

California High-Speed Rail



Agreement Status

RFP No.: HSR 11-16

Addendum No. 4

July 31, 2012

Entity: Fresno Metropolitan Flood Control District

Entity Role: Fresno Metropolitan Flood Control District (FMFCD) will review and approve Facility Plans and have a reasonable number of representatives on site of Project to verify that the Facility Work is being properly performed by Authority's Contractor and approve that work.

Master Agreement: Master Agreement technical review is 100% complete. Legal Review is 100% complete. FMFCD has signed agreement and is pending Authority signature. Master Agreement is expected to be executed by August 15, 2012.

Task Orders: Draft Task Order 1 has been prepared. FMFCD has not provided comments to Draft Task Order 1.

DISCLAIMER: **Because the Master Agreement has not yet been executed, the Authority cannot represent that there will be no substantive changes to the draft Master Agreement as provided, although the Fresno Metropolitan Flood Control District staff has reviewed and approved the Master Agreement. The Master Agreement and draft Task Orders are being provided for informational purposes only, and the draft Task Orders are subject to the express limitations set forth in the General Provisions.**



MASTER AGREEMENT

California High Speed Rail Authority

Master Agreement

Fresno Metropolitan Flood Control District

MASTER AGREEMENT

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Financial Project ID:		Federal Project ID:	
County:		AUTHORITY Document No:	

THIS AGREEMENT, entered into this **21st** day of **June, 2012** (the "Agreement"), by and between the **California High Speed Rail Authority**, an agency of the State of California, whose principal place of business and mailing address is 770 L Street, Suite 800, Sacramento, California 95814, hereinafter referred to as the "AUTHORITY", and **Fresno Metropolitan Flood Control District**, a public agency whose principal mailing address is 5469 E Olive Ave, Fresno, CA 93727, hereinafter referred to as the "DISTRICT". AUTHORITY and DISTRICT are hereinafter referred to individually as "PARTY" and collectively as "PARTIES."

RECITALS

WHEREAS, DISTRICT is responsible for implementing the Storm Drainage and Flood Control Master Plan ("Master Plan") applicable to real property within its boundary; and

WHEREAS, DISTRICT owns, operates, or maintains in the County of Fresno, State of California, certain storm drainage facilities ("Storm Drainage Facilities") (said term shall be deemed to include Storm Drainage Facilities as the same may be relocated or adjusted in accordance with this Agreement); and

WHEREAS, DISTRICT operates its Storm Drainage Facilities pursuant to the Fresno Metropolitan Flood Control Act (Sections 73-1 *et seq.* of Appendix to the California Water Code) ; and

WHEREAS, the AUTHORITY is currently engaging in a program that has various projects under current provisions of Section 2704.04 of the Streets and Highways Code ("S&H Code") and Sections 185033 and 185036 of the Public Utilities Code, to construct a high speed rail system for the State of California (the "SYSTEM"), by undertaking a number of "PROJECT(s)", as defined herein; and

WHEREAS, from time to time work on a Project involves constructing, reconstructing, or otherwise changing an existing improvement or installing a new improvement where Storm Drainage Facilities of DISTRICT are located; and

WHEREAS, PROJECT(S) may require the location (vertically and/or horizontally), protection, relocation, installation, or removal of the Storm Drainage Facilities, or some combination thereof, including any submittal review, inspection, certification or other oversight activity, hereinafter referred to as "STORM DRAIN WORK"; and

WHEREAS, PROJECT is a development that produces stormwater runoff, which the AUTHORITY desires perpetually to discharge, or reserve the right to discharge, into Storm Drainage Facilities, and to pay the cost of the DISTRICT's perpetually owning, operating and maintaining those Facilities to accept and dispose of that stormwater runoff; and

WHEREAS, the Non-Conforming Facilities Policy of DISTRICT provides that any person

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constructing any facilities not required by the Master Plan (“Non-Conforming Facilities”) shall pay to DISTRICT a fee to own, operate and maintain that Non-Conforming Facility (“NCF Fee”); and

WHEREAS, the AUTHORITY desires to construct Non-Conforming Facilities and to pay the NCF Fee in order to complete the PROJECT; and

WHEREAS, the AUTHORITY and DISTRICT desire to enter into an agreement which establishes the contractual terms and conditions applicable to the STORM DRAIN WORK.

ACCORDINGLY, for and in consideration of the mutual promises set out herein, the adequacy of which are hereby acknowledged, the AUTHORITY and DISTRICT hereby agree as follows:

1. DEFINITIONS

As used in this Agreement, the following terms have the following meanings:

1.1 ACTUAL COST

“ACTUAL COST” means the total actual cost for STORM DRAIN WORK.

1.2 AGREEMENT

”AGREEMENT” is synonymous with this Agreement and refers to the document which establishes the contractual terms and conditions applicable to the STORM DRAIN WORK.

1.3 AUTHORITY

“AUTHORITY” means the California High Speed Rail Authority and its authorized representatives.

1.4 AUTHORITY’S CONTRACTOR

“AUTHORITY’S CONTRACTOR” means the proposer who is awarded the design and construction of any of the PROJECT(s).

1.5 AREA OF COMMON USE

“AREA OF COMMON USE” means that area subject to a Joint Use Agreement or Consent to Common Use Agreement.

1.6 BETTERMENT

“BETTERMENT” means any improvement to Storm Drainage facilities that is requested by DISTRICT and is required to be provided by the AUTHORITY pursuant to any fully executed TASK ORDER that identifies such improvements as a BETTERMENT.

As employed herein, for the sake of clarification, BETTERMENT does not include those differences in cost caused by changes in manufacturing standards, availability of materials, regulatory requirement, or any upgrading required by any applicable standard specifications, standards of practice and construction methods applied to comparable facilities constructed by or for the DISTRICT at its own expense, which are in effect as of the date of execution of the Master Agreement. As provided in Appendix “D” hereto, relocation of electrical lines in the City of Fresno is not a BETTERMENT.

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1.7 CONSTRUCTION CONTRACT

"CONSTRUCTION CONTRACT" means the contract between the AUTHORITY and the AUTHORITY'S CONTRACTOR for construction (with or without design) of the PROJECT work that is impacting DISTRICT. All references herein to "the CONSTRUCTION CONTRACT" refer to the CONSTRUCTION CONTRACT(S) for the PROJECT(S) that impact the STORM DRAINAGE FACILITIES, and when used in reference to a particular FACILITY, refer to the CONSTRUCTION CONTRACT that impacts the referenced FACILITY.

1.8 COST ESTIMATE

"COST ESTIMATE" means the detailed breakdown of costs associated with the construction or RELOCATION of a particular STORM DRAINAGE FACILITY.

1.9 DEACTIVATED STORM DRAINAGE FACILITIES

"DEACTIVATED STORM DRAINAGE FACILITIES" means Storm Drainage Facilities that cease to be active as a result of the PROJECT.

1.10 DISTRICT

"DISTRICT" means the Fresno Metropolitan Flood Control District (FMFCD).

1.11 DISTRICT'S EASEMENT

"DISTRICT EASEMENT" means DISTRICT's rights affecting Storm Drainage Facilities.

1.12 FACILITY

"FACILITY" or "FACILITIES" are also used herein to refer to the Storm Drainage Facilities.

1.13 HAZARDOUS MATERIALS

"Hazardous Material(s)" means any hazardous substance, hazardous material, or hazardous waste as defined under state or federal law.

1.14 HIGH SPEED RAIL RIGHT OF WAY

"HIGH SPEED RAIL RIGHT OF WAY" is synonymous with rail right of way as defined by Federal Rail Authority (FRA).

1.15 MASTER PLAN

"MASTER PLAN" means the DISTRICT'S Storm Drainage and Flood Control Master Plan.

1.16 NON-CONFORMING FACILITIES

"NON-CONFORMING FACILITIES" means facilities constructed by the AUTHORITY as part of the PROJECT to be owned by the District and are not identified on the MASTER PLAN.

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1.17 NON-CONFORMING FACILITIES FEE

“NON-CONFORMING FACILITIES FEE” is synonymous with NCF Fee and refers to a fee incurred to construct a NON-CONFORMING FACILITY.

1.18 NOTICE TO DISTRICT

“NOTICE TO DISTRICT” means a formal written communication.

1.19 PARTIES

“PARTIES” refers to the AUTHORITY and DISTRICT, collectively.

1.20 PRIOR RIGHTS

“PRIOR RIGHTS” means a claimed right of occupancy in a defined property area.

1.21 PROJECT

“PROJECT” means a segment of the System (as determined by AUTHORITY) and the work undertaken or contracted for by AUTHORITY to construct, improve, maintain and/or operate such segment (including new construction as well as reconstruction of, or other modification of existing rail facilities). All references herein to “the PROJECT” refer to the PROJECT(S) that impact the STORM DRAINAGE FACILITIES, and when used in reference to a particular STORM DRAINAGE FACILITY, refer to the PROJECT that impacts the referenced STORM DRAINAGE FACILITY. RIGHT OF WAY OF DISTRICT

"RIGHT OF WAY OF DISTRICT" means a property right or claim of right held by DISTRICT as a prescriptive right, a dedication, or any consent, license, or a right in the form of either a recorded or fully executed deed in the usual form or other valid instrument recorded or fully executed and conveying a permanent property right to DISTRICT for the Storm Drainage Facilities in a defined area of real property.

1.22 RELOCATION

"RELOCATION" means removal, relocation, protection or any other rearrangement or modification of DISTRICT's Storm Drainage Facilities as ordered and approved by the AUTHORITY to accommodate any of the AUTHORITY's PROJECTS that may impact DISTRICT'S STORM DRAINAGE FACILITIES. RELOCATION shall include, but not be limited to preparation and submission by the AUTHORITY of RELOCATION plans or drawings sufficiently engineered to allow construction of the ordered RELOCATION, and a detailed estimate by DISTRICT and/or the AUTHORITY of the actual and necessary cost of the ordered RELOCATION for approval by DISTRICT and the AUTHORITY.

1.23 SCHEDULE

“SCHEDULE” means the schedule for the RELOCATION of Storm Drainage Facilities.

1.24 STAKEHOLDERS

“STAKEHOLDERS” means AUTHORITY, AUTHORITY'S CONTRACTOR, DISTRICT, and any other third-party entities affected by the PROJECT(s), including

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regulatory agencies, local agencies, and public and private utility entities, collectively.

1.25 STORM DRAINAGE FACILITIES

“STORM DRAINAGE FACILITIES” is synonymous with District Owned Facilities and District’s Facilities.

1.26 “S&H CODE”

“S&H CODE” means the California Streets and Highway Code.

1.27 STORM DRAIN WORK

“STORM DRAIN WORK” means activities related to the RELOCATION of a Storm Drain Facilities or construction of new Storm Drain Facilities (or any combination thereof) including the design, engineering, planning and permitting, as well as any necessary certification by or coordination with regulatory agencies and any other miscellaneous work, related to such activities.

1.28 TASK ORDER

“TASK ORDER” means a work order or other agreement executed by the AUTHORITY, the AUTHORITY’s CONTRACTOR, and DISTRICT detailing STORM DRAIN WORK specific to particular Storm Drainage Facilities’ RELOCATION, replacement or new facilities construction.

1.29 STORM DRAIN PLANS

“STORM DRAIN PLANS” refers to the plans and provisions for STORM DRAIN WORK.

1.30 UNFORESEEN WORK

“UNFORESEEN WORK” means any new and extra work necessary to the satisfactory completion of the PROJECT(s) and not covered by any of the various TASK ORDERS for which there is a bid price or agreed price or by combination of such items.

1.31 WASTED WORK

"Wasted Work" means design, design review, construction work or inspection performed by DISTRICT, upon written direction from the AUTHORITY, for a RELOCATION rendered useless or unnecessary as a result of the AUTHORITY's cancellation and/or changes in the scope of work as agreed to by both PARTIES. This term includes any other design or construction work that is needed to accommodate the PROJECT and is subsequently rendered unnecessary at some later date.

2. WORK TO BE DONE

2.1 STORM DRAIN WORK

STORM DRAIN WORK will remain the property of DISTRICT. STORM DRAIN WORK specific to a particular STORM DRAINAGE FACILITY’S RELOCATION or replacement shall be set forth in a subsequently executed TASK ORDER Agreement.

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2.2 TASK ORDERS

STORM DRAIN WORK shall be set forth in a TASK ORDER executed by the AUTHORITY, the AUTHORITY'S CONTRACTOR, and DISTRICT. The TASK ORDER will set forth among other things, the arrangements between the PARTIES regarding scope of work, schedule, cost, cost apportionment, billing, payment, documentation, document retention, accounting and coordination as it relates to the STORM DRAIN WORK for a specific STORM DRAINAGE FACILITY. Format of a TASK ORDER and its content shall be mutually agreed upon by the AUTHORITY, the AUTHORITY's CONTRACTOR, and DISTRICT, subject to compliance with the requirements of this Agreement. Task Orders may cover Relocation of a single STORM DRAINAGE FACILITY, or of a group of STORM DRAINAGE FACILITIES.

2.3 BETTERMENT WORK AT DISTRICT'S REQUEST

Any work considered a BETTERMENT, as defined in herein, made at DISTRICT's request shall be agreed upon in advance by the PARTIES and set forth in a TASK ORDER, along with costs and allocation of responsibility for such costs to DISTRICT.

2.4 UNFORESEEN WORK

If UNFORESEEN WORK arises during the performance of the STORM DRAIN WORK, it shall be performed under the TASK ORDER that is applicable to that STORM DRAIN WORK and funded by the AUTHORITY's CONTRACTOR. The AUTHORITY has prepared the 30% plans from record drawings provided by the DISTRICT. The AUTHORITY shall obligate the AUTHORITY's CONTRACTOR to verify location of existing STORM DRAINAGE FACILITIES.

3. LIABILITY FOR WORK

3.1 AUTHORITY'S EXPENSE

Unless DISTRICT agrees otherwise in writing, STORM DRAIN WORK will be performed at the AUTHORITY's expense.

3.2 DISTRICT'S EXPENSE

STORM DRAIN WORK will be performed at DISTRICT's EXPENSE where:

- (A) Work is mutually determined in writing to be a BETTERMENT as defined herein;
- (B) DISTRICT agrees in writing.

3.3 SHARED EXPENSE

The STORM DRAIN WORK will be performed at the shared expense of the AUTHORITY and DISTRICT in circumstances where the AUTHORITY and DISTRICT agree in writing to do so. The proportion of the STORM DRAIN WORK expense to be borne by the AUTHORITY and DISTRICT shall be clearly identified in the TASK ORDER for that STORM DRAIN WORK.

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3.4 AUTHORITY'S CONTRACTOR CLAIMS

In the event the AUTHORITY's CONTRACTOR makes any claim against the AUTHORITY relating to the STORM DRAIN WORK, the AUTHORITY will notify DISTRICT of the claim and DISTRICT will cooperate with the AUTHORITY in analyzing and resolving the claim within a reasonable time.

3.5 DISPUTES

The AUTHORITY and the DISTRICT agree that, as a general principle, the PARTIES shall attempt to resolve any and all disputes arising under this Agreement through a collaborative stakeholder process, which shall attempt to identify and resolve potential disputes without resort to formal legal process. In the event the DISTRICT disagrees with a determination or matter made by the AUTHORITY, the DISTRICT shall provide prompt written notice of its objection and the reasons for such objection. Thereafter, the PARTIES shall attempt to resolve such dispute through the stakeholder process, which may include further discussion with the AUTHORITY at the AUTHORITY's discretion. If, within 14 days after conclusion of such discussions, the dispute persists, then the DISTRICT shall request a written statement of the AUTHORITY concerning its decision. The AUTHORITY, shall reduce its decision to writing and mail or otherwise furnish a copy thereof to the DISTRICT. The decision of the AUTHORITY shall be final and conclusive unless, on or before the 45th day from the date of receipt of such copy, the DISTRICT mails or otherwise furnishes a written appeal addressed to the AUTHORITY. The AUTHORITY shall then, within two weeks thereafter, either issue a modified decision, or such prior decision shall stand. If the dispute still remains after such decision, then either PARTY may, within 42 days after such decision is issued or deemed affirmed, refer the dispute to binding arbitration

In connection with any appeal of the AUTHORITY's decision, the DISTRICT shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. At all times during the course of the dispute resolution process, the DISTRICT shall conform to any of the AUTHORITY's responses, decisions, orders; and shall be governed by all applicable provisions of the Agreement. Records of the Work shall be kept in sufficient detail to enable payment in accordance with applicable provisions in this Agreement irrespective of the ultimate outcome of any dispute.

In the event either PARTY, within the timeframe specified above, elects to refer a dispute to binding arbitration, then within 30 days after such request, the PARTIES will seek to appoint a panel of three arbitrators with not less than 10 years' experience each in complex construction disputes involving public works transportation projects. If the PARTIES cannot agree on a panel of three arbitrators, then each PARTY shall appoint

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one arbitrator, with the two so selected choosing the third arbitrator; in each instance, such arbitrator shall meet the relevant qualifications. The arbitration proceeding shall be conducted in accordance with the procedures specified in California Public Contract Code Section 10240 *et seq.* and the implementing regulations thereto. The decision of the arbitrators shall be binding on the PARTIES and any judgment on the award there rendered may be entered in the Superior Court for Fresno County.

If it is determined, in that arbitration, that the AUTHORITY's interpretation of the Agreement, direction to the DISTRICT, or any other action required by the AUTHORITY's decision was an erroneous determination of the rights and obligations of the parties under the Agreement, the DISTRICT'S claim and any award by the panel of arbitrators of the dispute shall be limited to the incremental costs incurred by the DISTRICT with respect to the disputed matter (crediting the AUTHORITY for any corresponding reduction in the DISTRICT'S other costs) and shall in no event exceed the amounts allowed hereunder with respect thereto.

4. PERFORMANCE OF WORK

4.1 GENERAL

All STORM DRAIN WORK (design and construction phases) or portions thereof may be performed by the AUTHORITY or the AUTHORITY'S CONTRACTOR as agreed by said PARTIES. Specific responsibilities, the costs therefor and the allocation of responsibility for performing the various portions of STORM DRAIN WORK shall be clearly stated in the TASK ORDER for that work.

4.2 AUTHORITY'S CONTRACTOR OR AGENT PERFORMS WORK

When any STORM DRAIN WORK is to be performed by the AUTHORITY or the AUTHORITY'S CONTRACTOR, DISTRICT shall have access to all phases of the STORM DRAIN WORK for the purpose of inspection to ensure that the work is performed in accordance with the TASK ORDER pertaining to that work; however, all questions regarding the work being performed will be directed to the AUTHORITY or its authorized representative for evaluation and final disposition.

Upon the AUTHORITY'S NOTICE TO DISTRICT, DISTRICT shall consider the AUTHORITY'S CONTRACTOR as acting on behalf of the AUTHORITY on particular matters pertaining to PROJECT that are specifically identified in said notice and shall treat the AUTHORITY'S CONTRACTOR'S directions on those identified matters as if they were given by the AUTHORITY.

4.3 STAKEHOLDER COLLABORATION

In signing this Agreement, DISTRICT agrees to collaborate with the AUTHORITY, the AUTHORITY'S CONTRACTOR, and any other third-party entities affected by the PROJECT(s), including regulatory agencies, local agencies, and public and private utility

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entities, hereinafter referred to as STAKEHOLDERS, to identify collaborative methods for resolving issues that may arise as part of the PROJECT and/or STORM DRAIN WORK in an effort to achieve a quality PROJECT(s) that meets the PROJECT schedule and budget.

STAKEHOLDERS will attend an initial facilitated kick-off workshop as well as subsequent periodic meetings as scheduled throughout the duration of the PROJECT(s). During the initial workshop, STAKEHOLDERS will develop procedures and agreements (including TASK ORDERS) as specified in APPENDIX E, "STAKEHOLDER COLLABORATION," included herein to facilitate the collaborative relationship and aid in identifying and resolving issues as they arise throughout the PROJECT(s).

The AUTHORITY or the AUTHORITY'S CONTRACTOR shall reimburse DISTRICT for its cost of participation in the initial workshop and subsequent meetings.

Except to the extent otherwise required by law, any statements made or materials prepared during or relating to stakeholder meetings, including any statements made or documents prepared by a facilitator, shall be admissible or discoverable in any judicial or other dispute resolution proceeding.

5. PAYMENT FOR WORK

5.1 COST OF STORM DRAIN WORK

Cost of STORM DRAIN WORK includes the actual and reasonable cost of all necessary engineering, labor and transportation, and all necessary materials exclusive of any dismantled STORM DRAINAGE FACILITIES used in any RELOCATION, together with reasonable and usual indirect and overhead charges attributable to that work, and acquisition of any necessary new facility right of way involved in the STORM DRAIN WORK, subject to the following:

1. In any case in which the AUTHORITY is required under the provisions of this AGREEMENT to pay its share of the cost of RELOCATION of any Storm Drainage Facilities, the AUTHORITY shall be entitled to credits for the amount of any BETTERMENTS.
2. A credit shall not be allowed against any portion of the cost that is otherwise chargeable to DISTRICT, or for the salvage value of any materials or parts salvaged, which shall be retained by the AUTHORITY.
3. A credit allowance for age shall not be applied to Storm Drainage Facilities.
4. DISTRICT costs eligible for reimbursement by the AUTHORITY shall include only those authorized under Title 23 C.F.R. Part 645, Subpart A. DISTRICT agrees that costs referenced in Title 23 C.F.R. Part 645 Section 117(d)(2) are not eligible for reimbursement. These regulations can be found at:

a. <http://www.access.gpo.gov/nara/cfr/waisidx/cf>

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5.2 INVOICING PROCEDURES

DISTRICT will invoice the AUTHORITY'S CONTRACTOR in accordance with the invoicing procedures of the AUTHORITY'S CONTRACTOR.

6. GENERAL CONDITIONS

6.1 DEACTIVATED STORM DRAINAGE FACILITIES

The AUTHORITY acknowledges its ownership of and responsibility for the DEACTIVATED STORM DRAINAGE FACILITIES.

6.2 DEFAULT

In the event that DISTRICT breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in this Agreement or by applicable law, the AUTHORITY may pursue a claim for damages suffered by the AUTHORITY.

In the event that the AUTHORITY breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in the Agreement or by Law, DISTRICT may pursue a claim for damages suffered.

Termination of this Agreement shall not relieve either PARTY from any obligations it has pursuant to other agreements or TASK ORDERS between the PARTIES, nor from any statutory obligations that either PARTY may have with regard to the subject matter hereof.

The AUTHORITY may unilaterally cancel this Agreement for refusal by DISTRICT to allow access to all public documents, papers, letters, or other material that is made or received by DISTRICT in conjunction with this Agreement.

