

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

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

Recording Information

AGREEMENT FOR COMMON USE OF EASEMENTS

LOCATION: ASHLAN AND CHESTNUT AVENUES
APN: N/A
CANAL: GOULD CANAL NO. 97

THIS AGREEMENT, made and entered into this 8 day of May, 2012, by and between the FRESNO IRRIGATION DISTRICT, a public corporation in the County of Fresno, State of California, hereinafter referred to as "DISTRICT" and CITY OF FRESNO, hereinafter referred to as "CITY", with reference to the following Recitations.

RECITATIONS:

A. DISTRICT is the owner of an open channel easement and right-of-way, recorded on January 23, 1997, as Document Number 97009618, Official Records of Fresno County, for its use in connection with the construction, maintenance, operation and use of an irrigation canal and incidental appurtenances, known as the GOULD CANAL NO. 97.

B. CITY has or will acquire a right-of-way interest in certain lands in the same area as the DISTRICT's easement and right of way, and CITY intends to use this new right-of-way interest for the purpose of constructing, maintaining and operating a 18-inch diameter water main and other pertinent structures.

C. A portion of CITY's right-of-way will overlap DISTRICT's open channel easement or right-of-way, which overlapping portion is more specifically describe as that area shown on the diagram attached hereto as Exhibit "A", such overlapping area being hereby designated as the "Area of Common Use".

CITY OF FRESNO
City Clerk's Office (Original)

CONFIRMED
COPY

D. DISTRICT and CITY 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:

I

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

II

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 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.

III

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 DISTRICT's facilities shall be the property of the DISTRICT. Except as herein otherwise provided, neither DISTRICT nor CITY shall have any right, title, or control over the other's said property other than it already has under applicable law.

IV

Except as expressly set forth herein, this Agreement shall not in any way alter, modify, or terminate DISTRICT's 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.

V

CITY shall be responsible to pay, and shall reimburse DISTRICT upon demand, but after DISTRICT gives to CITY at least thirty (30) days written notice (except in the case of an emergency) and an opportunity for CITY to perform the required work, 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.

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

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.

VI

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 of DISTRICT or its directors, officers, employees or authorized volunteers. CITY agrees to defend, hold harmless, and indemnify DISTRICT, its directors, officers, employees or authorized volunteers against any and all such injuries, damages, and claims. This indemnification agreement shall not be restricted to any insurance proceeds.

VII

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. 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

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.

VIII

This Agreement shall apply to and bind successors and assigns of the respective Parties hereto.

IX

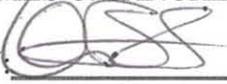
Violation of any term of this Agreement shall be cause of termination of the Agreement, and in such an event, DISTRICT shall have all remedies available at law or equity to enforce FID'S right to the unimpeded use of the Area of Common Use. No legally valid termination of this Agreement shall release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

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

"CITY"
CITY OF FRESNO
A Municipal Corporation

BY: 
PATRICK WIEMILLER, Public
Works Director

APPROVED AS TO FORM
JAMES C. SANCHEZ, City Attorney

BY: 
Deputy City Attorney *K. Darr*

ATTEST:
YVONNE SPENCE, City Clerk

BY: 
Deputy City Clerk
4/26/12

"DISTRICT"
FRESNO IRRIGATION DISTRICT
A Public Corporation

BY: 
JEFF NEELY, President

BY: 
GARY R. SERRATO, Secretary

CLERK'S CERTIFICATION

State of California)
County of Fresno)

On June 19, 2012 before me, Sherrie L. Badertscher, Deputy City Clerk, personally appeared, Patrick Wiemiller, Director, Public Works Department, who proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal

YVONNE SPENCE, CMC
City Clerk, City of Fresno

By *Sherrie L. Badertscher*
Deputy



R:\Clients\439 City of Fresno\08-09-04 Large Diameter TMains\CAD\Chestnut\Figures\EXHIBIT A.dwg 4-12-12 09:48:37 AM sbrbrf

