

Recording Requested By  
And When Recorded Mail To:

Fresno Irrigation District  
2907 South Maple  
Fresno, CA 93725

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The undersigned grantor(s) declare(s):  
DOCUMENTARY TRANSFER TAX IS \$ 0

LOCATION: S/E HERNDON & BRAWLEY AVENUES

APN: 406-411-54 & -47

CANAL: BULLARD NO. 124

### **AGREEMENT FOR COMMON USE OF EASEMENTS**

This Agreement is made effective as of March \_\_\_\_, 2014, by and between (i) the Fresno Irrigation District, a California irrigation district ("District") and (ii) the City of Fresno, a municipal corporation ("City"), with respect to the following facts:

A. District owns and operates an underground pipeline as part of its "Bullard Canal" facilities, located on the real property more particularly described in Exhibit A hereto, pursuant to certain easement rights, including those exclusive easement rights described in that certain Grant of Easement dated November 22, 2000, recorded November 27, 2000, as Document No. 2000-0144152 (the "District Easement"). Such real property is adjacent to Herndon Avenue.

B. City has acquired easement rights in certain lands in the same area for its construction, maintenance, and operation of street and landscaping improvements under that certain Deed of Easement dated December 13, 2012, recorded March 29, 2013, as Document No. 2013-0046247. A portion of City's right-of-way will overlap the District Easement, such overlapping portion is hereby designated the "Area of Common Use," as depicted in the diagram attached hereto as Exhibit A.

C. District and City wish to establish certain conditions under which the Area of Common Use shall be used by the parties.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. Area of Common Use.

(a) District hereby consents to the use by City of the Area of Common Use for purposes of constructing, maintaining and operating improvements ("Improvements") that do not unreasonably interfere with District's use of its own facilities or the District Easement. City's use of the Area of Common Use shall be subject to District Easement and to the terms and conditions herein contained. District does not by this Agreement subordinate any rights it may

have in the Area of Common Use to any use which City shall make of the land. City acknowledges that by this Agreement, District is making no representation or warranty regarding the existence or non-existence of any third parties claiming a right, title or interest in the Area of Common Use.

(b) City shall, at its own cost and with District's prior approval, locate, construct, and maintain the Improvements in the Area of Common Use in such a manner and of such material as may be required so that it will not at any time be a source of danger to or interference with the present or future uses of District. City is specifically required to coordinate the construction of the Improvements so that it does not interfere with District's water delivery and maintenance schedules. The constructed facilities shall be in conformance with the construction plans titled "Herndon Avenue Widening from Brawley to Valentine," dated March 18, 2013, as prepared by the City and approved by District.

(c) The right of the District to approve such construction details is solely for the benefit of the District and is not intended to assign to District any responsibility for the safe and proper construction of the Improvements, such responsibility and liability being entirely assigned to City. Approval by District of construction details shall not result in an assumption of liability for the Improvements.

(d) All of the Improvements constructed or installed pursuant to this Agreement shall be the property of City, and all appurtenances and facilities installed by District or existing in the Area of Common Use which are related to District's facilities shall be the property of District. Except as herein otherwise provided, neither District nor City shall have any right, title, or control over the other's property.

(e) Except as expressly set forth herein, this Agreement shall not in any way alter, modify, or terminate the District Easement in the Area of Common Use. Both District and City shall use the Area of Common Use in such a manner as not to unreasonably interfere with the rights of one another and nothing herein shall be construed as a release or waiver of any claim for compensation or damages which District or City may now have, or may hereafter acquire, resulting from the construction or alteration of existing facilities or the construction or alteration of additional facilities by either District or City which causes damage to or unreasonable interference with the use of the Area of Common Use by the other party.

(f) City shall be responsible to pay, and shall reimburse District upon demand, for any reasonable cost incurred by District for work performed by District that is caused by or required by City's construction, maintenance or use of the Improvements. District shall provide reasonable advanced written notice of the necessity of such work prior to commencement.

(g) Except as described above, District and City shall be responsible for the maintenance, repair, alteration, improvement or relocation of their respective facilities within the Area of Common Use.

(h) Nothing in this Agreement shall relieve the parties from any responsibility toward the other for damage to the other's property located outside of the Area of Common Use.

(i) To the fullest extent permitted by law, City agrees to be solely responsible for any and all injuries, damages, and claims to persons or property arising out of its use of the Area of Common Use, except for any such claims arising out of the willful misconduct or sole negligence or those of District or its directors, officers, employees or authorized volunteers, or those claims which violate the City's sovereign immunities. City agrees to defend, hold harmless, and indemnify District, its directors, officers, employees or authorized volunteers against any and all such injuries, damages, and claims. This indemnification agreement shall not be restricted to any insurance proceeds.

