

**INTERAGENCY 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 11th of October 2012, by and between FRESNO METROPOLITAN FLOOD CONTROL DISTRICT, a California public agency (the "District"), and the CITY OF FRESNO, a municipal corporation ("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 the McKinley Avenue Street Improvement Project ("Project") as depicted in Exhibit No. 1, attached hereto and incorporated herein by this reference; and

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

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

WHEREAS, the Project and the 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 to District for perpetual operation and maintenance; and

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

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

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

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

3. Plans and Specifications. Not later than ninety (90) days before the commencement of construction of the Improvements, City shall provide to District the plans and specifications pertaining to the Improvements ("Project Plans"). Thereafter, District shall have ten (10) days to review and provide its written approval or disapproval of such Project Plans.

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

4. Excess Costs. In the event the bid prices received by City result in the total cost for construction of the Reimbursable Facilities being greater than twenty percent (20%) above the total preliminary amount set forth in Exhibit No. 2 hereof, then prior to award of a contract by City for construction of the 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 for those construction costs and notify the City of its approval or disapproval of those costs. Should District disapprove the construction costs for the Reimbursable Facilities, City may proceed with the award of a contract for the Improvements, but in that case City shall either (i) delete by change order the construction of the Reimbursable Facilities or (ii) provide all funding for any amounts District is not willing to fund above said twenty percent (20%) limit.

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

which that portion does not so conform. In the event that any of the Reimbursable Facilities so constructed do not conform in all material respects to the Project Plans, 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 District, it may reject the nonconforming Reimbursable Facilities, or may accept them in writing. If District accepts any such nonconforming Reimbursable Facilities, the reimbursement required pursuant to Paragraph No. 2 hereof shall be adjusted as mutually determined by District and City to reflect the reduced value of the accepted nonconforming Reimbursable Facilities. District shall have no obligation to reimburse City for those Reimbursable Facilities that do not conform to the Project Plans and are not accepted by the District.

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

7. As-Built or Record Drawings. Within sixty (60) days after final acceptance of the Improvements by City and District, City shall provide to District in electronic or hard copy format one (1) twenty-four inch (24") by thirty-six inch (36") reproducible set of as-built or record drawings of the Improvements, including a cost schedule accurately setting forth the final construction cost of the Reimbursable Facilities.

8. Payment; Refunds. District shall make progress payments to City as billed by City to reimburse City's actual cash expenditures for construction of the Reimbursable Facilities, but those payments shall not exceed ninety-five percent (95%) of the total amount to be reimbursed pursuant to Paragraph No. 2 hereinabove. Within thirty (30) calendar days after City submits a bill for such cost to District, it shall pay ninety-five percent (95%) of that amount. 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 final billing from City, District shall reimburse City the final five percent (5%) of the amount to be reimbursed pursuant to Paragraph No. 2. In the event that District does not accept a portion of the Reimbursable Facilities or accepts the Reimbursable Facilities at a reduced value, 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 of the reduced value to the District of Reimbursable Facilities not conforming to the approved Project Plans as determined by the District pursuant to Paragraph No. 5 hereof. Within thirty (30) days after receipt of billing from District, City shall return such funds to District.

9. Indemnity.

(a) City shall indemnify, hold harmless and defend District and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by District, City or any other person, and from any and all claims, demands and actions in law or equity, arising or alleged to have arisen

directly or indirectly from the negligent or intentional acts or omissions, or willful misconduct of City or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement; provided nothing herein shall constitute a waiver by City of governmental immunities including California Government Code Section 810 et seq.

(b) District shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, District or any other person, and from any and all claims, demands and actions in law or equity, arising or alleged to have arisen directly or indirectly from the negligent or intentional acts or omissions, or willful misconduct of District or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement; provided nothing herein shall constitute a waiver by District of governmental immunities including California Government Code Section 810 et seq.