If the AUTHORITY's PROJECT(s) which precipitated this Agreement is canceled or modified so as to eliminate the necessity of work by DISTRICT, the AUTHORITY will notify DISTRICT in writing, and the AUTHORITY reserves the right to terminate this Agreement by Amendment by such written notice.

Notwithstanding any dispute, the PARTIES agree that they will continue their respective performances required hereunder unless and until termination of this Agreement has occurred, including payment of undisputed billings, and such continued efforts and payments of billings (whether or not disputed) shall not be construed as a waiver of any legal right or power of any PARTY under this Agreement or any other agreement or TASK ORDERS executed pursuant hereto, or otherwise available pursuant to applicable law. The PARTIES acknowledge and agree that delays in RELOCATIONS may impact the public convenience, safety and welfare, and that monetary damages could be inadequate to compensate for delays in the construction of the PROJECT. Consequently, the PARTIES shall be entitled to specific performance in the event of any breach of this

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Agreement that imminently threatens to delay PROJECT(s) construction.

6.3 INDEMNIFICATION

Each PARTY shall defend, hold harmless, and indemnify the other PARTY and its respective governing Boards, officers, directors, employees, authorized agents, engineers, contractors or subcontractors from and against any and all claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' and expert witness fees and costs) that arise out of or as a result of any negligent act or omission or willful misconduct of the indemnifying PARTY or its officers, agents, employees, engineers, contractors or subcontractors in carrying out that PARTY's obligations under this Agreement or under any TASK ORDER executed pursuant hereto, except to the extent that such expense, liability or claim is proximately caused by the negligence or willful misconduct of the PARTIES indemnified or their respective agents, servants, or independent contractors who are directly responsible to such indemnified PARTY.

When either PARTY receives a notice of claim for damages that may have been caused by the other PARTY in the performance of services required under this Agreement, that PARTY receiving the notice will immediately forward the claim to the other PARTY. PARTIES will evaluate the claim and report their findings to each other within fourteen (14) working days and will jointly discuss options in defending the claim. After reviewing the claim, PARTY receiving the notice of claim will determine whether to require the participation of the other PARTY in the defense of the claim or to require the non-notice receiving PARTY to defend the notice-receiving PARTY in such claim as described in this section. A PARTY'S failure to notify the other PARTY of a claim shall not release either PARTY from any of the requirements of this section.

PARTIES' obligation to defend and indemnify shall not be excused because of PARTIES' inability to evaluate liability or because PARTIES evaluate liability and determines it is not liable or determines the other PARTY is solely negligent or has engaged in willful misconduct. Only a final adjudication or judgment finding that a PARTY has been solely negligent or has engaged in willful misconduct shall excuse performance of this provision by either PARTY. Each PARTY shall pay all costs and fees related to this obligation and its enforcement by the other PARTY. A PARTY'S delay in notifying the other PARTY of a claim shall not release that PARTY of the above duty to defend.

6.4 FORCE MAJEURE

Neither DISTRICT nor the AUTHORITY shall be liable to the other for any failure to perform under this Agreement to the extent such performance is prevented by an act of God, act of civil or military authority, riot, fire, earthquake, strike, flood, power blackout, natural catastrophe, or any other event beyond the reasonable control of the non-performing party and which could not have been avoided or overcome by the exercise of due diligence; provided that the PARTY claiming the excuse from performance has:

- A. Promptly notified the other party of the occurrence and its estimated duration,
- B. Promptly remedied or mitigated the effect of the occurrence to the extent

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possible, and

C. Resumed performance as soon as practicable.

If any such event of Force Majeure occurs, DISTRICT agrees, if requested by the AUTHORITY, to accelerate its efforts if reasonably feasible to regain lost time, so long as the AUTHORITY agrees to reimburse DISTRICT for the reasonable and actual costs of such accelerated efforts.

6.5 DISTRICT'S STORM DRAIN FACILITY AND RIGHT OF WAY

Other than DEACTIVATED STORM DRAINAGE FACILITIES, any facility owned by DISTRICT shall at all times remain the property of and be properly protected and maintained by DISTRICT provided, however, that during the construction or RELOCATION of STORM DRAINAGE FACILITIES, the AUTHORITY or the AUTHORITY's CONTRACTOR shall properly protect and maintain those STORM DRAINAGE FACILITIES until DISTRICT accepts ownership thereof. .

Whenever DISTRICT's affected STORM DRAINAGE FACILITIES will remain within the AUTHORITY's Right Of Way, the AUTHORITY and DISTRICT shall execute an agreement for common use of the subject area, such agreement shall be in accordance with the AUTHORITY'S policies and procedures for joint or common use of the AUTHORITY's right of way acceptable to both PARTIES..

Whenever DISTRICT's affected STORM DRAINAGE FACILITIES are to be relocated from the existing Right Of Way Of DISTRICT to a new location that falls outside such existing right of way of DISTRICT, the AUTHORITY shall convey or cause to be conveyed to District a new right of way for such relocated STORM DRAINAGE FACILITIES acceptable to DISTRICT. For such RELOCATED FACILITIES, the AUTHORITY shall issue, or cause to be issued, to DISTRICT, without charge to DISTRICT or credit to the AUTHORITY, appropriate replacement rights in the new location mutually acceptable to both the AUTHORITY and DISTRICT for those rights previously held by DISTRICT in its existing right of way. In discharge of the AUTHORITY's obligations under this Paragraph, in the event that the new location falls within the right of way under the jurisdiction of the AUTHORITY, the AUTHORITY and DISTRICT shall execute an agreement for common use as stated in the above paragraph. In consideration for these replacement rights being issued by the AUTHORITY, DISTRICT shall subsequently vacate and convey to the AUTHORITY, or its nominee, within the AUTHORITY's right of way, all of its corresponding right, title and interest within DISTRICT's existing right of way so vacated.

If the existing RIGHT OF WAY OF DISTRICT includes fee title, the AUTHORITY shall acquire from DISTRICT, for just compensation under State law, those property rights required by the AUTHORITY for its FACILITIES by separate transaction, leaving to DISTRICT those remaining property rights appropriate for the placement and operation of DISTRICT's FACILITIES in the RIGHT OF WAY of DISTRICT.

Upon completion of the STORM DRAIN WORK by the AUTHORITY, the new STORM

MASTER AGREEMENT

DRAIN FACILITIES shall become the property of DISTRICT, and DISTRICT shall have the same rights in the new location that it had in the old location.

6.6 AGREEMENT FINAL EXPRESSIONS OF THE PARTIES

This Agreement constitutes the complete and final expression of the PARTIES with respect to the subject matter and supersedes all prior agreements, understandings, or negotiations, except that the PARTIES understand and agree that the AUTHORITY will have written policies and procedures which shall be applicable as written at the time of Agreement execution. Copies of the AUTHORITY policies and procedures will be provided to DISTRICT as soon as practicable after they become available. The AUTHORITY shall pay for any damages suffered by or costs incurred by DISTRICT for activities that may be required as a result of the AUTHORITY'S policies and procedures. Such activities will be set forth in the TASK ORDER specific to that STORM DRAIN WORK. This Agreement cannot be modified except by an instrument, in writing, signed by each of the PARTIES.

6.7 SEVERABILITY

Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof.

6.8 GOVERNING LAW AND VENUE

This Agreement shall be governed by the laws of the State of California. Venue for any action shall lie exclusively in Fresno County, California.

6.9 NOTICES

All notices under this Agreement must 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, by facsimile transmission, or by electronic transmission (email) and shall be deemed sufficiently given if served in a manner specified in this paragraph. The addresses and addressees noted below are that Party's designated address and addressee 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, three (3) days after the postmark date. If sent by regular mail, the notice shall be deemed given forty-eight (48) hours after it is addressed as required in this paragraph 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 to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means (including email) shall be deemed delivered upon telephone or similar confirmation of delivery (confirmation report from fax machine is sufficient), provided a copy is also delivered via personal delivery or mail. If notice is received after 4:00 p.m. or on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

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If to DISTRICT:

DISTRICT Name: Fresno Metropolitan Flood Control District
Person in Charge: Jerry Lakeman, District Engineer
Address: 5469 E. Olive Avenue
Fresno, CA 93727

If to AUTHORITY:

AUTHORITY: CALIFORNIA HIGH SPEED RAIL AUTHORITY
Person in Charge: Thomas Fellenz, General Counsel
Address: 770 L Street, Suite 800
Sacramento, CA 95814

6.10 WASTED WORK

The AUTHORITY will pay, in its entirety, that portion of the cost of the STORM DRAIN WORK constituting WASTED WORK.

6.11 HAZARDOUS MATERIAL

Upon discovery of HAZARDOUS MATERIAL in connection with the STORM DRAIN WORK, both DISTRICT and the AUTHORITY shall immediately confer to explore all reasonable alternatives and agree on a course of action. The AUTHORITY'S CONTRACTOR shall immediately reschedule the work in accordance with the AUTHORITY'S reasonable schedule and in compliance with existing statutes or regulations concerning the disposition of HAZARDOUS MATERIAL.

- A. The AUTHORITY will pay, in its entirety, those costs for additional necessary effort undertaken within the AUTHORITY's right of way to comply with existing statutes or regulations concerning the disposition of HAZARDOUS MATERIAL found as a consequence of that STORM DRAIN WORK.
- B. Those costs for additional necessary efforts undertaken within the area of the replacement property right located outside the AUTHORITY's right of way which is required to comply with existing statutes or regulations concerning the disposition of HAZARDOUS MATERIAL shall be borne by the AUTHORITY.
- C. Each PARTY to this Agreement retains the right to pursue recovery of its share of any such HAZARDOUS MATERIAL related costs from third parties in accordance with existing law.

6.12 SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of, and shall be binding upon, the successors and assigns of the PARTIES.

6.13 THIRD PARTIES

This Agreement is not intended to create a third party beneficiary or define duties, obligations, or rights in parties not signatory to this Agreement unless assigned. This Agreement is not intended to affect the legal liability of PARTIES by imposing any

MASTER AGREEMENT

standard of care for completing STORM DRAIN WORK different from the standards imposed by law.

The PARTIES agree that the AUTHORITY, without DISTRICT's written approval, shall have the right, in its sole discretion, without additional compensation to the DISTRICT and without being relieved of any liability or obligation of AUTHORITY hereunder, to assign this Agreement (or portions hereof) and any or all associated TASK ORDERS to the AUTHORITY'S CONTRACTOR, and in the event of such assignment, AUTHORITY and AUTHORITY'S CONTRACTOR shall be jointly and severally liable for any payments required to be made to the DISTRICT under this AGREEMENT or any TASK ORDER.

6.14 STATE FUNDS

No state funds or resources are allocated or encumbered as against this Agreement and the AUTHORITY's obligations and duties expressed herein are conditioned upon the passage of the annual State Budget Act and the allocation of funds by the California Department of Finance and the encumbrance of funds under a subsequently executed TASK ORDER.

6.15 AMERICAN RECOVERY AND REINVESTMENT ACT AND AUTHORITY

The provisions included in Appendix C, "ARRA AND AUTHORITY PROVISIONS," are hereby incorporated in and are integral to this Agreement, and DISTRICT shall ensure full compliance with these provisions to the extent they apply to this Agreement and subsequent TASK ORDERS.

MASTER AGREEMENT

IN WITNESS WHEREOF, the Parties have executed this Agreement effective the day and year first written.

DISTRICT:

BY: _____ DATE: _____
Signature

Typed Name: _____

Typed Title: _____

DISTRICT Legal Review			
BY:		DATE:	
Signature - DISTRICT Legal Counsel			

AUTHORITY Legal Review			
BY:		DATE:	
Signature - AUTHORITY Legal Counsel			

Approval by the **California High Speed Rail Authority**

BY: _____ DATE: _____
Signature

MASTER AGREEMENT

APPENDIX A

TASK ORDER FORM

This task order (“TASK ORDER”) entered into this day by and between _____, hereinafter referred to as DISTRICT, _____, herein referred to as the AUTHORITY’S CONTRACTOR, and California High Speed Rail Authority, hereinafter referred to as the AUTHORITY, is as follows:

WHEREAS, the AUTHORITY’S CONTRACTOR AND the AUTHORITY, acting by and through the State of California are parties to a certain Construction Contract with an effective date of _____, 20____, for the design and construction of a portion of a High Speed Railroad Project in the State of California; and,

WHEREAS, DISTRICT and the AUTHORITY are parties to that certain Master Agreement with an effective date of _____, 20____, along with any resulting TASK ORDER which provides for the location (vertically and/or horizontally), protection, relocation, installation, adjustment, or removal of STORM DRAINAGE facilities, or some combination thereof, owned and/or operated by DISTRICT (STORM DRAINAGE FACILITIES); and

WHEREAS, pursuant to the Construction Contract and the Master Agreement, the parties desire to execute a TASK ORDER to add one or more additional STORM DRAINAGE FACILITIES, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the agreements contained herein, the parties hereto agree as follows:

1. AMENDMENT

This TASK ORDER supplements and amends the Construction Contract and Master Agreement as follows:

- A. Scope of Work: The STORM DRAIN WORK as defined in Section 2.1 (including review, inspect, and approve) is incorporated into the Master Agreement,
- B. Schedule: The AUTHORITY must meet the deadlines for completion of the STORM DRAIN WORK that are provided for in the contract between the AUTHORITY and the AUTHORITY’S CONTRACTOR.
- C. DISTRICT’S costs for the STORM DRAIN WORK shall be developed pursuant to Section 5, “PAYMENT OF WORK,” of the Master Agreement, and shall be performed in accordance with the procedures set forth in Section 4, “PERFORMANCE OF WORK,” and Appendix B, “Design Build Procedures,” of the Master Agreement (*check one*): must meet the following deadline for completion of the STORM DRAIN WORK [*check one box*]:

ACTUAL & REASONABLE COST. DISTRICT estimates that its total actual cost for the STORM DRAIN WORK (net of any applicable credits for accrued depreciation, salvage and BETTERMENT), referred to herein as the “Actual Cost”, will be approximately \$_____ as shown by the Estimates. DISTRICT's Actual Cost

MASTER AGREEMENT

for the Adjustment work shall be developed in accordance with 23 CFR 645.117, pursuant to either *[check one]*:

- i. a work order accounting procedure prescribed by the applicable Federal or State regulatory body; or
- ii. an established accounting procedure developed by DISTRICT and which DISTRICT uses in its regular operations. Any costs included in the Actual Cost shall be reasonable, and shall be computed using rates and schedules not exceeding those applicable to similar work performed by or for DISTRICT at DISTRICT's full expense. The parties agree that ____% of DISTRICT's Actual Cost will be attributed to BETTERMENT.

NO CHARGE. DISTRICT is responsible for all of its costs for Adjustment of the additional STORM DRAINAGE FACILITIES. Accordingly, DISTRICT is not required to report such costs to the AUTHORITY.

- D. The net Actual Cost, as applicable, for the STORM DRAIN WORK shall be shared between the AUTHORITY and DISTRICT as follows: ____% by the AUTHORITY and ____% by DISTRICT; provided, however, that any portion of the Actual Cost attributable to Betterment shall be borne 100% by DISTRICT . If DISTRICT is entitled to any reimbursement for its costs of the STORM DRAIN WORK, the amounts required to be paid by the AUTHORITY to DISTRICT pursuant to this Agreement shall be full compensation to DISTRICT for all such costs (including without limitation costs of acquiring right of way for the STORM DRAIN WORK). DISTRICT acknowledges it shall not be entitled to compensation or reimbursement for any such costs from the AUTHORITY, the AUTHORITY'S CONTRACTOR, or the State of California.
- E. *[check if applicable.]* The proposed STORM DRAIN WORK will result in credits for accrued depreciation of those STORM DRAIN FACILITIES, in the amounts indicated on the Estimate.
- F. DISTRICT and the AUTHORITY agree to track separately all costs relating to this TASK ORDER and the STORM DRAIN WORK described herein.
- G. [Include any proposed amendments.]

2. GENERAL

- A. All capitalized terms used in this TASK ORDER shall have the meanings assigned to them in the Master Agreement, except as otherwise stated herein.
- B. This TASK ORDER may be executed in any number of counterparts. Each such counterpart hereof shall be deemed to be an original instrument but all such counterparts together shall constitute one and the same instrument.

MASTER AGREEMENT

- C. Except as amended hereby, the Master Agreement shall remain in full force and effect, and shall apply fully to the additional STORM DRAINAGE FACILITIES as if they were initially included therein.

- D. This TASK ORDER shall become effective upon the later of:
 - i. the date of signing by the last party (either DISTRICT or the AUTHORITY) signing this TASK ORDER, and
 - ii. the completion of the AUTHORITY’s review as indicated by the signature of the AUTHORITY’s representative, below.

DISTRICT:

BY: _____ **DATE:** _____
Signature

Typed Name: _____

Typed Title: _____

DISTRICT’S Legal Review

BY: _____ **DATE:** _____
Signature – DISTRICT’S Legal Counsel

California High Speed Rail Authority (AUTHORITY)

BY: _____ **DATE:** _____
Signature

Typed Name: _____

Typed Title: _____

AUTHORITY Legal Review

BY: _____ **DATE:** _____
Signature - AUTHORITY Legal Counsel

(CONTRACTOR):

MASTER AGREEMENT

BY: _____ **DATE:** _____
Signature

Typed Name: _____

Typed Title: _____

MASTER AGREEMENT

APPENDIX B

DESIGN BUILD PROCEDURES

1. INITIAL COORDINATION

- a. DISTRICT appoints Jerry Lakeman, District Engineer, jerryl@fresnofloodcontrol.org, (559) 456-3292, and in his absence Alan Hofmann, Assistant District Engineer/Design, alanh@fresnofloodcontrol.org, (559) 456-3292 as contact persons for DISTRICT who has charge over the STORM DRAIN WORK and will serve as the primary contacts for DISTRICT on all related issues.
- b. DISTRICT has provided the AUTHORITY with a series of As-Built drawings to illustrate the nature and location of DISTRICT'S existing STORM DRAINAGE FACILITIES.
- c. Based on DISTRICT'S verification and comments, the AUTHORITY will prepare Proposed Preliminary Design plans that indicate which STORM DRAINAGE FACILITIES are to be relocated and conceptual arrangements of the relocated STORM DRAINAGE FACILITIES.
- d. DISTRICT will verify the location of existing STORM DRAINAGE FACILITIES and/or correct errors and omissions in the AUTHORITY'S information by furnishing markups to the AUTHORITY of the drawings provided in Paragraph 1.b within 15 working days.
- e. The DISTRICT will review the plans to assist the AUTHORITY in completing correct and complete plans;

These plans will form the basis of subsequent design to be performed by the AUTHORITY, or the AUTHORITY'S CONTRACTOR. The AUTHORITY'S CONTRACTOR shall verify the accuracy of any information provided by the DISTRICT. DISTRICT shall provide the AUTHORITY or the AUTHORITY'S CONTRACTOR access to DISTRICT's plans and records of its depicted STORM DRAINAGE FACILITIES. DISTRICT shall verify, to the best of their ability, the accuracy of their depicted STORM DRAINAGE FACILITIES.

2. PERFORMANCE OF THE STORM DRAIN WORK

The method of performance to be utilized in the design and construction of the STORM DRAIN WORK, as described below, will be specified in the executed TASK ORDER for that STORM DRAIN WORK.

The DISTRICT agrees to (a) the AUTHORITY'S delegation to the AUTHORITY'S CONTRACTOR, the responsibility to reimburse DISTRICT, and (b) the AUTHORITY'S CONTRACTOR's collection of reimbursement directly from DISTRICT's having cost responsibility for BETTERMENTS.

Performance of the STORM DRAIN WORK will be in accord with the following method:

The AUTHORITY'S CONTRACTOR performs all design and construction services for the STORM DRAIN WORK.

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- a. At such time as the AUTHORITY'S CONTRACTOR has STORM DRAIN PLANS prepared to a level where the impact on DISTRICT'S STORM DRAINAGE FACILITIES and the nature and extent of the STORM DRAIN WORK can be determined, the AUTHORITY'S CONTRACTOR will provide a copy of the STORM DRAIN PLANS to DISTRICT. The STORM DRAIN PLANS shall include a preliminary STORM DRAIN WORK design concept which was created by the AUTHORITY'S CONTRACTOR with submittal stages at intermediate, Released for Construction (RFC) and As-Built stages.
- b. DISTRICT shall have fifteen (15) working days from receipt of the STORM DRAIN PLANS intermediate submittal to review them, and provide comments to the AUTHORITY or the AUTHORITY'S CONTRACTOR. DISTRICT shall also provide any applicable technical provisions and standard drawings along with its comments. Failure to provide comments within the time period allowed shall be deemed as an approval.
- c. At such time as the AUTHORITY'S CONTRACTOR has prepared proposed RFC STORM DRAIN PLANS, the AUTHORITY'S CONTRACTOR will provide a copy thereof to DISTRICT. The proposed RFC STORM DRAIN PLANS shall incorporate the comments of DISTRICT provided that the comments are reasonable and do not impair or create inconsistencies with the AUTHORITY'S CONTRACTOR'S Agreement with the AUTHORITY.
- d. DISTRICT shall have fifteen (15) working days from receipt of the proposed RFC STORM DRAIN PLANS to review them and provide final comments to the AUTHORITY'S CONTRACTOR. Failure to provide comments within the time period allowed shall be deemed as an approval.
- e. The AUTHORITY'S CONTRACTOR shall make final corrections to the STORM DRAIN PLANS and provide a copy to DISTRICT. If the final STORM DRAIN PLANS do not incorporate all the DISTRICT'S comments, DISTRICT, the AUTHORITY, and the AUTHORITY'S CONTRACTOR shall meet and confer in good faith to resolve the dispute and agree upon the final STORM DRAIN PLANS.
- f. The AUTHORITY'S CONTRACTOR shall perform the construction services for the STORM DRAIN WORK in accordance with the RFC STORM DRAIN PLANS.
- g. Deviations from the corrected RFC STORM DRAIN PLANS initiated by The AUTHORITY, the AUTHORITY'S CONTRACTOR or DISTRICT, must be agreed upon by all parties and memorialized in an Amendment to the Task Order for the original STORM DRAIN WORK. No deviation from the original STORM DRAIN WORK shall commence without a fully executed Amendment.

