

Agenda Item: ID#18-0808 (3-D)

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Supplemental Information Packet

Agenda Related Item(s) – ID#18-0808 (3-D)

**Contents of Supplement: Master Trails Agreement – Open Canals; and
Exhibit A to Master Trails Agreement: Common Use Agreement
Item(s)**

Approve a Master Trails Agreement with the Fresno Irrigation District (Citywide).

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

Americans with Disabilities Act (ADA):

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

**MASTER TRAILS AGREEMENT – OPEN CANALS
CITY OF FRESNO – FRESNO IRRIGATION DISTRICT**

THIS MASTER TRAILS AGREEMENT is made and entered into this _____ day of December, 2018, between the CITY OF FRESNO, a municipal corporation and public entity, (the City) and the FRESNO IRRIGATION DISTRICT, an irrigation district formed and operating pursuant to Division Eleven (11) of the California Water Code, and a public entity, (the District) with reference to the following facts:

RECITALS

- A. The District owns or controls more than 700 miles of canals, laterals, pipelines, structures, measuring stations, telemetry devices, canal banks, access roads, rights-of-way, ponds, regulating basins & structures, recharge basins, water banks, and drains (hereinafter collectively the Canal System). In association therewith, the District holds real property interests (which include but are not limited to fee title, easements (express, reserved, implied, prescriptive, statutory (California Water Code Section 22438) and otherwise), interests shown on plat maps, subdivision maps, outlot maps, dedications, surveys and other recorded or unrecorded interests) in the land underlying or associated with the Canal System (Real Property Interests). The District's Canal System and Real Property Interests are collectively referred to herein as the "Canal System."
- B. The District utilizes its Canal System to transport surface and other water to its customers. The District also utilizes its Canal System to deliver surface and other waters to the City of Fresno, for the City's municipal surface water treatment facilities, and for associated uses, among other uses.
- C. City maintains a system of public recreational trails ("Recreational Trails" or "Recreational Trail System"). Portions of City's Recreational Trails overlap with District's Canal System. For said portions of overlap, the City and District have previously entered into various agreements which set forth parameters for each Party's common use thereof. For those portions of the City's Recreational Trails that are constructed or will be constructed along the District's Canal Banks, this Master Trails Agreement will govern and set the guidelines for all such existing as well as current or future City Recreational Trails on the District's Canal Banks.
- D. The Parties acknowledge that City's existing and planned expansion of its

Recreational Trails along District's Canal Banks (defined herein) may, in some instances, impact District's ability to adequately operate, maintain, expand, upgrade, repair, clean, control, monitor, measure, treat, control weeds, access, construct, use, occupy, enhance, replace or work on (hereinafter Operate and Maintain or Operation and Maintenance) its Canal System within the District's operational plans, specifications and standards.

- E. City wishes to continue to expand its Recreational Trail System along certain open Canal Banks (defined hereinafter) within District's Canal System. The District has operational, maintenance, access, liability and public safety concerns anytime that the City envisions members of the public using any part of the District's Canal System for recreational or other purposes. However, District desires to cooperate with the City's use and expansion of the City's Recreational Trails, provided: (a) District maintains Operation and Maintenance access and operational control of those portions of its Canal Banks and Canal System overlapping with City's Recreational Trail System; (b) City pays for any increased Operation and Maintenance costs, impacts or liability exposure resulting from City's Recreational Trails or provides in kind services for the same; (c) City assumes all risk, exposure, liability and/or insurance costs in connection with its use of the Canal Banks and Canal System for Recreational Trails and indemnifies the District therefore; and, (d) any and all Real Property Interests of the District that are or may become impacted or disputed by or on account of the Recreational Trails System shall be addressed and resolved such that the District continues to enjoy its Real Property Interest use and control rights noted in Paragraph A above.
- F. City agrees to update its Active Transportation Plan ("ATP") within one year of the execution of this Agreement, in consultation with District, to further define which planned Recreational Trails segments would necessitate common use hereunder.
- G. For any Recreational Trail segment A-P identified in the attached Exhibit C ("New Growth Area,"--as defined in paragraph 36, herein) certain of the paragraph 10 obligations of the Parties have been modified as provided in paragraphs 2.c. and 36 of this Agreement.

AGREEMENT

NOW THEREFORE, for and in consideration of the mutual promises, covenants, and

agreements contained herein and for good and valuable consideration, the City and District do hereby agree as follows:

1. Recitals. Each and all of the foregoing recitals of background facts are incorporated herein by this reference as though set forth herein verbatim.
2. General. The City agrees to consult with the District in its planned expansion of its Recreational Trails to the extent that such expansion impacts the Canal System, and obtain the District's approval of such expansions pursuant to the terms and conditions hereinafter provided.

a. Active Transportation Plan.

The City agrees to update its Active Transportation Plan ("ATP") within one year of the execution of this Agreement, in consultation with District, to further define which planned Recreational Trails segments would: (a) necessitate common use hereunder for Recreational Trail segments located on the District's Canal System; and, (b) which Recreation Trails segments along District's Canal System will be established on new easements adjacent to and outside of District's existing Real Property Interests. This Master Trails Agreement deals with both situations.

b. Recreational Trail segments within current City boundaries and/or atop District Canal Banks

Typically, within the City's current boundaries, existing and planned Recreational Trail segments have been located or planned to be atop the District's Canal Banks because of the extent of property development and density adjacent to the current District Canal System. Existing property uses adjacent to the District's Canal System generally preclude the City from acquiring rights-of-way located off of the District's Real Property Interests to accommodate an adjacent Recreational Trail segment. The Parties hereto recognize that using existing District Canal Banks in the current City boundaries will generally be limited to infill locations located atop existing District Canal Banks where acquisition of new and separate Recreational Trail segment rights-of-way adjacent to existing District Canal Banks is not feasible given the density and uses of developed properties adjacent to existing District Canal Banks. All terms of this Agreement shall be applicable to Recreational Trail segments located within the current City boundaries as of the date hereof as well

as any City Recreational Trail segment atop any District Canal System or Canal Bank within or without the current City boundaries.

c. Recreational Trail segments not atop District Canal Banks but within current City New Growth Area.

In undeveloped areas where the City hopes to expand its boundaries, the City has the ability to require additional easements, rights-of-way or dedications for Recreational Trails segments in the City's planned New Growth Areas separated from and adjacent to the District's Canal System so that a Recreational Trail segment and the District's Canal System can exist side by side or adjacent to one another without the Recreational Trail segment being located on the District's Canal Banks or on its Real Property Interests.

For any Recreational Trail segments in the New Growth Area that are not atop the District's Canal System but adjacent to or outside of the District's Real Property Interests, obtained by the City, the City shall bound by all of the terms and provisions of this Agreement save and except that the City is specifically relieved of all the paragraph 10 obligations for such segments save paragraph 10 (g) (dealing with signage) in those segments (A-P of Exhibit C).

d. Protecting & Perfecting the District's Rights-of-Way

In addition to but not in lieu of the provisions found in Paragraph 5: (1) to the extent that the City approves any future property development located adjacent, proximate, parallel or perpendicular to any District Real Property Interest or acquires a City easement for a Recreational Trail segment that parallels or is adjacent, proximate or perpendicular to any District Real Property Interest/District Canal System, which District Real Property Interest is prescriptive and not reflected or referenced on any recorded document; and, (2) where the owner of the property granting an easement or right-of-way to the City for the City's Recreational Trail segment that parallels or is adjacent or perpendicular to the District's Real Property Interest/Canal System, is the same owner of the property subject to the District's prescriptive interest, the City shall require the owner of that property to grant to District the Exhibit B easement in the form attached hereto for the standard width and size including at least twenty feet (20') full minimum width across the top of the bank, and having at least a twenty feet (20') unobstructed clear opening across the District's Easement width as provided in the District's

standard canal profiles (depicted on Exhibit D hereto) in order to accommodate both the City's and the District's uses contemplated and the District's statutory easements and protections provided for in California Water Code section 22438. The second page of Exhibit D canal profiles represents District's desired approach dimensions (20 feet to 50 feet) but is subject to individual site specific agreements between the respective staffs of the City and the District taking into account several factors including median(s), geometry of the canal crossing, etc. How any specific approach is mutually worked out between the Parties under this Master Trails Agreement is not intended to set a precedent for how other FID canal approaches adjacent to City streets in other development contexts are to be sized.

