

**LICENSE AGREEMENT FOR USE OF AREA BY THE CITY OF FRESNO
FOR SPECIFIC IMPROVEMENTS**

LOCATION: S/W Trimmer Springs Road and Fresno No. 3 Canal
CANAL: Fresno No. 3

THIS LICENSE AGREEMENT ("License") is made and entered into this ____ day of June 2016 by and between the FRESNO IRRIGATION DISTRICT, a California irrigation district ("DISTRICT") and the CITY of FRESNO, a municipal corporation ("CITY"). DISTRICT and CITY are sometimes referred to herein as a "Party" or together as the "Parties."

RECITALS

WHEREAS, DISTRICT and CITY are currently negotiating an agreement for the DISTRICT's delivery to CITY of certain Kings River and Central Valley Project water supplies ("Conveyance Agreement");

WHEREAS, CITY seeks to convey such supplies using a pipeline to be constructed and owned by CITY, which shall run from the DISTRICT's Fresno No. 3 Canal near Trimmer Springs Road to CITY's planned Southeast Surface Water Treatment Facility;

WHEREAS, CITY seeks to use an area on the DISTRICT's real property adjacent to the Fresno No. 3 Canal for the purpose of constructing, maintaining and operating a diversion structure for such pipeline, and for related improvements as described in **Exhibit A** hereto ("the Improvements");

WHEREAS, the Improvements shall be located on the DISTRICT's real property more specifically described in **Exhibit B** hereto (the "Area of Use"); and

WHEREAS, the Conveyance Agreement will include general terms and conditions of the DISTRICT's delivery of Kings River and Central Valley Project water supplies to the CITY, but is not intended to include details relating to specific locations facilities such as the Area of Use; and

WHEREAS, DISTRICT and CITY wish to provide for DISTRICT's grant of a license to CITY, under which the Area of Use may be used by CITY to construct, maintain, and operate the Improvements.

NOW, THEREFORE, the Parties agree as follows:

1. DISTRICT hereby grants to CITY a license for CITY to access the Area of Use for purposes of constructing, maintaining, and operating the Improvements. CITY's license rights shall be subject to DISTRICT's right to fully use the Area of Use for all of DISTRICT's purposes, and to the terms and conditions herein contained. DISTRICT does not by this License subordinate any rights it may have in the Area of Use to any use which CITY shall make of the land. CITY acknowledges that DISTRICT makes no representation or warranty regarding the

existence or non-existence of any third parties claiming a right, title, or interest in the Area of Use.

2. CITY shall, at its own cost and with DISTRICT's prior approval, locate, construct, and maintain the Improvements in the Area of 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 with District 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 Kings River Pipeline, dated January 22, 2016, as prepared by CITY and approved by District.

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.

3. All of the Improvements constructed or installed under this License shall be the property of CITY, and all appurtenances and facilities constructed, installed or existing in the Area of Use which are related to DISTRICT's facilities shall remain the property of DISTRICT. Except as herein otherwise provided, neither DISTRICT nor CITY shall have any right, title, or control over the other's said property other than it already has under applicable law.

Prior to CITY's construction of any Improvements, the Parties shall negotiate and execute an operations and maintenance agreement governing the specific operations and maintenance conditions and responsibilities of each Party in connection with the CITY's diversion of water through the Improvements (the "O&M Agreement").

4. Except as expressly set forth herein, this License shall not in any way alter, modify, or terminate DISTRICT's rights in the Area of Use. Both DISTRICT and CITY shall use the Area of 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 Use by the other Party.

5. CITY shall repair or replace at CITY's sole expense any DISTRICT facilities damaged by or as a result of CITY's activities within the Area of Use. In the event CITY fails, neglects, or refuses to repair or replace the such damage within 30 days after written notice from DISTRICT or otherwise fails to proceed diligently in repairs or replacement, DISTRICT shall have the right, but shall not be required, to make any such repairs or replacements, and CITY shall repay to DISTRICT the cost of any such repairs or replacement with interest at the rate of

10% per annum from the date(s) amounts were expended by DISTRICT. Nothing in this License shall relieve the Parties from any responsibility toward the other for damage to the other's property located outside of the Area of Use.

