

**Documentary Transfer Tax -- \$0.00**  
**For the Benefit of:**

**CITY OF FRESNO**  
**2600 Fresno Street**  
**Fresno, CA 93721**

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**Recording Information**

**AGREEMENT FOR COMMON USE OF EASEMENTS**

LOCATION: N/E Copper and Auberry Road  
APN: 580-020-20 and 581-030-15

THIS AGREEMENT FOR COMMON USE OF EASEMENTS ("Agreement"), is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between the CITY OF FRESNO, a municipal corporation ("CITY"), and GARFIELD WATER DISTRICT ("GWD"), with reference to the following Recitals.

RECITALS:

A. GWD is the owner of a pipeline and an easement to operate, maintain, and repair a pipeline and related appurtenances that conveys water from the Friant Kern Canal.

B. CITY has or will acquire easement interests in certain lands in the same area as GWD's pipeline and easement, and CITY intends to use these easement interests for the purpose of maintaining and operating an 60-inch diameter raw water pipeline for a surface water treatment plant.

C. A portion of CITY's easements will overlap GWD's existing pipeline and easement in multiple locations, which overlapping portion is more specifically described as that area shown on the diagram attached hereto as **Exhibit "A"**, being hereby designated as the "Area of Common Use".

D. The improvement to be constructed by CITY within the Area of Common Use is a 60-inch diameter raw water pipeline ("Improvements").

E. CITY and GWD wish to establish certain conditions under which the Area of Common Use shall be used by the parties.



## AGREEMENT

NOW, THEREFORE, it is agreed as follows:

1. **GWD's Consent.**

GWD hereby consents to the use by CITY of the Area of Common Use for purposes of maintaining and operating the Improvements. CITY's use of the Area of Common Use shall be subject to GWD's right to fully use the Area of Common Use for all of GWD's purposes, and to the terms and conditions herein contained. GWD does not by this Agreement subordinate any rights it may have in the Area of Common Use to any use CITY shall make of the land. CITY acknowledges that by GWD's consent to CITY's use of the Area of Common Use, GWD 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.

2. **City Improvements.**

CITY shall, at its own cost and with GWD'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 uses of GWD. CITY is specifically required to coordinate the construction of the Improvements so that it does not interfere with GWD's operations and maintenance schedules. The constructed facilities shall be in conformance with the CITY's raw water pipeline plans (incorporated herein by Reference).

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

3. **Ownership Of Facilities.**

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

4. **Common Use.**

Except as expressly set forth herein, this Agreement shall not in any way alter, modify, or terminate GWD's easement in the Area of Common Use. Both GWD and CITY shall use the Area of Common Use in a manner that does not 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 GWD 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 GWD or CITY that causes damage to or unreasonable interference with the use of the Area of Common Use by the other party.

5. **City Reimbursement.**

CITY shall be responsible to pay, and shall reimburse GWD upon demand, for any reasonable cost incurred by GWD for work performed by GWD that is caused by or required by CITY's construction, maintenance, or use of the Improvements, whether such work was completed at CITY's expense or as reasonably determined to be necessary by GWD.

Except as described above, CITY and GWD shall be responsible for the maintenance, repair, alteration, improvement, or relocation of their respective facilities within the Area of Common Use.

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

6. **Indemnification.**

CITY shall indemnify, hold harmless and defend GWD and each of its officers, officials, employees, agents, and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs, and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time, and property damage) incurred by GWD, CITY or any other person, and from any and all claims, demands, and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly from the negligent or intentional acts or omissions, or willful misconduct of CITY or any of its officers, officials, employees, agents, and volunteers in the performance of this Agreement; provided nothing herein shall constitute a waiver by CITY of governmental immunities including California Government Code sections 810 et seq.

GWD shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents, and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs, and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time, and property damage) incurred by the CITY, GWD or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly from the negligent or intentional acts or omissions, or willful misconduct of GWD or any of its officers, officials, employees, agents and volunteers in the performance of this Agreement; provided nothing herein shall constitute a waiver by GWD of governmental immunities including California Government Code sections 810 et seq.