3. Purpose. The purpose of this Agreement is to set forth each Party's general requirements governing the common use of real property upon which Recreational Trails to be constructed along the District's Canal Banks are to be located.
4. Common Use Authorization. District hereby authorizes and grants City the right to utilize the District's Canal Banks (as defined hereinafter) in connection with City's Recreational Trails under the terms set forth herein.
 - a. Canal Banks Defined. Canal Banks shall refer to those portions of District's Canal System open canals commencing from hinge point of an open canal channel to the adjacent parallel boundary of the District's Real Property Interests, including access points, roadways, travel lanes, points of ingress/egress, approaches, rights of way and other means of accessing the balance of the Canal System and associated District's Real Property Interests.
 - b. Common Use Agreement. Common use of any particular segment of the Canal Banks shall be authorized in accordance with each Common Use Agreement, executed by the Parties pursuant to the terms set forth herein. The Parties hereby adopt as a template, the form of the Common Use Agreement anticipated for purposes of this authorization attached hereto as Exhibit A
 - c. No Warranties. District does not represent or warrant the nature, existence, or non-existence of its Real Property Interests or of any third-party claim to its Real Property Interests, nor does the execution of this Agreement or any

subsequent Common Use Agreement create such a warranty or warranties. City shall accept the District's authorization for common use and its execution of any Common Use Agreement as reflective of the City's investigation of the District's Real Property Interest and the City's satisfaction that it is suitable for the City's purposes in the District's execution of any Common Use Agreement with the City regarding Recreational Trails.

- d. Paramount Rights of District. Unless otherwise limited herein, City's rights under Common Use Agreements are subordinate and subservient to the District's rights in the Area of Common Use. Nothing contained in this Agreement or any Common Use Agreement executed pursuant it, shall be construed, implemented or enforced to impair, limit, restrict or otherwise affect the District's uses, ownership, rights, authority, powers, and discretion with respect to the Canal System, or to grant or create any rights which interfere with the purpose and uses to which the District's Canal System is used, Operated and Maintained, devoted and/or dedicated (other than as mutually agreed to specific Operational & Maintenance activities related to specific portions of the Canal Banks as may be provided for in specific Common Use Agreements specific to identified Recreational Trail segments).
- e. No Right to Convey. The City shall have no right, power or authority to grant, allow or suffer any lien or other charge, agreement, easement, use, or encumbrance of any kind against the District's right, title, and interest in the District's Canal System or any portions thereof other than contained in a Common Use Agreement.
- f. Termination of Common Use. The City shall provide the District written notice upon cessation of use of each authorized Recreational Trail segment for the authorized purposes. Upon notice of cessation of use from the City for any Recreational Trail or any segment thereof, the City shall prepare and deliver to District a recordable quitclaim deed in favor of the District, using a form approved by the District, terminating any easement or Common Use Agreement pertaining to the Recreational Trail or segment(s) thereof and the City's uses thereunder. The acceptance and recordation of said quitclaim by the District shall be predicated on all terms and conditions of this Master Trails Agreement being in compliance by the Parties as to such

Recreational Trail or segment thereof at the time that it is tendered to the District, and acceptance by the District shall be at the District's sole election. Prior to District accepting of any Quitclaim Deed or abandonment of a Recreational Trail [or segment(s)] City shall restore the Canal Bank to its pre-Common Use Agreement condition per District's specifications and conditions.

5. Extent of Common Use Grant.

- a. Limitations of Common Use. The Parties agree that in some instances where City seeks common use of portions of the Canal System, District may not have the readily ascertainable legal title to grant an interest in real property and that any such authorization of common use may be subject to legal challenge.
- b. Challenge to Common Use. Should the District's Real Property Interests in an Area of Common Use and/or the City's right to common use of any Area of Common Use granted hereunder (of any portion of the Canal System or any conveyance by District of a Real Property Interests in connection herewith) be challenged or if in connection with any proposed Common Use Agreement or Recreational Trail segment the District's Real Property Interests be challenged, City shall, at its sole expense, defend and hold the District harmless in resolving such claim, ownership or consent by the District for the benefit of the District. City shall consult with District regarding all critical decisions involved in the resolution of such a challenge.
 - i. Notice of Proceedings. City shall provide written notice to District prior to the initiating or prosecuting any eminent domain or quiet title proceeding involving a portion of District's Canal System. The notice shall include information regarding City's interest in acquiring fee simple or permanent easements therein and an explanation of how District's interests in the subject lands is to be maintained.
 - ii. Affirmation of District's Real Property Interests. Any resolution reached by City in any action involving District's Real Property Interests (whether in an action involving negotiation, quiet title, acquisition of easement(s) [e.g. Exhibit B Grant of Easement, attached hereto], or the exercise of the City's powers of eminent

domain) shall include an affirmation of District's permanent right to use its Real Property Interest at issue; City shall use its best efforts as the District's fiduciary for purposes of this Paragraph 5., to acquire, for District, fee ownership interest in and to the Real Property Interest in question or an Easement Deed in form and content set forth in the attached hereto as Exhibit B.

iii. No Obligation to Accept Resolution. District shall be under no obligation to accept any judicial order or settlement on any City-initiated eminent domain or quiet title proceeding where the fee title or easement interests to the proposed portion of the District's Canal System applicable to that "taking" or a determination of ownership rights (quiet title) would result in a fee or permanent easement interest in favor of the District that is less than (in size, scope, aspects of uses, rights, titles, interests or extent) the District's rights to its District Canal System under California Water Code Sections 22438, et. sec. and including the historic scope of uses to which the District put the subject property prior to the commencement of the action, as the District will be the real party in interest when it comes to an adjudication of the District's Real Property Interests affecting the subject parcel(s).

c. Rights Nonexclusive. This Master Trails Agreement is entered subject to all rights previously acquired by third parties as to those expressly set forth herein, but no other third-party rights are intended to be conveyed or acknowledged herein save those expressly and individually identified and granted. The rights and privileges granted by this Master Trails Agreement are nonexclusive and will not prohibit the District or the City from entering into agreements with other parties that do not conflict herewith. However, as stated in Section 4 above, City shall not permit, authorize, consent to or convey to any third party any right to use or occupy any aspect of the District's Canal System or its Real Property Interests without the prior written approval of the District.

6. Area of Common Use. The portion of the Canal Banks utilized by City for its Recreational Trails shall be designated "Area of Common Use." Areas of Common Use shall be specifically called out in Common Use Agreements to be executed pursuant to this Master Trails Agreement.
 - a. Outside Area of Common Use. Nothing in this Agreement shall relieve the Parties from any responsibility to the other for damage to the other's property located outside of the Area of Common Use or the Recreational Trails Area(s) designated in a Common Use Agreement other than as provided herein or modified by a specific Common Use Agreement.
 - b. Request for Access. In the event that either Party requires access to an Area of Common Use under a situation not otherwise provided for herein or contained in a specific Common Use Agreement, such Party shall provide notice of its requested access to the other Party for approval at least 30 days in advance.
 - i. Emergency Access. In the event of an emergency involving the potential for serious loss or damage to property or public health and safety, 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, or to insure unimpeded Maintenance and Operation of the Canal System by the District during water flows or emergency repairs.
7. Common Use Agreements. For each individual segment of the City's Recreational Trails which requires common use along a portion of the District's Canal Banks, the Parties shall enter into a Common Use Agreement substantially in the form attached hereto as Exhibit A.
 - a. Contents. Each Common Use Agreement shall: (i) incorporate by reference all covenants, conditions, and agreements of this Master Trails Agreement; (ii) describe the parameters of the District's existing Real Property Interests upon which common use is to occur; (iii) provide a legal description property subject to common use; (iv) identify the proposed Recreational Trail; (v) provide the City and District with a perpetual right to common use of the Area of Common use identified therein; and (vi) include any special conditions applicable to the particular proposed Recreational Trail, including

the granting or acquisition of the Exhibit B easements in favor of the District, as applicable in order to document the perpetual right to common use called for in (v), immediately above, , should anyone challenge the District's Real Property Interests in connection with any Recreational Trail segment proposed by the City involving a perpetual and common use by the Parties.