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- h. DISTRICT shall be entitled to have a reasonable number of representatives on the site of PROJECT to verify that the STORM DRAIN WORK is being properly performed by the AUTHORITY'S CONTRACTOR. The DISTRICT'S representatives shall at all times comply with all of the AUTHORITY'S CONTRACTOR'S work rules and regulations while on the Project Site. If after reasonable notice, any representative fails to comply with said work rules and regulations, the AUTHORITY'S CONTRACTOR shall have the exclusive right to prohibit the representative from access to the Project Site thereafter.
- i. Upon completion of the STORM DRAIN WORK, DISTRICT agrees to accept ownership and maintenance of the constructed Storm Drainage Facilities and receipt of as-built drawings in accordance with section 2.k.
- j. The process established above shall apply separately to each phase or segment of PROJECT, as established in accordance with the agreement between the AUTHORITY'S CONTRACTOR and the AUTHORITY.
- k. The AUTHORITY shall provide DISTRICT with as-built drawings of the STORM DRAIN WORK. The as-built drawings shall be in the format provided for in the TASK ORDER for that particular STORM DRAIN WORK.

California High Speed Rail Authority

MASTER AGREEMENT

APPENDIX C

ARRA AND AUTHORITY PROVISIONS

ARRA T&C

CCC-307 CERTIFICATION

GTC-610

California High Speed Rail Authority
MASTER AGREEMENT

A. ARRA T&C

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SUPPLEMENTAL TERMS AND CONDITIONS FOR CONTRACTS USING ARRA FUNDS

1. **ARRA FUNDED PROJECT:** Funding for this contract has been provided through the American Recovery and Reinvestment Act (ARRA) of 2009, Pub. L. 111-5. All contractors, including both prime and subcontractors, are subject to audit by appropriate federal or State of California (State) entities. The State has the right to cancel, terminate, or suspend the contract if any contractor or subcontractor fails to comply with the reporting and operational requirements contained herein.
2. **ENFORCEABILITY:** Contractor agrees that if Contractor or one of its subcontractors fails to comply with all applicable federal and State requirements governing the use of ARRA funds, the State may withhold or suspend, in whole or in part, funds awarded under the program, or recover misspent funds following an audit. This provision is in addition to all other remedies available to the State under all applicable State and federal laws.
3. **PROHIBITION ON USE OF ARRA FUNDS:** Contractor agrees in accordance with ARRA, Section 1604, that none of the funds made available under this contract may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pools.
4. **REQUIRED USE OF AMERICAN IRON, STEEL AND OTHER MANUFACTURED GOODS:** Contractor agrees that in accordance with ARRA, Section 1605, neither Contractor nor its subcontractors will use ARRA funds for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel and manufactured goods used in the project are produced in the United States in a manner consistent with United States obligations under international agreements. The Contractor understands that this requirement may only be waived by the applicable federal agency in limited situations as set out in ARRA, Section 1605.
5. **WAGE RATE REQUIREMENTS:** In accordance with ARRA, Section 1606, the Contractor assures that it and its subrecipients shall fully comply with said Section and notwithstanding any other provision of law and in a manner consistent with other provisions of ARRA, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the federal government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the United States Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act). It is understood that the Secretary of Labor has the authority and functions set forth in Reorganization Plan Numbered 14 or 1950 (64 Stat. 1267; 5 U.S.C. App.) and Section 3145 of Title 40, United States Code.
6. **INSPECTION OF RECORDS:** In accordance with ARRA Sections 902, 1514 and 1515, Contractor agrees that it shall permit the State of California, the United States Comptroller General or his representative or the appropriate Inspector General appointed under Section 3 or 8G of the United States Inspector General Act of 1978 or his representative to: (1) examine any records that directly pertain to, and involve transactions relating to, this contract; and (2) interview any officer or employee of Contractor or any of its subcontractors regarding the activities funded with funds appropriated or otherwise made available by the ARRA. Contractor shall include this provision in all of the contractor's agreements with its subcontractors from whom the contractor acquires goods or services in its execution of the ARRA funded work.
7. **WHISTLEBLOWER PROTECTION:** Contractor agrees that both it and its subcontractors shall comply with Section 1553 of the ARRA, which prohibits all non-federal Contractors, including the State, and all contractors of the State, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of: (1) gross mismanagement of a contract relating to ARRA funds; (2) a gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to implementation or use of ARRA funds; or (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) awarded or issued relating to ARRA funds. Contractor agrees that it and its subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of the ARRA.
8. **FALSE CLAIMS ACT:** Contractor agrees that it shall promptly notify the State and shall refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, subcontractor or other person has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds.
9. **REPORTING REQUIREMENTS:** Pursuant to Section 1512 of the ARRA, in order for state agencies receiving ARRA funds to prepare the required reports, Contractor agrees to provide the awarding state agency with the following information on a monthly (quarterly) basis:
 - a. The total amount of ARRA funds received by Contractor during the Reporting Period;
 - b. The amount of ARRA funds that were expended or obligated during the Reporting Period;
 - c. A detailed list of all projects or activities for which ARRA funds were expending or obligated, including:

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MASTER AGREEMENT

SUPPLEMENTAL TERMS AND CONDITIONS FOR CONTRACTS USING ARRA FUNDS

- (i.) The name of the project or activity;
 - (ii.) A description of the project or activity;
 - (iii.) An evaluation of the completion status of the project or activity; and
 - (iv.) An estimate of the number of jobs created and /or retained by the project or activity;
- d. For any contracts equal to or greater than \$25,000:
- (i.) The name of the entity receiving the contract;
 - (ii.) The amount of the contract;
 - (iii.) The transaction type;
 - (iv.) The North American Industry Classification System (NAICS) code or Catalog of Federal Domestic Assistance (CFDA) number;
 - (v.) The Program source;
 - (vi.) An award title descriptive of the purpose of each funding action;
 - (vii.) The location of the entity receiving the contract;
 - (viii.) The primary location of the contract, including the city, state, congressional district and country;
 - (ix.) The DUNS number, or name and zip code for the entity headquarters;
 - (x.) A unique identifier of the entity receiving the contract and the parent entity of Contractor, should the entity be owned by another; and
 - (xi.) The names and total compensation of the five most highly compensated officers of the company if it received: 1) 80% or more of its annual gross revenues in Federal awards; 2) \$25M or more in annual gross revenue from Federal awards and; 3) if the public does not have access to information about the compensation of senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 or section 6104 of Internal Revenue Code of 1986.;
- e. For any contracts of less than \$25,000 or to individuals, the information required above may be reported in the aggregate and requires the certification of an authorized officer of Contractor that the information contained in the report is accurate.

Any other information reasonably requested by the State of California or required by state or federal law or regulation.

Standard data elements and federal instructions for use in complying with reporting requirements under Section 1512 of the ARRA, are pending review by the federal government, and were published in the Federal Register on April 1, 2009 [74 FR 14824], and are to be provided online at www.FederalReporting.gov. The additional requirements will be added to this contract(s).

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B. CCC 307 – CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

<i>Contractor/Bidder Firm Name (Printed)</i>		<i>Federal ID Number</i>
By (Authorized Signature)		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in the County of</i>	

CONTRACTOR CERTIFICATION CLAUSES

1. **STATEMENT OF COMPLIANCE:** Contractor has, unless exempted, complied with the nondiscrimination program requirements. (GC 12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)
2. **DRUG-FREE WORKPLACE REQUIREMENTS:** Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:
 - a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
 - b. Establish a Drug-Free Awareness Program to inform employees about:
 - 1) the dangers of drug abuse in the workplace;
 - 2) the person's or organization's policy of maintaining a drug-free workplace;
 - 3) any available counseling, rehabilitation and employee assistance programs; and,
 - 4) penalties that may be imposed upon employees for drug abuse violations.
 - c. Every employee who works on the proposed Agreement will:
 - 1) receive a copy of the company's drug-free workplace policy statement; and,
 - 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: (1) the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (GC 8350 et seq.)

3. **NATIONAL LABOR RELATIONS BOARD CERTIFICATION:** Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a

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Federal court which orders Contractor to comply with an order of the National Labor Relations Board. (PCC 10296) (Not applicable to public entities.)

4. CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT: Contractor hereby certifies that contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

(Continued on next page)

CCC 307 – CERTIFICATION

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lesser of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

5. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with State of California.

6. SWEATFREE CODE OF CONDUCT:

- a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.
- b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice to determine the contractor's compliance with the requirements under paragraph a.

7. DOMESTIC PARTNERS: For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that contractor is in compliance with Public Contract Code section 10295.3.

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NOTE: This form represents only the certification portion of the Contractor Certification Clauses (CCC). Additional information about contracting with the State appears in the full text of the applicable CCC. Visit this web site to view the entire document:
<http://www.ols.dgs.ca.gov/Standard+Language/default.htm>.

MASTER AGREEMENT

C. GTC 610

DEPARTMENT OF GENERAL SERVICES TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. DISTRICT may not commence performance until such approval has been obtained.
2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. ASSIGNMENT: This Agreement is not assignable by the DISTRICT, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. AUDIT: DISTRICT agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. DISTRICT agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. DISTRICT agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, DISTRICT agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. INDEMNIFICATION: DISTRICT agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by DISTRICT in the performance of this Agreement.
6. DISPUTES: DISTRICT shall continue with the responsibilities under this Agreement during any dispute.
7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the DISTRICT fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the DISTRICT under this Agreement and the balance, if any, shall be paid to the DISTRICT upon demand.
8. INDEPENDENT CONTRACTOR: DISTRICT, and the agents and employees of DISTRICT, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.
9. RECYCLING CERTIFICATION: The DISTRICT shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).
10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, DISTRICT and its contractors and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and

MASTER AGREEMENT

AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. DISTRICT, its contractors and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. DISTRICT, its contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. DISTRICT, its contractors and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

DISTRICT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. TIMELINESS: Time is of the essence in this Agreement.

13. COMPENSATION: The consideration to be paid DISTRICT, as provided herein, shall be in compensation for all of DISTRICT's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15. ANTITRUST CLAIMS: The DISTRICT by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the DISTRICT shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

- 1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
- 2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the

MASTER AGREEMENT

cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT: For any Agreement in excess of \$100,000, the DISTRICT acknowledges in accordance with Public Contract Code 7110, that:

a. The DISTRICT recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b. The DISTRICT, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of \$200,000, the DISTRICT shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

a. If for this Contract Contractor made a commitment to achieve small business participation, then DISTRICT must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)

b. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then DISTRICT must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

20. LOSS LEADER:

If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

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MASTER AGREEMENT

APPENDIX D

SPECIAL CONDITIONS

1. PROJECT is a development that produces stormwater runoff, which the AUTHORITY desires perpetually to discharge, or reserve the right to discharge, into Storm Drainage Facilities, and the AUTHORITY acknowledges its obligation to pay the cost of the DISTRICT's perpetually owning, operating and maintaining those Facilities to accept and dispose of that stormwater runoff; and
2. The Non-Conforming Facilities Policy of DISTRICT provides that any person constructing any facilities not identified on the Master Plan ("NON CONFORMING FACILITIES") shall pay to DISTRICT a fee to own, operate and maintain that NON CONFORMING FACILITIES ("NCF Fee"); and
3. The AUTHORITY desires to construct Non-Conforming Facilities in order to complete the PROJECT.
4. DISTRICT operates its Storm Drainage Facilities pursuant to the Fresno Metropolitan Flood Control Act (Sections 73-1 *et seq.* of Appendix to the California Water Code.
5. The AUTHORITY'S CONTRACTOR shall (i) execute and comply with and (ii) pay or cause to be paid to DISTRICT drainage fees in accordance with the Fresno Metropolitan Flood Control District Drainage Facility Project Agreement attached hereto as Appendix F and the NCF Fee that is calculated in accordance with the DISTRICT'S NON CONFORMING FACILITIES Policy. Those drainage fees are intended to compensate DISTRICT for the cost of its perpetually accepting the stormwater runoff from the PROJECT into Storm Drainage Facilities
6. The AUTHORITY'S CONTRACTOR shall use Blair Church & Flynn, Provost & Pritchard or other local engineering firms approved by the DISTRICT to complete the Storm Drainage Work Design.
7. To the extent AUTHORITY'S CONTRACTOR needs import material for the PROJECT, the DISTRICT has 1,800,000 cubic yards of material available for export from within urban stormwater basin properties currently under its ownership, dependent on seasonal conditions. A diagram of the location and approximate volume is attached hereto as Appendix G. The DISTRICT has an on-going program to allow contractors to export material from these sites subject to obtaining from the DISTRICT a Borrow Material Permit containing grading and excavation conditions and requiring payment of a fee of 60¢ per cubic yard. Use of DISTRICT's import material shall mitigate the volume of stormwater storage capacity required to store PROJECT runoff. That mitigation shall offset storage capacity as shown on the table below. The AUTHORITY'S CONTRACTOR is responsible to verify that the material is suitable for use. This provision provides no BETTERMENT to DISTRICT.
8. In the event the AUTHORITY'S CONTRACTOR installs or replaces electrical power lines (i) supplying electrical power to DISTRICT's STORM DRAINAGE FACILITIES or (ii) crossing or located on such STROM DRAINAGE FACILITIES, the AUTHORITY'S CONTRACTOR shall install new or replacement lines only underground consistent with the requirements applicable to utility companies in underground utility Districts per Chapter 13, Article 6 of the City of Fresno Municipal Code. This provision provides not BETTERMENT to District.

MASTER AGREEMENT

APPENDIX E STAKEHOLDER COLLABORATION

In order to accomplish PROJECT(s) through the most effective means available, a collaborative relationship will be formed as agreed to by PARTIES in Section 4.5 “STAKEHOLDER COLLABORATION.” As part of this partnership, a cooperative management team would be developed, which would draw on the strengths of each team member in an effort to achieve a quality project within budget and on schedule. Collaboration and cooperation is strongly encouraged in preference to formal dispute resolution and adjudication mechanisms. Collaboration in this context is intended to be mandatory, but non-binding. The identified procedures will be available for use by the STAKEHOLDERS to resolve issues that may arise during the performance of STORM DRAIN WORK.

INITIAL KICK-OFF WORKSHOP

In order to achieve effective and efficient completion of the PROJECT(s), the STAKEHOLDERS agree to conduct a kick-off workshop where they will identify issues for resolution that are present or foreseeable and engage in joint problem solving and action planning on the issues identified.

At a minimum, during this workshop, participants will develop the following procedures and agreements to facilitate the stakeholder relationship and aid in identifying and resolving issues as they may arise throughout the PROJECT:

- A. “*Issues Resolution Ladder*” (IRL) – a hierarchy of those individuals within the PROJECT including the STAKEHOLDERS and Dispute Resolution Board and extending across organizational boundaries to address issues as they arise to facilitate communication and address issues before those issues are elevated to the next ladder rung.
- B. “*Stakeholder Implementation Plan*” (SIP) – the intention of the SIP is to sustain the collaborative relationship after the kick-off meeting by establishing monthly or quarterly schedule of stakeholder meetings and any procedures necessary for the identification and resolution of any issues during the performance of the STORM DRAIN WORK to be addressed by the STAKEHOLDERS
- C. “*Stakeholder Charter*” – the charter will express the vision for the project, a statement of mutual goals and positive behavior practices and will be a visual reminder of mutual commitment to the stakeholder vision, goals and relationship. The charter will be signed by all STAKEHOLDERS

STAKEHOLDER MEETINGS

The purpose of the stakeholder meetings will be to evaluate the efficacy of the collaborative relationship and review its processes as necessary to improve or correct any procedures/practices and efficiently identify and resolve PROJECT issues.

California High Speed Rail Authority

MASTER AGREEMENT

APPENDIX F

**FRESNO METROPOLITAN FLOOD CONTROL DISTRICT DRAINAGE
FACILITY PROJECT AGREEMENT (DRAINAGE FEE AND REIMBURSEMENT)**

AGREEMENT No.

MASTER AGREEMENT

FRESNO METROPOLITAN FLOOD CONTROL DISTRICT
DRAINAGE FACILITY PROJECT AGREEMENT
(Drainage Fee and Reimbursement)

WHEREAS, California High Speed Rail Authority (“Authority”) wishes _____ (Authority’s Contractor) [NOTE: If this is to be executed with Master Agreement, Contractor will not yet be identified.] to construct the project identified as HSR Construction Package #1 (the “Project”) on real property in the City or County of Fresno as depicted on Exhibit No. 1 attached hereto (“Authority’s Property”); and

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

WHEREAS, District, Authority, and Authority’s Contractor are hereinafter referred to individually as “Party” and collectively as “Parties”; and

WHEREAS, the Drainage Fee Ordinance of District (“District Ordinance”) requires Authority to cause Authority’s Contractor, prior to the approval by the District of the Project, to pay to District an urban drainage fee calculated by District with respect to the Project (“Drainage Fee”); and

WHEREAS, the Authority will carry out Storm Drain Work, as that term is defined in the Master Agreement entered into between Authority and District with regard to the Project, and Authority may construct certain storm drainage facilities identified in the Master Plan and District intends to reimburse Authority for some or all of the costs of constructing those facilities, which shall not include any replacement or relocation of District facilities that existed prior to the date of that Master Agreement, but such reimbursement shall not exceed the amount of the Drainage Fee; and

WHEREAS, as of the date hereof, District can calculate only the preliminary amount of that Drainage Fee and Authority and District can only estimate the cost of Authority’s constructing those storm drainage facilities; and

WHEREAS, in order for Authority to commence construction of the Project, District and Authority intend to use the preliminary Drainage Fee amount and estimated costs with the intention and obligation of each to carry out their respective duties set forth herein using the final amounts of the Drainage Fee and construction costs when the same are known after construction of those facilities and final approval of an entitlement for the Project by the District; and

WHEREAS, Authority, Authority’s Contractor, and District desire to set forth in this written Agreement their respective rights and obligations.

MASTER AGREEMENT

THEREFORE, it is mutually agreed as follows:

- | | <u>Preliminary
Amount</u> | <u>Final
Amount</u> |
|--|--|-------------------------|
| 1. Within forty-five (45) days after the execution hereof, Authority shall cause Authority's Contractor to pay to District its standard Drainage Fee per Appendix H calculated in accordance with Paragraph No. 8(A) below in the amount of: | \$2,730,000 | \$ _____ |
| 2. Authority may construct in accordance with all District requirements, Master Plan facilities identified on Exhibit No. 2 attached hereto (as it may be amended by District and Authority) and specifically referred to hereinafter as "Reimbursable Facilities" at a total cost of: | \$ _____ | \$ _____ |
| 3. Subject to subparagraph 9 below, District shall pay to Authority construction costs incurred by Authority pursuant to Paragraph No. 2 hereof in the following amount: | \$ _____ | \$ _____ |
| 4. Within forty-five (45) days of District's acceptance of the Reimbursable Facilities, District shall pay to Authority its construction costs for Reimbursable Facilities in the following amount: | \$ _____ | \$ _____ |
| 5. Final Date of Agreement: | _____ | |
| | (Date to be determined by the District pursuant to Paragraph No. 6 hereof) | |
| 6. Within ninety (90) days of acceptance by District of those Reimbursable Facilities for which reimbursement is claimed, Authority shall submit to District in electronic or hard copy format the permanent reproducible as-built or record plans of the Reimbursable Facilities, along with the project accounting reflecting final costs paid for the items | | |

MASTER AGREEMENT

eligible for reimbursement. District shall not pay reimbursements unless and until Authority completes the submittals required by this Paragraph No. 6. District shall establish and insert into Paragraph No. 5 above, the Final Date of this Agreement, using the date of receipt of the last submittal, only after District reviews and approves all Authority's submittals required hereby.

7. District shall determine the preliminary amount of the Drainage Fee stated in Paragraph No. 1 above and the preliminary construction cost specified in Paragraph No. 2 above based on the most recent map or plans of the Project and of the Master Plan available to District at the time of preparation of this Agreement.
8. (a) District shall calculate the final amount of the Drainage Fee stated in Paragraph No. 1 above based on the final approved plan or map of the Project. Taking into account all areas of improvement (alteration of the surface of the land) included in the Project.

(b) Upon acceptance by District of the completely constructed Reimbursable Facilities, District shall determine the final construction cost thereof and adjust the preliminary amount identified in Paragraph No. 2 above to reflect that final cost amount, which shall reflect Authority's actual cash expenditure as determined from unit prices established by such bidding procedures as may be required by District.

(c) Upon completion of such Reimbursable Facilities constructed by the Authority pursuant to this Agreement, Authority shall and does hereby offer them to District at the cost determined by District pursuant to subparagraph 8(b) above.
9. Even if the final construction cost determined pursuant to subparagraph 8(b) above exceeds the final amount of the Drainage Fee determined pursuant to subparagraph 8(a) above, District shall not pay to Authority any amount of construction cost in excess of the Drainage Fee. Reimbursable Facilities excludes all Storm Drain Work that is constructed as a replacement or relocation of facilities existing prior to the Project.
10. The preliminary amount of the Drainage Fee set forth in Paragraph No. 1 above has been computed using drainage fee rates in effect at the time of preparation of this Agreement. Should new rates become effective prior to the execution hereof, such new rates shall apply and all related amounts specified herein shall be adjusted accordingly.
11. The obligations set forth hereunder are both personal to Authority and constitute covenants running with the land of Authority; to wit, Authority's Property, such that they are binding on Authority's successors-in-interest in the Authority's Property and remain binding upon Authority after its sale of the Authority's Property or any portion thereof,

MASTER AGREEMENT

unless upon any such transfer District, in its sole and absolute discretion, consents in writing to an agreement provided by Authority and signed by its successor-in-interest expressly assuming all or a portion of Authority's obligations hereunder. Authority shall and hereby agrees to give notice of this Agreement to any buyer of or successor-in-interest in the Authority's Property.

12. In installing Reimbursable Facilities pursuant to this Agreement, Authority shall not be deemed to be a contractor or other agent of the District, but shall be deemed to be constructing the Project for its own benefit.
13. The contract amounts for construction of Reimbursable Facilities and the amounts of any change orders to such contract shall require written approval of the District, in its sole and absolute discretion, prior to Authority's execution of such construction contracts and change orders. Such amounts as approved by the District shall constitute the basis for calculating the amount of the reimbursement for such construction provided pursuant to this Agreement.
14. All notices under this Agreement must 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, by facsimile transmission, or by electronic transmission (email) and shall be deemed sufficiently given if served in a manner specified in this paragraph. The addresses and addressees noted below are that Party's designated address and addressee 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, three (3) days after the postmark date. If sent by regular mail, the notice shall be deemed given forty-eight (48) hours after it is addressed as required in this paragraph 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 to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means (including email) shall be deemed delivered upon telephone or similar confirmation of delivery (confirmation report from fax machine is sufficient), provided a copy is also delivered via personal delivery or mail. If notice is received after 4:00 p.m. or on a Saturday, Sunday, or legal holiday, it shall be deemed received on the next business day.

