City of FRESNO

REPORT TO THE CITY COUNCIL

AGENDA ITEM NO.	1L
COUNCIL MEETING	7/16/09
APPROVED BY	
DEPARTMENT DIRECTOR	
CITY MANAGER	

July 16, 2009

FROM: PATRICK N. WIEMILLER, Director
Public Works Department

BY: EFREN BAÑUELOS, Assistant Director
Public Works Department, Capital Management Division

MARK M. JOHNSON, Project Manager
Public Works Department, Capital Management Division

SUBJECT:

1. ADOPT CEQA NOTICE OF EXEMPTION, PURSUANT TO SECTION 15302(B)/CLASS 2 OF THE CEQA GUIDELINES, FOR THE NINTH STREET PEDESTRIAN BRIDGE

2. ADOPT CEQA NOTICE OF EXEMPTION, PURSUANT TO SECTIONS 15301(C)/CLASS 1 AND 15304(H)/CLASS 4 OF THE CEQA GUIDELINES, FOR THE DEL MAR PEDESTRIAN BRIDGE

3. APPROVE ENCROACHMENT AGREEMENTS WITH FRESNO IRRIGATION DISTRICT (FID) TO CONSTRUCT TWO PEDESTRIAN BRIDGES ACROSS FID'S CANALS (COUNCIL DISTRICTS 2 AND 7)

RECOMMENDATIONS

Adopt finding of a Categorical Exemption, the Del Mar Avenue pedestrian bridge has no potential to adversely impact air quality or any other environmental area, therefore, it is exempt from CEQA pursuant to CEQA Guidelines-15302(c)/Class 1.

Adopt finding of a Categorical Exemption, the Ninth Street pedestrian bridge has no potential to adversely impact air quality or any other environmental area, therefore, it is exempt from CEQA pursuant to CEQA Guidelines-15302(b)/Class 2.

Staff recommends that the Council approve and authorize the Public Works Director or his designee to execute two (2) encroachment agreements to encroach in the area of FID's easement. The encroachment agreements with FID are necessary for the construction of two (2) pedestrian bridges across FID canals. The construction of the pedestrian bridges will provide public access across the FID canal crossings. The pedestrian bridges are proposed at the FID Gould Extension No. 51 canal at Ninth Street, south of Dakota, and at FID Herndon No. 39 at Del Mar Avenue, north of Shields Avenue.

Presented to City Council
Date 7/16/09
Disposition Rec. approved

EXECUTIVE SUMMARY

Staff has determined that the Del Mar pedestrian bridge, north of Shields Avenue, fits within the definition of a Categorical Exemption. The Del Mar pedestrian bridge has no potential to adversely impact air quality or any other environmental area, therefore, it is exempt from CEQA pursuant to CEQA Guidelines-15302 (c)/Class 1.

Adopt finding of a Categorical Exemption, the Ninth Street pedestrian bridge, south of Dakota Avenue, has no potential to adversely impact air quality or any other environmental area, therefore, it is exempt from CEQA pursuant to CEQA Guidelines-15302 (b)/Class 2.

FY 2008 City Council appropriated $500,000 from the Bankside Trail Project into Contingency. The funds were designated to be used for pedestrian improvements adjacent to irrigation canals.

Staff recommends that the Council approve and authorize the Public Works Director or his designee to execute two (2) encroachment agreements to encroach in the area of FID's easement. The encroachment agreements with FID are necessary for the construction of two (2) pedestrian bridges across FID canals. The construction of the pedestrian bridges will provide public access across the FID canals as part of a Suggested Route to school and allow access over FID canals to prevent direct unprotected canal crossings. The pedestrian bridges are proposed at the FID Gould Extension No. 51 canal at Ninth Street, south of Dakota, and at FID Herndon No. 39 at Del Mar Avenue, north of Shields Avenue.

BACKGROUND

Staff has determined that the Del Mar Avenue pedestrian bridge, north of Shields Avenue, fits within the definition of Categorical Exemption as set forth in CEQA Guidelines, Section 15301 (c)/Class 1 exemption. The minor alteration of existing public facilities, such as streets, sidewalks, etc., involving no expansion of use beyond that existing at this time, are exempt from CEQA requirements. Section 15304(h)/Class 4 exemption reads: the creation of bicycle lanes on existing rights-of-way. Class 4 consists of minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, or scenic trees except for forestry and agricultural purposes. The pedestrian bridge at Del Mar Avenue is proposed to be built within the existing Herndon Canal easement and does not involve the removal of healthy, mature or scenic trees.

Staff has determined that the Ninth Street pedestrian bridge, south of Dakota Avenue, fits within the definition of Categorical Exemption as set forth in CEQA Guidelines, Section 15302(b)/Class 2 exemption which reads: replacement of a commercial structure with a new structure of substantially the same size, purpose, and capacity. The replacement of existing facilities, such as sidewalks, bicycle, and pedestrian trails, involving no explanation of use beyond that existing at this time, are exempt from CEQA requirements.

FY 2008 City Council appropriated $500,000 from the Bankside Trail Project into Contingency. The funds were designated to be used for pedestrian improvements adjacent to irrigation canals.

The City Council approved $60,000 set forth in PART III of the Annual Appropriation Resolution No. 2007-214 from the existing Contingency that City Council appropriated from the Bankside Trail Project for pedestrian facilities adjacent to irrigation canals. The revised allocations will be used for preliminary engineering for pedestrian facilities adjacent to irrigation canals that are part of the previously approved Herndon Canal Bankside Trail capital project. The funding will provide for consulting services to design and engineer pedestrian improvement projects to allow protected access over Fresno Irrigation District (FID) canals to prevent unprotected canal crossings.