- b. Review by Risk Management. Any and all Common Use Agreements and the subsequent designs, planned operational parameters and the continuing operational parameters thereof are subject to the prior review and written approval of the City's Risk Manager, or designee, and the District's liability insurance carrier(s) or Risk Manager, at District's option.
 - c. Preparation Costs. Each party shall be responsible for its own costs in preparing, reviewing and approving Common Use Agreements.
 - d. Nature of Agreement. The covenants, conditions and agreements contained in each Common Use Agreement shall constitute covenants to run with, and running with, the servient lands and/or easements of the City, and shall be binding on each of the parties to the agreement and on all parties and all persons claiming under them for as long as the subject Recreational Trail segment associated with a specific Common Use Agreement continues to be used for the purposes authorized by each agreement.
8. Notice of Change in Common Use. Should either party determine that the design and/or operational parameters of a segment of the City's Recreational Trails requires alternation for any reason, said Party shall notify the other and the Parties shall meet and confer regarding resolution. The Parties shall amend any affected Common Use Agreement for consistency with said change when mutually agreeable to both Parties.
9. District Use of Area of Common Use.
- a. Limited Access. It is understood by and between the City and the District that any Canal Bank segment with a Recreational Trail under a Common Use Agreement shall be open to the general public and shall be under the control of the City for purposes of trail-related liability, trail maintenance, and other obligations placed upon City for weed and trash abatement, homeless

abatement, etc., as set forth herein. The District shall at all times retain Operational and Maintenance management and control of all of its Canal System, including those segments with a Recreational Trail segment under a Common Use Agreement as provided for hereunder. The District and City shall collaborate when District requires more than normal Maintenance or Operational access (including any Maintenance or Operation work which may impact City's facilities in the Area of Common Use or requires a closure of a trail segment) to its Canal System from within an Area of Common Use. In such instances District shall notify the City of its need to access its canal and City shall work with District to accomplish District's maintenance or operational goals in a manner which considers City's facilities in the Area of Common Use.

This Section 9.a. shall supersede all other references contained herein or in any subsequent Common Use Agreement, to District's access to the Canal System from Areas of Common Use (for Operation and Maintenance or otherwise).

- b. Maintenance. The Parties acknowledge that District currently utilizes both Canal Banks along any given stretch of the Canal System to Operate and Maintain the Canal System. The District and the City agree all of the District's rights and discretion to Operate and Maintain any portion of the District's Canal System are reserved and vested unilaterally in the District unless otherwise noted. Notwithstanding the forgoing, for any portion of its Canal System which becomes subject to a Common Use Agreement hereunder, District shall notify City at least thirty (30) days in advance of any non-standard, unscheduled or unusual Operation and Maintenance activities which may impact the use or condition of City's Recreational Trail for any such portion or segment.
- c. Spoil. City acknowledges District has, and shall continue to have, the right to deposit sediment, plant material, debris and other material (collectively Spoil) removed from the Canal System onto lands comprising District's Real Property Interests. Notwithstanding the forgoing, District shall not deposit Spoil within an Area of Common Use unless provided for in a Common Use Agreement or otherwise agreed to by the City. Moreover, District agrees to provide reasonable advance notice to City prior to depositing Spoil on any Canal Bank adjacent to an Area of Common Use. If it is not feasible to

deposit Spoil on the Canal Bank parallel to an Area of Common Use, City and District shall work together to dispose of the Spoil in a mutually agreeable manner; in such instance, City may use its forces to aid in the disposition of Spoil or pay for costs in excess of the usual costs for removal or spreading/leveling of Spoil or both) to the District's specifications and locations. To the extent that special handling of Spoil is necessary because of a Recreational Trail, the extra costs associated with the handling of Spoil will be borne by the City.

10. City Obligations.

- a. Homeless Abatement. City shall undertake the full administrative, funding, and enforcement responsibilities to address and resolve the issues related to homeless camps and homeless sites and their removal including but not limited to removing all trash, personal property, waste and hazardous materials from said sites/locations along any Canal Bank which is part of an Area of Common Use and the adjacent parallel Canal Bank.
- b. Canal Bank Maintenance. City shall, at its sole expense, be responsible for maintaining the entire Area of Common Use in accordance with the City's regular weed abatement and litter control schedule for City rights-of-way. City shall make all efforts to coordinate such weed abatement with District's Canal Bank maintenance schedule.
- c. Litter Control. Within the Area of Common Use, City shall enforce its anti-littering ordinances, provide waste receptacles, and take other reasonable actions within its authority to prevent litter, trash or other material to gather or be deposited on or in Areas of Common Use. If City requests District to undertake litter removal more frequently than the normal procedures of District, City shall be responsible for the additional costs associated with the litter removal.
- d. Additional Maintenance Responsibility. The City understands that any City Recreational Trail or Recreational Trail segment associated with the District's Canal System may result in additional Maintenance and Operational costs to the District. The City agrees, in such situations, to either perform such additional work to the level complying with District standards or to compensate the District for the additional costs. This could

include picking up trash on the Trail side as well as on the opposite side of the Recreational Trail more often, renting a rubber track excavator so as to minimize damage to the trail side, putting out signs to close a Recreational Trail segment during maintenance or trash removal, using a pilot vehicle to go before any District equipment working on the trail side, etc.

- e. Weed Abatement. City shall be responsible for herbicide spraying within Areas of Common Use on the tops of Canal Banks and down to the water edge to control weed growth in Recreational Trail segments along open canals. The City shall not engage in the application of herbicides below water edge in any canal.

- f. Dredging Costs. The Parties acknowledge that it may be prudent to dredge open canal segments -subject to a Common Use Agreement prior to construction of the City's Recreational Trail System along said segment so as to ultimately reduce the costs associated with maintaining said segment after the construction of an adjacent Recreational Trail segment. For such segments, where the Parties agree that dredging would be prudent, prior to the initial construction of a Recreational Trail segment, the Parties agree to share in dredging costs. For Recreational Trail segments to be dredged by FID after the initial construction thereof, dredging costs shall be handled under Section 10.d. above.

- g. Signs. The City shall prepare and install readily visible signs at Recreational Trail segment entrances or other appropriate locations along each Recreational Trail advising the public: (i) the Recreational Trail is located within the District's Canal System with the District's consent; (ii) the District has reserved the use of and access to the Area of Common Use and its Canal System for Operation and Maintenance; (iii) users of the Recreational Trail must yield to District personnel and equipment (and the District's contractors) engaged in District activities; (iv) swimming, wading, boating, and any other activity in District Canal System is prohibited; (v) public use of motor vehicles or equipment on the Recreational Trail segment is prohibited; (vi) disposing of or placing litter, refuse, trash, or any other foreign item or material into or on the District's Canal System or District waters is prohibited; (vii) that the Recreational Trail(s) may be closed from time to time upon request of the District; and, (viii) that where Recreational

Trails exist, the public is directed to use said trails and not use or trespass on the District's Canal Banks or canals that have no Recreational Trails.

11. Design Standards:

- a. General. Recreational Trails will be constructed in conformance with the City's Design Standard and are likewise subject to the District's own design specifications, oversight and standards for any Recreational Trail segments proposed within the District's Canal System or Area of Common Use.
- b. No Obstruction. Except as otherwise limited herein, City Improvements (including but not limited to trail bridges, tree canopies, placement of crossings, etc.) shall not cause an interruption or interference with the District's Operation or Maintenance of its Canal System or the flow of water in or access to the Canal System or the delivery or drainage of water by the District; an increase in seepage or any other increase in the loss of water from the Canal System, the subsidence of soil within or adjacent to the easement, or any other impact to, interference with or damage to the District's Canal System.
- c. Safety Infrastructure. In connection with the plan approval process by the District for any Recreational Trail segment and its attendant Common Use Agreement, the District may specify and require City to install fencing, gates, signs, bollards and such other control structures within the Area of Common Use to protect the District's interests. In connection with the District's plan review and approval process for any Recreational Trail (or segment) proposed by the City with its accompanying Common Use Agreement, the District reserves the right to specify and require the City's installation of fencing, gates, signs, bollards and other such control features or structures in connection with such Recreational Trail (or segment(s)) within or adjacent to the Area(s) of Common Use so as to protect the District's interests, uses and Maintenance and Operational concerns as determined by the District's planning staff and General Manager. This includes but shall not be limited to the City being responsible for any and all consequences to its invitees or users of Recreational Trails located by the City on or adjacent to any District Canal System. The City's design of Recreational Trail and segments and any Improvements shall include all reasonable features necessary to protect the safety of the members of the

public who use the City's Recreational Trails, ensure that members of the public comply with the terms of this Master Trails Agreement, agreements executed pursuant to this Master Trails Agreement, and any City ordinance regarding activity on City Recreational Trails, prevent interference with the District's use, access to, Operation and Maintenance of the District's Canal System and prevent members of the public using City Recreational Trails and thus having the use of or access to the District's Canal System for swimming, wading, boating, or conducting any other activity within the inside slope of the District's Canal Banks or its Canal System. This Master Trails Agreement shall not prevent the District from enforcing any prohibition against unauthorized use of the District's Canal System or enjoying or enforcing its statutory rights under the California Water Code Section 22438 as to all others.