In the event of concurrent negligence on the part of CITY or any of its officers, officials, employees, agents or volunteers, and GWD or any of its officers, officials, employees, agents or volunteers, the liability for any and all such claims, demands and



actions in law or equity for such losses, fines, penalties, forfeitures, costs and damages shall be apportioned under the State of California's theory of comparative negligence as presently established or as may be modified hereafter.

This section shall survive termination or expiration of this Agreement.

7. **Insurance.**

It is understood and agreed that CITY and GWD will maintain insurance policies or self-insurance programs to fund their respective liabilities. The parties agree that such respective programs or policy coverage for Worker's Compensation shall contain a waiver of subrogation as to the other party and each of its officers, officials, agents, employees or volunteers. Evidence of Insurance, e.g., Certificates of Insurance or other similar documentation, shall not be required of either party under this Agreement.

8. **Notice.**

Except in the event of an emergency, or for necessary maintenance, 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. Neither party shall permit installation of facilities by others in the Area of Common Use without the written consent of the other party. The reviewing party shall have the right to specify reasonable conditions on, or changes in, the proposed work and schedule when necessary to prevent damage to its facilities or interference with its operations in the Area of Common Use. Where such changes shall result in additional expense, such expense shall be borne by CITY. Each party agrees to repair any damage to the other party's facilities caused by work permitted, 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 GWD to accommodate repair, maintenance, or replacement of GWD's facilities, GWD 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.

9. **Termination.**

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

10. **Miscellaneous.**

(a) **Entire Agreement.** This Agreement and items incorporated herein contain all of the agreements of the parties with respect to the matters contained herein, and no prior agreement or understanding pertaining to any such matter shall be effective for



any purpose. The parties further warrant and represent that they have not relied on any inducements, promises or representations made by any party or its representative, or any other person, except for those expressly set forth herein.

(b) Amendments. No provisions of this Agreement may be amended or modified in any manner whatsoever except by an agreement in writing duly authorized by representatives of both parties.

(c) Headings. The subject headings of the paragraphs of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of the provisions herein.

(d) Notices. All notices required or permitted by this Agreement or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified, or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, or by electronic transmission (email) and shall be deemed sufficiently given if served in a manner specified in this subparagraph 10(d). The addresses and addressees noted below are that party's designated address and addressee for delivery or mailing of notices.

**CITY:** City of Fresno  
2600 Fresno Street  
Fresno, CA 93721  
Attn: Thomas Esqueda, Director of Public Utilities  
Facsimile: (559) 621-8610

**GWD:** Garfield Water District  
c/o Dennis Keller  
P.O. Box 911  
209 South Locust Street  
Visalia, CA 93279  
Facsimile: (559) 732-7937

**With Copy To:** Douglas B. Jensen, Esq.  
Baker Manock & Jensen  
5260 N. Palm Avenue, Suite 421  
Fresno, CA 93704  
Facsimile: (559) 432-5620

Either party may, by written notice to the other, specify a different address for notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, three (3) days after the postmark date. If sent by regular mail, the notice shall be deemed given forty-eight (48) hours after it is addressed as required in this section and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given twenty-four (24) hours after delivery to the Postal Service or courier. Notices transmitted by



facsimile transmission or similar means (including email) shall be deemed delivered upon telephone or similar confirmation of delivery (confirmation report from fax machine is sufficient), provided a copy is also delivered via personal delivery or mail. If notice is received after 4:00 p.m. or on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

(e) Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under existing or future laws, such provision shall be fully severable, and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision were not a part hereof, and the remaining provisions of this Agreement shall remain in full force and effect.

(f) Construction. The parties hereto acknowledge that each party has or has had the opportunity to have counsel, of its own choosing, review and revise this Agreement, such that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

(g) Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for the purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be in Fresno County, California.

(h) Waiver. No failure or delay by a party to insist on the strict performance of any provision of this Agreement, or to exercise any right or remedy consequent on a breach thereof, shall constitute a waiver of any breach or subsequent breach of such provision. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

(i) Assignment. Neither party hereto shall assign this Agreement, or any interest herein, without the prior written consent of the other party. Any such attempted assignment in violation of this Agreement shall be null and void.