Staff identified four (4) locations where pedestrians have direct access to FID canals. Public Works proposed to solicit and hire a consultant to design pedestrian crossings over FID canals and/or barriers to discourage unprotected pedestrian travel through the canals. City staff negotiated in good faith to hire a consultant to provide design services for pedestrian crossings over FID canals. The City was unsuccessful in securing a consultant within budget constraints. City Design staff is providing the design and engineering for the two above-mentioned pedestrian bridges.

1. East side of Cedar Avenue, south of Dakota Avenue; this site was identified as needing a barrier and extending an existing sidewalk to an existing bridge crossing. The barrier will discourage pedestrians from directly walking into the canal and will provide a safe path of travel. This project was designed and completed in 2008 by City maintenance forces. (Council District 4)

2. Ninth Street, south of Dakota; there is an existing pedestrian crossing over the FID canal. Due to the poor condition of the bridge and pedestrian barrier, they both need to be replaced. This project is being designed by the City. The encroachment agreement with FID is necessary for the construction of a pedestrian bridge to allow safe access over FID canal to prevent direct canal crossings. (Council District 4)

3. At the intersection of Clark Street and Floradora Avenue. It was determined by Public Works and FID that a pedestrian bridge was not necessary at this location. This location would not serve as a Suggested Route to School and was eliminated as a possible pedestrian bridge crossing. (Council District 7)

4. Del Mar Avenue at the canal, north of Shields Avenue; this site has been identified as needing a pedestrian bridge to allow access over FID canals to prevent unprotected direct canal crossings. The nearest crossing point over the canal is approximately one thousand three hundred feet (1,300') west of this location at Maroa Avenue and Cortland Avenue. To alleviate this inconvenience and discourage walking through the canal, Public Works is proposing to install a barrier and designated pedestrian crossing over the FID canal. The encroachment agreement with FID is necessary for the construction of a pedestrian bridge to allow access over FID canal to prevent direct canal crossings. (Council District 7)

The encroachment agreements with FID are necessary for the construction of two (2) pedestrian bridges. The construction of the pedestrian bridges will provide safe public access across the FID canals as part of a Suggested Route to school and allow access over FID canals to prevent direct canal crossings. The pedestrian bridges are proposed at the FID Gould

Extension No. 51 canal at Ninth Street, south of Dakota, and at FID Herndon No. 39 at Del Mar Avenue, north of Shields Avenue.

Staff recommends that the Council now authorize the Public Works Director to execute the encroachment agreements on behalf of the City of Fresno.

The City Attorney's Office has reviewed and approved to form the attached encroachment agreements.

FISCAL IMPACT

There will be no impact to the City's General Fund.

PNW/EB/MMJ/eam
Adopt CEQA Notice of Exmpt – Two Ped Bridges FID Canals 7-16-09

Attachments: Fiscal Impact Statement
Categorical Exemptions
Encroachment Agreements

FISCAL IMPACT STATEMENT

PROGRAM: PW00313 – PEDESTRIAN BRIDGE CROSSINGS ACROSS FID CANALS

RECOMMENDATION	TOTAL OR CURRENT	ANNUALIZED COST
Direct Cost	$0.00	
Indirect Costs: *Contract management, design coordination, etc.*, (estimated)	$60,000	
TOTAL COST	$60,000	
Additional Revenue or Savings Generated	-0-	
Net City Cost	-0-	
Amount Budgeted (If none budgeted, identify source):	$60,000	

Indirect cost consists of the following:

Project Management	$20,000
Design	$30,000
Preliminary Surveying	$5,000
Printing, Purchasing, etc.	$5,000
Total	$60,000

CITY OF FRESNO
CATEGORICAL EXEMPTION
ENVIRONMENTAL ASSESSMENT NO. EA-09-06

THE PROJECT DESCRIBED HEREIN IS DETERMINED TO BE CATEGORICALLY EXEMPT FROM THE PREPARATION OF ENVIRONMENTAL DOCUMENTS PURSUANT TO ARTICLE 19 OF THE STATE CEQA GUIDELINES.

APPLICANT: City of Fresno (Contact: Mark Johnson)
Public Works Department
2600 Fresno Street
Fresno, California 93721

PROJECT LOCATION: Pedestrian bridge near North Ninth Street, south of East Dakota Avenue

PROJECT DESCRIPTION: The City of Fresno is proposing to replace an existing pedestrian bridge which crosses the Dry Creek Canal near North Ninth Street, south of East Dakota Avenue. The new bridge will contain approach fencing, a walkway and other related structures. The project is funded by Measure "C" funds.

This project is exempt under Section 15302(b)/Class 2 of the California Environmental Quality Act (CEQA) Guidelines.

EXPLANATION: Section 15302(b)/Class 2 exemption reads: replacement of a commercial structure with a new structure of substantially the same size, purpose, and capacity. The replacement of existing facilities, such as sidewalks, bicycle and pedestrian trails, involving no expansion of use beyond that existing at this time, are exempt from CEQA requirements.

Date: June 18, 2009

Prepared By: Israel Trejo, Planner

Submitted by:

Mike Sanchez
Planning Manager
City of Fresno
Planning and Development Department
(559) 621-8277

CITY OF FRESNO
CATEGORICAL EXEMPTION
ENVIRONMENTAL ASSESSMENT NO. EA-09-07

THE PROJECT DESCRIBED HEREIN IS DETERMINED TO BE CATEGORICALLY EXEMPT FROM THE PREPARATION OF ENVIRONMENTAL DOCUMENTS PURSUANT TO ARTICLE 19 OF THE STATE CEQA GUIDELINES.

