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2/16/12

CITY OF FRESNO
City Clerk's Office (Original)

AGREEMENT NO.
1658 (D)-NN-6

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

THIS AGREEMENT FOR DESIGN AND CONSTRUCTION OF MASTER PLAN FACILITIES ("Agreement"), is made and entered into this 22 day of February, 2012, by and between FRESNO METROPOLITAN FLOOD CONTROL DISTRICT, a California public agency ("District"), and the CITY OF FRESNO, a municipal corporation ("City").

RECITALS

WHEREAS, the District has adopted and is responsible for implementing the Storm Drainage and Flood Control Master Plan ("Master Plan") for the Fresno County Stream Group area; and

WHEREAS, the State of California Department of General Services ("State") is constructing the development identified as Veterans Home ("Development") on real property located at the southeast corner of Marks and California Avenues and bearing Fresno County Assessor's Parcel Number(s) 477-021-22T as shown on Exhibit No. 1 attached hereto and incorporated herein by this reference; and

WHEREAS, the Development lies within local Drainage Area "NN" of the Master Plan and is subject to the payment of a drainage fee pursuant to the District's Drainage Fee Ordinance ("District Ordinance") and incorporated herein by this reference; and

WHEREAS, the State desires the City to construct permanent street improvements in Marks and California Avenues adjacent to the Development (“Project”), depicted in Exhibit No. 2; and

WHEREAS, the City desires to construct certain Master Plan Facilities (“Reimbursable Facilities”) within the Project, as identified in Exhibit No. 2 hereto; and

WHEREAS, the Project and the Reimbursable Facilities are collectively referred to herein as the (“Improvements”); and

WHEREAS, the State has paid the drainage fee obligation for the Development to the District, through its contractor, Hensel Phelps Construction Company, said fee payment being \$127,439 (“State’s Drainage Fee”); and

WHEREAS, the City is eligible for reimbursement for the cost of the design and construction of the Reimbursable Facilities pursuant to the District Ordinance; and

WHEREAS, the District is willing to utilize the State’s Drainage Fee, less a 5% administrative charge, to provide immediate reimbursement to the City for a portion of the cost of the Reimbursable Facilities; and

WHEREAS, pursuant to the District Ordinance, the District shall also pay the City, as provided in Paragraph Nos. 3 and 11 herein, the difference between the total final cost of the Reimbursable Facilities specified in Paragraph No. 1 and the reimbursement amount specified in Paragraph No. 2; and

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

WHEREAS, the District possesses the legal authority to accept such Reimbursable Facilities and the operational liability therefor.

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:

	<u>PRELIMINARY</u>	<u>FINAL</u>
1. The City shall design and construct the Reimbursable Facilities in accordance with the District's Standard Plans and Specifications and the plans and specifications approved by District pursuant to Paragraph No. 6 hereof, said facilities bearing a cost totaling:	\$ <u>254,783</u>	\$ _____
2. The District shall provide immediate reimbursement to the City in accordance with provisions of Paragraph No. 10 hereof, for the City's design and construction costs identified in Paragraph No. 1 hereof, not to exceed 95% of the amount of:	\$ <u>127,439</u> (paid 10/24/11) *	\$ <u>127,439</u>
3. Pursuant to the provisions of the District Ordinance, the District shall pay to the City, the portion of the City's design and construction costs identified in Paragraph No. 1 hereof in excess of the District's immediate reimbursement identified in Paragraph No. 2 hereof, in the following amount:	\$ <u>127,344</u>	\$ _____