(j) Except in the event of an emergency, or as necessary to maintain the flow of water in District's canal or pipeline, each party shall give the other reasonable notice before performing or permitting any work affecting the other's facilities in the Area of Common Use, and shall furnish the other party with plans and specifications describing the work to be done beforehand. The reviewing party shall have the right to specify reasonable conditions on, or changes in, the proposed work and schedule when necessary to prevent damage to its facilities or interference with its operations in the Area of Common Use. Where such changes shall result in additional expense, such expense shall be borne by City. Neither party shall permit installation of facilities by others in the Area of Common Use without the written consent of the other party. Each party agrees to repair any damage to the other party's facilities caused by work directed or performed by it within the Area of Common Use, except that where City's facilities within the Area of Common Use must necessarily be damaged, destroyed or removed by District to accommodate repair, maintenance, modification or replacement of District's facilities, District shall have no obligation to restore City's affected facilities. In the event of an emergency, no such notice shall be required and either party may proceed to do what is reasonably necessary to prevent serious loss or damage and to protect the public health and safety. An emergency shall be deemed to exist if immediate action is reasonably required to prevent serious loss or damage to life or property, or to protect the public health and safety.

(k) Violation of any term of this Agreement shall be cause of termination of the Agreement, and in such an event, the aggrieved party shall have all remedies available at law or equity, including the right to enforce District's right to the unimpeded use of the Area of Common Use. No termination of this Agreement shall release the other party from liability hereunder, whether of indemnity or otherwise.

2. Further Assurances. From time to time and at any time after the execution and delivery hereof, each of the parties, at its own expense, shall execute, acknowledge and deliver any further instruments, documents and other assurances reasonably requested by the other party, and shall take any other action consistent with the terms of this Agreement that may reasonably be requested by the other party, to evidence or carry out the intent of this Agreement.

3. Time and Computation of Time. Time is of the essence of this Agreement and each and all of its provisions. The parties agree that the time for performance of any action

permitted or required under this Agreement shall be computed as if such action were “an act provided by law” within the meaning of California Civil Code §10, which provides: “The time in which any act provided by law to be done is computed by excluding the first day and including the last, unless the last day is a holiday, and then it is also excluded.”

4. Entire Agreement. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all of the parties hereto.

5. Waiver. Waiver of any breach of this Agreement by any party hereto shall not constitute a continuing waiver or a waiver of any breach of the same or another provision of this Agreement.

6. Counterparts. This Agreement may be executed in any number of counterparts and each such counterpart shall be deemed to be an original instrument, all of which together shall constitute one and the same instrument.

7. Binding Effect. This Agreement shall “run with the land” and be binding upon and inure to the benefit of the heirs, executors, administrators, assigns, and successors of the parties hereto.

8. Interpretation. It is agreed and acknowledged by the parties that this Agreement has been arrived at through negotiation, and that each party has had a full and fair opportunity to revise the terms of this Agreement. Consequently, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Agreement.

9. Professionals’ Fees. Should any action or proceeding be commenced between the parties hereto concerning this Agreement, or the rights and duties of any party in relation thereto, the party prevailing in such action or proceeding shall be entitled, in addition to such other relief as may be granted, to recover from the losing party a reasonable sum for its attorneys’, paralegals’, accountants’, and other professional fees and costs incurred in connection with such action or proceeding.

10. Parties in Interest. Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies on any persons other than the parties hereto and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third person to any party to this Agreement, nor shall any provision give any third person any right of subrogation or action over and against any party to this Agreement.

11. Survival. Each of the terms, provisions, representations, warranties, and covenants of the parties shall be continuous and shall survive the consummation of the transactions contemplated in this Agreement.

12. Notices. All notices and other communications required under this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of service, if served personally on the person to whom notice is to be given, (ii) on the date of service if sent by telecopier, provided the original is concurrently sent by first class mail, and provided that notices received by telecopier after 5:00 p.m. shall be deemed given on the next business day, (iii) on the next business day after deposit with a recognized overnight delivery service, or (iv) on the third (3rd) day after mailing, if mailed to the party to whom notice is to be given by first class mail, registered or certified, postage-prepaid, and properly addressed as follows:

To District:               Fresno Irrigation District  
                                  2907 South Maple  
                                  Fresno, CA 93725-2218  
                                  Attn: General Manager

To City:                    City of Fresno  
                                  Attn: Director of Public Works  
                                  2600 Fresno Street  
                                  Fresno, CA 93721

A party may change its address for notices by providing notice to the other parties as provided above.