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(j) Binding Effect. This Agreement shall apply to and bind successors, assignees, contractors, subcontractors, transferees, agents, employees, and representatives of the respective parties hereto.

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

"GWD"  
GARFIELD WATER DISTRICT

"CITY"  
CITY OF FRESNO

By: \_\_\_\_\_  
Pat Ricchiuti, President

By: \_\_\_\_\_  
Thomas C. Esqueda  
Director of Public Utilities

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

ATTEST:  
YVONNE SPENCE, CMC  
City Clerk

By: \_\_\_\_\_  
Paul Woodworth, Secretary

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

Date: \_\_\_\_\_

APPROVED AS TO FORM:  
BAKER MANOCK & JENSEN, PC  
Garfield Water District General Counsel

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

By: \_\_\_\_\_  
Lauren D. Layne

By: Tracy N. Parvanian  
Tracy N. Parvanian  
Deputy City Attorney

Date: \_\_\_\_\_

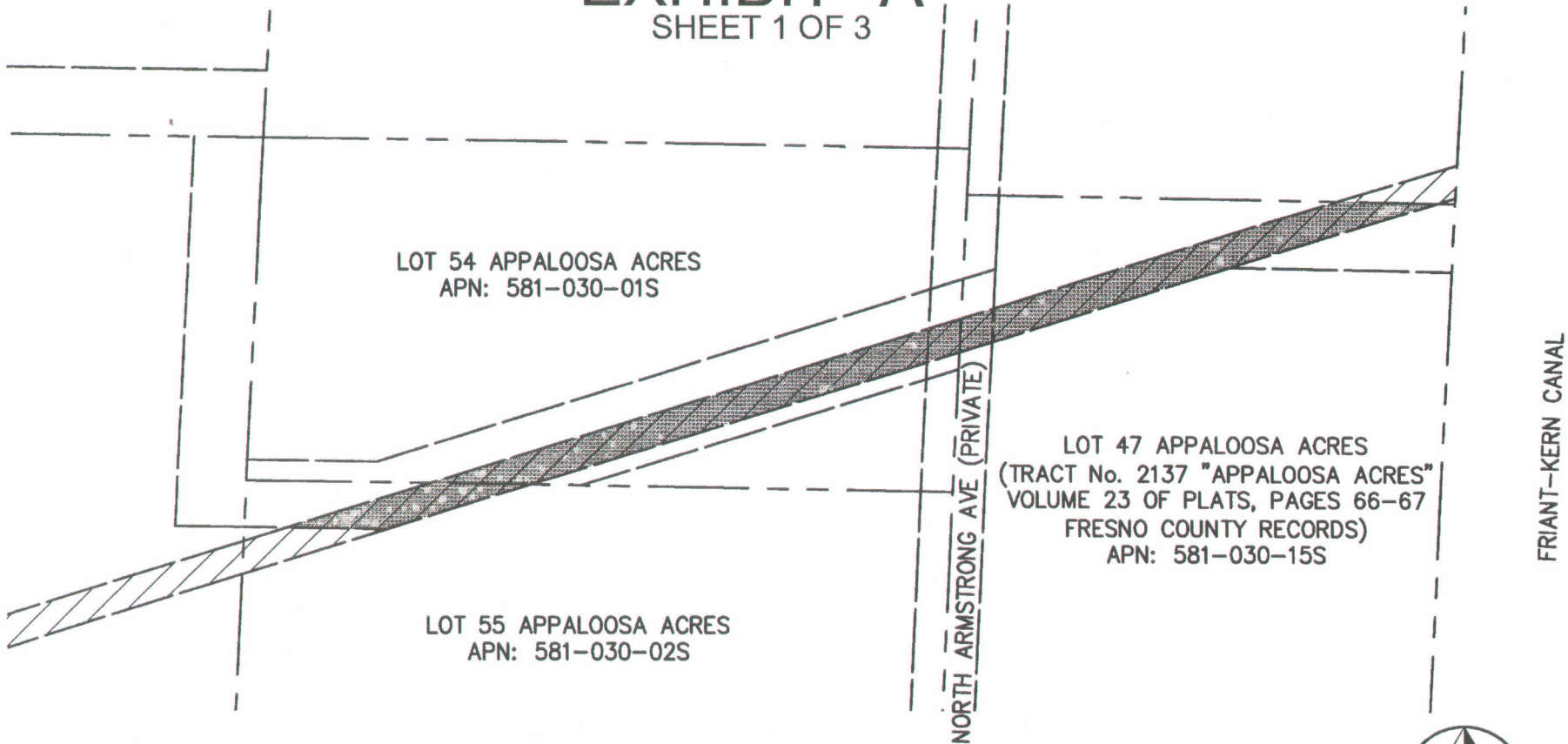
Date: 6-3-15

Attachment: Exhibit "A"





# EXHIBIT "A"

## SHEET 1 OF 3

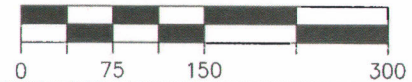


### LEGEND

-  INDICATES AREA TO BE COMMONLY SHARED FOR WATER PIPELINE/ACCESS EASEMENT PURPOSES (0.72 ACRES +/-)
-  GARFIELD WATER DISTRICT PIPELINE EASEMENT PER DOCUMENT RECORDED AUGUST 8, 1967 IN BOOK 5468, PAGE 142, OFFICIAL RECORDS OF FRESNO COUNTY



1"=150'



DATE SIGNED: 5/28/2015

EST. 1968  
**PROVOST & PRITCHARD**  
CONSULTING GROUP  
*An Employee Owned Company*

GARFIELD WATER DISTRICT  
COMMON USE AGREEMENT

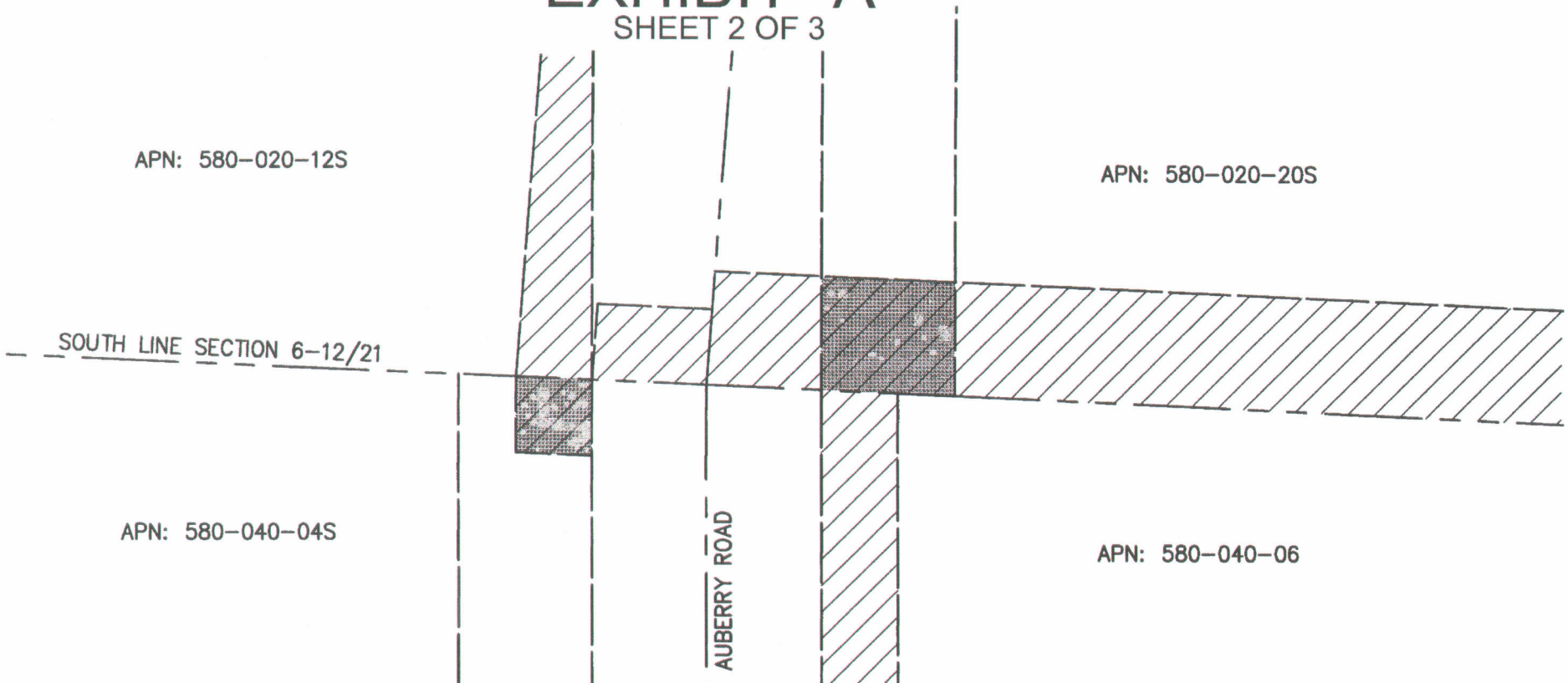
PORTION OF SECTION 4, T.12S., R.21E., M.D.B.&M.