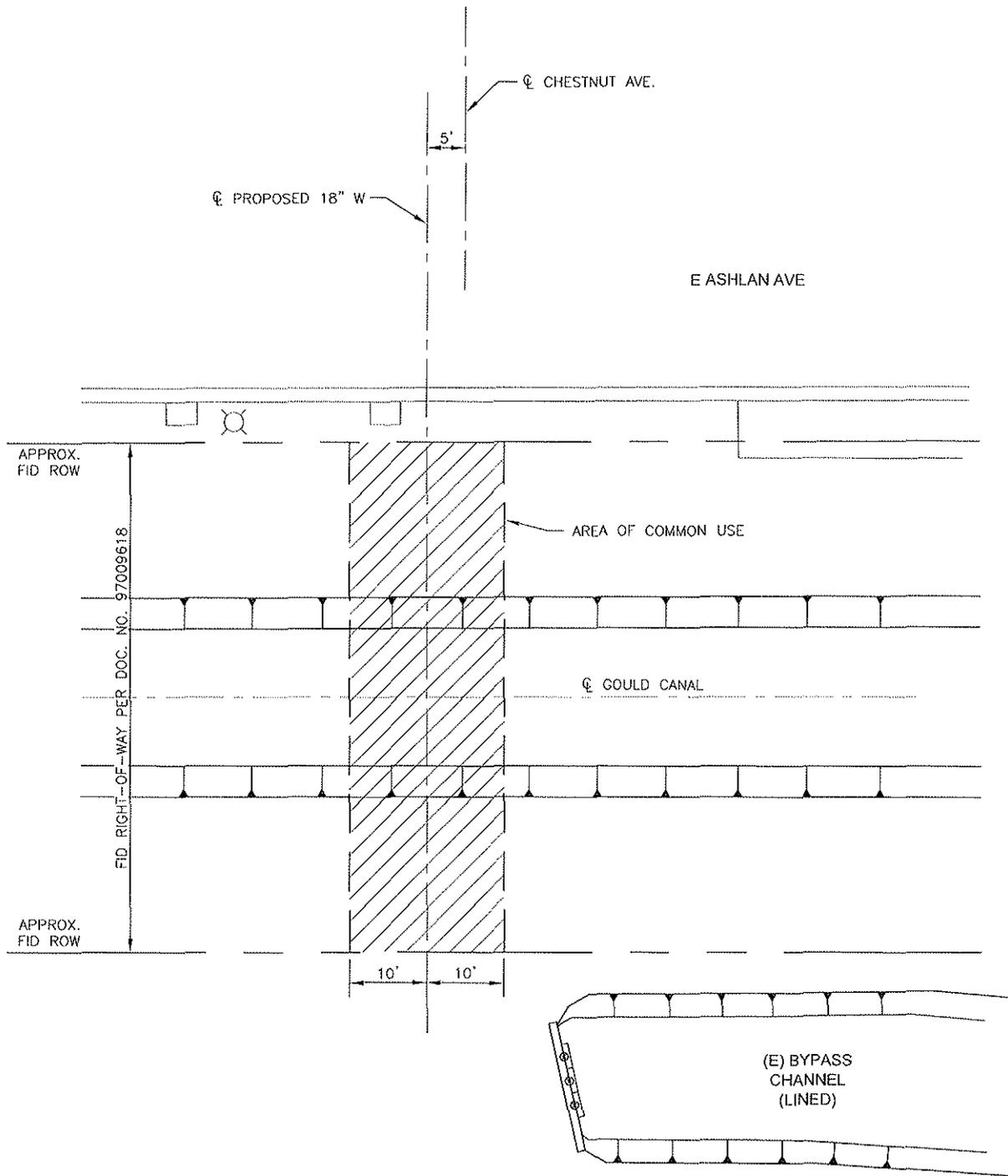


EXHIBIT "A"

**PIPELINE EASEMENT
FOR COMMON USE AGREEMENT
GOULD CANAL, CITY OF FRESNO, CA.**



06/20/2012, 20120085714

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FRESNO CA 93725-2218

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