APPLICANT: City of Fresno (Contact: Mark Johnson)
Public Works Department
2600 Fresno Street
Fresno, California 93721

PROJECT LOCATION: Herndon Canal, adjacent to North Del Mar Avenue between East Fedora and East Cortland Avenues

PROJECT DESCRIPTION: The City of Fresno is proposing to construct a pedestrian bridge within the Herndon Canal easement. The bridge will contain approach fencing, a walkway and other related structures, a portion of which will be located within existing right-of-way. The project is funded by Measure "C" funds.

This project is exempt under Sections 15301(c)/Class 1 and 15304(h)/Class 4 of the California Environmental Quality Act (CEQA) Guidelines.

EXPLANATION: Under the Section 15301(c)/Class 1 exemption, the minor alteration of existing public facilities, such as streets, sidewalks, etc., involving no expansion of use beyond that existing at this time, are exempt from CEQA requirements. Section 15304(h)/Class 4 exemption reads: the creation of bicycle lanes on existing rights-of-way. Class 4 consists of minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry and agricultural purposes. The pedestrian bridge is proposed to be built within the existing Herndon Canal easement and does not involve the removal of healthy, mature or scenic trees.

Date: June 24, 2009

Prepared By: Israel Trejo, Planner

Submitted by:

Mike Sanchez
Planning Manager
City of Fresno
Planning and Development Department
(559) 621-8277

CITY OF FRESNO
City Clerk's Office (Original)

1-L
2/10/09

Documentary Transfer Tax – $0.00

For the Benefit of:

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

Recording Information

ENCROACHMENT AGREEMENT

LOCATION: N/W SHIELDS & BLACKSTONE AVENUES
APN:
CANAL: HERNDON NO. 39

THIS AGREEMENT is made effective as of May 27, 2009, by and between the City of Fresno, a municipal corporation ("City") and the Fresno Irrigation District, a California irrigation district ("District"), with respect to the following facts:

A. District is the owner of a canal easement and right-of-way for its Herndon No. 39 Canal and related facilities (the "Canal"). FID's easement for the Canal divides North Del Mar Avenue between East Fedora and East Cortland Avenues (the "Easement").

B. City desires to encroach into the Easement to install and maintain a pedestrian bridge structure connecting North Del Mar Avenue over the Canal, along with related abutments, approach fencing, walkway and other related structures as shown on Exhibit "A" attached hereto, incorporated herein by this reference (the "Encroachments").

C. District is willing to allow the Encroachments described above on the terms and conditions set forth in this Agreement.

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

1. Encroachment for Pedestrian Bridge. District hereby consents to City's installation, maintenance or removal of the Encroachments within the Easement, subject to the paramount right of District to the full and beneficial use and enjoyment of the Easement. Prior to

installation of the Encroachments, City shall submit to District for District's approval a site plan which clearly indicates the nature, size, material and location of all Encroachments to be installed within the Easement. All Encroachments shall be installed in accordance with the approved site plan on a schedule approved by District to avoid interference with District's water delivery and maintenance schedules. District shall have the right to inspect the installation of the Encroachments to confirm conformance with the site plan. City acknowledges and agrees that District's right to approve the installation and construction of the Encroachments as provided in this Agreement (i) is solely for the benefit of District, (ii) shall not assign to District any responsibility for the safe and proper construction of the Encroachments, and (iii) shall not result in District's assumption of any liability for the Encroachments.

2. Costs of Encroachments. City shall bear all costs of installing, maintaining, repairing and replacing the Encroachments.

3. Maintenance of Encroachments. City shall at all times maintain the Encroachments so as not to interfere with the normal operation and maintenance of the Canal. Should City fail to maintain, repair, or replace the Encroachments, District shall have the right (but not the obligation) to perform any maintenance, repair, replacement, or removal necessary for District's unhindered use of the Easement following reasonable written notice to City. City shall be responsible to reimburse District on demand for any reasonable cost incurred by District in connection with the Encroachments, with interest at the rate of 10% per annum on any unpaid balance of said costs to accrue starting 30 days after written demand for payment is made.

4. Repair of Canal. City shall repair or replace at City's sole expense any portion of the Canal damaged by or as a result of the installation, maintenance, repair or replacement of any of the Encroachments. In the event City fails, neglects, or refuses to repair or replace the damaged portions of the Canal within 30 days after written notice from District or otherwise fails to proceed diligently in repairing or replacing any damaged portion of the Canal, District shall have the right, but shall not be required, to make any such repairs or replacements, and City shall repay to District the cost of any such repairs or replacement with interest at the rate of 10% per annum from the date(s) amounts were expended by District for such relocation.

5. Increased Maintenance Expenses. The parties acknowledge that, as a result of the installation of the Encroachments, District's cost for maintenance of the Canal may be increased due to additional reasonable precautions and actions that will be necessary in order to access the Canal without affecting the Encroachments. The parties shall cooperate in connection with the maintenance of the Canal, and shall meet and confer regarding the purported increased maintenance resulting from the Canal. City shall, within 30 days after written demand from District, reimburse District for the cost of such additional precautions and actions that would not have been necessary if the Encroachments had not been installed, with interest at the rate of 10% per annum on any unpaid balance of said costs to accrue starting 30 days after written demand for payment is made.

6. Installation of Encroachments. City shall comply with all federal, state and local codes and ordinances regarding the installation, maintenance, repair and replacement of any

Encroachments. City shall locate, construct, and maintain the Encroachments in such a manner and of such material as may be required to prevent interference with District's present or future uses of the Easement.

7. Title to Property. All Encroachments installed or constructed pursuant to this Agreement shall be the property of City. The Easement and the Canal shall remain the property of District, and City shall have no right, title or interest therein except as expressly provided herein. Without limiting the generality of the foregoing, the manner, method and time of conducting and discharging water through the Canal shall be in the sole and absolute control of District, and the nature and extent of the Easement shall in no way be diminished or restricted by the Encroachments. Except as herein otherwise provided, neither District nor City shall have any right, title, or control over the other's property, except as provided by law.