MASTER AGREEMENT

Authority: CALIFORNIA HIGH SPEED RAIL AUTHORITY
Person in Charge: Thomas Fellenz
Address: 770 L Street, Suite 800
Sacramento, CA 95814

Authority's Contractor:
Name:
Address:

District: Bob Van Wyk
General Manager-Secretary
Fresno Metropolitan Flood
Control District
5469 East Olive Avenue
Fresno, CA 93727

Copy to: Douglas B. Jensen
Legal Counsel
Baker, Manock & Jensen, P.C.
Fig Garden Financial Center
5260 North Palm Avenue, Suite 421
Fresno, CA 93704

Authority shall promptly notify District of any change of address.

- 15. All Exhibits referred to herein and attached hereto are hereby incorporated herein as though set forth in full.
- 16. This Agreement may be amended only by a written document signed by all Parties hereto.
- 17. In the event Authority constructs facilities that are not identified on the Master Plan ("Non-Conforming Facilities"), Authority shall cause the Authority's Contractor to pay to District pursuant to Section 2.303 of the District Ordinance, Non-Conforming Facilities fees in effect on the date District accepts the Non-Conforming Facilities. The present schedule of such fees is attached hereto as Exhibit No. 3.

Executed this _____ day of _____ 20____ * Final document formatted so OParagraph 17 and all signatures are contained on the page.

MASTER AGREEMENT

“District”

Fresno Metropolitan Flood
Control District, a
California public corporation

By: _____

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

“Authority”

Authorized Official(1)

Name and Title

Authorized Official(2)

Name and Title

Authority’s Contractor

Authorized Official (1)

Name and Title

MASTER AGREEMENT

Authority's Contractor

Authorized Official (2)

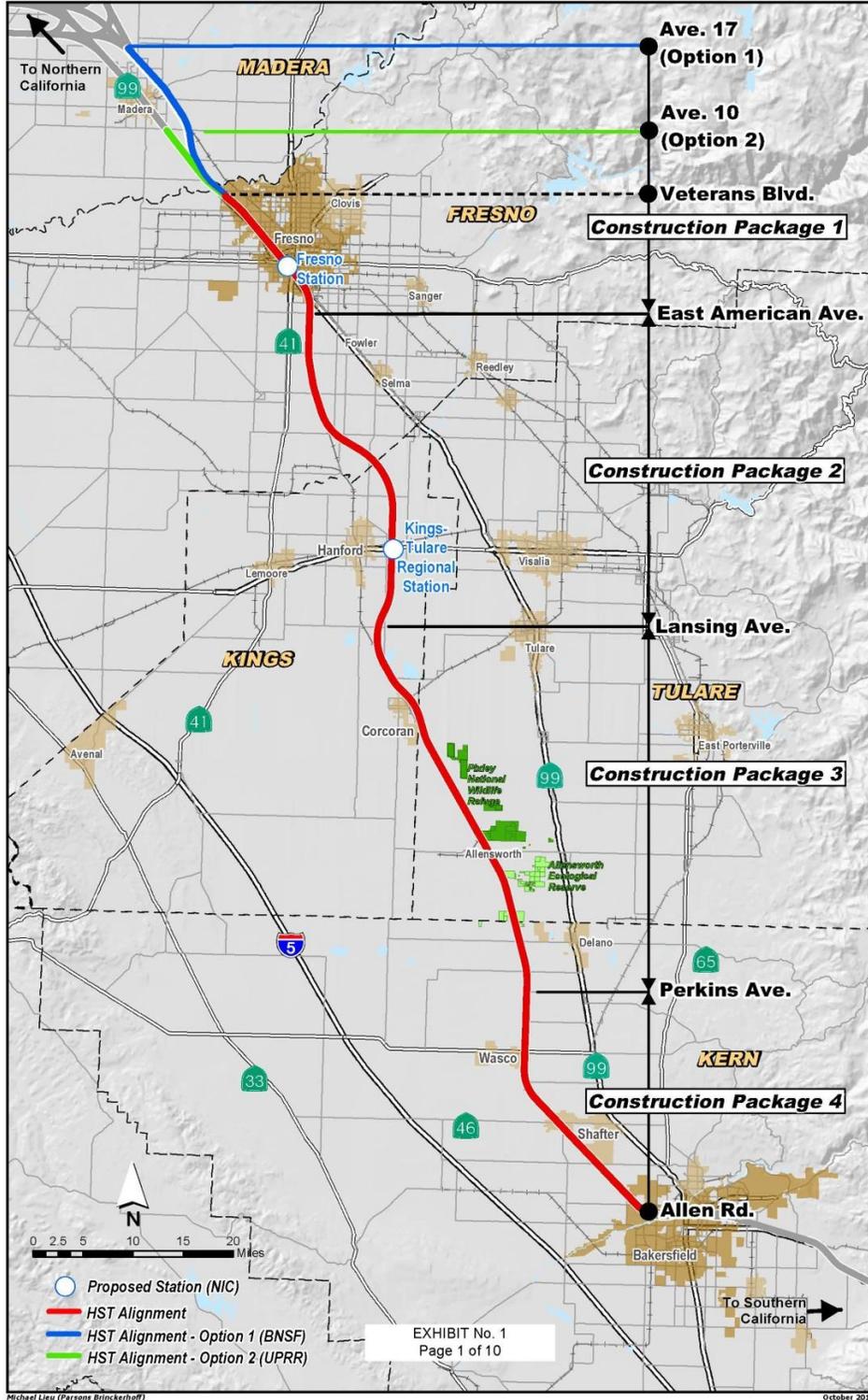
Name and Title

Engineering Department Review	
Approved by:	
	or
GEL	AEH

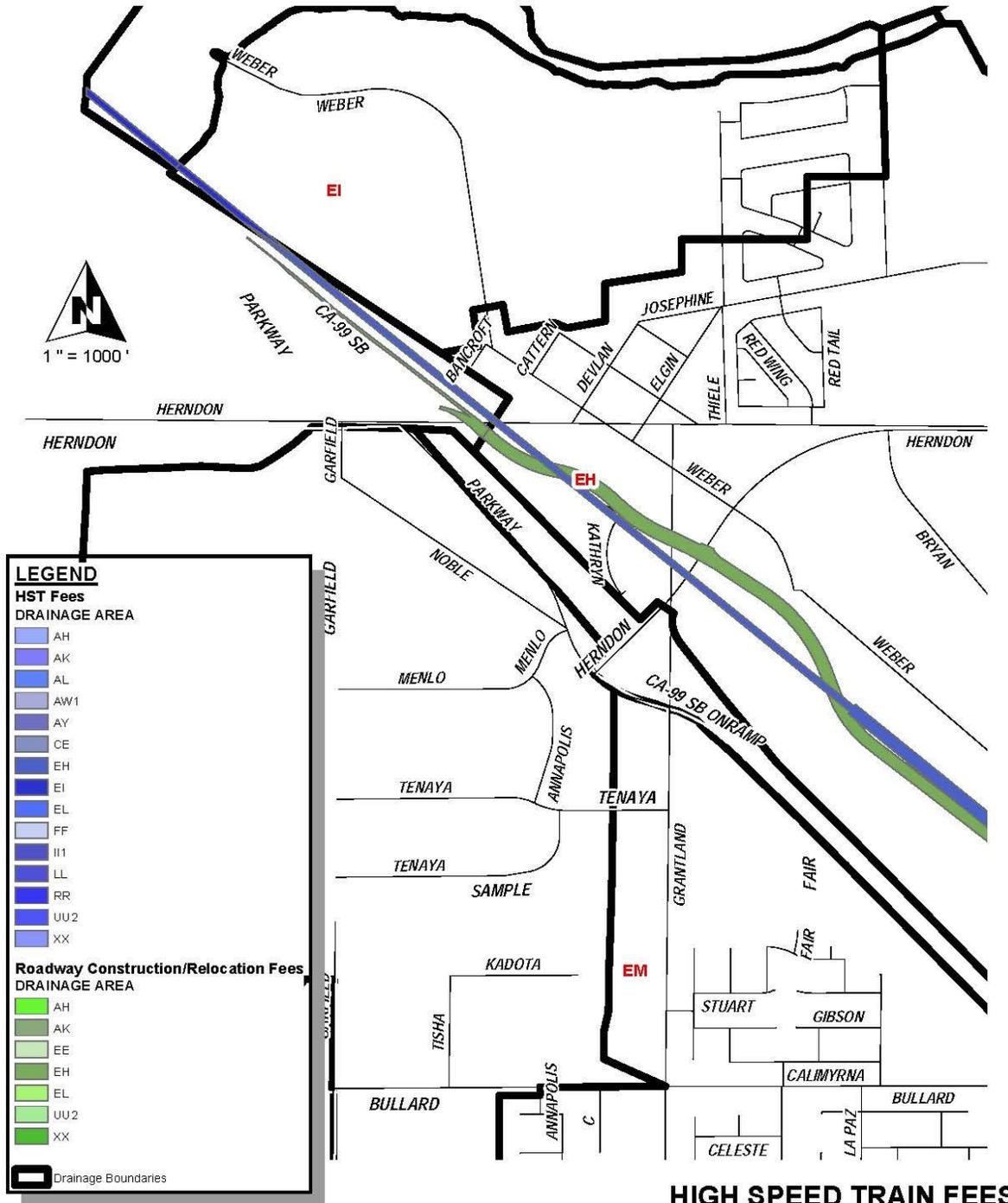
**Exhibit No. 1 to
Drainage Facility Project Agreement**

MASTER AGREEMENT

[Depiction of Authority's Property]



MASTER AGREEMENT



HIGH SPEED TRAIN FEES BY DRAINAGE AREA

EXHIBIT No. 1
Page 2 of 10

FRESNO METROPOLITAN FLOOD CONTROL DISTRICT



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Date: 10/10/2011
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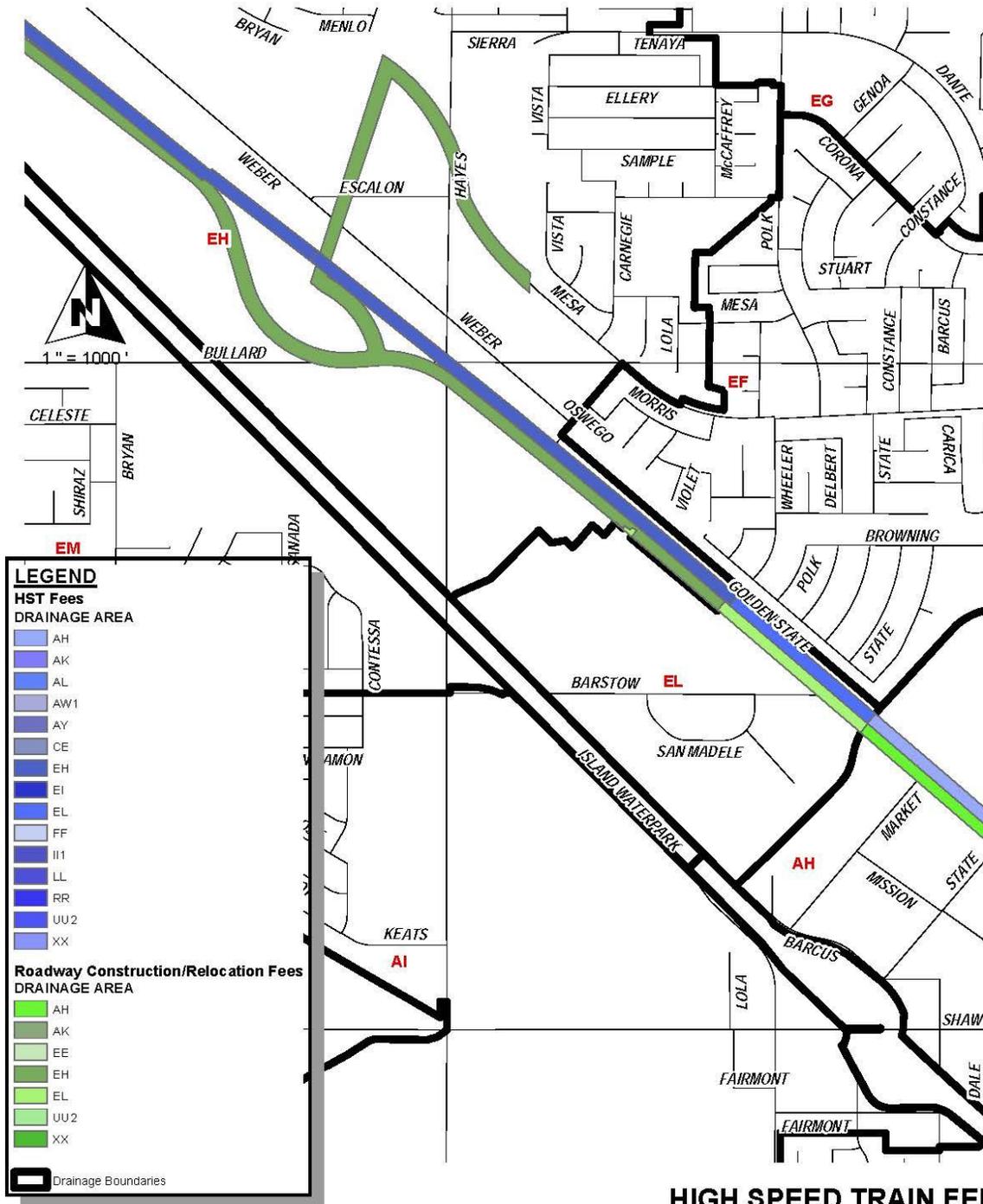


EXHIBIT No. 1
Page 3 of 10

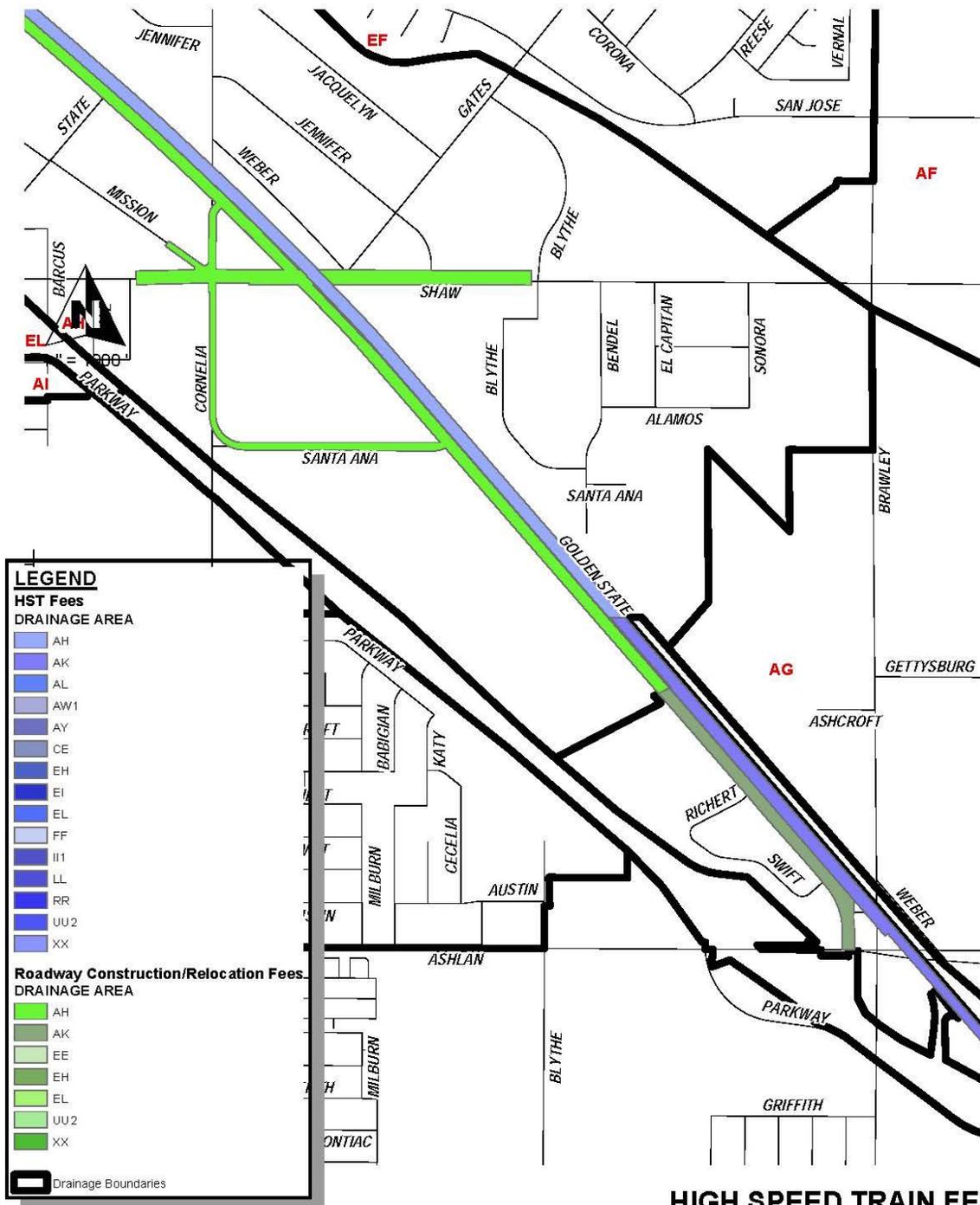
HIGH SPEED TRAIN FEES BY DRAINAGE AREA

FRESNO METROPOLITAN FLOOD CONTROL DISTRICT



Prepared by: rich
Date: 10/10/2011
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MASTER AGREEMENT



HIGH SPEED TRAIN FEES BY DRAINAGE AREA

EXHIBIT No. 1
Page 4 of 10



FRESNO METROPOLITAN FLOOD CONTROL DISTRICT

Prepared by: richd
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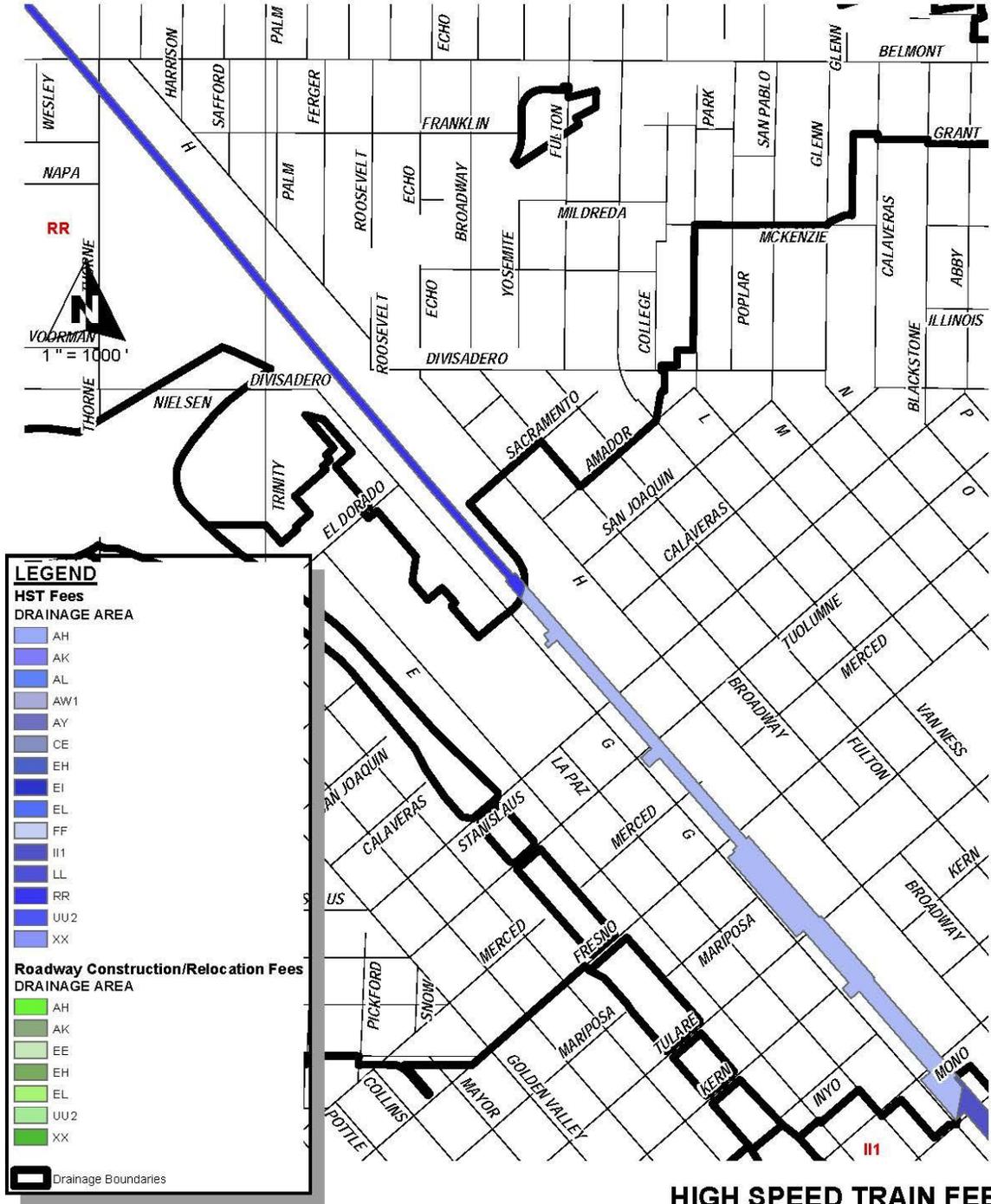


