

**AGREEMENT FOR DESIGN AND CONSTRUCTION
OF MASTER PLAN FACILITIES BY REDEVELOPMENT AGENCY OF THE
CITY OF FRESNO**

WHEREAS, the FRESNO METROPOLITAN FLOOD CONTROL DISTRICT, ("District"), has adopted and bears responsibility for implementation of its Storm Drainage and Flood Control Master Plan ("Master Plan"); and

WHEREAS, the Redevelopment Agency of the City of Fresno, ("Agency"), proposes a project identified as: "Reconstruction of Orange Avenue from North Avenue to Highway 99" ("Project"); and

WHEREAS, the District desires to have the Agency include within the Project certain Master Plan Facilities To Be Constructed By AGENCY as shown on Exhibit No. 1 hereto, ("Master Plan Facilities"); and

WHEREAS, JAGM Properties, LLC ("JAGM") desires to develop its land pursuant to SPR 2005-539/TPM 2006-009 as shown on Exhibit No. 1, ("Entitlement"), attached hereto; and

WHEREAS, the Agency is willing to include construction of the Master Plan Facilities as a part of the Project; and

WHEREAS, JAGM shall reimburse the Agency its actual cost of the design and construction of the Master Plan Facilities; and

WHEREAS, the District desires to provide JAGM drainage fee credit equal to its reimbursement to the Agency for the Master Plan Facilities, and apply such credit against the drainage fee obligation of the Entitlement; and

WHEREAS, upon completion of the Project, the Agency 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 and the operational liability therefore; and

WHEREAS, the Agency will incur expenses for non-Master Plan facilities and certain other drainage related expenses benefiting JAGM.

NOW, THEREFORE, it is agreed as follows:

1. The Agency shall design and construct the Master Plan Facilities in accordance with plans approved by District, consistent with the District's Standard Plans and Specifications ("Project Plans").
2. Pursuant to the terms hereof, JAGM shall reimburse the Agency its actual cost for the design and construction of the Master Plan Facilities. The items eligible for reimbursement and a preliminary estimate of their cost are identified in Exhibit No. 2 hereto. Final payment shall be based on the Agency's actual cash expenditures for the Master Plan Facilities.
3. JAGM has made a non-refundable payment to the Agency in the sum of \$120,807.80. Said sum being provided to the Agency for construction of Master Plan facilities, pursuant to Paragraph No. 2 hereof, and non-Master Plan facilities, and drainage related expenses on behalf of JAGM.

4. The District shall apply JAGM's reimbursement to the Agency for Master Plan facilities as a credit against the drainage fee obligation for the Entitlement.
5. The District shall have the right to periodically inspect and approve or disapprove the construction of the Master Plan Facilities prior to acceptance thereof by Agency from its construction contractor. Upon completion of construction by Agency 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 Agency 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 Agency 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 such 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 Paragraph No. 2 hereof, shall be adjusted as mutually determined by the District and the Agency 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 Master Plan Facilities by the Agency 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 Master Plan Facilities by the District, the Agency shall provide the District with one twenty-four inch (24") by thirty-six inch (36") reproducible set of as-built drawings and a cost schedule reflecting the final construction cost of the Master Plan Facilities.
8. All exhibits attached hereto are hereby incorporated into this Agreement as if set forth in full herein.
9. Agency shall indemnify, hold harmless and defend the District and each of its officers, officials, employees, agents, consultants, independent contractors and authorized 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 and property damage) incurred by the District or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen from the negligent or intentional acts, omissions or willful misconduct of the Agency or any of its officers, officials, employees, agents, consultants, independent contractors or authorized volunteers in the performance of this Agreement.
10. The District shall indemnify, hold harmless and defend the Agency and each of its officers, officials, employees, agents, consultants, independent contractors and authorized 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 and property damage) incurred by the Agency, or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen from the negligent or intentional acts, omissions or willful misconduct of the District, or any of its officers, officials, employees, agents, consultants, independent contractors or authorized volunteers in the performance of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed this

29th day of April, 2008.

CITY ATTORNEY, City of Fresno

By: [Signature]

REDEVELOPMENT AGENCY OF THE
CITY OF FRESNO

By: [Signature]
Marlene Murphy, Executive Director
"Agency"

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"