6. CITY shall be responsible to install and maintain fencing, drive surfaces, and site lighting within the Area of Use, as further described in **Exhibit A** hereto. CITY shall also be responsible for weed control within such area. CITY shall be responsible to maintain the Area of Use in a clean condition, and to properly dispose of any debris and trash, including any debris and trash collected by the CITY's diversion trash screen.
7. CITY shall be responsible to install fencing outside the Area of Use as further described in **Exhibit C** hereto. DISTRICT or CITY, as convenient, will maintain said fencing at CITY's expense.
8. CITY acknowledges that its activities within the Area of Use will require DISTRICT to operate powered equipment at or near that location, including telemetry equipment and water control gate actuators. CITY shall supply DISTRICT with electrical power for such DISTRICT equipment, at CITY's expense, and shall permit DISTRICT to install telemetry equipment on CITY's antenna towers and similar structures, as described in the construction plans titled Kings River Pipeline, dated January 22, 2016, as prepared by CITY and approved by District.
9. CITY acknowledges that its activities within the Area of Use, together with the DISTRICT equipment described above, will require DISTRICT to have greater access to both banks of the Fresno Canal at the Area of Use. CITY agrees to convey permanent access easements to DISTRICT, in form and substance reasonably acceptable to DISTRICT, over CITY's real property in these locations.
10. CITY acknowledges that the DISTRICT real property containing the Fresno No. 3 Canal between the Area of Use and the canal headgates is used for cattle grazing. DISTRICT shall not be required to divert and deliver water through the Improvements until such fencing and other improvements have been installed as (i) may be required by the State Water Resources Control Board Division of Drinking Water to permit continued grazing on such property, that (ii) are reasonably acceptable to DISTRICT ("Grazing Improvements"). All Grazing Improvements shall be constructed by the DISTRICT at CITY's expense based on reasonable and actual costs incurred by the DISTRICT, and shall be completed prior to January 1, 2018. All future maintenance of the Grazing Improvements shall be completed by the DISTRICT at CITY's expense based upon reasonable and actual costs incurred by the DISTRICT.
11. The term of this License shall begin on the date hereof and expire December 31, 2016. Notwithstanding the foregoing, if the Conveyance Agreement has been finalized and executed by CITY and DISTRICT by that date, the term of this License shall continue and shall run concurrently with the term of the Conveyance Agreement.

12. CITY agrees to pay DISTRICT a one-time fee of \$5,000.00 prior to DISTRICT delivering water to CITY's diversion structure contemplated in this License. Any other compensation to DISTRICT related to CITY's rights under this License shall be included in the O&M Agreement, and shall be payable pursuant to the terms of the O&M Agreement.
13. In the event that DISTRICT offers for sale any portion of or the entirety of the Area of Use, CITY shall have a right of first refusal to purchase the portion of the Area of Use which shall be for sale at a market rate established by an independent appraisal.
14. CITY agrees to be solely responsible for any and all injuries, damages, and claims to persons or property arising from CITY's activities in the Area of Use or otherwise related to this License, except for any such claims arising out of the willful misconduct of DISTRICT or its directors, officers, employees or authorized volunteers. 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.
15. Except in the event of an emergency, or as necessary to maintain the flow of water in DISTRICT's canal or pipeline, DISTRICT and CITY agree they shall give the other reasonable notice before performing or permitting any work affecting the other's facilities in the Area of Use, and shall furnish the other Party with plans and specifications describing the work to be done beforehand. Neither DISTRICT nor CITY shall permit installation of facilities by others in the Area of Use without the written consent of the other Party. 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. DISTRICT and CITY agree to repair any damage to the other Party's facilities caused by work permitted, directed or performed by it within the Area of Use, except that where CITY's facilities within the Area of 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 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.
16. This License shall apply to and bind successors and assigns of the respective Parties hereto.
17. This License (including the Exhibits hereto), contains the entire agreement between DISTRICT and CITY regarding the subject matter hereof, and no oral statements or prior written documents not specifically incorporated into this License shall have any force or effect.