EXHIBIT No. 1
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HIGH SPEED TRAIN FEES
BY DRAINAGE AREA



FRESNO METROPOLITAN FLOOD CONTROL DISTRICT

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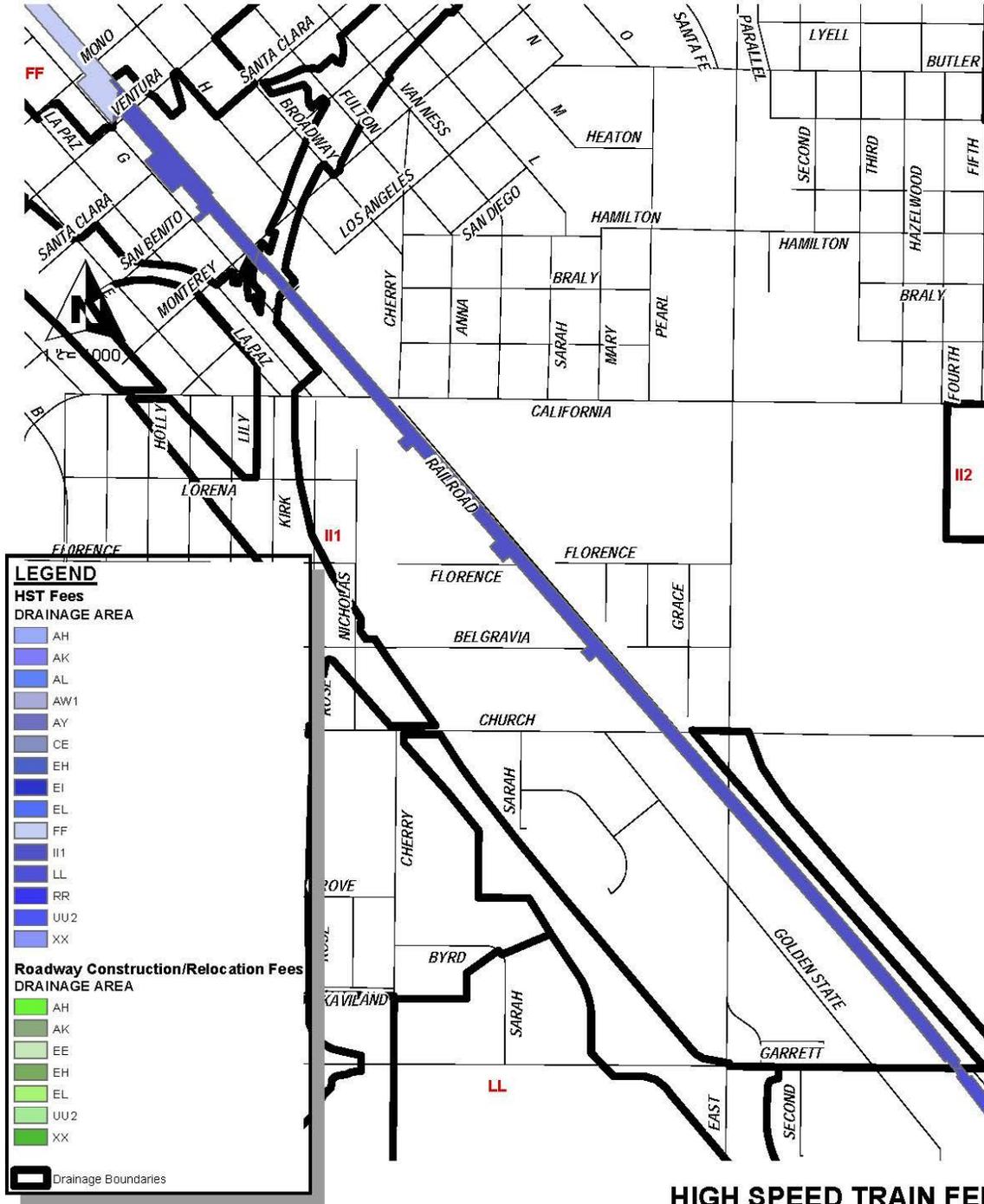


EXHIBIT No. 1
Page 8 of 10

HIGH SPEED TRAIN FEES BY DRAINAGE AREA



FRESNO METROPOLITAN FLOOD CONTROL DISTRICT

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MASTER AGREEMENT

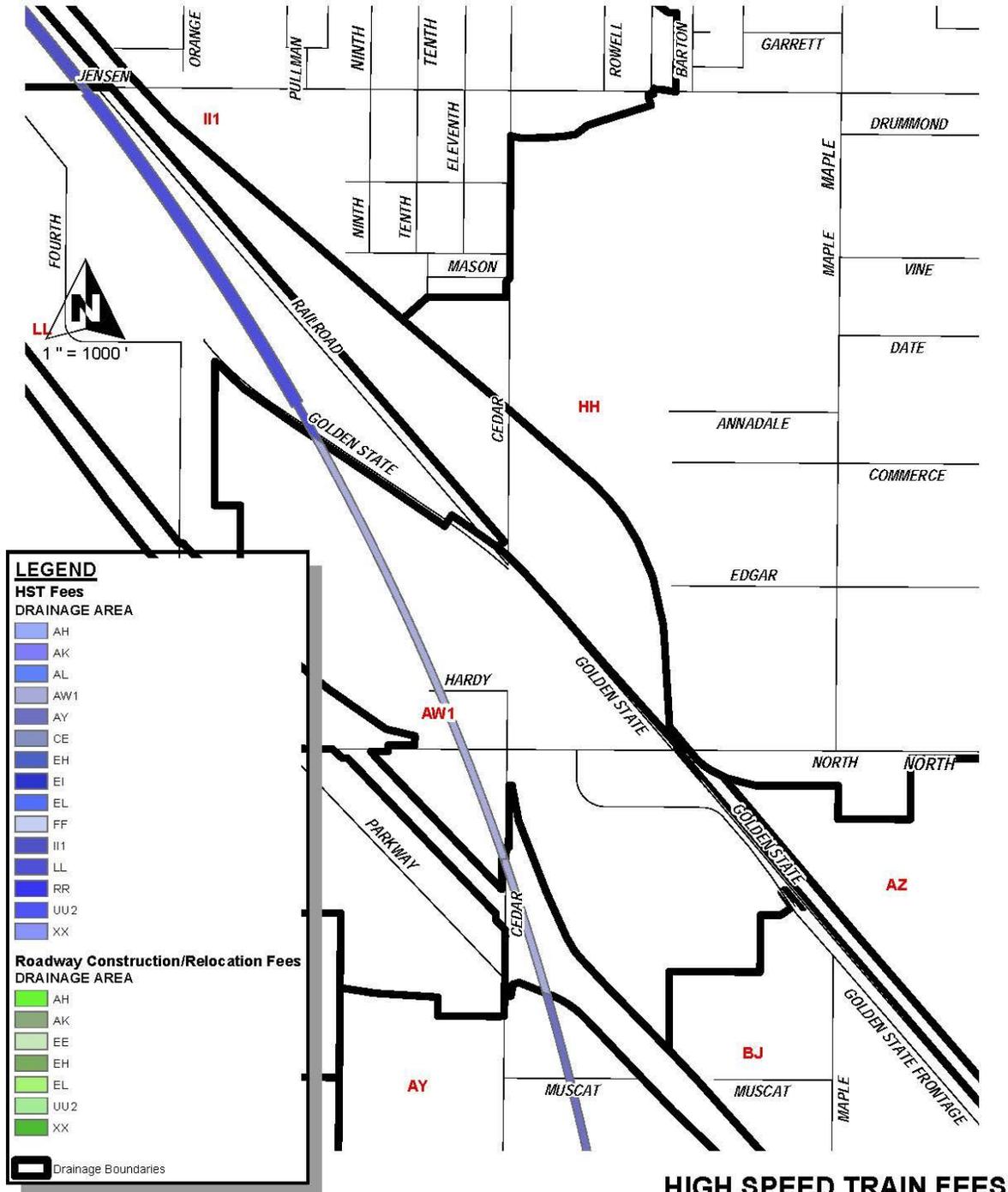


EXHIBIT No. 1
Page 9 of 10

HIGH SPEED TRAIN FEES BY DRAINAGE AREA



FRESNO METROPOLITAN FLOOD CONTROL DISTRICT

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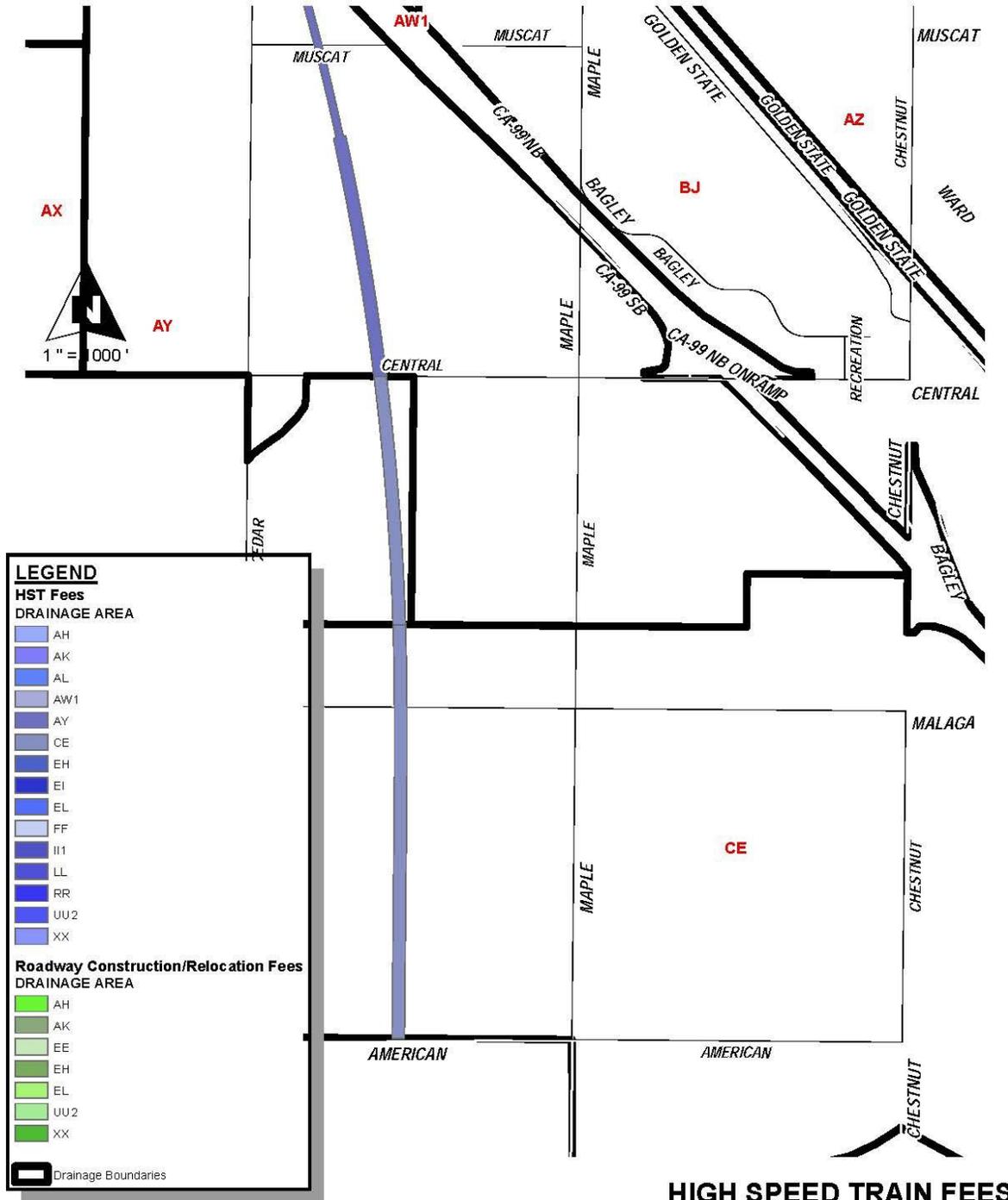


EXHIBIT No. 1
Page 10 of 10

HIGH SPEED TRAIN FEES BY DRAINAGE AREA



FRESNO METROPOLITAN FLOOD CONTROL DISTRICT

Prepared by: richd
Date: 10/10/2011
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MASTER AGREEMENT

Project Review-Legal Description Approval	
Approved by:	
	or
DEBBIE _____	ENGINEER _____
DATE _____	

DRAFT

MASTER AGREEMENT

Exhibit No. 2 to
Drainage Facility Project Agreement

[Diagram and Estimate of Reimbursable Facilities]

DRAFT

MASTER AGREEMENT

Exhibit No. 3 to
Drainage Facility Project Agreement

[Non-Conforming Facilities Fees]

**ORDINANCE CODE: ORDINANCE 2004-1
FRESNO METROPOLITAN FLOOD CONTROL DISTRICT**

CHAPTER 2

**MASTER SCHEDULE OF SERVICE CHARGES
AMENDING ORDINANCE 97-2, CHAPTER 2**

2.100 Purposes.

2.101 The Board of Directors finds and declares that the programs and activities of the District frequently involve the provision of direct services to specific individual beneficiaries. The Board of Directors determines that such programs and activities produce direct and indirect costs to the District and that it is appropriate for such costs to be borne by the beneficiaries of such programs and activities.

1.102 It is the purpose of this Chapter to establish a specific schedule of service charges to be collected by the District from beneficiaries of the identified District services, further providing a means of regularly reviewing and adjusting such service charges to fully reflect current actual District costs.

2.200 Definitions.

2.204 "Non-Conforming Facilities" means facilities not identified in and not required by the District's adopted Storm Drainage Master Plan, also referred to as "Non-Master Plan Facilities".

2.303 Non-Conforming Facilities Services.

- a. There exists a significant and continuing demand by non-District parties to construct non-Storm Drainage Master Plan Facilities in-lieu of providing surface grading or street patterns as otherwise required. The Board of Directors has determined that such non-Storm Drainage Master Plan Facilities may be accepted by the District for perpetual operation and maintenance subject to the provisions of this Section.
- b. Acceptance by the District of non-Storm Drainage Master Plan Facilities requires the District to (1) provide an engineering review of the hydraulic and construction design plans and specifications, (2) perform on-site construction inspection, (3) accept, operate and maintain in

MASTER AGREEMENT

perpetuity the completed facilities; and (4) administer detailed engineering and contractual records, which activities result in direct and indirect costs to the District.

- c. Pursuant to this Chapter the District may accept from a non-District party, at its sole discretion, non-Storm Drainage Master Plan facilities for perpetual operation and maintenance by the District, subject to (1) execution of a Non-Conforming Facilities Agreement (2) compliance with all conditions, plans and specifications established by the District for such construction; and (3) payment to the District of the Non-Conforming Facilities Service Charge as computed using the rates set forth in Section 2.400 of this Chapter.
- d. Failure of non-District parties constructing non-Storm Drainage Master Plan facilities pursuant to this Section to comply with the provision hereof shall result in the imposition of penalties which may include but are not limited to (1) termination of any current Non-Conforming Facilities Agreement (2) non-acceptance by the District of the facilities being constructed (3) monetary fines and penalties as may be imposed by the District; (4) such other remedies and penalties which may be available under law.

2.402 Service Charges.

Non-Conforming Facilities Service Charges:

(1)	Engineering Charge, Basic Hydrology	\$550.00
(2)	Engineering Charge, Each inlet in excess of one	\$ 30.00
(3)	Inspection Charge	\$180.00
(4)	Maintenance Charge per Lineal Foot	\$ 6.50

2.500 Adjustment and Amendment of Master Schedule of Service Charges.

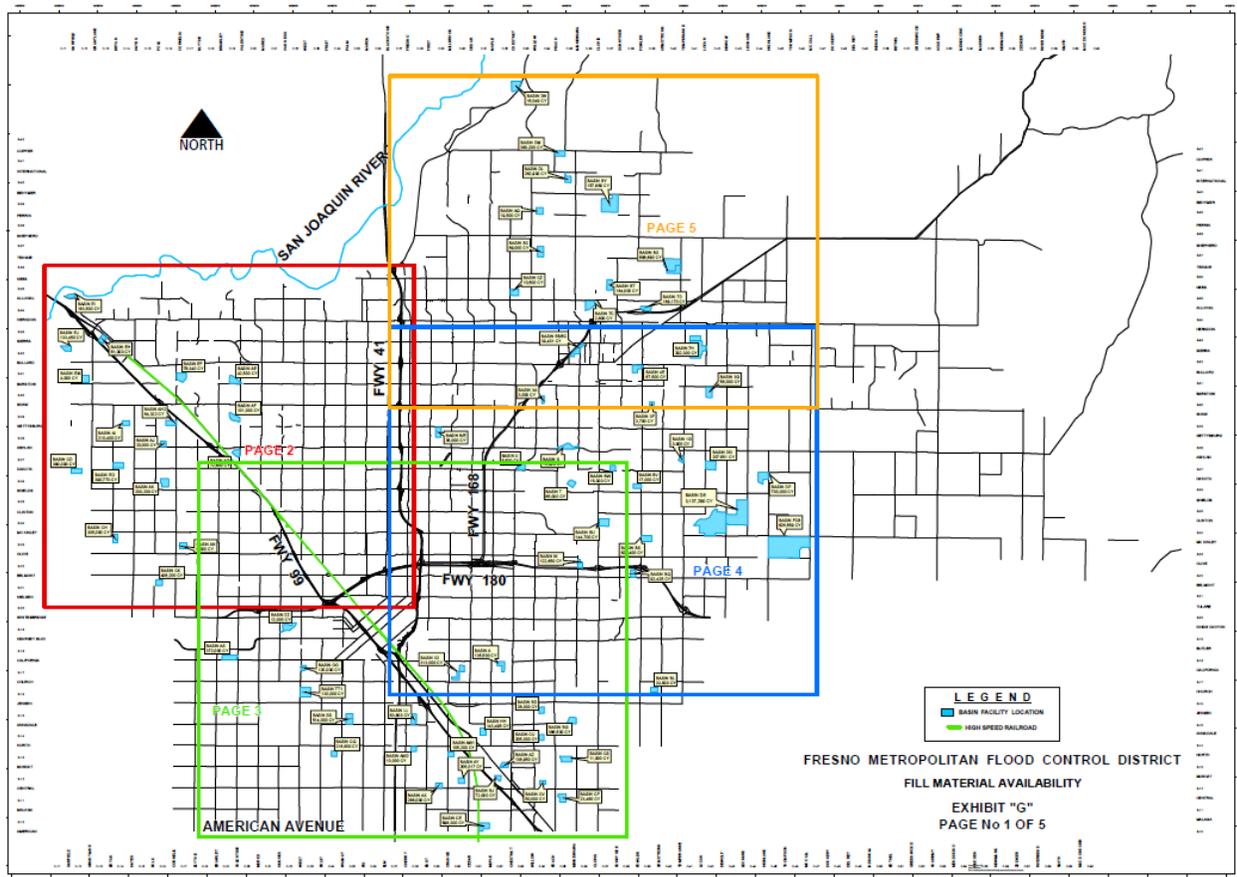
2.501 The service charge rates set forth in Section 2.400 of this Chapter may be adjusted by the Board of Directors when the Board determines the adopted rates no longer achieve full recovery of the District's cost of providing such services. Such adjustment of rates shall become effective no sooner than 60 days from adoption of a resolution of the Board of Directors setting forth such amendments.

2.502 The provisions of this Chapter may be amended, including the establishment of additional service charges, by the Board of Directors. Such amendments will become effective no sooner than 60 days from adoption of a resolution of the Board of Directors setting forth such amendments.

Date Adopted: April 14, 2004

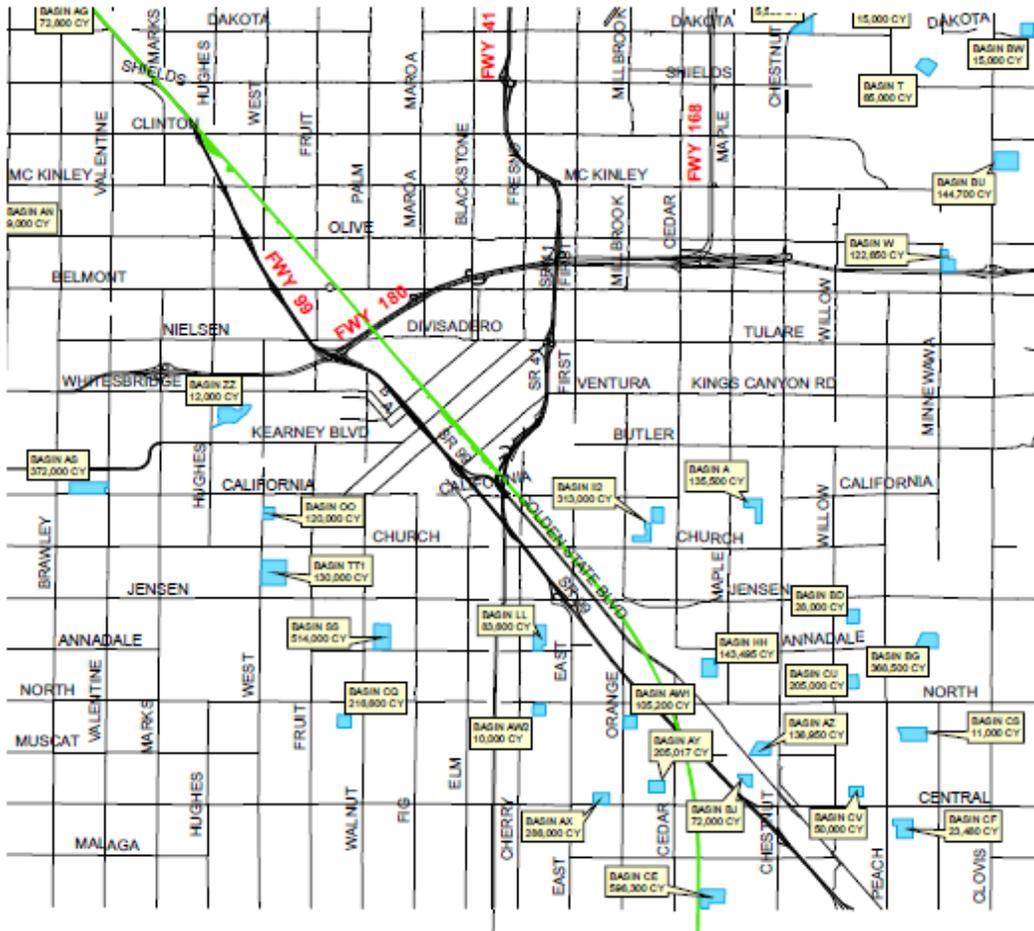
MASTER AGREEMENT

**APPENDIX G
STORMWATER BASIN LOCATIONS**



MASTER AGREEMENT

NOTE:
THIS MAP IS SCHEMATIC
DISTANCES ARE APPROXIMATE.