JAGM PROPERTIES, LLC

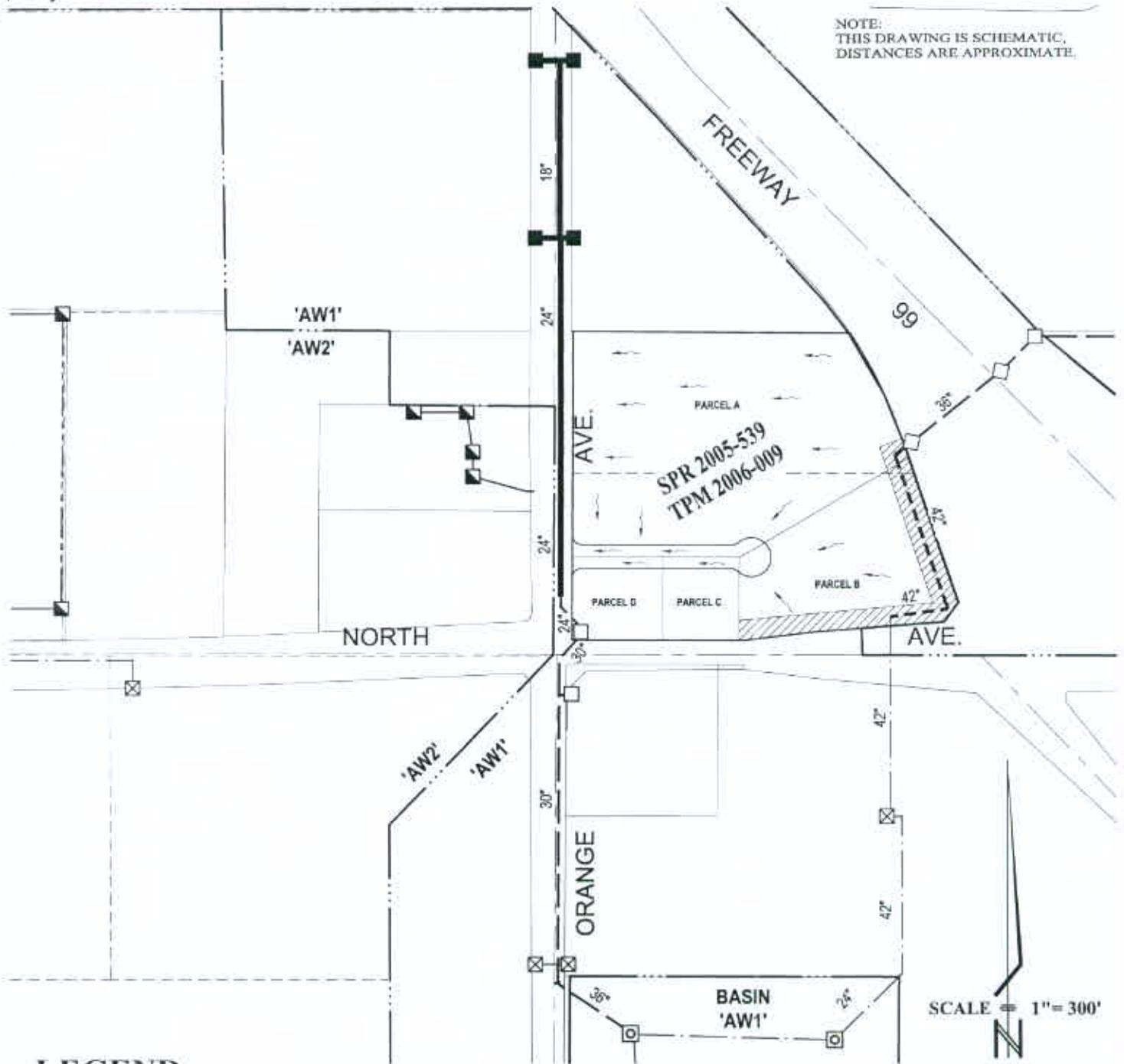
By: [Signature]
Joseph Pelanick, President
Print name & title
"JAGM"

FMFCD/Agency Reimbursement Agreement for
Orange Avenue Storm Drain Improvements
April 29, 2008
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ATTEST
REBECCA E. KLISCH
Ex Officio Clerk for the Agency

By: Elvia Sommeville
Deputy (9/30/08)

NOTE:
THIS DRAWING IS SCHEMATIC.
DISTANCES ARE APPROXIMATE.



LEGEND

- | | | | |
|--|---|--|------------------------|
| | Master Plan Facilities To Be Constructed By AGENCY
- Pipeline (Size Shown) & Inlets. | | Inlet Boundary |
| | Existing Master Plan Facilities | | Drainage Area Boundary |
| | Master Plan Facilities To be Constructed By SPR 2005-539
Under Separate Agreement | | Direction Of Drainage |
| | Storm Drainage Easement Location | | |
| | Future Master Plan Facilities | | |
| | Private Facilities | | |
| | Existing Master Plan Outfall | | |

AGREEMENT
1423(G) AW₁-9
DRAINAGE AREA: "AW₁"

EXHIBIT NO. 1

FRESNO METROPOLITAN FLOOD CONTROL DISTRICT



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

Drainage Area "AW₁"

<u>Description</u>	<u>Quantities</u>	<u>Unit Prices</u>	<u>Amount</u>
15" RCP, Class III	88 LF	\$ 65.55	\$ 5,768.40
18" RCP, Class III	323 LF	\$ 49.00	\$ 15,827.00
24" RCP, Class III	84 LF	\$ 73.00	\$ 6,132.00
24" Concrete Pipe	743 LF	\$ 63.50	\$ 47,180.50
Type "A" Case I MH	3 EA	\$ 2,617.00	\$ 7,851.00
Type "D" Inlet & Lateral	4 EA	\$ 3,531.00	\$ 14,124.00
Worker Protection	Lump Sum	\$ 1,372.00	<u>\$ 1,372.00</u>
			\$ 98,254.90
		Engineering 10% Maximum =	<u>\$ 9,825.40</u>
		Total =	\$108,080.39

Exhibit No. 2