* Drainage fee paid by State

4. Final Date of Agreement: _____
(Date to be determined by the District pursuant to Paragraph No. 9 hereof)
5. A description of the Reimbursable Facilities and a preliminary estimate of their costs is identified in Exhibit No. 3 hereof. The final amount reimbursed by the District to the City shall be based on the City's actual cash expenditures for the Reimbursable Facilities.
6. The District shall have the right to review and approve or disapprove, in writing, the plans and specifications pertaining to the Reimbursable Facilities ("Project Plans"). The City's approval of the Project Plans shall not be deemed final and complete until the District gives its written approval thereof. However, said written approval shall not be unreasonably withheld.
7. The District shall have the right to periodically inspect and approve or disapprove the construction of the Reimbursable Facilities prior to acceptance thereof by City from its construction contractor. Upon completion of construction by City of the Reimbursable Facilities, and within ten (10) calendar days after receipt of the notification of completion, District shall inspect the Reimbursable 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 Reimbursable 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 Reimbursable 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 Reimbursable 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 Reimbursable Facilities, or may accept them in writing. If the District accepts any such nonconforming Reimbursable Facilities, the reimbursement required pursuant to Paragraph Nos. 2 and 3 hereof shall be adjusted as mutually determined by the District and the City to reflect the reduced value of the accepted nonconforming Reimbursable Facilities. The District shall not reimburse

the City for those Reimbursable Facilities that do not conform to the Project Plans and are not accepted by the District per the requirements in this Paragraph No. 7. The District's approval and/or acceptance of the Reimbursable Facilities shall not be unreasonably withheld.

8. Upon completion and final acceptance of the Reimbursable Facilities by the City and the District, ownership of the Reimbursable Facilities shall be automatically transferred to the District for perpetual operations and maintenance.
9. Within sixty (60) days after final acceptance of the Reimbursable Facilities 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 Reimbursable Facilities. The date that the District reviews and approves all of the City's submittals shall determine the final date of this Agreement (the "Final Date").
10. With respect to the amount reimbursable to the City under Paragraph No. 2, payment shall be made within thirty (30) calendar days after the later of (i) receipt by the District of the submittals required pursuant to Paragraph No. 9 hereof or (ii) receipt of final billing by the City.
11. Reimbursement of the final amount identified in Paragraph No. 3 herein, will be made to City by District in accordance with Section 4.106.0 of the District Ordinance from future drainage fees received by District from the local drainage area served by the facilities for which such reimbursement is due. In cases where more than one reimbursement contract is concurrently in effect for that particular local drainage area, the order of reimbursement shall be based on the Final Date of those Development Agreements and the Final Date of this Agreement determined pursuant to Paragraph No. 9 herein. Reimbursement shall not be paid pursuant to a subsequent reimbursement contract within the local drainage area until any previous reimbursement contract within said drainage area is fully reimbursed.

12. The total reimbursement to be paid to City by District pursuant to Paragraph Nos. 2 and 3 shall not exceed ninety-five percent (95%) of the total final amount of Paragraph Nos. 2 and 3 hereof; the District shall deduct and retain five-percent (5%) from the reimbursement payment as shown in the final amount in Paragraph Nos. 2 and 3 as an administrative records and services charge.
13. The preliminary cost to construct identified in Paragraph No. 1 and on Exhibit No. 3 herein, shall be determined by District based on the most recent map or plans of the Project and of said Master Plan, available at the time of preparation of this Agreement.
14. Upon completion and acceptance by District of the Reimbursable Facilities, District shall determine the final construction cost thereof and adjust the preliminary amount identified in Paragraph No. 1 herein to reflect that final cost amount, which shall reflect City's actual cash expenditure as determined from unit prices established by the City's competitive bidding procedure.
15. All exhibits attached hereto (Exhibits No. 1, 2 and 3) are hereby incorporated into this Agreement as if set forth in full herein.
16. 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.

17. 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 have 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 subparagraph No. 17(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

2366 Fresno Street, Rm 4031
Fresno, CA 93721
Attn: Patrick Weimiller, Public Works Director

Fresno Metropolitan Flood Control District

5469 East Olive Avenue
Fresno, CA 93727
Attn: Bob Van Wyk, General Manager-Secretary
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.

WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed this ____ day of _____, 2012.