DESIGN ENGINEER:  
MARTY D. HARTWIG  
DATE: 5/28/2015  
JOB NO: 15610702  
SHEET 1 OF 3





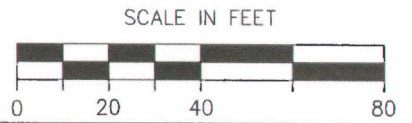
# EXHIBIT "A"

## SHEET 2 OF 3



**LEGEND**

-  INDICATES AREA TO BE COMMONLY SHARED FOR WATER PIPELINE/ACCESS EASEMENT PURPOSES (1,451 SQ. FT. +/-)  
NOTE: THE CITY PIPELINE WILL ALSO OVERLAP A PORTION OF GWD'S EASEMENT WITHIN THE AUBERRY ROAD RIGHT OF WAY.
-  GARFIELD WATER DISTRICT PIPELINE EASEMENT PER DOCUMENT RECORDED AUGUST 8, 1967 IN BOOK 5468, PAGE 142, OFFICIAL RECORDS OF FRESNO COUNTY



DATE SIGNED: 5/28/2015

EST. 1968  
**PROVOST & PRITCHARD**  
 CONSULTING GROUP  
 An Employee Owned Company

GARFIELD WATER DISTRICT  
 COMMON USE AGREEMENT

PORTION OF SECTIONS 6 & 7, T.12S., R.21E., M.D.B.&M.

DESIGN ENGINEER: MARTY D. HARTWIG
DATE: 5/28/2015
JOB NO: 15610702
SHEET 2 OF 3



# EXHIBIT "A"

SHEET 3 OF 3

APN: 578-010-49T

APN: 580-050-01S

WILLOW AVENUE

APN: 578-010-48T

APN: 580-050-02S

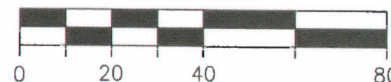
### LEGEND

 INDICATES GWD EASEMENT AREA WITHIN CITY OF FRESNO OWNED PROPERTY (1,572 SQ. FT. +/-)

 GARFIELD WATER DISTRICT PIPELINE EASEMENT PER DOCUMENT RECORDED AUGUST 8, 1967 IN BOOK 5468, PAGE 142, OFFICIAL RECORDS OF FRESNO COUNTY



SCALE IN FEET



DATE SIGNED: 5/28/2015

EST. 1968

**PROVOST & PRITCHARD**

CONSULTING GROUP

*An Employee Owned Company*

GARFIELD WATER DISTRICT  
COMMON USE AGREEMENT

PORTION OF SECTIONS 13 T.12S., R.20E., M.D.B.&M.

DESIGN ENGINEER:  
MARTY D. HARTWIG

DATE: 5/28/2015

JOB NO: 15610702

SHEET 3 OF 3