LEGEND

- Basin Facility Location
- High Speed Railroad



BASIN FILL MATERIAL AVAILABILITY

EXHIBIT "G"
PAGE No 3 OF 5

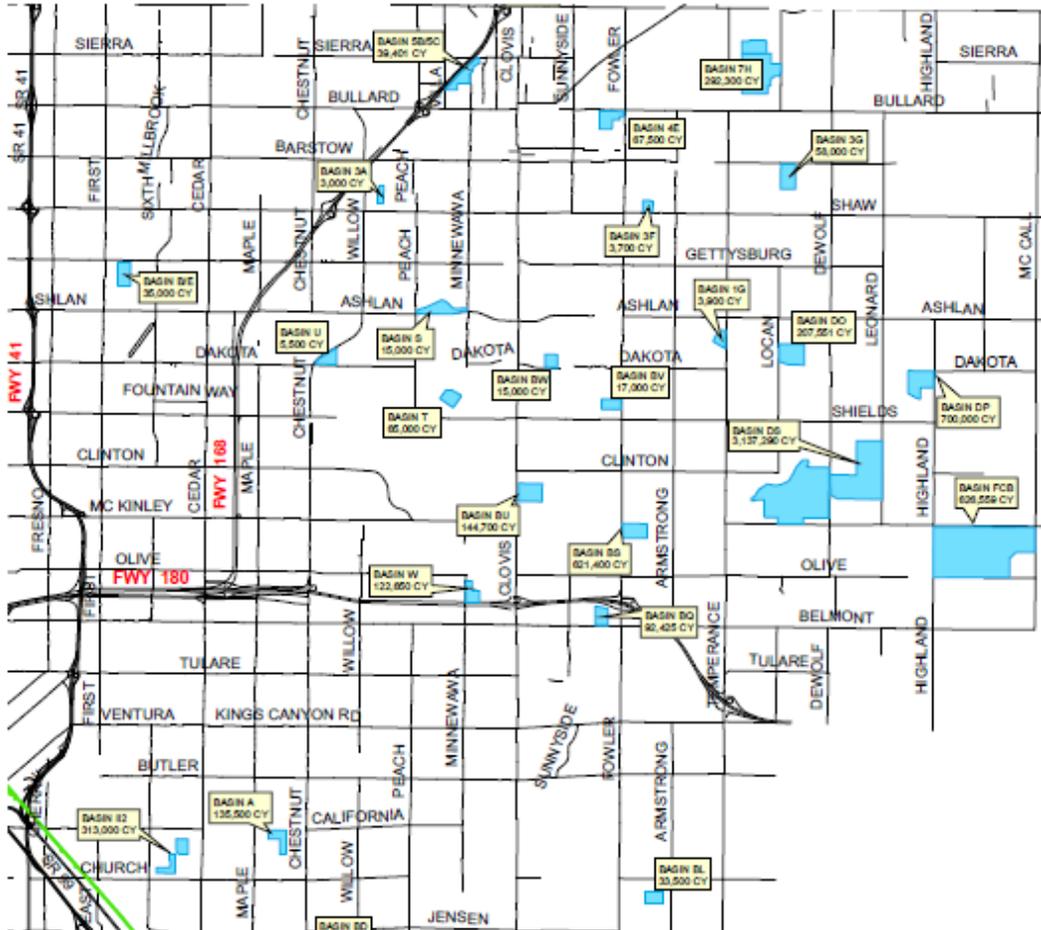


FRESNO METROPOLITAN FLOOD CONTROL DISTRICT

Prepared by: wadet
Date: 5/4/2012
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MASTER AGREEMENT

NOTE:
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DISTANCES ARE APPROXIMATE.



LEGEND

-  Basin Facility Location
-  High Speed Railroad



BASIN FILL MATERIAL AVAILABILITY

EXHIBIT "G"
PAGE No 4 OF 5

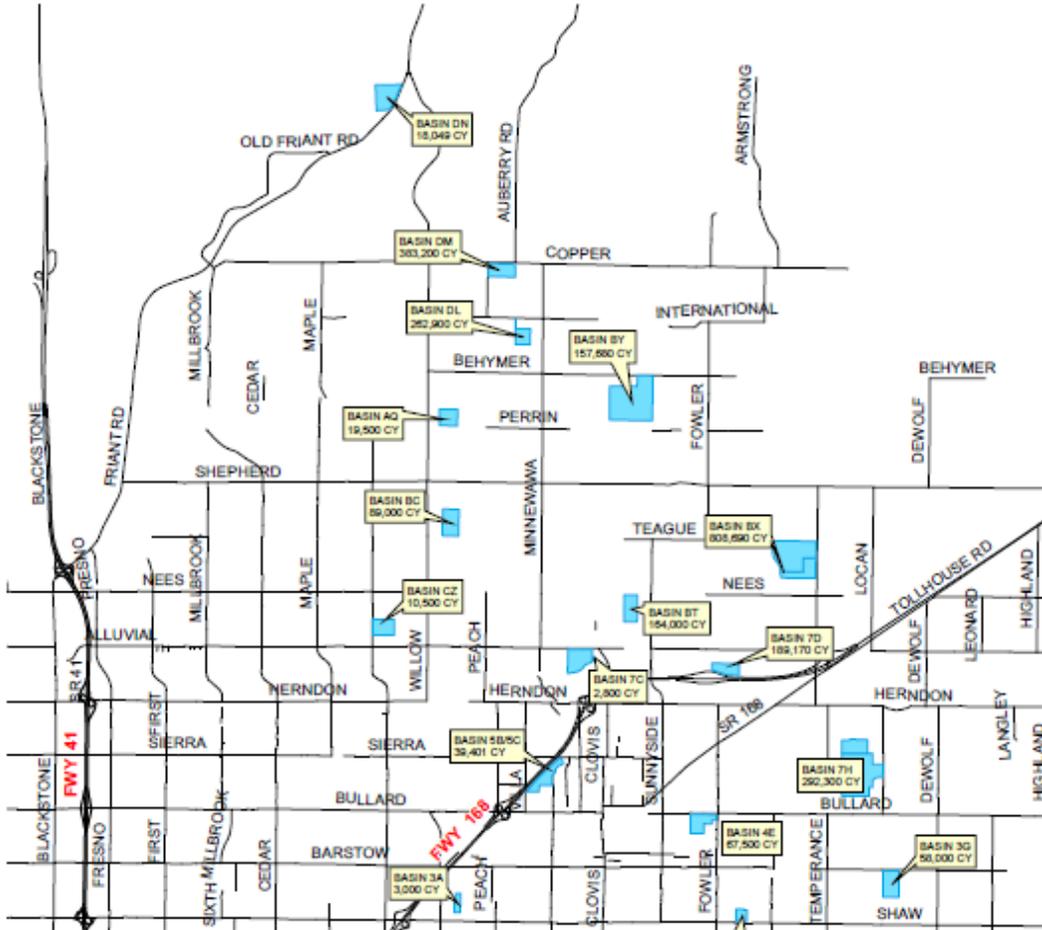


FRESNO METROPOLITAN FLOOD CONTROL DISTRICT

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MASTER AGREEMENT

NOTE:
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DISTANCES ARE APPROXIMATE.



LEGEND

-  Basin Facility Location
-  High Speed Railroad



BASIN FILL MATERIAL AVAILABILITY

EXHIBIT "G"
PAGE No 5 OF 5



FRESNO METROPOLITAN FLOOD CONTROL DISTRICT

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California High Speed Rail Authority

MASTER AGREEMENT
APPENDIX H
SUMMARY PRELIMINARY DRAINAGE FEE
Based on CHSRA Preliminary Engineering Design

DRAFT

MASTER AGREEMENT**High Speed Train
Summary Preliminary Drainage Fee****High Speed Train**

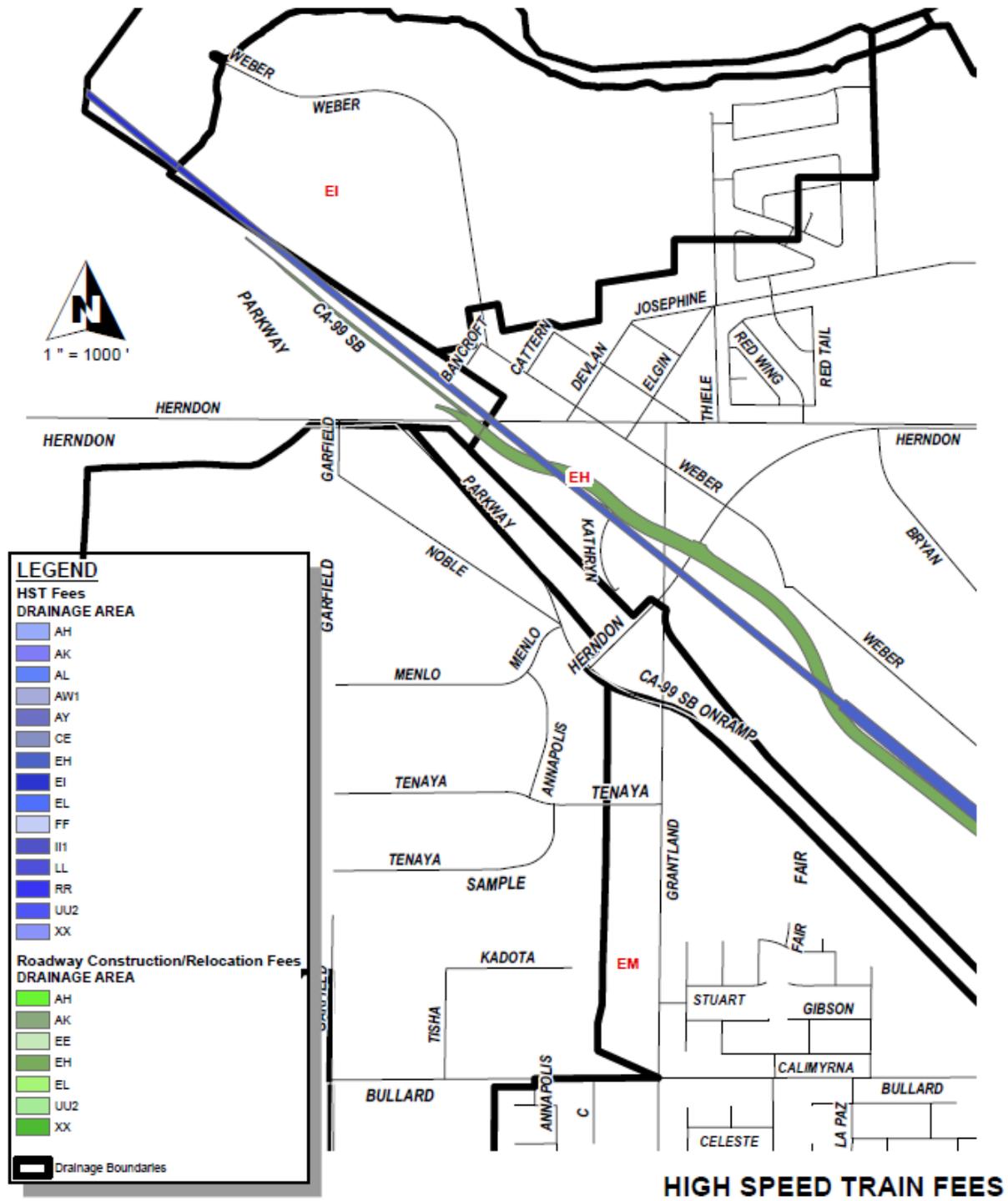
Drainage Area	Use	Rate/Ac	Acres	Fee
EXEMPT "EI"	Comm.	\$15,640	1.08	\$16,891.00
EI	Comm.	\$15,640	1.05	\$16,422.00
EH	Comm.	\$13,090	12.18	\$159,436.00
AH	Comm.	\$11,010	16.78	\$184,748.00
AK	Comm.	\$8,890	10.14	\$90,145.00
EXEMPT "AL"	Comm.	\$6,960	14.25	\$99,180.00
NON-PLANNED "EH"	Comm.	\$13,090	2.63	\$34,427.00
EL	Comm.	\$9,970	3.32	\$33,100.00
EH	Comm.	\$13,090	9.92	\$129,853.00
CE	Comm.	\$14,730	7.58	\$111,653.00
AW1	Comm.	\$17,090	5.08	\$86,817.00
EXEMPT "AW1"	Comm.	\$17,090	1.56	\$26,660.00
LL	Comm.	\$6,960	7.42	\$51,643.00
AY	Comm.	\$11,200	6.45	\$72,240.00
FF	Comm.	\$6,960	18.66	\$129,874.00
EXEMPT "RR"	Comm.	\$6,960	3.91	\$27,214.00
UU2	Comm.	\$6,960	3.36	\$23,386.00
RR	Comm.	\$6,960	8.67	\$60,343.00
II1	Comm.	\$6,960	18.91	\$131,614.00
II1	Comm.	\$6,960	6.09	\$42,386.00
EXEMPT "II1"	Comm.	\$6,960	0.70	\$4,872.00
EXEMPT "XX"	Comm.	\$6,960	7.73	\$53,801.00
NON-PLANNED "CE"	Comm.	\$14,730	4.56	\$67,169.00
XX	Comm.	\$6,960	5.50	\$38,280.00
			177.53	\$1,692,154.00

Roadway Construction/Relocation

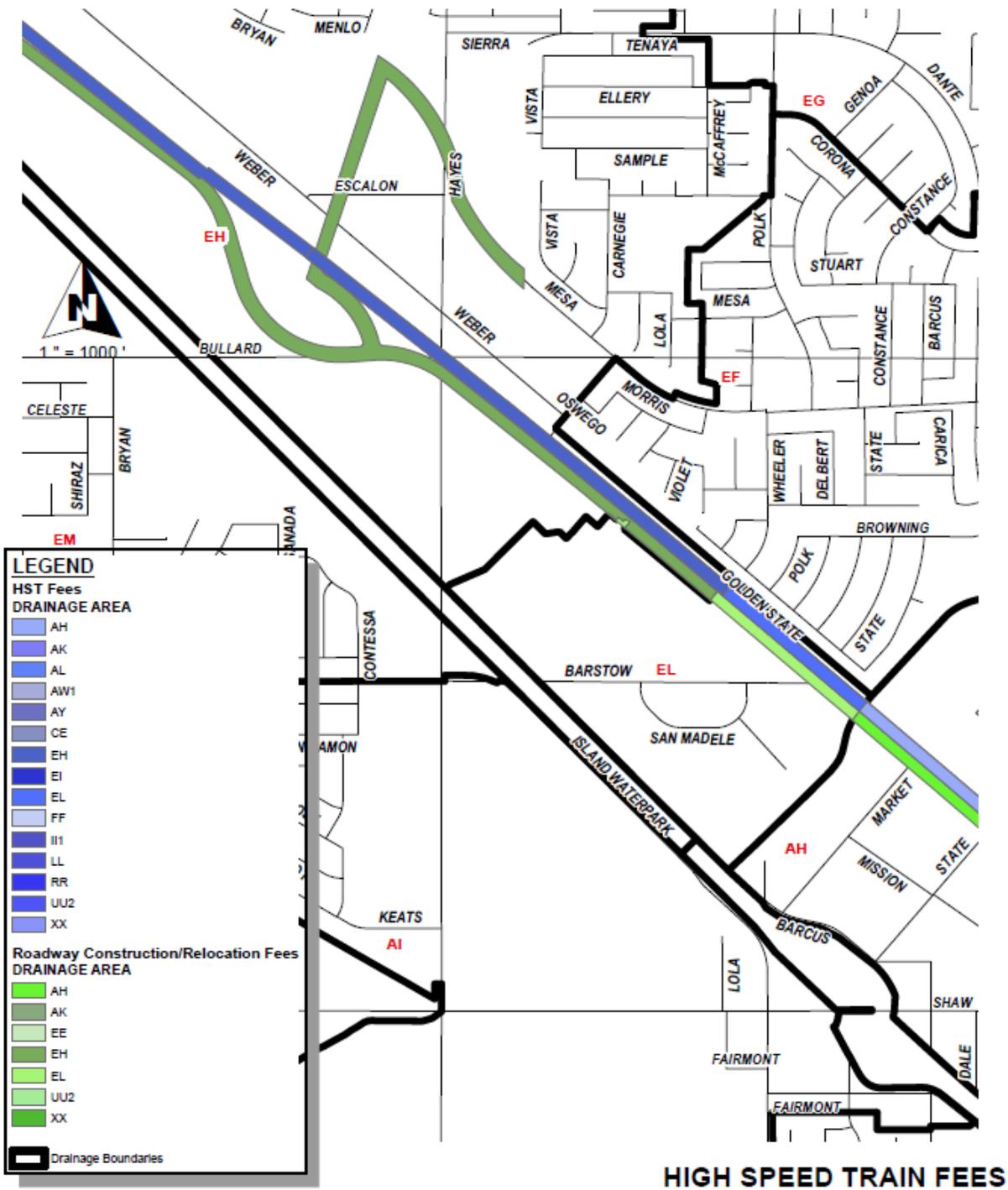
Drainage Area	Use	Rate/Ac	Acres	Fee
AH	Road	\$11,010	29.80	\$328,098.00
EL	Road	\$9,970	3.85	\$38,385.00
EI	Road	\$15,640	1.60	\$25,024.00
EH	Road	\$13,090	39.92	\$522,553.00
AK	Road	\$8,890	6.21	\$55,207.00
EE	Road	\$6,960	1.29	\$8,978.00
UU2	Road	\$6,960	2.75	\$19,140.00
XX	Road	\$6,960	5.35	\$37,236.00
			90.77	\$1,034,621.00

High Speed Train	\$1,692,154.00
Roadway	\$1,034,621.00
Grand Total	\$2,726,775.00