APPROVED AS TO FORM:

James C. Sanchez
City Attorney

By: [Signature] 1/20/12
Deputy [Signature]

City of Fresno
A Municipal Corporation

By: [Signature]
Asst Director PWD
City of Fresno
"City"

ATTEST:
Yvonne Spence, CMC
City Clerk

By: [Signature]
Deputy 2/17/12

BAKER, MANOCK & JENSEN

By: [Signature]
Attorneys for the
FRESNO METROPOLITAN FLOOD
CONTROL DISTRICT

FRESNO METROPOLITAN FLOOD
CONTROL DISTRICT

By: [Signature]
Bob Van Wyk
General Manager-Secretary
"District"

Engineering Department Review
Approved by:
_____ or <u>[Signature]</u>
GEL AEH

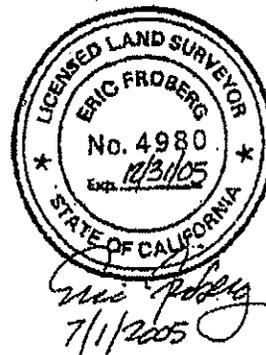
EXHIBIT No. 1

APN 477-021-22T

That portion of that Parcel of land granted to the City of Fresno by a Grant Deed recorded November 14, 2003 as Document No. 2003-0276316, Official Records of Fresno County, situated in the northwest quarter of Section 18, Township 14 South, Range 20 East, Mount Diablo Base and Meridian, according to the Official United States Government Township Plat thereof, more particularly described as follows:

COMMENCING at the northwest corner of the northwest quarter of said Section 18; thence N 89°14'50" E, along the north line of said northwest quarter, a distance of 1,240.29 feet to the intersection of said north line with the northerly prolongation of the east line of said Parcel granted to the City of Fresno by said Grant Deed, said east line also being the centerline of Pleasant Avenue, now vacated, as said Pleasant Avenue is shown on the map of Pleasant Dale Tract, according to the map thereof recorded in Book 2 of Plats at Page 38, Fresno County Records; thence S 0°21'40" W; along said east line and along said centerline, a distance of 55.00 feet to the most easterly southeast corner of that Parcel of land previously dedicated for public street purposes by City of Fresno Council Resolution No. 2004-217 recorded July 9, 2004 as Document No. 2004-0150598, Official Records of Fresno County, said corner also being the TRUE POINT OF BEGINNING of this description; thence continuing S 0°21'40" W, along said east line and along said centerline, a distance of 967.67 feet to the southeast corner of said Parcel granted to the City of Fresno by said Grant Deed; thence S 89°14'50" W, along the south line of said Parcel granted to the City of Fresno by said Grant Deed, a distance of 1,178.84 feet to the most southerly southeast corner of said Parcel of land previously dedicated for public street purposes by Document No. 2004-0150598; thence N 0°00'00" E, along the boundary of said previously dedicated Parcel, parallel with and 55.00 feet east of the west line of said northwest quarter, a distance of 714.85 feet; thence N 12°08'13" E, continuing along said boundary, a distance of 9.51 feet; thence N 0°00'00" E, continuing along said boundary, parallel with and 57.00 feet east of the west line of said northwest quarter, a distance of 225.07 feet; thence N 44°37'25" E, continuing along said boundary, a distance of 23.31 feet; thence N 89°14'50" E, continuing along said boundary, parallel with and 57.00 feet south of said north line of said northwest quarter, a distance of 225.07 feet; thence N 77°06'37" E, continuing along said boundary, a distance of 9.51 feet; thence N 89°14'50" E, continuing along said boundary, parallel with and 55.00 feet south of said north line of said northwest quarter, a distance of 932.22 feet to the TRUE POINT OF BEGINNING.

Contains an area of 26.224 acres, more or less.



CONFORMED
October, 2009

NOTE:
THIS MAP IS SCHEMATIC
DISTANCES ARE APPROXIMATE.



LEGEND

- Master Plan Facilities To Be Constructed By City
-Pipeline (Size Shown) & Inlet (Reimbursable Facilities)
- Temporary Inlet to be Constructed by City
Not Eligible for Fee Credit
- Private Facilities, Connection Not Eligible for Fee Credit
- Tempory Pond Not Eligible for Fee Credit
- Future Master Plan Facilities
- Limits of Street Improvements



1" = 300'

Agreement No. 1658(D)-NN-6
City of Fresno
California & Marks Construction
DRAINAGE AREA "NN"