(c) In the event of concurrent negligence on the part of District or any of its officials, officers, agents, employees or volunteers and City or any of its officers, officials, agents, employees, agents or volunteers, the liability for any and all such claims, demands and actions in law or equity for such losses, fines, penalties, forfeitures, costs and damages shall be apportioned under the State of California's

theory of comparative negligence as presently established or as may be modified hereafter.

(d) Subparagraphs 9(a), (b) and (c) shall survive termination or expiration of the Agreement.

10. Miscellaneous.

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

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

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

prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given twenty-four (24) hours after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means shall be deemed delivered upon telephone confirmation of receipt (confirmation report from fax machine is sufficient), provided a copy is also delivered via delivery or mail. If notice is received after 4:00 p.m. in the time zone in which the party is located or on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

City of Fresno

2366 Fresno Street, Room 4031
Fresno, CA 93721
Attn: Patrick Wiemiller
Fax Number: 559-488-1045

Fresno Metropolitan Flood Control District

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

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

(e) Construction. The parties hereto acknowledge that each party has, or has had the opportunity to have, counsel of its own choosing review and revise this Agreement, such that the normal rule of construction to the effect that any ambiguities

are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

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

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

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

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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed this 11th day of October, 2012.

"City"

CITY OF FRESNO
A Municipal Corporation

By: Elen Bannelo
Asst PW Director
"City"

Approved as to form:
James C. Sanchez, City Attorney

By: [Signature]
Deputy R Abrams

ATTEST:
Yvonne Spence, CMC
City Clerk

By: Cindy Buer 10/16/12
Deputy

"District"

FRESNO METROPOLITAN FLOOD
CONTROL DISTRICT

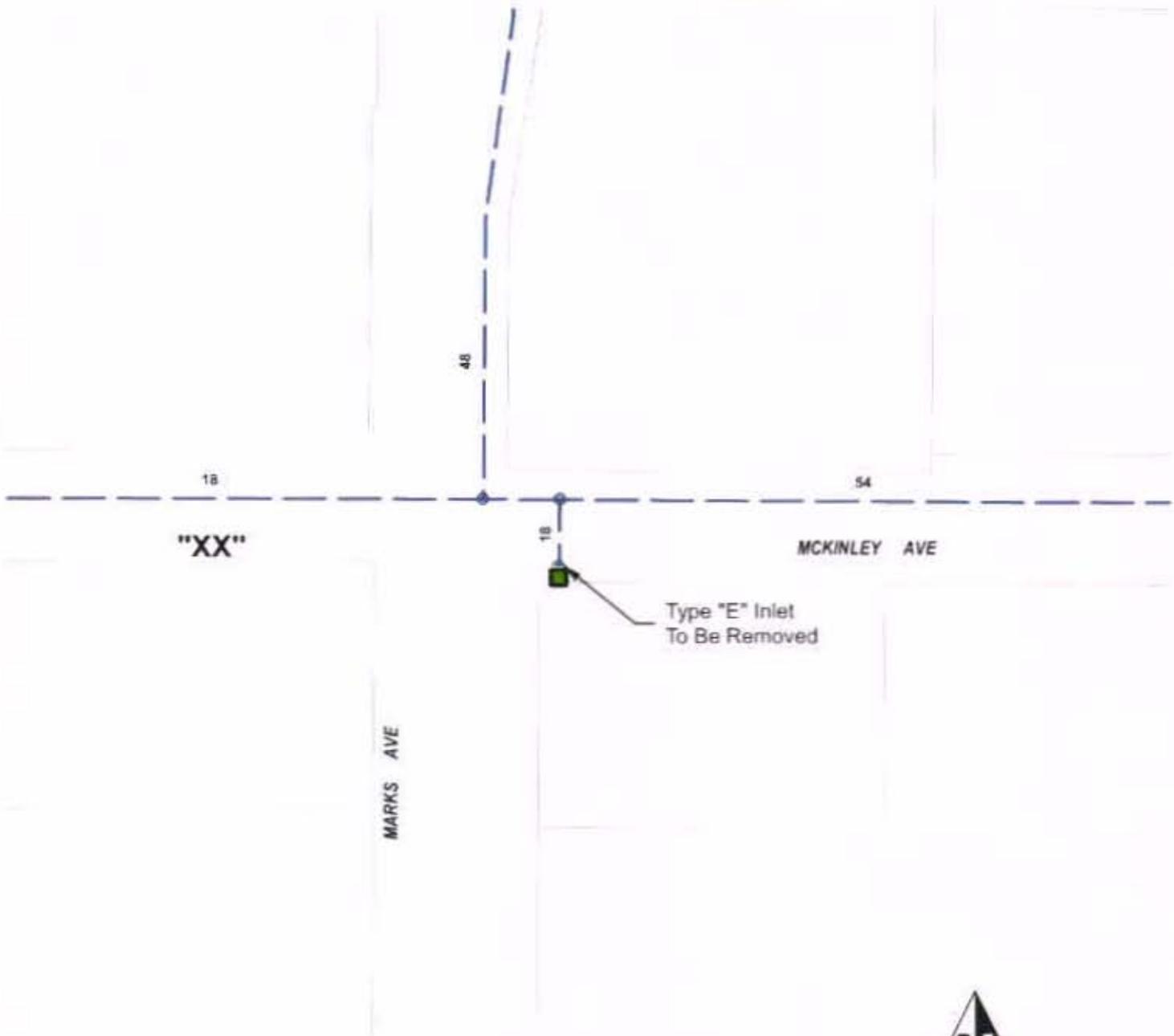
By: Bob Van Wyk
Bob Van Wyk, General Manager