8. No Grant of Real Property Rights. Notwithstanding any other provision of this Agreement, nothing herein shall constitute a grant of any real property rights to City. City acknowledges that all rights required for the Encroachments must be acquired from other parties (to the extent that City does not already have such rights). By this Agreement, District is only agreeing not to object to the location of Encroachments within the Easement (subject to the terms and conditions set forth herein), and is not purporting to grant any rights to install the Encroachments (except as set forth herein).

9. Release. District shall not be liable for any damage to the Encroachments, or to any other City property associated with the Encroachments, that may result from District's operation, maintenance, repair or replacement of the Canal, with the exception of damage caused by District's gross neglect of care in performing operations, maintenance, repair, or replacement of the Canal.

10. No Precedent. The rights herein granted to City are limited to the Encroachments and shall not constitute a precedent for the granting of any other permission for encroachments upon any other easement or right-of-way of District. City acknowledges and agrees that the rights herein granted are not intended to diminish the rights of District in the use or maintenance of its facilities.

11. Indemnity.

(a) City shall indemnify, hold harmless and defend District and each of its directors, officers, employees and authorized 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 District, 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 from the negligent or intentional acts, omissions or willful misconduct of City or any of its officers, officials, employees, agents or authorized volunteers in its ownership or use of the Encroachments.

(b) District shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and authorized 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, District, 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 from the negligent or intentional acts, omissions or willful misconduct of District or any of its directors, officers, employees, agents or authorized volunteers in its ownership, maintenance and use of the Canal, to the extent that City's liability arises from its ownership or operation of the Encroachments.

(c) In the event of concurrent negligence on the part of City or any of its officers, officials, employees, agents or authorized volunteers, and District or any of its directors, officers, employees, agents or authorized 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.

(d) This section shall survive termination or expiration of this Agreement.

12. Existing Rights Not Affected. Nothing herein shall be construed as a release or waiver of any claim which District may have as of the date of this Agreement with respect to any City encroachments within the Easement which do not comply with the terms of this Agreement or which are not otherwise authorized by law or by agreement between the parties.

13. Termination for Default. District shall have the right to terminate this Agreement upon City's failure to cure a default of this Agreement within thirty (30) days after written notice thereof from the District, in addition to any other rights District may have at law or in equity for such default. Upon such termination, the City shall remove the Encroachments and repair any damages to the Canal caused by such removal, at City's expense.

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

15. 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 pertaining hereto. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all of the parties hereto.

16. 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.

17. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the assigns and successors of the parties hereto.

18. Legal Fees. Should any legal action or proceeding be commenced between the parties hereto concerning this Agreement, or the rights and duties of either 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 other party its reasonable attorneys' and paralegals' fees and other legal expenses incurred in connection with such action or proceeding.

19. Governing Law. This Agreement shall be governed by the laws of the State of California.

20. Construction. All words used in this Agreement shall be construed to include the plural as well as the singular number and vice versa. Words used herein in the present tense shall include the future as well as the present, and words used in the masculine gender shall include the feminine and neuter genders.

21. 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.

22. 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 with confirmation of successful transmission, 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 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 Avenue
Fresno, CA 93725-2218
Attn: General Manager
Fax: (559) 233-8227

To City: City of Fresno
_____
_____
Attn: City Engineer
Fax: _____

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

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

"City"

CITY OF FRESNO

By
Scott Mozier, Assistant Director, Public Works Department

ATTEST:

Rebecca E. Klisch 7/22/09
City Clerk

APPROVED AS TO FORM:
JAMES C. SANCHEZ
City Attorney

By: 6/5/09
Katherine Bradley Date
Deputy City Attorney III

REVIEWED BY:

Efren Bañuelos, Assistant Public Works Director
Department of Public Works

"District"

FRESNO IRRIGATION DISTRICT

By
Jeff Boswell, President

By:
Gary R. Serrato, Secretary

PRELIMINARY DESIGN
(NOT FOR CONSTRUCTION)