EXHIBIT NO. 2
FRESNO METROPOLITAN FLOOD CONTROL DISTRICT

**PRELIMINARY COST ESTIMATE FOR
REIMBURSABLE FACILITIES**

Drainage Area "NN"

	Description	Quantity	Unit Price	Amount
1.	18" RCP Class III	137	\$ 75.00	\$ 10,275.00
2.	24" RCP Class III	974	\$ 46.50	\$ 45,291.00
3.	24" RCP Class IV	285	\$ 50.00	\$ 14,250.00
4.	42" RCP Class IV	8	\$ 250.00	\$ 2,000.00
5.	24" RCP Class V or IV w/Special Bedding	0	\$ 60.00	\$ - 0 -
6.	30" RCP Class V or IV w/Special Bedding	0	\$ 125.00	\$ - 0 -
7.	48" RCP Class V or IV w/Special Bedding	8	\$ 115.00	\$ 920.00
8.	24" RGRCP Class V or IV w/Special Bedding	40	\$ 125.00	\$ 5,000.00
9.	42" Concrete Pipe	881	\$ 98.00	\$ 86,338.00
10.	48" Concrete Pipe	206	\$ 115.00	\$ 23,690.00
11.	Type "A" Case I Manhole	1	\$3,000.00	\$ 3,000.00
12.	Type "A" Case II Manhole w/Eccentric Cone & Steps	4	\$4,500.00	\$ 18,000.00
13.	Type "D" Inlet	2	\$4,500.00	\$ 9,000.00
14.	Type "E" Inlet w/Neenah R3308 Lid	0	\$2,500.00	\$ - 0 -
15.	Type "R" Outfall Structure	0	\$ - 0 -	\$ - 0 -

Total Preliminary Cost Estimate = \$217,764.00
City 17% Engineering = \$ 37,019.88
Total Amount = \$254,783.88

AGENDA ITEM NO.	1D
COUNCIL MEETING	2/16/12
APPROVED BY	
	
DEPARTMENT DIRECTOR	
CITY MANAGER	
	

February 16, 2012

FROM: PATRICK N. WIEMILLER, Director
Public Works Department

BY: EFREN BAÑUELOS, Assistant Public Works Director *EB*
Public Works Department, Capital Management Division

LALKUMAR GOONAWARDENA, Design Services Manager *L*
Public Works Department, Capital Management Division

SUBJECT: APPROVE REIMBURSEMENT AGREEMENT WITH THE FRESNO METROPOLITAN FLOOD CONTROL DISTRICT (FMFCD) FOR THE INSTALLATION OF MASTER PLAN FACILITIES ALONG THE VETERANS HOME FRONTAGE IN CALIFORNIA AVENUE AND MARKS AVENUE

RECOMMENDATION

Staff recommends that the City Council approve a reimbursement agreement with the Fresno Metropolitan Flood Control District (FMFCD), for the installation of master plan facilities along veterans home frontage in California and Marks Avenues, and authorize the Public Works Director, or his designee, to sign the agreement, on the City's behalf.

EXECUTIVE SUMMARY

In 2000 California voters approved a bond measure to construct several veterans convalescent facilities throughout California. In 2003 City of Fresno offered a site at the southeast corner of Marks and California Avenues to the State of California for this purpose. In October, 2011 the City Council awarded contract to install improvements and widen California and Marks Avenues to serve the facility that is to be completed by April 2012. FMFCD facilities were included in the City's contract and are to be reimbursed to the City. FMFCD will reimburse the City a total of \$254,783. A sum of money amounting to \$127,439 will be reimbursed after execution of this agreement and \$127,344 will be reimbursed over the next 20 years as development occurs.

BACKGROUND

Approximately \$125 million dollars were made available in State and Federal funds for the Construction of the 300-bed Veterans Home in Fresno County. The annual operating budget for this facility is estimated to be \$21 million. This expenditure is to employ 458 employees and purchase goods. Construction work on the Veterans Home project started in 2010 and expected to be completed by April 2012. Originally this project was to receive its infrastructure under the Running Horse Development. Since the Running Horse failed to keep to its commitments the City has undertaken the task of providing the basic infrastructure essential for the operation of the proposed Veterans Home. In the adopted 2011 budget, the Public Works Department appropriated funds to

Presented to City Council
Date 2/16/12
Disposition Approved

install frontage improvements and widen California and Marks Avenues for the Veterans Home under construction.