- d. Preservation of District Access. City shall use its best efforts to design its Recreational Trails within Areas of Common Use to allow reasonable access by the District to the Canal System for Operation and Maintenance purposes, as determined by the District.
 - e. District Design, Plan Review, CUA & Inspection Fees. City agrees to pay the District for the District's staff's time spent on planning, coordinating, corresponding, reviewing plans and documents, preparing agreements, and inspection of Recreational Trail project construction for each trail segment constructed or implemented under this agreement or the associated trail Common Use Agreement. Charges shall be based on the District's standard review fee schedule, or on a time-and-expense basis if determined to be necessary by either party.
12. Procedure for Submission, Review, and Approval of Requests for Common Use. The following procedures, terms and conditions shall apply to the submission, review, and approval of Requests for Common Use:
- a. Consultation in City Recreational Trail Planning. City shall consult with District in a timely manner regarding planned segments of its Recreational Trails which may impact District's Canal Banks and/or its Canal System.
 - b. Compliance with ATP. Before submitting any Recreational Trail Segment to the District to be located atop or adjacent to any District Canal System

element, the City agrees to require developers or and/or property owners desirous of developing property along planned trail rights of way under the City's Active Transportation Plan ("ATP") to provide the City with deeded dedications or rights of way on which the planned trails can be located if the property has not yet developed prior to any such properties being included in the Recreational Trail System contemplated herein.

- c. Request for Common Use. Upon determining that a particular segment of its Recreational Trails may require overlap with the District's Canal Banks, City shall provide District written notice of its desired common use (Request for Common Use). City's Request for Common Use shall include the following:
 - i. Description of Proposed Recreational Trail. Each request shall describe the proposed Recreational Trail segment, including a schematic drawing showing the proposed trail alignment and location.
 - ii. Timeline. Identify the proposed dates of construction (if any) and identify any known local, state, or federal procedures or requirements which may impact the District's review and approval of the Request for Common Use.
- d. District Approval of Request for Common Use. The District's General Manager or designee shall review each Request for Common Use. Within thirty (30) days of receipt of said request, the General Manager shall provide City with a written response: (i) responding to the City's Request for Common Use and requesting such other information as it deems needful to move forward with Recreational Trail segment planning; (ii) identify circumstances under which space constraints, Operation and Maintenance, and/or safety issues limit the proposed construction of a Recreational Trail; and (iii) provide conditions, if any, upon which an approval by the District of the Request for Common Use could be based.
- e. Submission of Construction Documents. Upon receipt of District's approval, City shall prepare and submit to the District for review and comment, schematic (30%), design development (60%), and construction document (90%) level plans and specifications; and final 100% signature level plans

and specifications. The City shall address the District's comments, concerns and issues raised by the District, to the District's satisfaction.

- f. Draft Common Use Agreement. District shall submit a draft Common Use Agreement with its review comments to City's schematic design (30%) level documents.
 - g. Approval of Construction Documents; Common Use Agreement. The Parties shall work together to negotiate any special terms to be contained in Common Use Agreements and to obtain District's final approval of Construction Documents (which shall include any specific construction terms to be contained in the related Common Use Agreement). Upon District's approval of the Construction Documents, the Parties shall execute a Common Use Agreement.
 - i. Number of Copies. When the City and District staffs have reached consensus, the City shall execute duplicate originals of each Common Use Agreement and deliver them to the District for consideration during the next meeting of the District's Board of Directors. The City or its contractors for any Recreational Trail segment or Common Use Agreement shall be responsible to remit payment for the District's plan review fees. When a Common Use Agreement is signed, the City's contractor for the work outlined in such Common Use Agreement will pull construction/access permits from the District.
 - ii. Recordation. Each Common Use Agreement, once approved and signed by the District's Board of Directors, and approved and signed by the City Council, shall be recorded by the District and a recorded copy returned to the City.
 - iii. Timing. The Common Use Agreement for any segment of the Recreational Trail within an Area of Common Use must be executed prior to the commencement of construction on such Trail.
13. Acceptance of Work by District. The City shall provide notice prior to and immediately after construction of any City Improvement undertaken pursuant to a Common Use Agreement so District's engineers may inspect aspects of the

construction associated with the Canal System, if any, and verify that said improvements meet with the mutually approved plan as built, and intended to be operated. District shall not be unreasonably withhold approval of improvements discussed herein.

14. Construction of Improvements. The City shall comply fully with all federal, state or other laws, rules, regulations, directives or other governmental requirements in any form as administered by appropriate authorities, regarding environmental matters, and specifically those relating to pollution control and to materials and chemicals which may be inimical to human health or the environment, which may be applicable to its construction, installation, operation, or maintenance of the Recreational Trail and Improvements.
15. Dispute Resolution. The Parties agree to implement the provisions of this Master Trails Agreement in a reasonable, good faith manner as specific Recreational Trails and/or segments of pre-existing Recreational Trails are proposed by the City which affects any aspect of the District's Canal System and/or the District's Real Property Interests. The Parties agree to engage in mediation through a mutually acceptable mediator prior to institution of legal proceedings to resolve any issues pertaining to the provisions of this Master Trails Agreement. The Parties shall each pay fifty percent (50%) of all fees and costs charged by such mediator.
16. Indemnity.
 - a. The City acknowledges that prior to the City's request to use the District's Canal Banks or any portions of the District's Canal System for Recreational Trails, the District wanted no recreational trails or segments thereof (including public uses thereof) accessible to or proximate to any portions of the District's Canal System or any segments thereof. The District is risk adverse when it comes to any third party approaching or having any access to its Canal System for any purpose. The City nevertheless has prevailed upon the District and desires to utilize the District's Canal Banks and Canal System for portions of the City's Recreational Trails plans notwithstanding the District's concerns about risk, liability and potential harm to third parties coming into proximity with its Canal System. In an effort to persuade the District to allow the City to use portions of the District's Canal System in its Recreational Trails program, the City has repeatedly and universally assured the District that the City will assume and willingly accept 100% of

all liability, costs, exposure to loss/damages, and all foreseeable and unforeseeable risks, losses, and all claims for and assertions of damages associated with the City's locating any Recreational Trail or any segment thereof proximate to any District Canal System or segments thereof in exchange for and in consideration for siting its Recreational Trails proximate to the District's Canal System components or segments. The District accepts the City's offer with the understanding that in siting, constructing or operating its Recreational Trails or any segments thereof in proximity to the District's Canal System or any segments thereof, the City assumes 100% of the risk and liability for having done so. All of the risks associated with the City siting, constructing or operating any Recreational Trail or any segment thereof on or adjacent to or in proximity with any District Canal System or segment thereof belongs 100% to the City, (including any risks and all liability created by or existing on account of the City, its contractors, the public, any Trail users, the District or any third-party performing any work or maintenance any aspect of the District's Canal System or any City Trail on, adjacent to or proximate to any City Trail which is in turn near or on any segment of the District's Canal System) which hereby indemnifies and holds the District free and harmless for all consequences arising out of the City's siting its Recreational Trails or any segments thereof in any proximity to the District's Canal System.

- b. The City and District are each a public entity to which the Government Claims Act (Gov. Code § 810 et seq.) applies, including immunity for City development, creation, construction, use, maintenance and authorization for Recreational Trails along the District's Canal System, (including, but not limited to, paved or unpaved trails, walkways, paths, sidewalks, fences, or other similar structures, conditions or uses under Government Code Section 831.4 and 831.8 thereof, including Recreational Trails as that term encompasses all of the foregoing as used in the statute and as referenced in this Master Trails Agreement. Notwithstanding the foregoing, the Parties agree as follows:
 - i. To the maximum extent provided by law, statute or agreement, City agrees to indemnify, hold harmless and defend District and its directors, officers, employees, agents, contractors, partners and the heirs, personal representatives, successors, and assigns of each of

them (collectively, District) from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from: (i) the terms and performance of this Agreement and any agreement executed hereunder; (ii) the City's construction, use, operation, or maintenance of its Improvements within and affecting District's Canal System; (iii) the use/location/approval or operation of the City's Improvements; (iv) any challenge from any source to the District's Real Property Interests; or, (v) any damage, loss, injury or claims by any third party accessing any part of the Canal System by way of any part or access point of a Recreational Trail or invited (intentionally or unintentionally) by the presence of any Recreational Trail segment; or, (vi) the use of such Recreational Trails and facilities (including all Improvements) proximate to, adjacent to or sited on any portion of the District's Canal System by any third party or member of the public as those facilities and Improvements are being herein made available by the City, provided nothing herein shall constitute a waiver by the City (or any waiver, secondarily, by the District) of governmental immunities including, but not limited to, California Government Sections 810 et seq. and Government Code Section 831.4., 831.8, etc.

- ii. This indemnity by the City in favor of the District includes but shall not be limited to the City being 100% responsible for any and all consequences to its invitees or any users of Recreational Trails located by the City on, adjacent to or proximate to any District Canal System or portion thereof.
- iii. In addition to the foregoing, the Parties adopt the following additional Indemnity provision applicable to the City in the context of its siting Recreational Trails proximate to any District Canal System or Canal Banks:

c. Further Indemnity from City to District.