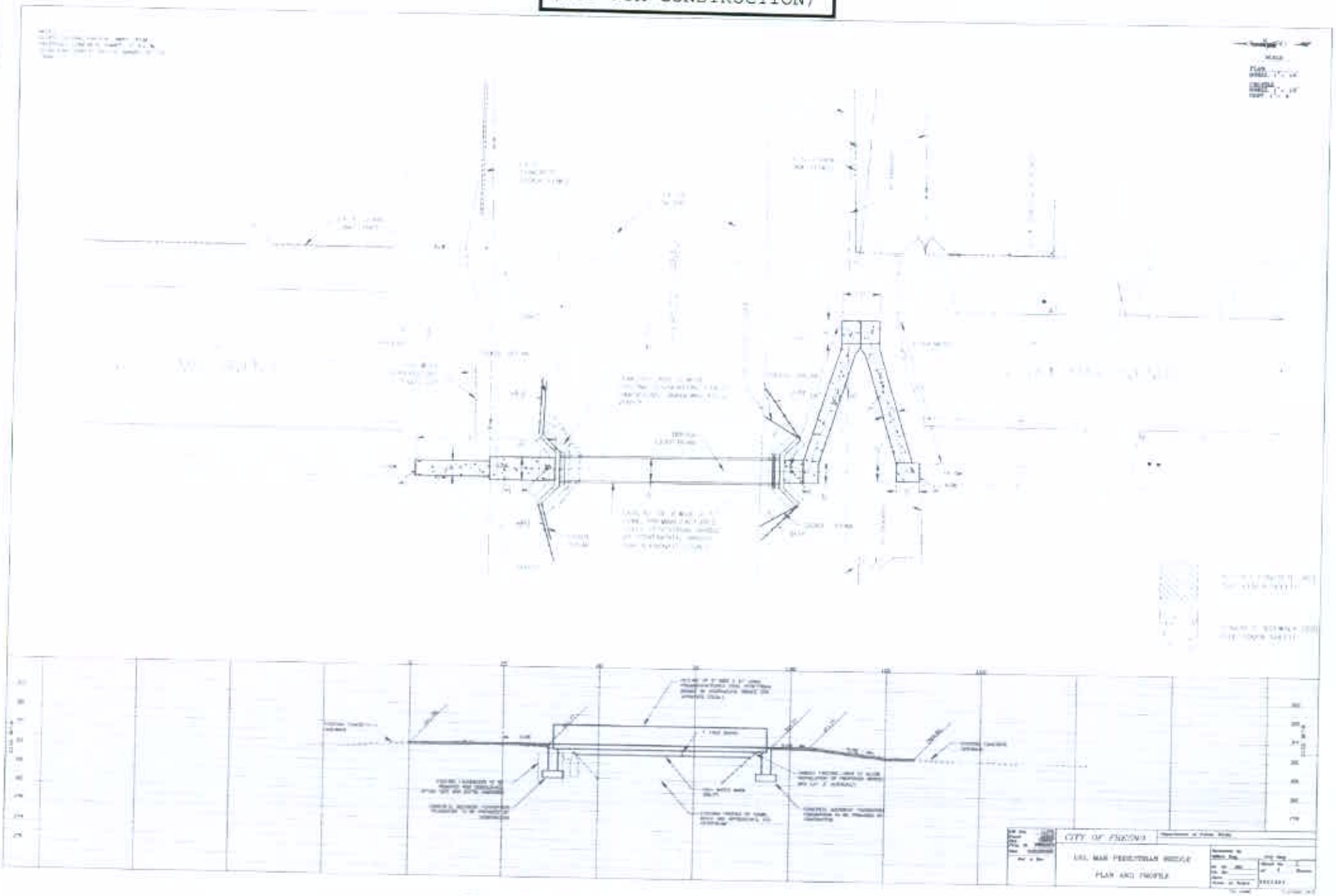

EXHIBIT A - ENCROACHMENT AGREEMENT
(DEL MAR AVENUE PEDESTRIAN BRIDGE & HERNDON NO 39 CANAL)

STATE OF CALIFORNIA)
)SS.
COUNTY OF Fresno)

On May 27, 2009, before me, Norma Cecil, Notary Public, personally appeared Jeff Boswell + Gary R. Serrato, 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.

NORMA CECIL
Commission # 1631223
Notary Public - California
Fresno County
My Comm. Expires Dec 18, 2009

Notary Public

STATE OF CALIFORNIA)
)SS.
COUNTY OF)

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

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

Notary Public

STATE OF CALIFORNIA)
)SS.
COUNTY OF)

On JULY 22, 2009, before me, KENNETH ANTHONY JOAQUIN, Notary Public, personally appeared SCOTT MUZIER, 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.

Kenneth Anthony Joaquin

Notary Public

STATE OF CALIFORNIA)
)SS.
COUNTY OF)

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

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

_____

Notary Public

CITY OF FRESNO
City Clerk's Office (Original)

11
7/16/09

Documentary Transfer Tax – $0.00

For the Benefit of:

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

Recording Information

ENCROACHMENT AGREEMENT

LOCATION: S/E DAKOTA AVENUE& NINTH STREET
APN:
CANAL: GOULD EXTENSION NO. 151

THIS AGREEMENT is made effective as of May 27, 2009, by and between the City of Fresno, a municipal corporation ("City") and the Fresno Irrigation District, a California irrigation district ("District"), with respect to the following facts:

A. District is the owner of a canal easement and right-of-way recorded on November 21, 1978 as Document Number 130063 Official Records of Fresno County, for its Gould Extension No. 151 Canal and related facilities, as shown on Exhibit "A" attached hereto, incorporated herein by this reference (the "Easement").

B. City desires to encroach into the Easement to remove an existing pedestrian bridge, and to install and maintain a new bridge, abutments, approach fencing, walkway and other related structures as shown on Exhibit "B" attached hereto, incorporated herein by this reference (the "Encroachments").

C. District is willing to allow the Encroachments described above on the terms and conditions set forth in this Agreement.

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

1. Encroachment for Pedestrian Bridge. District hereby consents to City's removal of the existing pedestrian bridge and related structures, and to the installation, maintenance or removal of the Encroachments within the Easement, subject to the paramount right of District to

the full and beneficial use and enjoyment of the Easement. Prior to installation of the Encroachments, City shall submit to District for District's approval a site plan which clearly indicates the nature, size, material and location of all Encroachments to be installed within the

2. Easement. Removal of the existing bridge, and installation of all new Encroachments, shall be in accordance with the approved site plan on a schedule approved by District to avoid interference with District's water delivery and maintenance schedules. District shall have the right to inspect the installation of the Encroachments to confirm conformance with the site plan. City acknowledges and agrees that District's right to approve the installation and construction of the Encroachments as provided in this Agreement (i) is solely for the benefit of District, (ii) shall not assign to District any responsibility for the safe and proper construction of the Encroachments, and (iii) shall not result in District's assumption of any liability for the Encroachments.

3. Costs of Encroachments. City shall bear all costs of removing the existing pedestrian bridge and related structures, and of installing, maintaining, repairing and replacing the Encroachments.

4. Maintenance of Encroachments. City shall at all times maintain the Encroachments so as not to interfere with the normal operation and maintenance of the Canal. Should City fail to maintain, repair, or replace the Encroachments, District shall have the right (but not the obligation) to perform any maintenance, repair, replacement, or removal necessary for District's unhindered use of the Easement following reasonable written notice to City. City shall be responsible to reimburse District on demand for any reasonable cost incurred by District in connection with the Encroachments, with interest at the rate of 10% per annum on any unpaid balance of said costs to accrue starting 30 days after written demand for payment is made.