Upon execution, the Conveyance Agreement and the O&M Agreement, together with this License, shall comprise the entire agreement regarding the subject matter hereof and related matters. In the event of any conflict between the terms of the foregoing agreements, such conflict shall be resolved by giving those agreements the following order of priority in interpretation: (i) the Conveyance Agreement, (ii) the O&M Agreement, and (iii) this License.

18. This License may be modified only by a written document executed by both Parties hereto.
19. All notices required or permitted by this License or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission. The addresses noted below shall be that party's address for delivery or mailing of notices. Either party may by written notice to the other specify a different address for notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, two (2) days after the postmark thereon. If sent by regular mail the notice shall be deemed given forty-eight (48) hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given twenty-four (24) hours after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means shall be deemed delivered upon telephone confirmation of receipt (confirmation report from fax machine is sufficient), provided a copy is also delivered via delivery or mail. If notice is received after 4:30 p.m. in the time zone in which the party is located or on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

Addresses for notices:

CITY
City of Fresno
ATTN: Director
Department of Public Utilities
2600 Fresno Street, Room 4019
Fresno, CA 93721-3623

DISTRICT
Fresno Irrigation District
ATTN: General Manager
2907 S. Maple Ave.
Fresno, CA. 93725

20. If any provision of this License is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable, and this

Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision were not a part hereof, and the remaining provisions hereof shall remain in full force and effect.

21. The parties hereto acknowledge that each party has, or has had the opportunity to have, counsel of its own choosing review and revise this License, such that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this License or any exhibits or amendments hereto.
22. This License shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for the purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.
23. No failure or delay by a party to insist on the strict performance of any provision of this License, or to exercise any right or remedy consequent on a breach thereof, shall constitute a waiver of any breach or subsequent breach of such provision. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.
24. Violation of any term of this License or the Conveyance Agreement shall be a default under and cause for termination of this License. In such an event, DISTRICT shall have the right to require CITY to remove the Improvements from Area of Use (or if CITY fails to do so within a reasonable time, to remove the Improvements at CITY's expense), together with all remedies available at law or equity to enforce DISTRICT's right to the unimpeded use of the Area of Use.
25. Should any action or proceeding be commenced between the parties hereto concerning this License, 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.
26. This License may be executed in counterparts by the parties.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Parties hereto have executed this License as of the day and year first above written.

CITY:
CITY OF FRESNO,
a Municipal Corporation

DISTRICT:
FRESNO IRRIGATION DISTRICT,
a California irrigation district

BY: _____
THOMAS C. ESQUEDA
Director of Public Utilities

BY: _____
RYAN JACOBSEN
President

APPROVED AS TO FORM:
DOUGLAS T. SLOAN,
City Attorney

BY: _____
GARY R. SERRATO
Secretary

BY:  5/31/16
Amanda B. Freeman Date
Deputy City Attorney

ATTEST:
YVONNE SPENCE, CMC
City Clerk

BY: _____
Deputy City Clerk

Attachments: Exhibit A
Exhibit B
Exhibit C

Exhibit A

Description of Improvements Kings River Pipeline Diversion Structure

The Kings River Pipeline supplies raw (untreated water) to the Southeast Surface Water Treatment Plant by diverting water from the Fresno Irrigation District (FID) Fresno Canal No. 3 on FID property near the crossing with East Trimmer Springs Road.

Improvements were made to the FID property associated with the diversion as follows:

- Perimeter security fencing with vehicle and person gates
- Paved entrance to site from E Trimmer Springs Road
- All weather gravel road around site on south side of canal
- Lighting
- Electrical and Instrumentation cabinets and panels
- 100-foot tall communications pole and antenna
- Turnout
 - Structure made of concrete and rebar
 - Self-cleaning traveling screen
 - Debris conveyor and trash bin
 - Traveling screen water pump
 - 72-inch sluice gate
 - 72-inch pipe connection to raw water pipeline
- Meter vault
 - Structure made of concrete and rebar
 - Magnetic flowmeter
 - Sump pump
 - Sample pump
 - Turbidimeter instrument
- Grazing Improvements