*[remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date first above written.

“District”

The Fresno Irrigation District, a California irrigation district

By \_\_\_\_\_  
Ryan Jacobsen, President

By \_\_\_\_\_  
Gary R. Serrato, Secretary

“City”

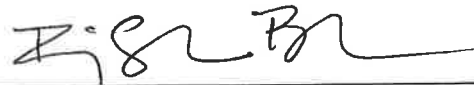
The City of Fresno, a municipal corporation

By \_\_\_\_\_  
\_\_\_\_\_

ATTEST:  
Yvonne Spence, CMC  
City Clerk

By: \_\_\_\_\_

APPROVED AS TO FORM:  
Douglas Sloan, City Attorney

By:  3.20.14  
\_\_\_\_\_  
Raj Singh Badhesha, Deputy

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument  
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that  
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
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Signature \_\_\_\_\_

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

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Signature \_\_\_\_\_

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

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personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
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in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument  
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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the foregoing paragraph is true and correct.

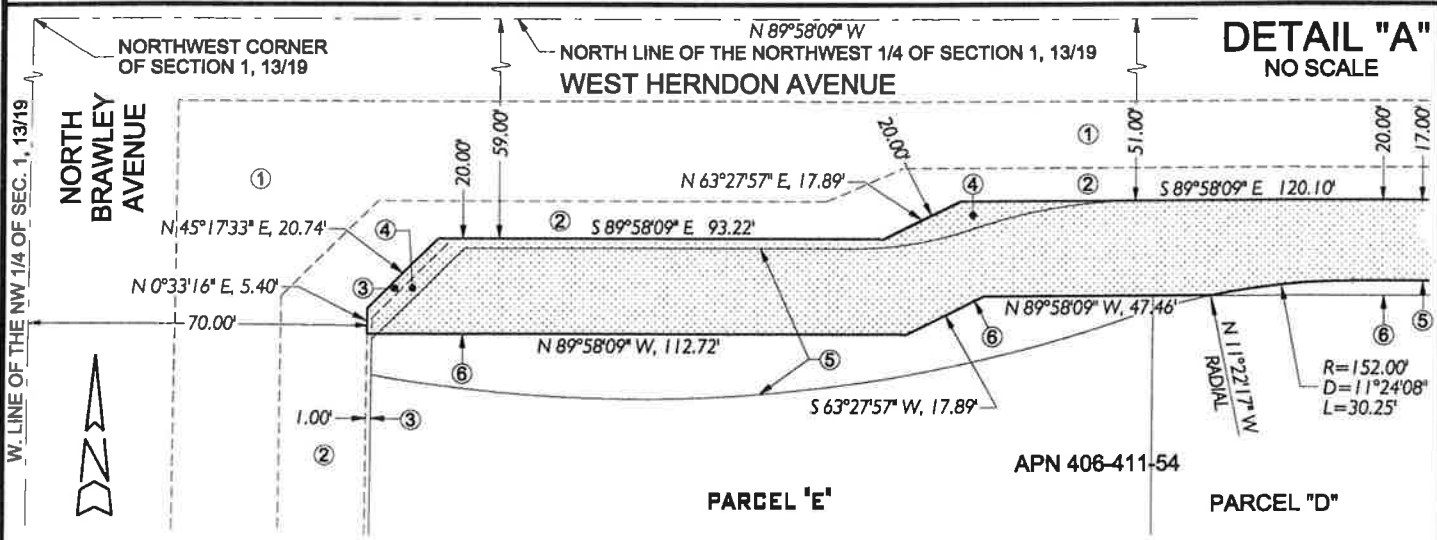
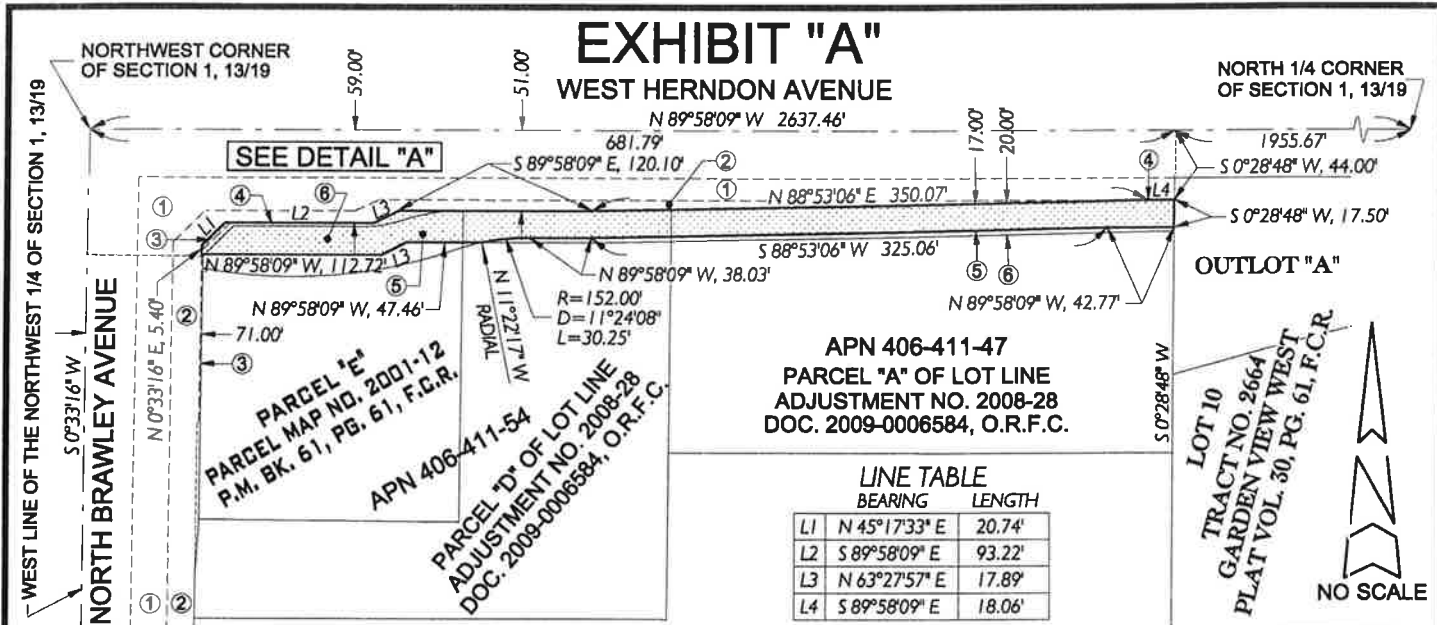
WITNESS my hand and official seal.