5. Repair of Canal. City shall repair or replace at City's sole expense any portion of the Canal damaged by or as a result of the removal of the existing pedestrian bridge and the installation, maintenance, repair or replacement of any of the Encroachments. In the event City fails, neglects, or refuses to repair or replace the damaged portions of the Canal within 30 days after written notice from District or otherwise fails to proceed diligently in repairing or replacing any damaged portion of the Canal, District shall have the right, but shall not be required, to make any such repairs or replacements, and City shall repay to District the cost of any such repairs or replacement with interest at the rate of 10% per annum from the date(s) amounts were expended by District for such relocation.

6. Increased Maintenance Expenses. The parties acknowledge that, as a result of the installation of the Encroachments, District's cost for maintenance of the Canal may be increased due to additional reasonable precautions and actions that will be necessary in order to access the Canal without affecting the Encroachments. The parties shall cooperate in connection with the maintenance of the Canal, and shall meet and confer regarding the purported increased maintenance resulting from the Canal. City shall, within 30 days after written demand from District, reimburse District for the cost of such additional precautions and actions that would not have been necessary if the Encroachments had not been installed, with interest at the rate of 10%

per annum on any unpaid balance of said costs to accrue starting 30 days after written demand for payment is made.

7. Installation of Encroachments. City shall comply with all federal, state and local codes and ordinances regarding the removal of the existing pedestrian bridge and the installation, maintenance, repair and replacement of any Encroachments. City shall locate, construct, and maintain the Encroachments in such a manner and of such material as may be required to prevent interference with District's present or future uses of the Easement.

8. Title to Property. All Encroachments installed or constructed pursuant to this Agreement shall be the property of City. The Easement and the Canal shall remain the property of District, and City shall have no right, title or interest therein except as expressly provided herein. Without limiting the generality of the foregoing, the manner, method and time of conducting and discharging water through the Canal shall be in the sole and absolute control of District, and the nature and extent of the Easement shall in no way be diminished or restricted by the Encroachments. Except as herein otherwise provided, neither District nor City shall have any right, title, or control over the other's property, except as provided by law.

9. No Grant of Real Property Rights. Notwithstanding any other provision of this Agreement, nothing herein shall constitute a grant of any real property rights to City. City acknowledges that all rights required for the Encroachments must be acquired from other parties (to the extent that City does not already have such rights). By this Agreement, District is only agreeing not to object to the location of Encroachments within the Easement (subject to the terms and conditions set forth herein), and is not purporting to grant any rights to install the Encroachments (except as set forth herein).

10. Release. District shall not be liable for any damage to the Encroachments, or to any other City property associated with the Encroachments, that may result from District's operation, maintenance, repair or replacement of the Canal, with the exception of damage caused by District's gross neglect of care in performing operations, maintenance, repair, or replacement of the Canal.

11. No Precedent. The rights herein granted to City are limited to the Encroachments and shall not constitute a precedent for the granting of any other permission for encroachments upon any other easement or right-of-way of District. City acknowledges and agrees that the rights herein granted are not intended to diminish the rights of District in the use or maintenance of its facilities.

12. Indemnity.

(a) City shall indemnify, hold harmless and defend District and each of its directors, officers, employees and authorized 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 District, 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 from

the negligent or intentional acts, omissions or willful misconduct of City or any of its officers, officials, employees, agents or authorized volunteers in its ownership or use of the Encroachments.

(b) District shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and authorized 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, District, 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 from the negligent or intentional acts, omissions or willful misconduct of District or any of its directors, officers, employees, agents or authorized volunteers in its ownership, maintenance and use of the Canal, to the extent that City's liability arises from its ownership or operation of the Encroachments.

(c) In the event of concurrent negligence on the part of City or any of its officers, officials, employees, agents or authorized volunteers, and District or any of its directors, officers, employees, agents or authorized 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.

(d) This section shall survive termination or expiration of this Agreement.

13. Existing Rights Not Affected. Nothing herein shall be construed as a release or waiver of any claim which District may have as of the date of this Agreement with respect to any City encroachments within the Easement which do not comply with the terms of this Agreement or which are not otherwise authorized by law or by agreement between the parties.

14. Termination for Default. District shall have the right to terminate this Agreement upon City's failure to cure a default of this Agreement within thirty (30) days after written notice thereof from the District, in addition to any other rights District may have at law or in equity for such default.

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

16. 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 pertaining hereto. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all of the parties hereto.

17. 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.

18. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the assigns and successors of the parties hereto.

19. Legal Fees. Should any legal action or proceeding be commenced between the parties hereto concerning this Agreement, or the rights and duties of either 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 other party its reasonable attorneys' and paralegals' fees and other legal expenses incurred in connection with such action or proceeding.

20. Governing Law. This Agreement shall be governed by the laws of the State of California.

21. Construction. All words used in this Agreement shall be construed to include the plural as well as the singular number and vice versa. Words used herein in the present tense shall include the future as well as the present, and words used in the masculine gender shall include the feminine and neuter genders.

22. 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.