- i. Definitions. As used in this Section 16:

- (1) "District" includes other agencies using District's Canal System at or near the location of City's installation of any Recreational Trail or segment thereof and their officers, directors, agents, and employees.
 - (2) "City" includes City and its agents, contractors, subcontractors, sub-subcontractors, employees, officers, and directors, or any other person or entity acting on its behalf or under its control.
 - (3) "Loss" includes claims, suits, taxes, loss, damages (including punitive damages, statutory damages, and exemplary damages), costs, charges, assessments, judgments, settlements, liens, demands, actions, causes of action, fines, penalties, interest, and expenses of whatsoever nature, including court costs, reasonable attorneys' fees and expenses, investigation costs, and appeal expenses.
- ii. City shall defend, indemnify, and hold harmless District from and against any and all Loss, even if groundless, fraudulent, or false, directly or indirectly arising out of or related to City's construction, maintenance, operation, location, relocation, or removal of a Recreational Trail (or any segment thereof), and the location of any Recreational Trail (or any segment thereof) on, proximate to or adjacent to any District Canal System, which includes, but is not limited to, any actual or alleged:
- (1) Bodily harm or personal injury (including any emotional injury or disease) to, or the death of, any person(s). Such person or persons include but are not limited to City, District, any user of or invitee on a Recreational Trail (or any segment thereof) and those accessing any District Canal System via any Recreational Trail (or segment thereof), or the agents, contractors, subcontractors, or employees of the foregoing;
 - (2) Damage to or the disturbance, loss, movement, or destruction of property, including loss of use and diminution in

value. Such property includes any Canal System or other District facilities on or near District's Canal System (or portions thereof), any property of City or District, or any property in the care, custody, or control of City or District;

- (3) Removal of person(s) from District's Canal System;
 - (4) Activity(ies) by City on District's Canal System, including without limitation the installation, construction, maintenance, repair, renewal, modification, reconstruction, relocation, or removal of the Recreational Trail (or any segment thereof)s or any part thereof, any activities, labor, materials, equipment, or machinery in conjunction therewith, and any delays or interference with any Canal System caused thereby;
 - (5) Right(s) or interest(s) granted to third parties by the City to use its Recreational Trails which gives opportunity to access any segment thereof and/or any portion of the District's Canal System;
 - (6) Presence, operation, or use of the Recreational Trail (or any segment thereof) or contents escaping therefrom, including without limitation any actual or alleged pollution, contamination, breach, or environmental Loss;
 - (7) City's breach of this Agreement or failure to comply with its provisions; and
 - (8) Violation by City of any law, statute, ordinance, governmental administrative order, rule, or regulation, including without limitation all applicable Federal, State, County, Regional or local regulations.
- iii. The foregoing obligations shall apply if the Loss actually or allegedly arises from, relates to, results from, or is caused by, in whole or in part, any act, activity, error, or omission of City with respect to or under this Agreement, including the City's siting of any Recreational Trail (or any segment thereof) on, proximate to or adjacent to any

District Canal System or portions thereof. The foregoing obligations shall apply even to losses caused by, arising from, relating to, or resulting from, in whole or in part, the actual or alleged misconduct, fault, liability, or negligence of District and/or any third party performing any work or maintenance on the District's Canal System and/or the City's Recreational Trails, and such actual or alleged misconduct, fault, liability, or negligence of District shall not limit, diminish or preclude City's obligations to District in any respect.

- iv. THE FOREGOING OBLIGATIONS SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW FOR THE BENEFIT OF District, EXCEPT WHERE THE LOSS IS CAUSED BY THE SOLE, ACTIVE, INTENTIONAL AND DIRECT NEGLIGENCE OF DISTRICT AS DETERMINED IN A FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION.
- v. Upon written notice from District, City agrees to assume the defense of any Loss described in this Section and shall immediately take such actions as may be necessary and appropriate to protect the interests of District, including the appointment of appropriate and qualified counsel. Any and all counsel selected or provided by City to represent or defend District shall conduct such representation or defense strictly in accordance with District's Defense Counsel Guidelines. In the event counsel selected by City refuses or fails to conduct District's defense pursuant to District's Defense Counsel Guidelines, or in the event District, in its sole discretion, determines a conflict of interest precludes counsel's defense of District, District may replace such counsel with other counsel of District's own choosing. In such event, any and all fees and expenses of District's new counsel shall be paid or reimbursed by City as part of its indemnity obligation hereunder.
- d. District shall at all times have the right to direct the defense of, and to accept or reject any offer to compromise or settle, any Loss asserted against District.
- e. The provisions in this Section shall survive cancellation, termination, or expiration of the Agreement.

- f. The District agrees to indemnify, hold harmless, and defend the City, the City's elected officials, officers, employees, agents, contractors, partners and the heirs, personal representatives, successors, and assigns of each of them, (but excluding and excepting any and all users of the City's Recreational Trails, any untended or unintended invitees or any other persons accessing the Recreational Trail(s) or any segments thereof) from all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees arising solely out of the intentionally harmful acts by the District's employees, agents or contractors in the course of the District's Operation, and Maintenance of its Canal Banks directed exclusively toward the above-enumerated and finite list of City personnel, which list expressly excludes and excepts certain classes of users, invitees and others, other than as authorized under this Master Trails Agreement. Nothing herein shall constitute a waiver by District of governmental immunities including but not limited to Government Code Sections 810 et seq. and Government Code Section 831.4, 831.8, etc.
17. Termination. This Agreement, and any Common Use Agreement entered into hereunder shall not be terminated without the mutual agreement of the Parties. In the event of a violation of any terms of this Agreement or of a derivative Common Use Agreement, the Parties agree to attempt resolution and cure in good faith in accordance with the provision noted above. Any dispute regarding a specific Common Use Agreement shall not limit City's right to move forward with other Common Use Agreements.
18. Time of the Essence. Time is of the essence in 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 Section 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."
19. 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.
20. 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.
 21. 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.
 22. 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.
 23. Interpretation. It is agreed and acknowledged by the Parties that this Agreement has been arrived at through negotiation, and 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.
 24. Professionals’ Fees. Each Party to this Agreement shall be responsible for its own Attorney’s Fees in relation to any and all actions, proceedings, etc. commenced hereunder.
 25. 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.
 26. 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.
 27. 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.

28. Applicable Law and Jurisdiction Unaffected. Neither the terms of this Master Trails Agreement, nor any agreement executed hereunder, nor the Parties exercise of any rights or performance of any obligations hereunder, shall be construed or asserted to extend the application of any such governmental requirements or the jurisdiction of any federal, state, or other agency or official to District's ownership, Operation and Maintenance of its Canal System which did not apply prior to and without execution of this agreement. By entering this Master Trails Agreement the District does not create, or exercise legal or other authority, either express or implied, to regulate, control, or prohibit the discharge or contribution of pollutants or contaminants to any groundwater, waters of the State or the United States, or any other destination. Such authority, to the extent that it exists, is possessed and exercised by governmental environmental agencies. By entering this Master Trails Agreement, the District does not assume any responsibility or liability for any impact upon or degradation of human health or safety or the environment resulting from any activity of the other party, including, but not limited to, the City's construction, operation, and maintenance of its Recreational Trails, Improvements

and facilities. In the event the District is required to comply with any governmental requirements or is subject to the jurisdiction of any governmental agency as a result of authorizing the construction and maintenance of a Recreational Trail and/or Improvements upon its Canal Banks, the District shall notify City in writing and the Parties shall work collaboratively towards resolution. In any event, if it is determined that City is the cause of such governmental intervention, City shall indemnify, hold harmless or defend District from liabilities associated with the governmental requirements and intervention.

29. Water Rights. The City acknowledges that the waters in the District's Canal System are fully appropriated for beneficial use, and the water flows in the District's Canal System fluctuate based on demand, diversion and use of water. The City shall not attempt to divert or claim the right to diversion or maintenance of minimum stream flows of any water in any of the District's Canal System. The City shall not in any manner attempt to require the District to maintain any flow of water in any of the District's ditches, canals or Canal System.
30. Not a Public Dedication. Except for the permission to construct and maintain a Recreational Trail (including segments) contained in Common Use Agreements executed pursuant to this Master Trails Agreement, nothing contained herein or in such agreements shall be deemed to constitute a gift or dedication of any portion of the District's Real Property Interests or Canal Systems to the general public or for the benefit of the general public or for any public purpose whatsoever, and nothing contained herein shall be deemed to provide that any Recreational Trail shall be used for any other purpose than as stated herein and in agreements executed pursuant hereto, it being the intention of the Parties this Agreement and any further agreements will be strictly limited to and for the purposes expressed herein. The Parties shall be permitted, from time to time, to take whatever reasonable action it or they deem necessary to prevent any portion of the District's Canal Systems from being dedicated or taken for public use or benefit, including but not limited to any taking by the City except as expressly authorized herein.
31. Relocation. If desired by the District, any District-approved Recreational Trail within or affecting the District's Canal Systems subject to a Common Use Agreement may be relocated in a functionally similar manner. Such relocation shall be with the prior written approval of the City, which approval shall not be unreasonably withheld. The costs of such relocation shall be borne by the District.