Signature \_\_\_\_\_



# EXHIBIT "A"

## WEST HERNDON AVENUE



- ① = PREVIOUSLY DEDICATED AS AN EASEMENT FOR PUBLIC STREET PURPOSES BY A DEED OF EASEMENT RECORDED JUNE 2, 1883 AS DOCUMENT NO. 83048407, O.R.F.C.
- ② = PREVIOUSLY DEDICATED AS AN EASEMENT FOR PUBLIC STREET PURPOSES BY A DEED OF EASEMENT RECORDED OCTOBER 11, 1990 AS DOCUMENT NO. 90123332, O.R.F.C.
- ③ = PREVIOUSLY DEDICATED AS AN EASEMENT FOR PUBLIC STREET PURPOSES BY PARCEL MAP NO. 2001-02 RECORDED IN BOOK 61 OF PARCEL MAPS AT PAGE 61, F.C.R.
- ④ = PREVIOUSLY DEDICATED AS AN EASEMENT FOR PUBLIC STREET PURPOSES BY A DEED OF EASEMENT RECORDED MARCH 29, 2013 AS DOCUMENT NO. 2013-0046247, O.R.F.C.
- ⑤ = PREVIOUSLY DEDICATED AS AN EASEMENT FOR PUBLIC PEDESTRIAN WALKWAY & BICYCLE PATH PURPOSES BY A DEED OF EASEMENT RECORDED MARCH 29, 2013 AS DOCUMENT NO. 2013-0046247, O.R.F.C.
- ⑥ = PREVIOUSLY DEDICATED TO THE FRESNO IRRIGATION DISTRICT AS AN EASEMENT FOR IRRIGATION PIPELINE PURPOSES BY A GRANT OF EASEMENT RECORDED NOVEMBER 27, 2000 AS DOCUMENT NO. 2000-0144152, O.R.F.C.

INDICATES AREA OF COMMON USE  
10,909 S.F. ±

REF. & REV. PWF 11493 PLAT 1348	CITY OF FRESNO DEPARTMENT OF PUBLIC WORKS	PROJ. ID. PWO0582	CO _____
		FUND NO. 22048	RES TYPE _____
AREA OF COMMON USE		ORG. NO. 189901	
		DR. BY Aj.	SHEET NO. 1
		CH. BY R.A.W.	OF 1 SHEETS
		DATE OCT. 4, 2013	
		SCALE NO SCALE	