23. 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 with confirmation of successful transmission, 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 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 Avenue
Fresno, CA 93725-2218
Attn: General Manager
Fax: (559) 233-8227

To City: City of Fresno

_____

_____

Attn: City Engineer
Fax: _____

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

[remainder of page intentionally left blank]

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

"City"

CITY OF FRESNO

By _____
Scott Mozier, Assistant Director, Public Works Department

ATTEST:

_____
Rebecca E. Klisch 7/22/09
City Clerk

APPROVED AS TO FORM:
JAMES C. SANCHEZ
City Attorney

By: _____ 6/5/09
Katherine Bradley Date
Deputy City Attorney III

REVIEWED BY:

_____
Efren Bañuelos, Assistant Public Works Director
Department of Public Works

"District"

FRESNO IRRIGATION DISTRICT

By _____
Jeff Boswell, President

By: _____
Gary R. Serrato, Secretary

BOOK 7104 PAGE 558

RECORDED AT THE REQUEST OF
AND RETURN TO:

130063

DEPARTMENT OF TRANSPORTATION, DIST. 6
P. O. Box 12616
Fresno, California 93778

State Business - No recording fee
[illegible] Code 6[illegible]
DEPT. OF TRANSPORTATION

By R. A. Bergman Jr.
RIGHT OF WAY AGENT

RECORDED IN OFFICIAL RECORDS OF FRESNO COUNTY, CALIFORNIA
AT — MIN. PAST 12 P M
NOV 8 1978
GALEN LARSON, County Recorder
FEE $

ORIGINAL
06-Fre-41-27.2
79140-NTS

R. S. Martin
4/12/79

GRANT OF EASEMENT AND RIGHT OF WAY

THIS INDENTURE, made and entered into this 19th day of October, 1978, by and between G. T. GAZAWAY and WILLIE NELL GAZAWAY - Husband and Wife -

as Grantors, and FRESNO IRRIGATION DISTRICT, a public corporation in the County of Fresno, State of California, as Grantee,

W I T N E S S E T H:

Grantors, for good and valuable consideration, do hereby grant to Grantee a perpetual and exclusive right and easement to relocate, reconstruct, enlarge, improve, maintain, repair, and use the channel of Big Dry Creek, and to construct, reconstruct, install, and enlarge, improve, repair, maintain, and use a canal and/or pipeline or pipelines, and to flow and conduct water in and through said channel of said Dry Creek and/or said canal and/or said pipeline or pipelines across, over, through, and under the following described real property in the unincorporated territory, County of Fresno, State of California, to wit:

See Exhibit "A" attached and made a part hereof.

together with a secondary easement for access to and egress from said primary easement and for all other purposes reasonably necessary, convenient, or incidental to the use of said primary easement, including but not limited to the construction, maintenance, and use of roadways thereon and the removal of trees, structures, and other obstructions which may interfere with Grantee's use of either of said easements or any rights granted hereby. Said secondary easement is described as follows:

See Exhibit "B" attached and made a part hereof.

Grantors expressly reserve unto themselves the right to also use any part of the property included within said secondary easement for any purpose connected with Grantors' use of their adjoining lands so long as said use is not inconsistent with or does not interfere with Grantees' use of its said easements or any right herein granted to Grantee.

IN WITNESS WHEREOF, Grantors have executed this Grant the day and year first above written.

Signed and delivered
in the presence of:

Stanton W. Greene

G. T. Gazaway

Willie Nell Gazaway

Accepted for and on behalf of Fresno Irrigation District November 9, 1978
Ardys T. Gorder, Secretary

GIS 3758

EXHIBIT A - ENCROACHMENT AGREEMENT
(NINTH AVENUE PEDESTRIAN BRIDGE & GOULD EXTENSION NO 151)

EXHIBIT "A"

That portion of Lot 17 in National Colony per map recorded in Book 1 of Records of Surveys at page 38, Fresno County Records described as follows:

BEGINNING at the southwest corner of the land conveyed to G. T. Gazaway, et ux, by deed recorded November 29, 1977 in Book 6922 at page 439, Fresno County Official Records, said southwest corner bears S.1°10'06"W. 410.00 feet from the intersection of the west line of said lot with the south line of the north 20 feet of the S. E. ¼ of Section 23, T. 13 S., R. 20 E., M. D. M.;

THENCE (1), along said west line, N.1°10'06"E., 29.58 feet

THENCE (2), S.86°21'11" E., 48.63 feet;

THENCE (3), S.89°49'44"E., 87.41 feet to the east line of the west 2 acres of said lot;

THENCE (4), along last said east line, S.1°10'06"W., 26.86 feet to the south line of the land conveyed by said deed;

THENCE (5), along last said south line, N.89°43'57"W., 136.00 feet to the point of beginning.

ACKNOWLEDGMENT OF SUBSCRIBING WITNESS

FORM R/W-5 (REV. 1-82)

STATE OF CALIFORNIA, COUNTY OF Fresno BOOK 7164 PAGE 559

On this 23rd day of October, in the year one thousand nine hundred and seventy-eight, before me, the undersigned, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Stanton W. Greene

known to me to be the person whose name is subscribed to the within instrument as a subscribing witness thereto, who, being by me duly sworn deposed and said: that he resides in the County of Fresno, State of California; that he was present and saw G. T. Gazaway and Willie Nell Gazaway,

personally known to him to be the person~~s~~ described in and whose name~~s~~ are subscribed to the within instrument, execute the same; that he, affiant, subscribed his name as a witness thereto.

WITNESS my hand and official seal.

GLORIA L. ADAM
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
FRESNO COUNTY
My Commission Expires Jan. 26, 1980

My commission expires January 26, 1980

Gloria L. Adam
Name (Typed or Printed)
Notary Public in and for said County and State

Part of Document No. 79140-NTS, dated October 19, 1978.

EXHIBIT A - ENCROACHMENT AGREEMENT
(NINTH AVENUE PEDESTRIAN BRIDGE & GOULD EXTENSION NO 151)

EXHIBIT "B"

BEGINNING at the westerly terminus of Course (2) described in Exhibit "A".