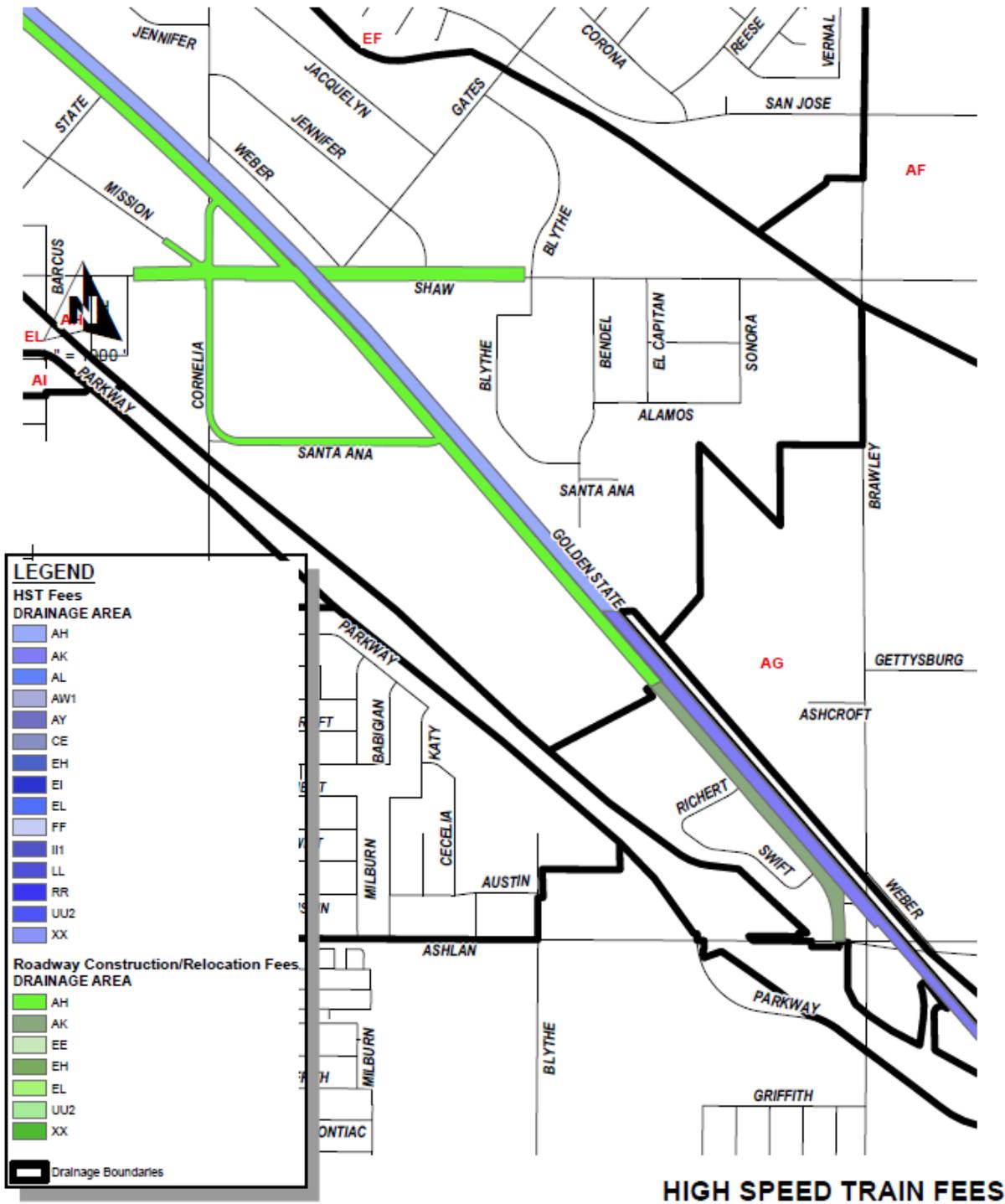
MASTER AGREEMENT



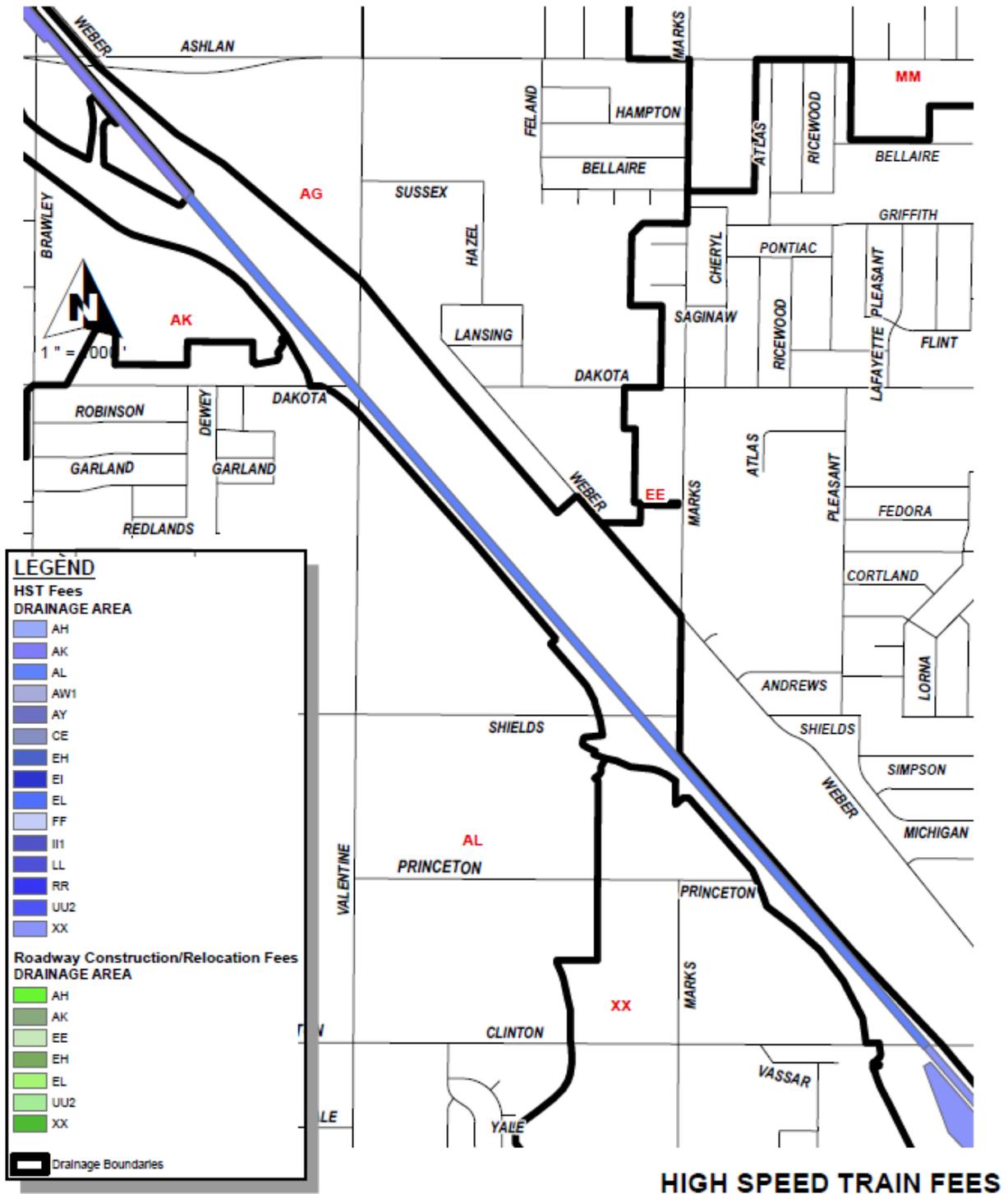
MASTER AGREEMENT



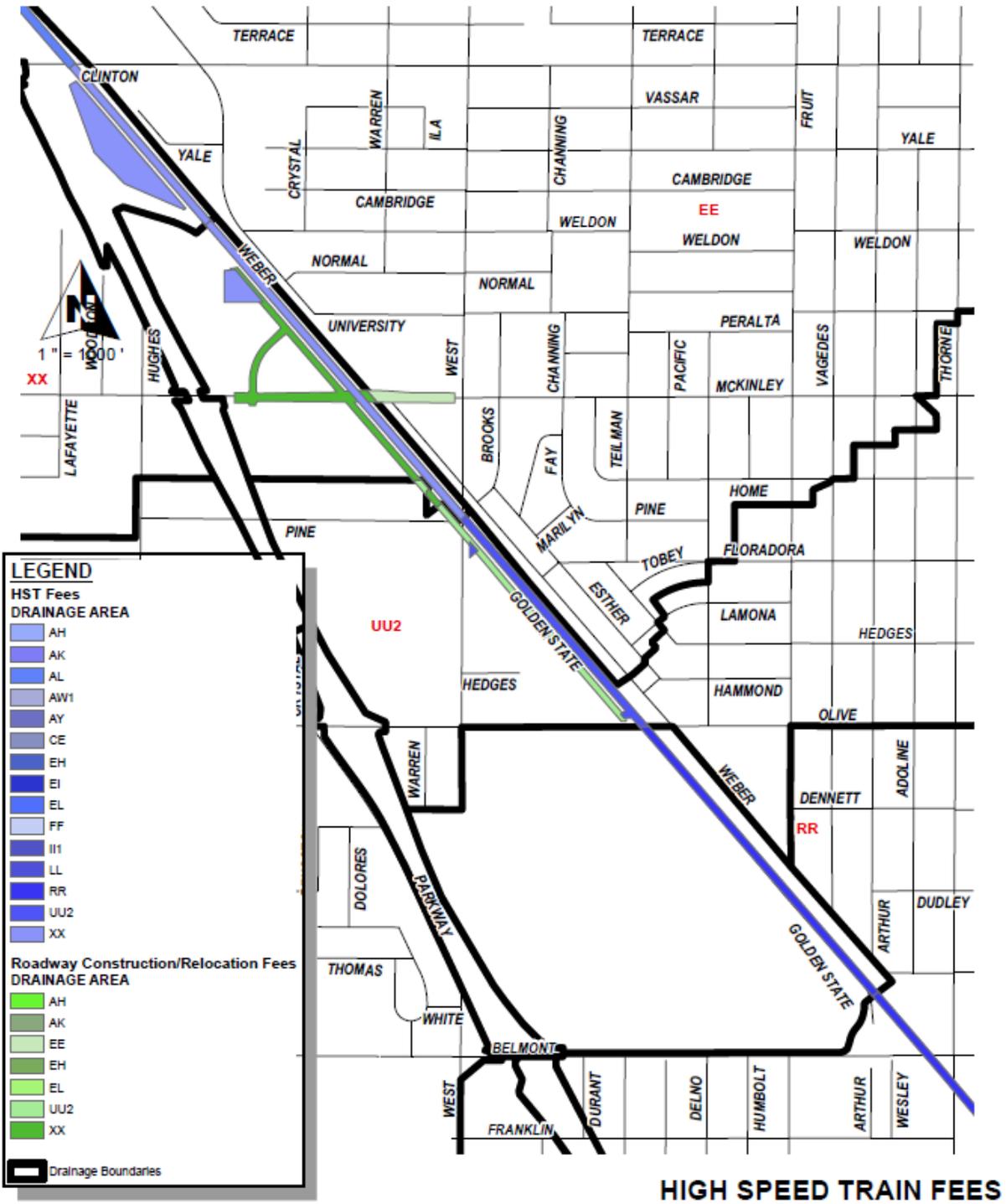
MASTER AGREEMENT



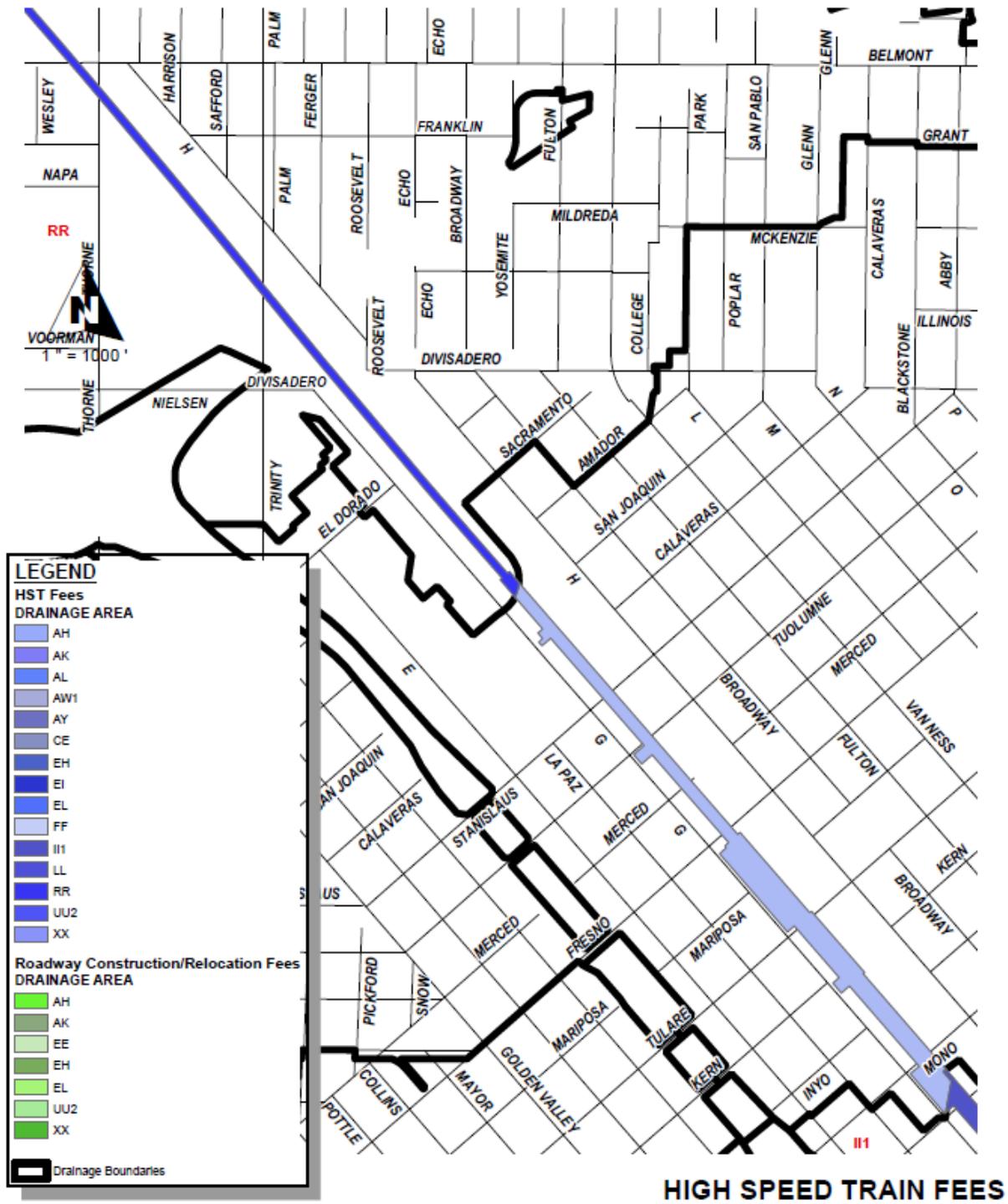
MASTER AGREEMENT



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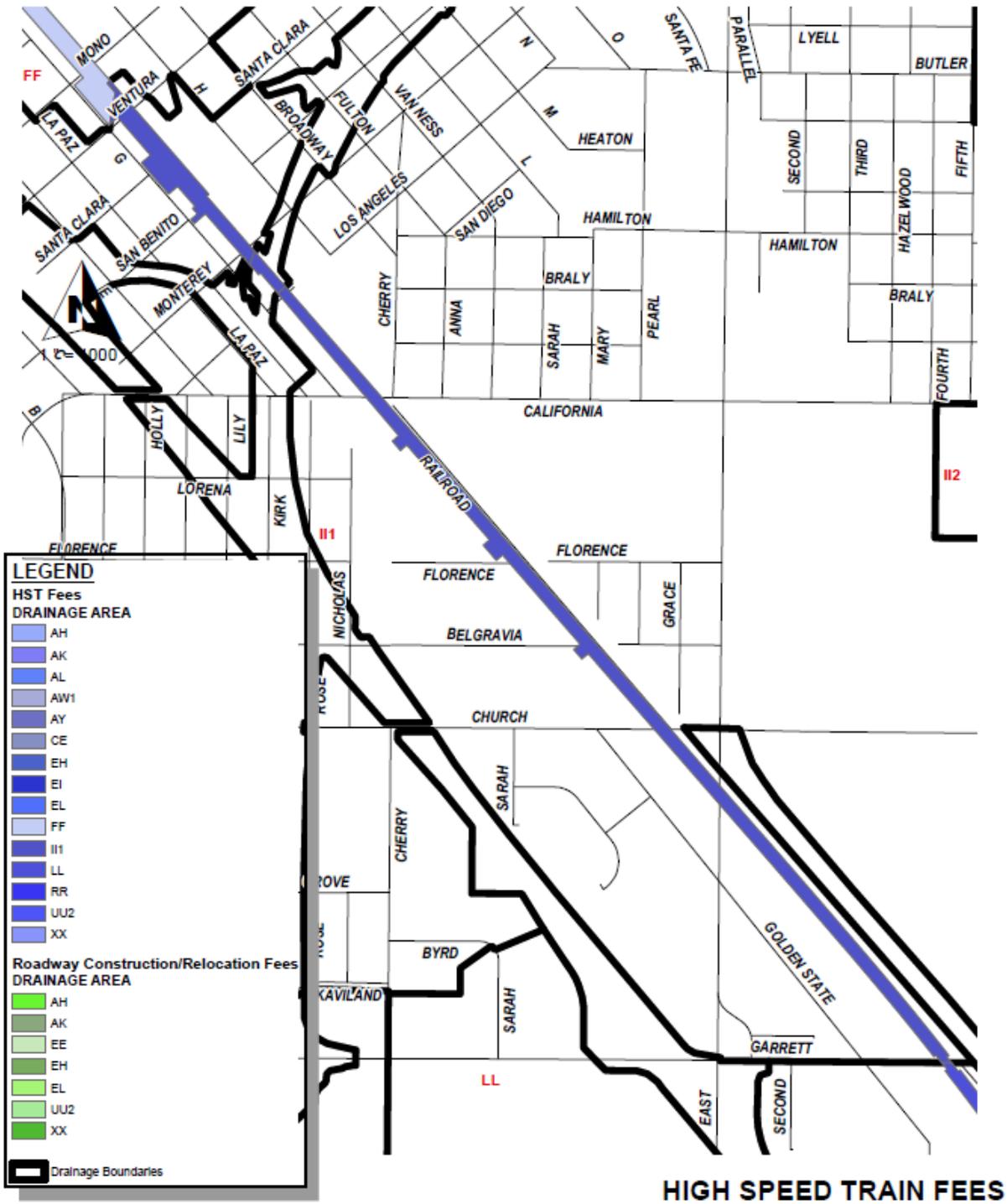


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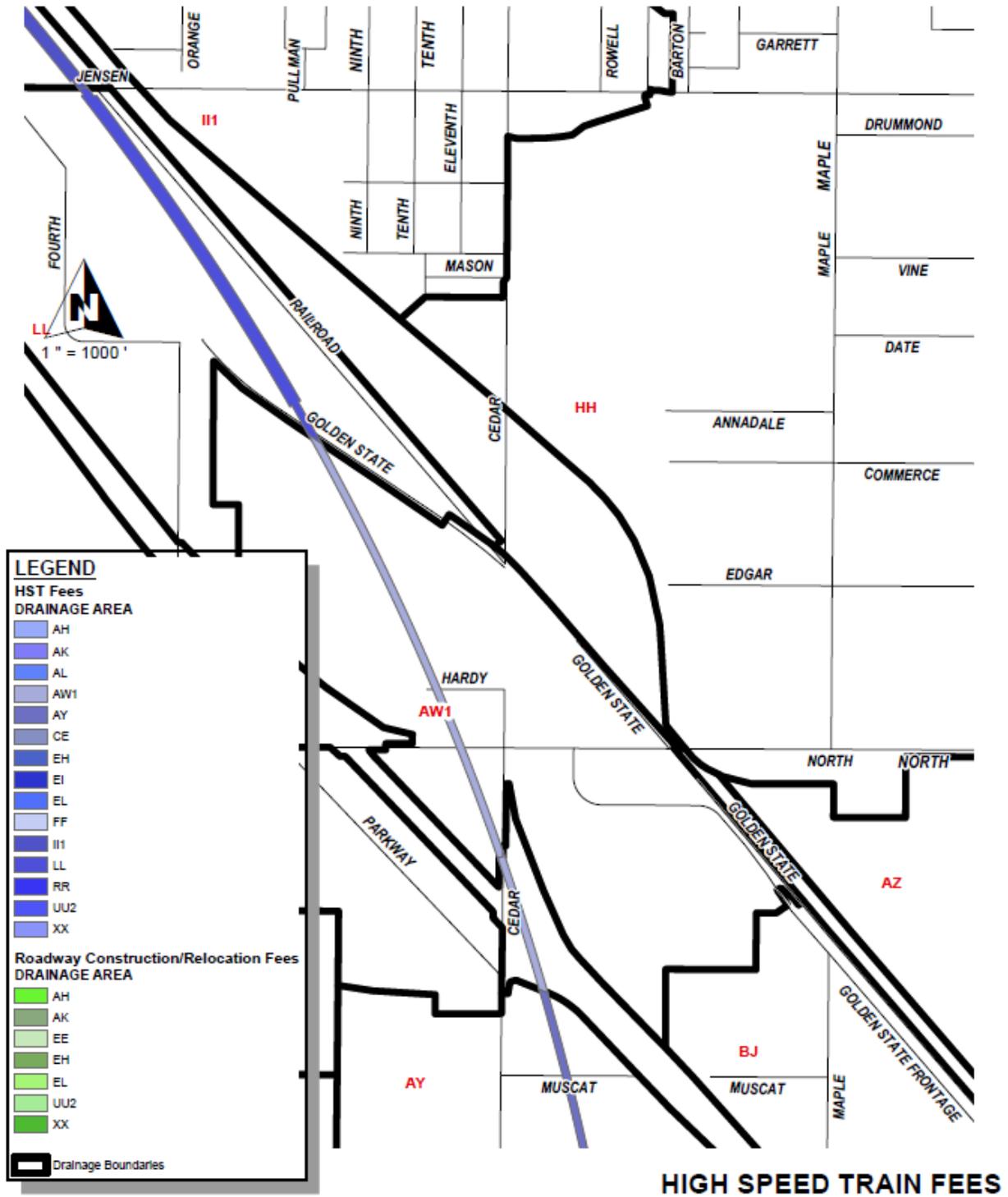


HIGH SPEED TRAIN FEES

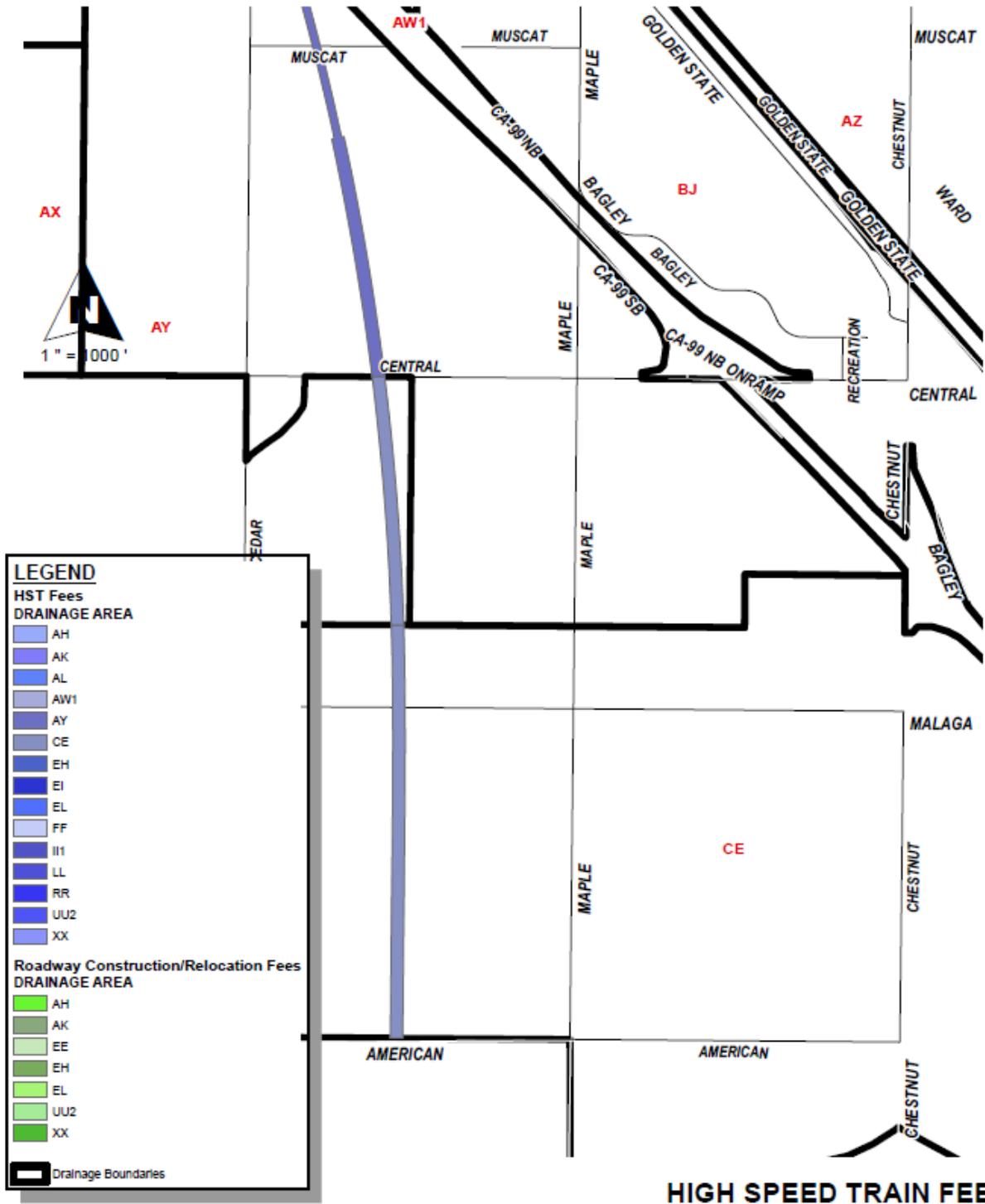
MASTER AGREEMENT



MASTER AGREEMENT



MASTER AGREEMENT



HIGH SPEED TRAIN FEES

TASK ORDER NO. SD00001
CHSRP Interaction Removal or Relocation Plan

Date: July 18, 2012
DISTRICT: Fresno Metropolitan Flood Control District
Agreement No: 0000000
Task Order No: SD00001
Project Title: California High-Speed Rail Project

GENERAL

This TASK ORDER supplements and amends the Construction Contract and Master Agreement. The purpose of this TASK ORDER is to authorize the STORM DRAIN WORK for DISTRICT. Each STORM DRAINAGE FACILITY that requires relocation will be handled under a separate subtask of this TASK ORDER.

STORM DRAIN WORK TO BE DONE

1. Master Agreement

This TASK ORDER is issued in order to authorize the STORM DRAIN WORK described herein (STORM DRAIN WORK). This TASK ORDER does not express all of the terms and conditions relevant to the STORM DRAIN WORK; accordingly, the Master Agreement and all of the provisions thereof are incorporated into this TASK ORDER by this reference. Capitalized terms used but not identified in this TASK ORDER shall have the definitions set forth in the Master Agreement. All attachments referenced in this TASK ORDER are incorporated herein by such reference. All STORM DRAIN WORK shall be performed in accordance with the requirements of the Master Agreement and, in the event of any inconsistency between the provisions of this TASK ORDER and the Master Agreement, the provisions of the Master Agreement shall prevail.

2. Scope of Work

STORM DRAIN WORK as defined in Section 2.1 of the Master Agreement is incorporated by reference. Each separate STORM DRAINAGE FACILITY that requires RELOCATION will be treated as a subtask to this TASK ORDER.