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

By: [Signature]

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

NOTE:
THIS MAP IS SCHEMATIC
DISTANCES ARE APPROXIMATE.



LEGEND

-  Master Plan Facilities To Be Constructed By City
-Pipeline (Size Shown) & Inlet (Reimbursable Facilities)
-  Existing Master Plan Facilities



1" = 100'

**AGREEMENT 1664(G)-XX-35
MCKINLEY AVE. STREET
IMPROVEMENT PROJECT
CONTRACT "XX-35"
DRAINAGE AREA "XX"**

EXHIBIT NO. 1
(Sheet 1 of 2)

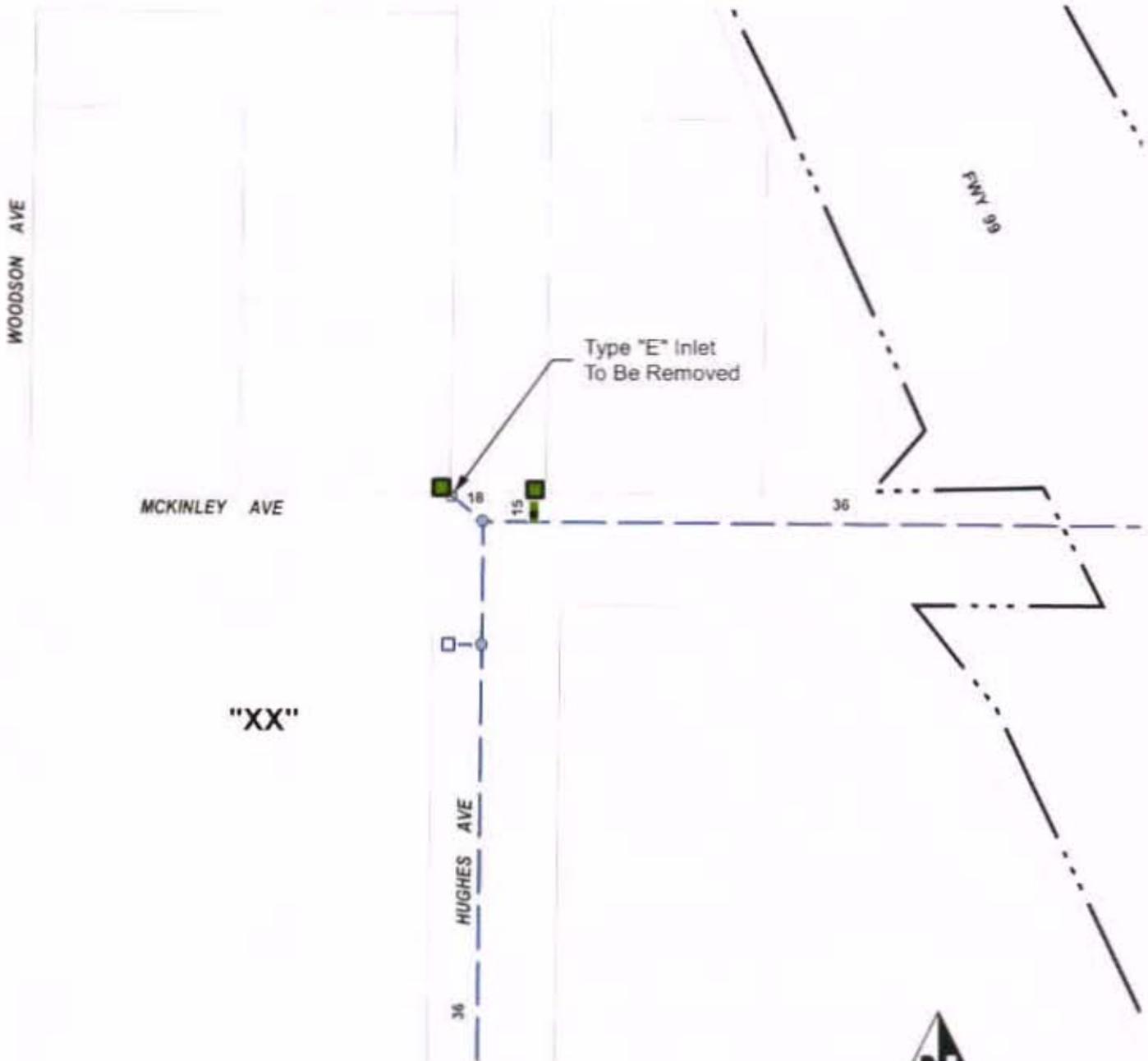


FRESNO METROPOLITAN FLOOD CONTROL DISTRICT

Prepared by: keithr
Date: 3/21/2012

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NOTE:
THIS MAP IS SCHEMATIC
DISTANCES ARE APPROXIMATE.



LEGEND

-  Master Plan Facilities To Be Constructed By City
-Pipeline (Size Shown) & Inlet (Reimbursable Facilities)
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AGREEMENT 1664(G)-XX-35
MCKINLEY AVE. STREET
IMPROVEMENT PROJECT
CONTRACT "XX-35"
DRAINAGE AREA "XX"

EXHIBIT NO. 1
(Sheet 2 of 2)



FRESNO METROPOLITAN FLOOD CONTROL DISTRICT

Prepared by: keithr
Date: 3/21/2012

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Exhibit No. 2

PRELIMINARY COST FOR
REIMBURSABLE FACILITIES

Drainage Area "XX"
Contract "XX-35"

<u>Description</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Amount</u>
15" RCP Class IV	30 LF	\$ 100	\$ 3,000
18" RCP Class III	42 LF	\$ 100	\$ 4,200
Type "D" Inlet	3 EA	\$3,800	\$11,400
Worker Protection	100% LS	\$ 500	\$ 500
Miscellaneous	100% LS	\$1,500	<u>\$ 1,500</u>
		Total =	\$20,600
		17% Engineering =	<u>\$ 3,502</u>
		Preliminary Amount Eligible for Fee Credit =	\$24,102