.

(a) County shall indemnify, hold harmless and defend District and its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs (including attorney's fees and 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, County 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 County or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement; provided nothing herein shall constitute a waiver by County of governmental immunities including California Government Code Section 810 et seq. District may conduct or participate in its own defense without affecting County's obligation to indemnify and defend, as described in this subsection 9(a).

(b) District shall indemnify, hold harmless and defend County and its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs (including attorney's fees and 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 County, 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. County may conduct or participate in its own defense without affecting District's obligation to indemnify and defend, as described in this subsection 9(b).

(c) In the event of concurrent negligence on the part of District or any of its officials, officers, agents, employees or volunteers and County 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) Subsections 9(a), (b) and (c) shall survive termination or expiration of this Agreement.

(e) Without limiting the applicability or scope of the indemnification provision contained in this Section 9, each Party shall maintain, at their sole expense, insurance policies or self-insurance programs including, but not limited to, an insurance pooling arrangement and/or Joint Powers Agreement sufficient to fund their respective liabilities hereunder throughout the term of this Agreement. Coverage shall be provided for comprehensive general liability, automotive liability, professional liability, and workers' compensation.

10. Term; Termination

(a) This Agreement shall take effect on the Effective Date, and shall expire upon filing of the Notice of Completion of Construction for the project, except insofar as final accounting provisions are concerned.

(b) The terms of this Agreement, and the services to be provided hereinunder, are contingent on the approval of funds by the appropriating government agency. Should sufficient funds not be allocated, the services provided may be modified, or this Agreement terminated at any time by either party by giving the other party thirty (30) days advance written notice. Upon such termination, each party shall pay for work performed or partial work performed in accordance with the provisions set forth herein above.

11. Miscellaneous.

(a) Entire Agreement. This Agreement (including the Exhibits hereto) contains the entire Agreement between District and County in regard to the subject matter hereof, and no oral statements or prior written documents not specifically incorporated into this Agreement shall have 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 subsection 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. For all claims arising from or related to this Agreement, nothing in this Agreement establishes, waives, or modifies any claims presentation requirements or procedures provided by law, including the

Government Claims Act (Division 3.6 of Title 1 of the Government Code, beginning with section 810).

County of Fresno

Director of Public Works and Planning
2220 Tulare Street, Suite 600
Fresno, CA 93721

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.

2140(G)-BQ-20 to be executed this _____ day of _____, 20__.

“County”

“District”

COUNTY OF FRESNO

FRESNO METROPOLITAN FLOOD CONTROL DISTRICT

By: _____
Steven E. White
Director of Public Works and Planning

By: _____
Peter Sanchez, General Manager-Secretary

COUNTY OF FRESNO:

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

APPROVED AS TO LEGAL FORM:

Daniel C. Cederborg
County Counsel

By: _____
Kenneth J. Price

Date: _____

APPROVED AS TO ACCOUNTING FORM:

For County Accounting Use Only:

Oscar J. Garcia, CPA
Auditor Controller/Treasurer -Tax Collector

Fund: 0010
Subclass: 10000
(Revenue)Account: 4985
Org: 4510
Project: H13502

Date: _____