32. No Claims Created. Nothing in this Master Trails Agreement or any agreement executed or permit issued pursuant to this Master Trails Agreement shall create or support a claim of estoppel, waiver, prescription or adverse possession by either party hereto or any third party against either party hereto.
33. Assignment. Neither this Master Trails Agreement nor any agreement entered pursuant to this Master Trails Agreement may be assigned or transferred from the City or any City Department or from the District's board or administrative officers (including any assignment to a board, commission or oversight group) without the prior written approval and signatures of the Parties, which approval shall not be unreasonably withheld without cause.
34. Construction, Binding Effect. This Master Trails Agreement shall be construed and enforced in accordance with the laws of the State and shall be binding upon and inure to the benefit of the Parties hereto and their respective successors. This Agreement is not intended for the benefit of any third party and is not enforceable by any third party. If any provision of this Master Trails Agreement is determined by a court of competent jurisdiction to be invalid or otherwise unenforceable, all remaining provisions of this Master Trails Agreement shall remain in full force and effect. The Parties represent and warrant to each other that they each have authority to enter this Master Trails Agreement.
35. Headings. The section headings herein set forth are provided only for the convenience of the Parties in locating various provisions of the Agreement, and are not intended to be aids in interpretation of any provision of the agreement with respect to which the Parties might disagree at some future time, and shall not be considered in any way in interpreting or construing any provision of the Agreement.
36. New Growth Area(s). "New Growth Area" or "New Growth Areas" as those terms are used herein means areas specified in the attached Exhibit C and labelled as stretches A-P, which Exhibit C is incorporated herein by reference. For any Recreational Trail segment A-P identified in the attached Exhibit C ("New Growth Area,") which is not atop the District's Canal Banks, and without affecting any of the City's other obligations in this Master Trails Agreement, including but not limited to the City's retention of the paragraph 16 Indemnity provision and the paragraph 10 (g) (dealing with signage), all of which are reaffirmed herein, the City shall be relieved of its paragraph 10 (a-f) obligations under this Agreement.

IN WITNESS WHEREOF, the Parties have executed this agreement on the date first above written.

CITY OF FRESNO
a Municipal Corporation

FRESNO IRRIGATION DISTRICT
A Public Corporation

By: _____
Wilma Quan-Schechter
City Manager

By: _____
Ryan Jacobson
President

Date: _____

Date: _____

YVONNE SPENCE, CMC
City Clerk

By: _____
Gary R. Serrato
Secretary

By: _____
Deputy

Date: _____

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

APPROVED AS TO FORM:

By: _____
Jeffrey G. Boswell, Esq.
Attorney for Fresno Irrigation District

By: _____
Raj Singh Badhesha, Deputy

Date: _____

**Exhibit A to Master Trails Agreement:
Common Use Agreement**

Recording Requested By
And When Recorded Mail To:

FRESNO IRRIGATION DISTRICT
2907 South Maple
Fresno, CA 93725

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

LOCATION:
APN:
CANAL:
PROJECT: [*Ex: Midtown Trail – Phase 1*]

**COMMON USE AGREEMENT
(Pursuant to Master Trails Agreement)**

This Common Use Agreement (“Agreement”) is made effective as of ___, 20___, 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:

RECITALS

- A. City and District are parties to that Certain Master Trails Agreement, dated December ___, 2017, (the “Master Trails Agreement”), which is incorporated herein by this reference. All defined terms not otherwise defined herein, shall have the same meaning provided in the Mater Trails Agreement.
- B. Pursuant to the Master Trails Agreement, the parties are to enter into a common use agreement for each individual segment of the City’s Recreational Trails which requires common use of District’s Canal Banks or any portion of the District’s Canal System.
- C. City desires to expand its Recreational Trail System on portions of the District’s

Canal System as identified and depicted in Exhibit "A" hereto (the "Area of Common Use").

D. District is the owner of a pre-existing Real Property Interests underlying the Area of Common Use, as described in Exhibit "B" hereto for its use in connection with the construction, maintenance, operation and use of a portion of the District's Canal System and incidental appurtenances, known as the _____ ("District's Easement").

E. City has reviewed the District's Easement and has concluded that it is comfortable acquiring a right-of-way interest in favor of the City for its recreational trail via a Common Use Agreement with the District (or if the City feels it is not comfortable with the District's Easement the City can abandon this Common Use Agreement for this particular Recreational Trail segment; or, if the District's Easement is subject to challenge the City has or will acquire a right of way interest in certain lands in the same area as the District's Easement, which acquisition will both affirm the District's Easement under the terms of a Grant of Easement in form and content attached as Exhibit B to the Master Trails Agreement to be secured by the City for the District); and, acknowledge the District's authority to enter into a Common Use Agreement with the City pursuant to paragraphs 1 and 10 of said Grant of Easement) as the City's intends to use the Area of Common Use for the purpose of constructing, maintaining and operating a recreational trail and appurtenant improvements (collectively "Improvements") as set forth in Exhibit "C" hereto, which Exhibit "C" depicts and describes both the District's Easement and the overlapping Area of Common Use and City Improvements.

F. 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. Recitals. Each and all of the foregoing recitals of background facts are incorporated herein by this reference as though set forth herein verbatim.

2. Area of Common Use.

(a) Subject to the controlling terms of the Master Trails Agreement, The City affirms the District's perpetual right to the District Easement; and, the District hereby consents to the use, in perpetuity, by City of the Area of Common Use for purposes of constructing, maintaining and operating City's 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 (or ownership/control) 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. District does not by this Agreement agree to any third-party utility or other third-party uses within the Area of Common Use which the City shall make use of the land without the express advance written consent first had and obtained from the District. 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. All aspects of this Agreement are subject to the controlling provisions and terms of the Master Trails Agreement to which Common Use Agreements for City Recreational Trails are subject as to all aspects hereof, the terms of which are herein referenced and incorporated herein by said reference.

(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 "Plans and Specifications for the Construction of Recreational Trails Improvements on _____", dated _____, as prepared by the City and approved by District and shall be subject to any special conditions applicable and indicated therein. In addition, any trees that are part of any landscape improvements by the City, if approved by the District, shall be located a minimum of 10 feet away from the adjacent outside edge (hinge point) of the District's _____ canal as indicated on the above-referenced Plans and Specifications approved by the 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. In the event that the City ever vacates or abandons its Improvements, or in the event that the District ever vacates or abandons its

appurtenances and facilities existing or installed by the District, the vacating/abandoning party shall record a document acknowledging the ongoing uses of the other party in the Area of Common Use previously shared by the parties so as not to work an abandonment or vacation of the interests of the other party.

(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) To the extent set forth in the Master Trails Agreement, 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; and, as between the parties, the City shall be responsible for any maintenance, repair alteration or relocation of any third party facilities the City and the District jointly permit, allow or provide for within the Area of Common Use and under the terms of the Master Trails Agreement to which Common Use Agreements for City Recreational Trails are subject, and the Master Trails Agreement is controlling as to all aspects hereof.

(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. District shall not be responsible for any damage to or for the costs of replacement or repair of any City or third-party facility located in the Area of Common Use not specifically approved, in writing by the District and in advance of the installation of such third-party facility(ies), and City shall indemnify and hold District harmless for any such cost and/or damages except for any such claims arising out of the willful misconduct or sole negligence of District or its directors, officers, employees or authorized volunteers.

(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. Reference is made to the terms of the Master Trails Agreement to which Common Use Agreements for City Recreational Trails are subject and subordinate, as the Master Trails Agreement is controlling as to all aspects hereof, including the allocation of risk, insurance, liability, indemnity, use, etc., including all of the provisions and terms found in Paragraphs 11 (c) and 16 of the Master Trails Agreement which are adopted, restated and included as though fully set forth herein.

(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) In the situation of a violation of any term of this Agreement the aggrieved party shall have all remedies available at law or equity, including the right to enforce District's right to unimpeded use of the Area of Common Use. Unless otherwise agreed upon by the parties in writing, City shall be entitled to up to 90 days to cure any default under this Agreement, following the date on which it receives written notice of said default from the District. Should City fail to initiate cure within the allotted, or

otherwise mutually agreed-upon time frame, in writing, District may cure and invoice City for all costs actually incurred to cure the default, No termination of this Agreement shall release the other party from liability hereunder, whether of indemnity or otherwise.