THENCE along Courses (2) and (3) as described in Exhibit "A", the following courses: (1), S.86°21'11"E., 48.63 feet and (2), S.89°49'44"E., 87.41 feet to the east line of the west 2 acres of said lot;

THENCE (3), along said east line, N.1°10'06"E., 13.16 feet;

THENCE (4), S.89°25'06"W., 87.37 feet;

THENCE (5), N.86°21'11"W., 48.70 feet to the west line of said lot;

THENCE (6), along said west line, S.1°10'06"W., 12.01 feet to the point of beginning.

Containing 0.012 of an acre, more or less, in addition to that portion now acknowledged and being used for access to and the maintenance of the Dry Creek Canal.

Part of Document No. 79140-NTS, dated October 19, 1978.

EXHIBIT A - ENCROACHMENT AGREEMENT

(NINTH AVENUE PEDESTRIAN BRIDGE & GOULD EXTENSION NO 151)

STATE OF CALIFORNIA)
)SS.
COUNTY OF Fresno)

On May 27, 2009, before me, Norma Cecil, Notary Public, personally appeared Jeff Boswell & Gary R. Serrato, 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.

NORMA CECIL
Commission # 1631223
Notary Public - California
Fresno County
My Comm. Expires Dec 18, 2009

Cecil
Notary Public

STATE OF CALIFORNIA)
)SS.
COUNTY OF)

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

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

_____
Notary Public

STATE OF CALIFORNIA)
)SS.
COUNTY OF)

On JULY 22, 2009, before me, KENNETH ANTHONY JOAQUIN Notary Public, personally appeared SCOTT MOZIER, 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.

KENNETH ANTHONY JOAQUIN
Commission # 1844866
Notary Public - California
Fresno County
My Comm. Expires May 11, 2013

Kenneth Anthony Joaquin
Notary Public

STATE OF CALIFORNIA)
)SS.
COUNTY OF)

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

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

_____
Notary Public

PRELIMINARY DESIGN
(NOT FOR CONSTRUCTION)

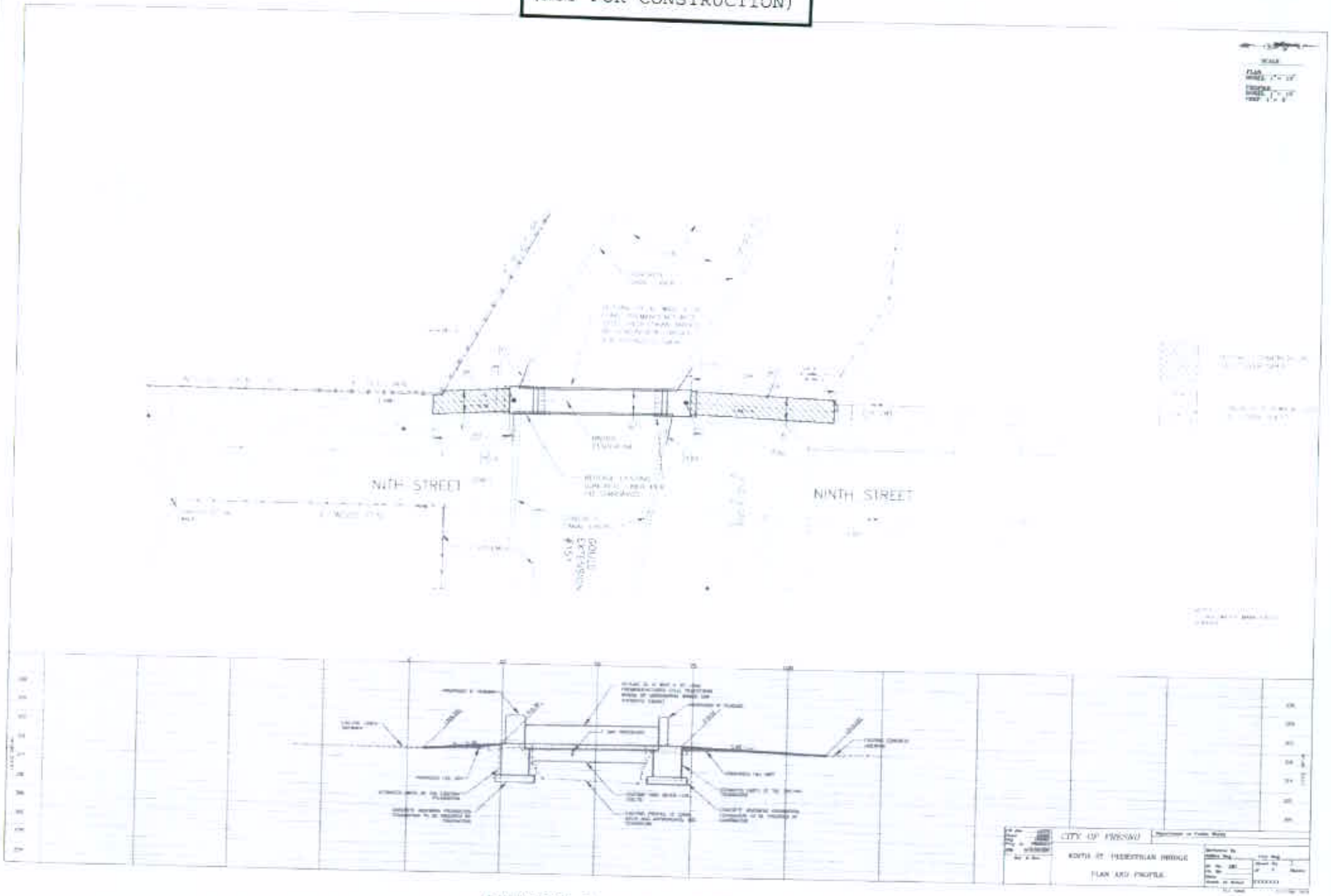

EXHIBIT B - ENCROACHMENT AGREEMENT
(NINTH AVENUE PEDESTRIAN BRIDGE & GOULD EXTENSION NO 151)