- **Location and General Description of the Work Covered by this TASK ORDER (Including Disposition of Existing Facilities):**
AUTHORITY'S CONTRACTOR will furnish all labor, material, equipment and supervision required to complete the relocation of STORM DRAINAGE FACILITIES and appurtenances. All work shall be performed substantially in accordance with "Request for Proposal for Design Build Services-RFP No. 11-16 consisting of Hybrid Alternative, Contract Package 1A, Contract Package 1B and Contract Package 1C, a copy of which is on file in the AUTHORITY'S office at 770 L St, Suite 800, Sacramento, CA 95814.
- **Subject Work to be Performed by Parties Pursuant to this TASK ORDER:**
AUTHORITY'S CONTRACTOR performs all design and construction services for STORM DRAIN WORK. DISTRICT will review and approve STORM DRAIN PLANS and be entitled to have a reasonable number of representatives on site of PROJECT to verify that the STORM DRAIN WORK is being properly performed by AUTHORITY'S CONTRACTOR and approve that work.

TASK ORDER NO. SD00001
CHSRP Interaction Removal or Relocation Plan

- **Subtask SD1.01**
Scope: Design, secure permits and relocate STORM DRAINAGE FACILITIES from the existing Golden State Blvd to the new Golden State Blvd. Work includes removal of existing STORM DRAINAGE FACILITIES. Existing STORM DRAINAGE FACILITIES are shown on Drawing UT-C4001 and will be completed in accordance with FMFCD standards.
Estimated Period of Performance: 2 Months
Estimated Value: \$531,732

- **Subtask SD1.02**
Scope: Design, secure permits and relocate Basin EH to accommodate Golden State Boulevard re-alignment. Relocation must provide a minimum storage capacity of 248.0 ac-ft with a potential to provide 252.5 ac-ft, based on FMFCD preliminary basin design. Storm Drainage Basin EH is shown on Drawing UT-C4002 and UT-C4003 and will be completed in accordance with FMFCD standards. STORM DRAIN WORK includes coordinate design and relocation with future STORM DRAINAGE FACILITIES.
Estimated Period of Performance: 2 Months
The estimated value for this STORM DRAIN WORK is \$772,000.

- **Subtask SD1.03:**
Design, secure permits, furnish and install RCP casing for future STORM DRAINAGE FACILITIES. STORM DRAIN WORK is shown on Drawing UT-C4006 and will be completed in accordance with FMFCD standards. Work also includes coordinate design and relocation with future STORM DRAINAGE FACILITIES.
Estimated Period of Performance: 2 Months
The estimated value for this STORM DRAIN WORK is \$288,000.

- **Subtask SD1.04:**
Design, secure permits, furnish and install RCP casing for future STORM DRAINAGE FACILITIES. STORM DRAIN WORK is shown on Drawing UT-C4007 and will be completed in accordance with FMFCD standards. STORM DRAIN WORK includes coordinate design and relocation with future STORM DRAINAGE FACILITIES.
Estimated Period of Performance: 2 Months
The estimated value for this STORM DRAIN WORK is \$260,000.

- **Subtask SD1.05:**
Design, secure permits, furnish and install RCP casing for future STORM DRAINAGE FACILITIES. STORM DRAIN WORK is shown on Drawing UT-C4007 and will be completed in accordance with FMFCD standards. STORM DRAIN WORK includes coordinate design and relocation with future STORM DRAINAGE FACILITIES.
Estimated Period of Performance: 2 Months
The estimated value for this STORM DRAIN WORK is \$260,000.

- **Subtask SD1.06:**
Design, secure permits, furnish and install casing for future STORM DRAINAGE FACILITIES. STORM DRAIN WORK is shown on Drawing UT-C4008 and will be completed in accordance with

TASK ORDER NO. SD00001

CHSRP Interaction Removal or Relocation Plan

FMFCD standards. STORM DRAIN WORK includes coordinate design and relocation with future STORM DRAINAGE FACILITIES.

Estimated Period of Performance: 2 Months

The estimated value for this STORM DRAIN WORK is \$242,000.

- **Subtask SD1.07:**

Design, secure permits, furnish and install STORM DRAINAGE FACILITIES including storm drain inlets, RCP casing and removal of existing STORM DRAINAGE FACILITIES including storm drain inlets. STORM DRAIN WORK is shown on Drawing UT-C4010 and will be completed in accordance with FMFCD standards.

Estimated Period of Performance: 2 Months

The estimated value for this STORM DRAIN WORK is \$291,576.

- **Subtask SD1.08:**

Design, secure permits and reconstruct STORM DRAINAGE FACILITIES in an RCP casing and removal of remaining STORM DRAINAGE FACILITIES. STORM DRAIN WORK is shown on Drawing UT-C4012 and will be completed in accordance with FMFCD standards.

Estimated Period of Performance: 2 Months

The estimated value for this STORM DRAIN WORK is \$360,000.

- **Subtask SD1.09:**

Design, secure permits, furnish and install an RCP casing for future STORM DRAINAGE FACILITIES. STORM DRAIN WORK is shown on Drawing UT-C4014 and will be completed in accordance with FMFCD standards. STORM DRAIN WORK includes coordinate design and relocation with future STORM DRAINAGE FACILITIES.

Estimated Period of Performance: 2 Months

The estimated value for this STORM DRAIN WORK is \$235,000.

- **Subtask SD1.10:**

Design, secure permits and reconstruct STORM DRAINAGE FACILITIES in an RCP casing and removal of remaining STORM DRAINAGE FACILITIES. STORM DRAIN WORK is shown on Drawing UT-C4014 and will be completed in accordance with FMFCD standards.

Estimated Period of Performance: 2 Months

The estimated value for this STORM DRAIN WORK is \$260,000.

- **Subtask SD1.11:**

Design, secure permits and remove STORM DRAINAGE FACILITIES, including storm drain man holes and drain inlets from the existing Golden State Blvd. Install STORM DRAINAGE FACILITIES, including manholes and drain inlets to the new Golden State Blvd. STORM DRAIN WORK is shown on Drawing UT-C4016 and UT-C4017 and will be completed in accordance with FMFCD standards.

Estimated Period of Performance: 3 Months

The estimated value for this STORM DRAIN WORK is \$358,949.

- **Subtask SD1.12:**

Design, secure permits, furnish and install steel casing for future 18" STORM DRAINAGE FACILITIES. STORM DRAIN WORK is shown on Drawing UT-C4017 and will be completed in

TASK ORDER NO. SD00001

CHSRP Interaction Removal or Relocation Plan

accordance with FMFCD standards. STORM DRAIN WORK includes coordinate design and relocation with future STORM DRAINAGE FACILITIES.

Estimated Period of Performance: 2 Months

The estimated value for this STORM DRAIN WORK is \$235,000.

- **Subtask SD1.13:**

Design, secure proper permits, traffic control, dewatering, protect in place STORM DRAINAGE FACILITIES. STORM DRAIN WORK is shown on Drawing UT-C4030 and UT-C4032 and will be completed in accordance with FMFCD standards.

Estimated Period of Performance: 3 Months

The estimated value for this STORM DRAIN WORK is \$222,908.

- **Subtask SD1.14:**

Design, secure proper permits, traffic control, dewatering, remove STORM DRAINAGE FACILITIES, including storm drain man holes and storm drain inlets from the existing McKinley Ave and Motel Dr. Install STORM DRAINAGE FACILITIES, including manholes and storm drain inlets to the proposed McKinley Ave, McKinley Connector and Golden State Blvd. STORM DRAIN WORK includes coordinate design and relocation with future STORM DRAINAGE FACILITIES. STORM DRAIN WORK is shown on Drawing UT-C4036, UT-C4037, UT-C4046 and UT-C4047 and will be completed in accordance with FMFCD standards.

Estimated Period of Performance: 3 Months

The estimated value for this STORM DRAIN WORK is \$1,433,752.

- **Subtask SD1.15:**

Design, secure proper permits, traffic control, dewatering, remove STORM DRAINAGE FACILITIES, including storm drain man holes and storm drain inlets from existing Olive Ave. Install STORM DRAINAGE FACILITIES, including manholes and storm drain inlets to the proposed Olive Ave. STORM DRAIN WORK is shown on Drawing UT-C4039, UT-C4048 and UT-C4049 and will be completed in accordance with FMFCD standards.

Estimated Period of Performance: 3 Months

The estimated value for this STORM DRAIN WORK is \$1,529,743.

- **Subtask SD1.16:**

Design, secure proper permits, traffic control, dewatering, remove STORM DRAINAGE FACILITIES including storm drain manholes, storm drain manholes, storm drain inlets, junction boxes, outlet structures and rock energy dissipaters from existing Belmont Ave, Golden State Ave, Weber Ave, adjacent streets and basins. Furnish and Install STORM DRAINAGE FACILITIES including storm drain manholes, storm drain inlets, junction boxes, outlet structures and rock energy dissipaters at proposed Belmont Ave, Weber Ave, adjacent streets and storm drain basin. STORM DRAIN WORK includes coordinate design and relocation with future STORM DRAINAGE FACILITIES. STORM DRAIN WORK is shown on Drawing UT-C4041, UT-C4042 and UT-C4052 and will be completed in accordance with FMFCD standards.

Estimated Period of Performance: 18 Months

The estimated value for this STORM DRAIN WORK is \$5,738,993.

- **Subtask SD1.17:**

Design, secure proper permits, traffic control, dewatering, remove STORM DRAINAGE FACILITIES including storm drain manholes and storm drain inlets adjacent to Dry Creek Canal, SR 180 and

TASK ORDER NO. SD00001

CHSRP Interaction Removal or Relocation Plan

Roosevelt Ave. Furnish and Install STORM DRAINAGE FACILITIES including storm drain manholes and storm drain inlets adjacent to Dry Creek Canal, SR 180 and Roosevelt Ave. STORM DRAIN WORK includes coordinate design and relocation with future STORM DRAINAGE FACILITIES. STORM DRAIN WORK is shown on Drawing UT-C4043, UT-C4044 and UT-C4053 and will be completed in accordance with FMFCD standards.

Estimated Period of Performance: 12 Months

The estimated value for this STORM DRAIN WORK is \$937,136.

- **Subtask SD1.18:**

Design, secure proper permits, traffic control, dewatering, remove STORM DRAINAGE FACILITIES including storm drain manholes and storm drain inlets from existing Divisadero St. STORM DRAIN WORK is shown on Drawing UT-C4044 and will be completed in accordance with FMFCD standards.

Estimated Period of Performance: 2 Months

The estimated value for this STORM DRAIN WORK is \$34,453.

- **Subtask SD1.19:**

Design, secure proper permits, traffic control, dewatering, protect in place STORM DRAINAGE FACILITIES from existing Stanislaus St and G Street. STORM DRAIN WORK is shown on Drawing UT-C4054 and will be completed in accordance with FMFCD standards.

Estimated Period of Performance: 9 Months

The estimated value for this STORM DRAIN WORK is \$64,144.

- **Subtask SD1.20:**

Design, secure proper permits, traffic control, dewatering, protect in place STORM DRAINAGE FACILITIES at G St and Stanislaus St. STORM DRAIN WORK is shown on Drawing UT-C4054 and will be completed in accordance with FMFCD standards.

Estimated Period of Performance: 2 Months

The estimated value for this STORM DRAIN WORK is \$69,616.

- **Subtask SD1.21:**

Design, secure proper permits, traffic control, dewatering, protect in place STORM DRAINAGE FACILITIES at G St and Fresno St. STORM DRAIN WORK is shown on Drawing UT-C4055 and will be completed in accordance with FMFCD standards.

Estimated Period of Performance: 2 Months

The estimated value for this STORM DRAIN WORK is \$41,116.

- **Subtask SD1.22:**

Design, secure proper permits, traffic control, dewatering, remove, relocate and protect in place STORM DRAINAGE FACILITIES near Tulare St and G St. STORM DRAIN WORK is shown on Drawing UT-C4056 and will be completed in accordance with FMFCD standards.

Estimated Period of Performance: 4 Months

The estimated value for this STORM DRAIN WORK is \$1,037,975.

- **Subtask SD1.23:**

TASK ORDER NO. SD00001

CHSRP Interaction Removal or Relocation Plan

Design, secure proper permits, traffic control, dewatering, protect in place STORM DRAINAGE FACILITIES near Inyo St and G St. STORM WORK is shown on Drawing UT-C4056 and will be completed in accordance with FMFCD standards.

Estimated Period of Performance: 2 Months

The estimated value for this STORM DRAIN WORK is \$35,112.

- **Subtask SD1.24:**

Design, secure proper permits, traffic control, dewatering, protect in place STORM DRAINAGE FACILITIES near G St and Ventura St. STORM WORK is shown on Drawing UT-C4057 and will be completed in accordance with FMFCD standards.

Estimated Period of Performance: 36 Months

The estimated value for this STORM DRAIN WORK is \$129,200.

- **Subtask SD1.25:**

Design, secure proper permits, traffic control, dewatering, remove and relocate STORM DRAINAGE FACILITIES near H St and Ventura St. STORM DRAIN WORK is shown on Drawing UT-C4059 and will be completed in accordance with FMFCD standards.

Estimated Period of Performance: 6 Months

The estimated value for this STORM DRAIN WORK is \$691,306

- **Subtask SD1.26:**

Design, secure proper permits, traffic control, dewatering and relocate STORM DRAINAGE FACILITIES near Railroad Ave and Florence Ave. Protect in place STORM DRAINAGE FACILITIES near California Ave and Railroad Ave. Coordinate Design and Relocation with future STORM DRAINAGE FACILITIES. STORM DRAIN WORK is shown on Drawing UT-C4060, UT-C4061 and UT-C4062 and will be completed in accordance with FMFCD standards.

Estimated Period of Performance: 6 Months

The estimated value for this STORM DRAIN WORK is \$1,108,836

- **Subtask SD1.27:**

Design, secure proper permits, traffic control, dewatering remove and relocate STORM DRAINAGE FACILITIES near Railroad Ave near Church Ave and East Ave. Coordinate Design and Relocation with future STORM DRAINAGE FACILITIES. STORM DRAIN WORK is shown on Drawing UT-C4063, UT-C4064, UT-C4065, UT-C4081 and UT-C4083 and will be completed in accordance with FMFCD standards.

Estimated Period of Performance: 8 Months

The estimated value for this STORM DRAIN WORK is \$2,432,700

- **Subtask SD1.28:**

Design, secure permits, traffic control and coordinate relocation with future STORM DRAINAGE FACILITIES near Jensen Ave and Railroad Ave. STORM DRAIN WORK is shown on Drawing UT-C4066.

Estimated Period of Performance: 1 Month

The estimated value for this STORM DRAIN WORK is \$5,000

- **Subtask SD1.29:**

TASK ORDER NO. SD00001

CHSRP Interaction Removal or Relocation Plan

Design, secure proper permits, traffic control, dewatering and relocate STORM DRAINAGE FACILITIES near Cedar Ave and Golden State Blvd. Coordinate design and relocation with future STORM DRAINAGE FACILITIES. STORM DRAIN WORK is shown on Drawing UT-C4068 and will be completed in accordance with FMFCD standards.

Estimated Period of Performance: 6 Months

The estimated value for this STORM DRAIN WORK is \$649,900

- **Subtask SD1.30:**

Design, secure permits, traffic control and coordinate relocation with future STORM DRAINAGE FACILITIES near North Ave and Cedar Ave. STORM DRAIN WORK is shown on Drawing UT-C4070 and UT-C4071.

Estimated Period of Performance: 1 Month

The estimated value for this STORM DRAIN WORK is \$15,000

- **Subtask SD1.31:**

Design, secure permits, traffic control and coordinate relocation with future STORM DRAINAGE FACILITIES near North Ave and Cedar Ave. STORM DRAIN WORK is shown on Drawing UT-C4073, UT-C4074, UT-C4085 and UT-C4086.

Estimated Period of Performance: 1 Month

The estimated value for this STORM DRAIN WORK is \$30,000

- **Subtask SD1.32:**

Design, secure permits, traffic control and coordinate relocation with future STORM DRAINAGE FACILITIES near North Ave and Cedar Ave. STORM DRAIN WORK is shown on Drawing UT-C4078.

Estimated Period of Performance: 1 Month

The estimated value for this STORM DRAIN WORK is \$20,000

- **Subtask SD1.33:**

Scope: AUTHORITY'S CONTRACTOR shall reimburse DISTRICT for all costs resulting from plan check review, permits, inspection and testing (inspection & testing in an oversight Quality Assurance capacity only). AUTHORITY'S CONTRACTOR is still responsible to provide Quality Assurance and Quality Control for design and construction through project completion and closeout.

Period of Performance: 36 Months

The estimated value for this FACILITY WORK is \$330,000

- **Subtask SD1.34:**

Scope: The AUTHORITY'S CONTRACTOR shall (i) execute and comply with and (ii) pay or cause to be paid to DISTRICT drainage fees in accordance with the Fresno Metropolitan Flood Control District Drainage Facility Project Agreement attached to the Master Agreement as Appendix. Those drainage fees are intended to compensate DISTRICT for the cost of its perpetually accepting the stormwater runoff from the PROJECT into Storm Drainage Facilities

Period of Performance: 36 Months

The estimated value for this FACILITY WORK is \$2,730,000

- **Subtask SD1.35:**

Scope: The AUTHORITY'S CONTRACTOR shall (i) execute and comply with and (ii) pay or cause to be paid to DISTRICT NCF fees in accordance with the DISTRICT'S NON CONFORMING FACILITIES Policy.

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Period of Performance: 36 Months
The estimated value for this FACILITY WORK is \$200,000

Deadlines for the completion of STORM DRAIN WORK are provided for in the contract between AUTHORITY and AUTHORITY'S CONTRACTOR.

3. Schedule for STORM DRAIN WORK (This TASK ORDER Only)

AUTHORITY'S CONTRACTOR shall complete the design work in accordance with the schedule specified in this TASK ORDER. AUTHORITY'S CONTRACTOR shall commence construction work only after acceptance of the final design for such work in accordance with Appendix C – Design Build Procedures of the Master Agreement.

Design:

Start Date: January 2013

Completion Date: June 2013

Construction:

Start Date: June 2013

Completion Date: February 2016

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PERFORMANCE OF THE STORM DRAIN WORK

1. Design

The design furnished by AUTHORITY'S CONTRACTOR pursuant to this TASK ORDER shall be substantially in accordance with the Proposed Preliminary Design (see Appendix C – Design Build Procedures of the Master Agreement) attached to this TASK ORDER, and shall be consistent with 30% design submittal of the PROJECT plans. All plans for STORM DRAIN WORK are subject to review by AUTHORITY, DISTRICT, and AUTHORITY'S CONTRACTOR, in accordance with the time frames and procedures set forth in Appendix C – Design Build Procedures of the Master Agreement.

BY DISTRICT: DISTRICT will review STORM DRAIN PLANS and be entitled to have a reasonable number of representatives on site of PROJECT to verify the STORM DRAIN WORK is being properly performed by AUTHORITY'S CONTRACTOR.

BY AUTHORITY'S CONTRACTOR: AUTHORITY'S CONTRACTOR performs all design and construction services for STORM DRAIN WORK.

2. Construction

AUTHORITY'S CONTRACTOR will perform all the construction services for the STORM DRAIN WORK. The construction of STORM DRAIN WORK shall be performed substantially in accordance with the final STORM DRAIN PLANS. Deviations from the final STORM DRAIN PLANS may occur only in conformity with the Master Agreement.

LIABILITY FOR WORK

In accordance with Section 3 of the Master Agreement, DISTRICT and AUTHORITY shall each be responsible for the cost of the STORM DRAIN WORK as specified herein. The total estimated cost for the STORM DRAIN WORK is \$22,881,087

Cost Allocation

AUTHORITY pays 100 % and DISTRICT pays 0 % of cost of STORM DRAIN WORK

COST ESTIMATE

The amounts stated herein are estimates of the costs associated with the STORM DRAIN WORK. Authorized expenditures and reimbursements will be based on the terms of the Master Agreement.

1. For Work by DISTRICT

DISTRICT's costs for STORM DRAIN WORK shall be developed pursuant to Section 5, "Payment of Work," of the Master Agreement, and shall be performed in accordance with the procedures set forth in Section 4, "Performance of Work" and Appendix C – Design Build Procedures of this Master Agreement.

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2. For Work by AUTHORITY'S CONTRACTOR

AUTHORITY has prepared an initial cost estimate in the amount of \$22,881,087 for the STORM DRAIN WORK included in this TASK ORDER.

AUTHORITY'S CONTRACTOR shall prepare an independent cost estimate for the STORM DRAIN WORK which shall be submitted for AUTHORITY's approval. Such estimate will reflect appropriate estimated charges for BETTERMENT and salvage value, if any. Upon approval, the parties shall revise this TASK ORDER to incorporate the approved estimate.

BETTERMENT, ACCRUED DEPRECIATION, SALVAGE

DISTRICT shall credit AUTHORITY for the actual cost of any BETTERMENT, salvage value, and accrued depreciation on the FACILITIES as required pursuant to the Master Agreement, and pay the AUTHORITY'S CONTRACTOR for the actual cost of any BETTERMENT constructed by AUTHORITY'S CONTRACTOR.

The STORM DRAIN WORK in this TASK ORDER does not include any BETTERMENT

BILLING AND PAYMENT

Billing and payment shall be in accordance with Section 5, "Payment for Work," of the Master Agreement.

CONTACTS

The contacts for this TASK ORDER will be as follows:

DISTRICT: Jerry Lakeman

AUTHORITY: Tony Valdez

AUTHORITY'S CONTRACTOR:

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SIGNATURES

This TASK ORDER shall become effective upon the later of:

- (A) The date of signing by the last party signing this TASK ORDER, or
- (B) The completion AUTHORITY's review as indicated by the signature of AUTHORITY's representative, below.

IN WITNESS WHEREOF, this TASK ORDER has been executed under the provisions of Agreement No. _____ between the AUTHORITY, DISTRICT, and AUTHORITY'S CONTRACTOR. By signature below, the parties hereto agree that all terms and conditions of this TASK ORDER No. ____ and Agreement No. ____ shall be in full force and effect.

DISTRICT:

BY: _____ DATE: _____
Signature

Typed Name: _____

Typed Title: _____

DISTRICT'S Legal Review

BY: _____ DATE: _____
Signature –DISTRICT'S Legal Counsel

California High Speed Rail Authority (AUTHORITY)

BY: _____ DATE: _____
Signature

Typed Name: _____

Typed Title: _____

AUTHORITY Legal Review

BY: _____ DATE: _____
Signature - AUTHORITY Legal Counsel

(CONTRACTOR):

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BY: _____ **DATE:** _____

Signature

Typed Name: _____

Typed Title: _____