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 Section 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. Consistent with the Master Trails Agreement, each Party to this Agreement shall be responsible for its own Attorney’s Fees in relation to any and all actions, proceedings, etc. commenced hereunder. .

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.

13. Termination. Consistent with the Master Trails Agreement and except as otherwise provided in paragraph 2.k., above, this Agreement shall not be terminated without the mutual agreement of the Parties. In the event of a violation of any terms of this Agreement, the Parties agree to attempt resolution and cure in good faith in accordance with the provision noted above.

IN WITNESS WHEREOF, the Parties have executed this agreement on the date first above written.

CITY OF FRESNO
a Municipal Corporation

FRESNO IRRIGATION DISTRICT
A Public Corporation

By: _____
Wilma Quan-Schecter
City Manager

By: _____
Ryan Jacobson
President

Date: _____

Date: _____

YVONNE SPENCE, CMC
City Clerk

By: _____
Gary R. Serrato
Secretary

By: _____
Deputy

Date: _____

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

APPROVED AS TO FORM:
By: _____
Jeffrey G. Boswell, Esq.
Attorney for Fresno Irrigation District

By: _____
Raj Singh Badhesha, Deputy

Date: _____

EXHIBIT "A"
Area of Common Use

PROJECT: [*Ex: Midtown Trail – Phase I*]

[*Legal description and depiction*]

EXHIBIT B
(description of District's Easement)

EXHIBIT "C"
Description of Improvements

**Exhibit B to Master Trails Agreement:
Easement Deed**

Documentary Transfer Tax -- \$0.00

RECORDING REQUESTED BY

**AND WHEN RECORDED MAIL TO
FOR THE BENEFIT OF**

**FRESNO IRRIGATION DISTRICT
2907 SOUTH MAPLE AVENUE
FRESNO CA 93725-2218**

Recording Information

GRANT OF EASEMENT

LOCATION: _____
APN: _____
CANAL: _____
PROJECT: _____

THIS INDENTURE and GRANT OF EASEMENT is made and entered into this ____ day of _____, 20__, by and between _____, hereinafter referred to as "GRANTOR", and the FRESNO IRRIGATION DISTRICT, a California irrigation district, hereinafter referred to as "DISTRICT";

WITNESSETH:

1. For a valuable consideration, receipt of which is hereby acknowledged, GRANTOR does hereby grant unto DISTRICT, its successors and assigns, a perpetual and exclusive easement and right-of-way to construct, install, operate, maintain, alter, repair, improve, reconstruct, access, inspect, clean, reconfigure, redesign, traverse and/or pipe: canal(s), ditches, pipelines turnouts, gates, structures, conduits, meters, valves, measuring and/or telemetric control devices or structures, monitoring stations/devices, power lines, poles,

panels and/or equipment, pumps or any other accouterments or security structures (“Improvements”) the DISTRICT deems helpful or necessary in connection with its rights granted under this GRANT OF EASEMENT (all hereinafter “Improvements”) as determined by the DISTRICT and to flow and conduct water through said pipes, canals, conduits, structures and Improvements across, over, through and under that certain real property owned by GRANTOR in the County of Fresno, State of California, more particularly described as follows:

_____.

EXCEPTING THEREFROM _____.

TOGETHER WITH _____.

SAID EASEMENT also permits and authorizes DISTRICT the right to enter into any Common Use Agreement with the City of Fresno whereby the City of Fresno will have the right to construct, maintain, operate and use recreational trails within the DISTRICT’s EASEMENT whereby certain uses thereof will be permitted to the City of Fresno by the DISTRICT under the terms of a Master Trails Agreement and Common Use Agreement by and between DISTRICT and the City of Fresno. GRANTOR hereby consents to DISTRICT granting such rights to the City of Fresno under such arrangement.

2. Said easement and right-of-way is as shown on EXHIBIT “A” and EXHIBIT “B” attached hereto and described as follows:

See EXHIBIT “A” and as shown on EXHIBIT “B”

3. Said easement and right-of-way shall include all rights necessary, convenient or incidental to the use thereof as determined by the DISTRICT including the right of unrestricted ingress to and egress from said easement, Improvements and right-of-way so described over and across said real property owned by GRANTOR at such times and locations and for such equipment, material, personnel and vehicles as determined by the DISTRICT.
4. All canals, pipes, pipelines, conduits and other facilities (“Improvements”) constructed, installed and/or placed by or for DISTRICT upon and within said easement shall become and remain the property of DISTRICT and shall be maintained by DISTRICT at DISTRICT’S expense and GRANTOR shall have no right, title or interest therein.
5. When said canals, pipes, pipelines and other structures or facilities (“Improvements”) shall be constructed, installed, operated, maintained, altered, repaired, improved, reconstructed, accessed, inspected, cleaned, reconfigured, redesigned, traversed, piped, etc., the manner in which they shall be installed, constructed and/or placed by or for the DISTRICT; and, the time and manner for conducting and discharging water through the same shall be in the sole, exclusive and absolute control of DISTRICT. If DISTRICT fails to undertake the placement or construction of said Improvements within a term set by the DISTRICT and/or

thereafter determines that the easement is not needed, DISTRICT will abandon the easement by recorded document signed by the DISTRICT. Said easement shall not be deemed abandoned by DISTRICT until and unless such DISTRICT-executed document formally abandoning the easement is recorded.

6. DISTRICT hereby allows, to GRANTOR, the right to use the surface of the land within said easement for its own purposes, so long as said use by GRANTOR does not interfere in any way with the use of said easement by DISTRICT for the purposes for which said easement is granted (and so long as GRANTOR does not interfere with any aspect of any Common Use Agreement(s) entered into by DISTRICT and the City of Fresno within the easement for the City's recreational trails and improvements thereto); and, provided further that GRANTOR shall not build or construct any building or other permanent structure on or plant any vegetative materials within said easement without the written permission and consent of DISTRICT, which permission may be withdrawn at any time by the DISTRICT if GRANTOR's activities or improvements interfere with the DISTRICT's easement. DISTRICT shall have the right, without notice, and at GRANTOR'S expense, to modify any of Grantor's surface uses and/or to remove any structures, fences, or vegetative materials or other encroachments from said easement which interfere at any time with the purpose or use of said easement from time to time as determined by the DISTRICT.
7. *[Optional if temporary use of the GRANTOR's property is anticipated for temporary construction outside of the normal easement area] It is anticipated by GRANTOR and DISTRICT that circumstances may arise in DISTRICT's use of these easements that construction, maintenance and other activities may involve materials, equipment and/or personnel having to be mobilized on, delivered to, stockpiled and/or accessed for the work contemplated by grantee DISTRICT in the easement area(s). In such events, DISTRICT shall use its best efforts to inform GRANTOR of the scope of DISTRICT's work, including, perhaps, a request of GRANTOR to accommodate some of this mobilization/delivery/storage of materials and equipment in areas potentially and temporarily outside of the easement areas, provided that such temporary use(s) of such property shall not unreasonably interfere with GRANTOR's use of its non-easement areas; and, meet with GRANTOR's permission for such temporary uses outside of the easement areas. GRANTOR's permission for such temporary uses outside of the easement areas shall not be unreasonably withheld*
8. GRANTOR will arrange for any secured lienholder having an interest in the Property subject to any easements granted hereunder to submit a recordable, fully executed Subordination Agreement in form and substance acceptable to the DISTRICT to be recorded contemporaneously herewith to subordinate any such lien to the easement(s) and rights of way and other interests herein conveyed to the DISTRICT as a condition to the DISTRICT accepting this easement.
9. This GRANT OF EASEMENT described herein in favor of the DISTRICT shall constitute a covenant running with the land and shall be interpreted and administered by this Agreement as an easement under California law, and California Civil Code Sections 801, 1104, and 1468 et seq. and be interpreted consistent with California Water Code Section 22438. The easements contained herein shall run with the land and shall be

binding on all parties and persons claiming under them including all tenants and successors, assigns, and transferees of any party.

10. Should any action or proceeding be commenced between the parties hereto concerning this GRANT OF EASEMENT, 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. For purposes of this paragraph, the City of Fresno is not an anticipated or unintended third-party beneficiary of this provision and is not considered a "party" to this GRANT OF EASEMENT or this paragraph, but will be included in a Common Use Agreement between the City of Fresno and the DISTRICT.

IN WITNESS WHEREOF, the undersigned have caused this GRANT OF EASEMENT to be executed the date hereinabove written.

"DISTRICT"

"GRANTOR"

The Fresno Irrigation District, a California irrigation district

By: _____

By _____
Ryan Jacobsen, President

By: _____

By _____
Gary R. Serrato, Secretary

This is to certify that the interest in real property conveyed by the deed or grant dated _____ from _____ to Fresno Irrigation District, a California irrigation district, is hereby accepted by the undersigned officer or agent on behalf of the Board Of Directors pursuant to authority conferred by resolution of the Board of Directors adopted on January 27, 2004, and the grantee consents to recordation thereof by its duly authorized officer.