In October, 2011 City Council awarded contract to install improvements and widen California and Marks Avenues to serve the facility that is to be completed by April 2012. Installations of the Flood Control master plan facilities were necessary and were included in the contract. FMFCD has prepared an agreement to reimburse the City a portion of the total cost (\$127,439) initially amounting to the fees paid by the State of California for the Veterans Home, and the remainder (\$127,344) of the construction cost to be paid as development occurs over a period of 20 years. The City Attorney's Office reviewed and approved the agreement as to form and a copy is attached to this document.

Staff recommends that the City Council approve a reimbursement agreement with the FMFCD, for the installation of Flood Control master plan facilities along veterans home frontage in California Avenue and Marks Avenues, and authorize the Public Works Director, or his designee, to sign the contract, on the City's behalf

FISCAL IMPACT

There is no impact to the General Fund.

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

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

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12. The total reimbursement to be paid to City by District pursuant to Paragraph Nos. 2 and 3 shall not exceed ninety-five percent (95%) of the total final amount of Paragraph Nos. 2 and 3 hereof; the District shall deduct and retain five-percent (5%) from the reimbursement payment as shown in the final amount in Paragraph Nos. 2 and 3 as an administrative records and services charge.
13. The preliminary cost to construct identified in Paragraph No. 1 and on Exhibit No. 3 herein, shall be determined by District based on the most recent map or plans of the Project and of said Master Plan, available at the time of preparation of this Agreement.
14. Upon completion and acceptance by District of the Reimbursable Facilities, District shall determine the final construction cost thereof and adjust the preliminary amount identified in Paragraph No. 1 herein to reflect that final cost amount, which shall reflect City's actual cash expenditure as determined from unit prices established by the City's competitive bidding procedure.
15. All exhibits attached hereto (Exhibits No. 1, 2 and 3) are hereby incorporated into this Agreement as if set forth in full herein.
16. 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.

17. 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 have 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 subparagraph No. 17(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

2366 Fresno Street, Rm 4031
Fresno, CA 93721
Attn: Patrick Weimiller, Public Works Director

Fresno Metropolitan Flood Control District

5469 East Olive Avenue
Fresno, CA 93727
Attn: Bob Van Wyk, General Manager-Secretary
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.

WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed this ____ day of _____, 2012.

APPROVED AS TO FORM:

James C. Sanchez
City Attorney

By: [Signature] 1/20/12
Deputy TRIASKOUKI-BARR, Z

City of Fresno
A Municipal Corporation

By: _____

ATTEST:
Yvonne Spence, CMC
City Clerk

"City"

By: _____
Deputy

BAKER, MANOCK & JENSEN

FRESNO METROPOLITAN FLOOD
CONTROL DISTRICT

By: _____
Attorneys for the
FRESNO METROPOLITAN FLOOD
CONTROL DISTRICT

By: _____
Bob Van Wyk
General Manager-Secretary
"District"

Engineering Department Review	
Approved by:	
_____ or <u>AEH</u>	
GEL	AEH

EXHIBIT No. 1

APN 477-021-22T

That portion of that Parcel of land granted to the City of Fresno by a Grant Deed recorded November 14, 2003 as Document No. 2003-0276316, Official Records of Fresno County, situated in the northwest quarter of Section 18, Township 14 South, Range 20 East, Mount Diablo Base and Meridian, according to the Official United States Government Township Plat thereof, more particularly described as follows:

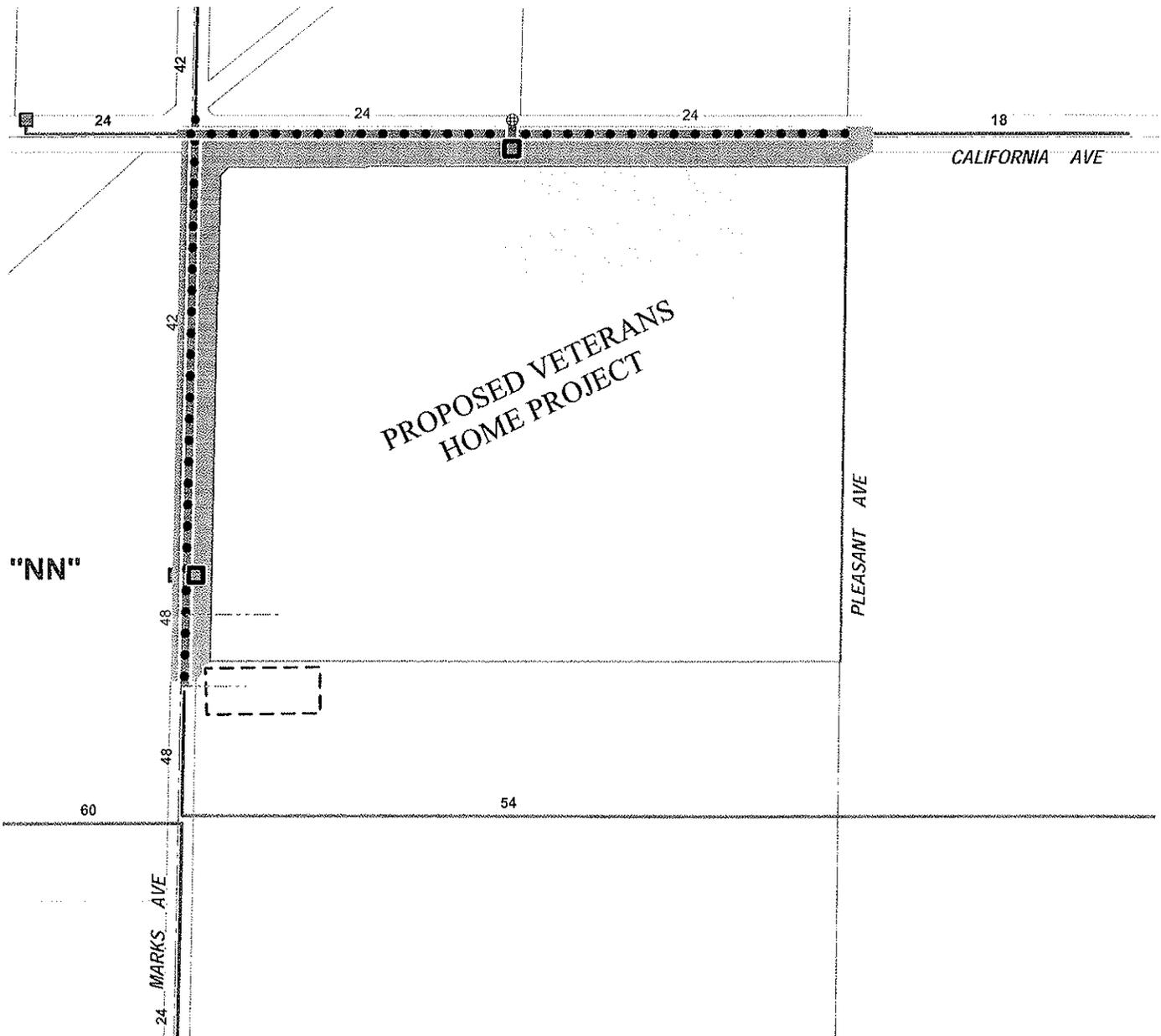
COMMENCING at the northwest corner of the northwest quarter of said Section 18; thence N 89°14'50" E, along the north line of said northwest quarter, a distance of 1,240.29 feet to the intersection of said north line with the northerly prolongation of the east line of said Parcel granted to the City of Fresno by said Grant Deed, said east line also being the centerline of Pleasant Avenue, now vacated, as said Pleasant Avenue is shown on the map of Pleasant Dale Tract, according to the map thereof recorded in Book 2 of Plats at Page 38, Fresno County Records; thence S 0°21'40" W, along said east line and along said centerline, a distance of 55.00 feet to the most easterly southeast corner of that Parcel of land previously dedicated for public street purposes by City of Fresno Council Resolution No. 2004-217 recorded July 9, 2004 as Document No. 2004-0150598, Official Records of Fresno County, said corner also being the TRUE POINT OF BEGINNING of this description; thence continuing S 0°21'40" W, along said east line and along said centerline, a distance of 967.67 feet to the southeast corner of said Parcel granted to the City of Fresno by said Grant Deed; thence S 89°14'50" W, along the south line of said Parcel granted to the City of Fresno by said Grant Deed, a distance of 1,178.84 feet to the most southerly southeast corner of said Parcel of land previously dedicated for public street purposes by Document No. 2004-0150598; thence N 0°00'00" E, along the boundary of said previously dedicated Parcel, parallel with and 55.00 feet east of the west line of said northwest quarter, a distance of 714.85 feet; thence N 12°08'13" E, continuing along said boundary, a distance of 9.51 feet; thence N 0°00'00" E, continuing along said boundary, parallel with and 57.00 feet east of the west line of said northwest quarter, a distance of 225.07 feet; thence N 44°37'25" E, continuing along said boundary, a distance of 23.31 feet; thence N 89°14'50" E, continuing along said boundary, parallel with and 57.00 feet south of said north line of said northwest quarter, a distance of 225.07 feet; thence N 77°06'37" E, continuing along said boundary, a distance of 9.51 feet; thence N 89°14'50" E, continuing along said boundary, parallel with and 55.00 feet south of said north line of said northwest quarter, a distance of 932.22 feet to the TRUE POINT OF BEGINNING.