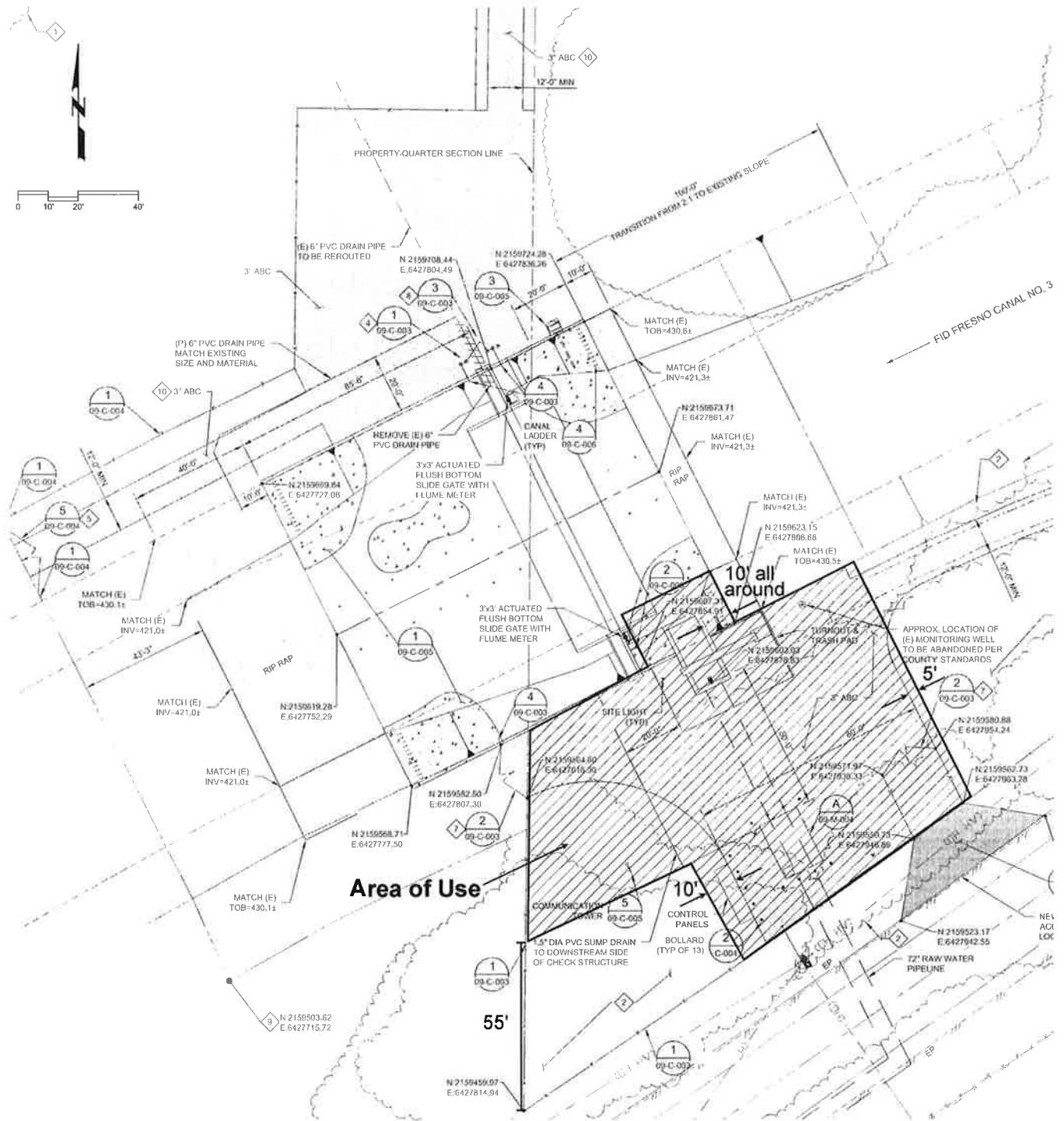


EXHIBIT B
Diversion Site Area of Use
Kings River Pipeline