Dated _____

By: _____

*GARY R. SERRATO, Secretary
Fresno Irrigation District*

EXHIBIT "A"
Legal Description of Grantor's Property

EXHIBIT "B"

Map and/or description of right of way or scope of easement encumbering the Exhibit A parcel(s)

Exhibit C - Map of New Growth Areas

- A. Herndon No 39 Canal - Granifland Ave. to Veterans Blvd. Alignment
- B. Herndon No 39 Canal - Veterans Blvd. Alignment to Hayes Ave.
- C. Herndon No 39 Canal - Vista Ave. Alignment to Island Water Park Dr.
- D. Silvia No. 47 Canal - Granifland Ave. to Garfield Ave.
- E. Houghton No 78 Canal - Comelia Ave. to Blythe Ave.
- F. Houghton No 78 Canal - Blythe Ave. to Brawley Ave.
- G. Houghton No 78 Canal - Brawley Ave. to Marks Ave.
- H. Lower Dry Creek No 77 Canal - Marks Ave. to Hughes Ave.
- I. Mill No 36 Canal - Sunnyside Ave. Alignment to Temperance Ave.
- J. Fancher Creek No 6 Canal - Clovis Ave. to Tulare St.
- K. Fancher Creek No 6 Canal - Kona Ave. to Fowler Ave.
- L. Fancher Creek No 6 Canal - Fowler Ave. to Fancher Creek Dr. (Bridge Crossing)
- M. Fancher Creek No 6 & Washington Colony No 15 Canals - California Ave. Alignment to Church Ave.
- N. Washington Colony No 15 Canal - Church Ave. to Jensen Ave.
- O. Central No 23 Canal - Fancher Creek Junction to Minnewawa Ave.
- P. Central No 23 Canal - Minnewawa Ave. to Peach Ave.

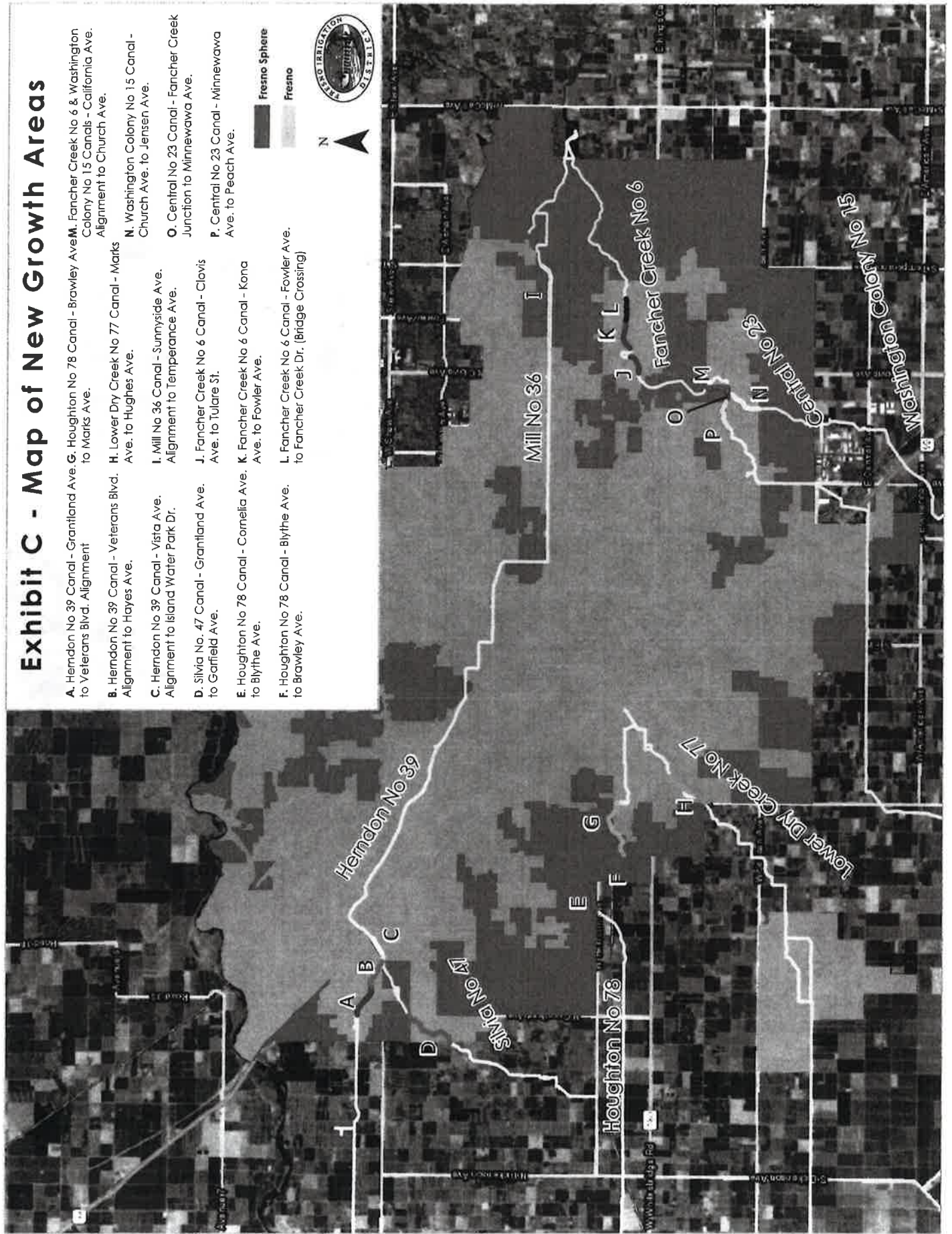
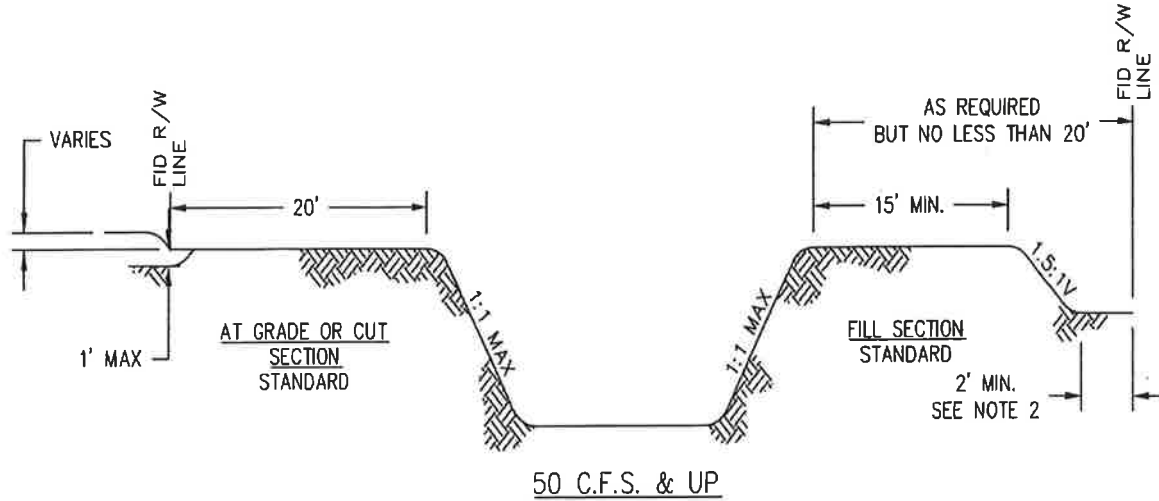


EXHIBIT D—Exception - FID canal profile applicable to this Agreement



NOTES:

1. ALL PRIVATE FACILITIES TO BE LOCATED OUTSIDE FID RIGHT-OF-WAY.
2. ADD 2 FEET TO EMBANKMENT WIDTH TO ESTABLISH OVERALL RIGHT-OF-WAY WIDTH TO ACCOMMODATE GRADER BLADE CLEARANCE.
3. THE ALTERNATE SECTION CANNOT BE USED IF THE OVERALL WIDTH EXCEEDS THE STANDARD WIDTH AND IS PERMITTED ONLY WHEN DISTRICT OPERATIONS AND MAINTENANCE FUNCTIONS DO NOT REQUIRE A STANDARD ROADWAY.



FRESNO IRRIGATION DISTRICT

CANAL RIGHT-OF-WAY

"Your Most Valuable Resource - Water"

SCALE: NOT TO SCALE

STANDARD DETAIL

DATE: JANUARY 2018

1-01

SHEET 1 OF 1