Contains an area of 26.224 acres, more or less.



CONFORMED
October, 2009

NOTE:
THIS MAP IS SCHEMATIC
DISTANCES ARE APPROXIMATE.



LEGEND

- Master Plan Facilities To Be Constructed By City
-Pipeline (Size Shown) & Inlet (Reimbursable Facilities)
- Temporary Inlet to be Constructed by City
Not Eligible for Fee Credit
- Private Facilities, Connection Not Eligible for Fee Credit
- Temporary Pond Not Eligible for Fee Credit
- Future Master Plan Facilities
- Limits of Street Improvements



1" = 300'

Agreement No. 1658(D)-NN-6
City of Fresno
California & Marks Construction
DRAINAGE AREA "NN"



EXHIBIT NO. 2
FRESNO METROPOLITAN FLOOD CONTROL DISTRICT

**PRELIMINARY COST ESTIMATE FOR
REIMBURSABLE FACILITIES**

Drainage Area "NN"

	Description	Quantity	Unit Price	Amount
1.	18" RCP Class III	137	\$ 75.00	\$ 10,275.00
2.	24" RCP Class III	974	\$ 46.50	\$ 45,291.00
3.	24" RCP Class IV	285	\$ 50.00	\$ 14,250.00
4.	42" RCP Class IV	8	\$ 250.00	\$ 2,000.00
5.	24" RCP Class V or IV w/Special Bedding	0	\$ 60.00	\$ - 0 -
6.	30" RCP Class V or IV w/Special Bedding	0	\$ 125.00	\$ - 0 -
7.	48" RCP Class V or IV w/Special Bedding	8	\$ 115.00	\$ 920.00
8.	24" RGRCP Class V or IV w/Special Bedding	40	\$ 125.00	\$ 5,000.00
9.	42" Concrete Pipe	881	\$ 98.00	\$ 86,338.00
10.	48" Concrete Pipe	206	\$ 115.00	\$ 23,690.00
11.	Type "A" Case I Manhole	1	\$3,000.00	\$ 3,000.00
12.	Type "A" Case II Manhole w/Eccentric Cone & Steps	4	\$4,500.00	\$ 18,000.00
13.	Type "D" Inlet	2	\$4,500.00	\$ 9,000.00
14.	Type "E" Inlet w/Neenah R3308 Lid	0	\$2,500.00	\$ - 0 -
15.	Type "R" Outfall Structure	0	\$ - 0 -	\$ - 0 -

Total Preliminary Cost Estimate = \$217,764.00
 City 17% Engineering = \$ 37,019.88
 Total Amount = \$254,783.88