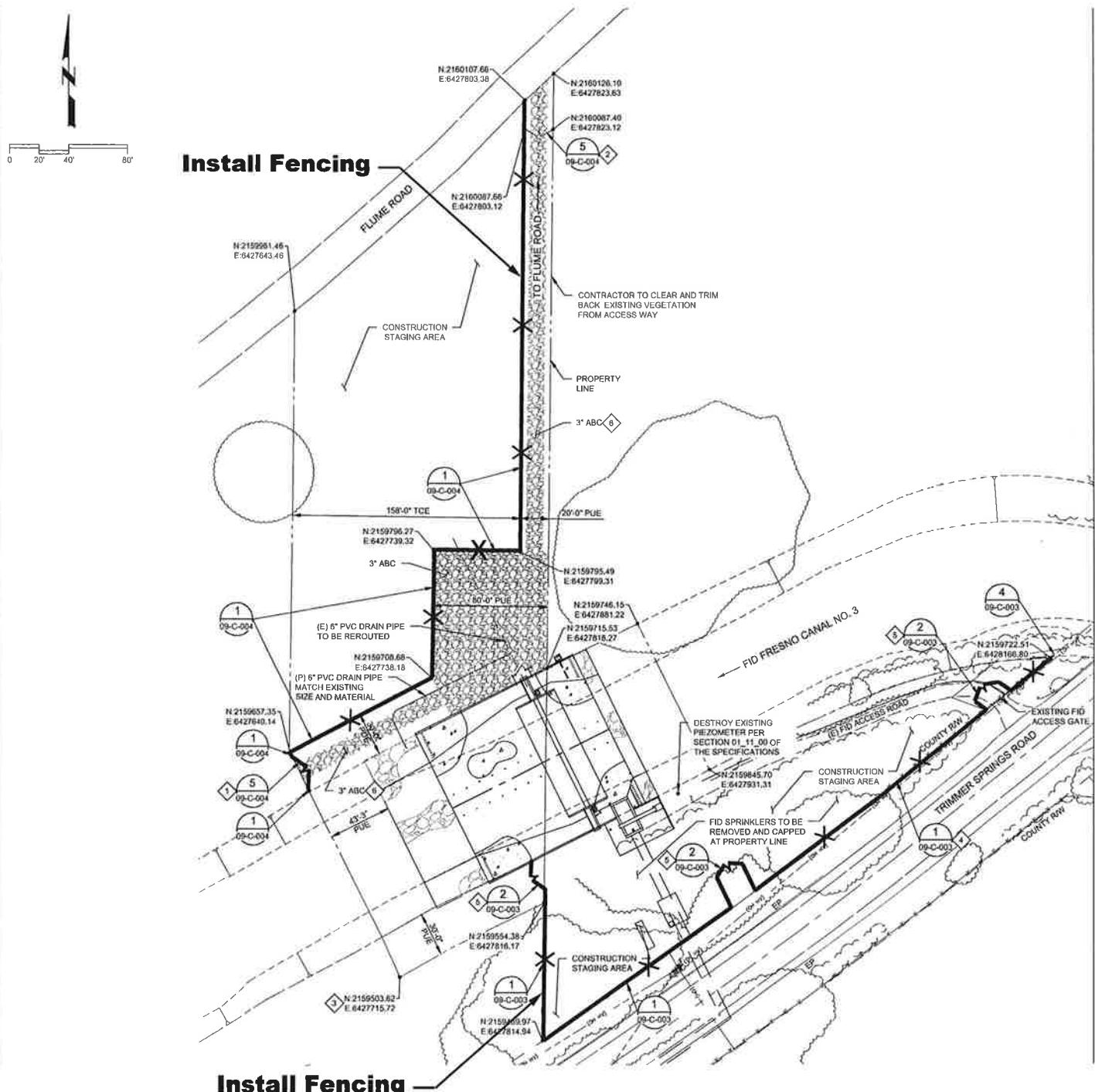


EXHIBIT C

**Fencing Outside Area of Use
*Kings River Pipeline***