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**RECORDED AT THE REQUEST OF  
AND WHEN RECORDED MAIL TO:**

Orange County Transportation Authority  
c/o Real Property Department  
550 S. Main Street  
Orange, CA 92863-1584

Mail Tax Statements as shown above

THIS SPACE FOR RECORDER'S USE ONLY

Portion of APN: 345-061-07

DOCUMENTARY TRANSFER TAX \$ \_\_\_\_\_

- \_\_\_ Computed on the consideration or value of property conveyed  
\_\_\_ Exempt per Revenue & Taxation Code Section 11922  
\_\_\_ Exempt from Recording Fees per Govt. Code Section 27383

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

SIGNATURE OF DECLARANT OR AGENT DETERMINING TAX FIRM NAME

- ☐ Unincorporated Area  
☒ Incorporated - City of Anaheim

OCFCD Parcel/Project: E02-353/Carbon Creek Diversion Channel  
OCTA Parcel/Project: OR-001-05/Orangethorpe Grade Separation

**EASEMENT DEED**

For valuable consideration, receipt of which is hereby acknowledged,  
ORANGE COUNTY FLOOD CONTROL DISTRICT,  
a body corporate and politic,  
hereinafter referred to as "**DISTRICT**,"

does hereby grant to

ORANGE COUNTY TRANSPORTATION AUTHORITY,  
a public entity,  
hereinafter referred to as "**GRANTEE**," its, successor and assigns,

a permanent, non-exclusive easement for wall maintenance purposes on, over, upon and across that certain real property (hereinafter referred to as "**Easement Area**") described in "**Exhibit A**," and illustrated in "**Exhibit B**," which exhibits are attached hereto and made a part hereof.

GRANTEE'S rights shall include rights to utilize the Easement Area to inspect, maintain, and/or repair GRANTEE'S wall structure ("**Wall Structure**") supporting Miller Street; as well as reasonable access to the Easement Area and specifically excludes the right to disturb the surface of the Easement Area or use the Easement Area for construction staging purposes without the express written approval of DISTRICT'S Director OC Public Works, or designee (hereinafter referred to as "**Director**"), as such approval is more particularly addressed hereinbelow in Section 1 (Maintenance).

DISTRICT and GRANTEE, may sometimes hereinafter be individually referred to as "**Party**" or jointly as "**Parties**". It is understood and agreed by the Parties hereto and their successors and assigns that the easement

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DISTRICT and GRANTEE, may sometimes hereinafter be individually referred to as "**Party**" or jointly as "**Parties**". It is understood and agreed by the Parties hereto and their successors and assigns that the easement

and right of way herein granted in this easement deed ("**Easement Deed**") shall be subject to the following terms, conditions, and reservations:

**1. MAINTENANCE (PMES2.2N)**

GRANTEE hereby acknowledges that the Easement Area lies within a portion of DISTRICT'S flood control facility, commonly referred to as the Carbon Creek Diversion Channel (hereinafter the "**Channel**").

GRANTEE shall perform all Wall Structure maintenance activities in such a manner that will allow for unobstructed flood control operations and maintenance of the Channel by DISTRICT. GRANTEE shall, at its sole cost and to the satisfaction of GRANTOR, repair any damage to the Easement Area, caused by GRANTEE to the same condition as existed prior to such damage.

Should it be necessary for GRANTEE to conduct any Wall Structure maintenance, repair, or re-construction activities that may disturb the surface of the Easement Area or require the staging of any construction material, equipment or vehicles upon the Easement Area, GRANTEE agrees to notify Director in writing sixty (60) days in advance of such planned activities, obtain Director's written approval of all plans and obtain a permit for construction from County Property Permits with payment of normal processing fees prior to the commencement of any such activities. Said approval shall not be withheld unreasonably, nor shall said approval be necessary in any emergency situation.

**2. REMOVAL AND/OR ABANDONMENT (PMES3.1N)**

GRANTEE agrees that in the event (a) GRANTEE'S Wall Structure is no longer required, or (b) GRANTEE'S use of the Easement Area for wall maintenance purposes ceases for a continuous period of more than three (3) years without written notice from GRANTEE to DISTRICT of the circumstances affecting such suspension and of GRANTEE'S intention to resume usage of the Easement Area, GRANTEE shall, at Director's request execute and deliver to Director, within ninety (90) days of such abandonment, for recordation in the Official Records of Orange County, California, a Quitclaim Deed sufficient to remove the encumbrance of this Easement Deed from title.

**3. USE AND OPERATIONS**

GRANTEE shall restrict vehicular speeds on and over the Easement Area to a maximum speed of five (5) miles per hour and unless covered by a permit from the County of Orange ("**County**"), shall not park any vehicles or equipment on the Easement Area without the physical presence of GRANTEE'S agent, employee or contractor.

GRANTEE shall, at its sole cost and to the satisfaction of Director, promptly repair any damage to the Easement Area caused by GRANTEE, to the same condition as existed prior to such damage, normal wear and tear excepted.

**4. COMPLIANCE WITH REGULATORY AUTHORITIES (PMES6.2N)**

GRANTEE shall, at its own cost and expense, promptly and at all times observe, comply with and carry out all present and future orders, regulations, directions, rules, laws, ordinances, permits and requirements of all governmental authorities, including but not limited to environmental regulatory authorities, with jurisdiction in, on, over and about the Easement Area, which arise from GRANTEE'S use of or performance of any activities permitted to be conducted in, on, over, or across the Easement Area.

In addition, GRANTEE shall ensure that all activities conducted in, on, or about the Easement Area are performed in accordance with any NPDES (National Pollutant Discharge Elimination System) permit requirements or other water quality statutes, regulations, ordinances, or permits applicable to such activities,

including but not limited to use of appropriate best management practices, so as to ensure that pollutants are not discharged into the Channel nor into DISTRICT'S flood control system.

No approvals or consents given hereunder by DISTRICT, as a Party to this Easement Deed, shall be deemed approval as to compliance or conformance with applicable governmental codes, laws, rules or regulations.

**5. HOLD HARMLESS (PMES7.2N)**

GRANTEE acknowledges that the primary purpose of the Easement Area is for flood control purposes, that the Easement Area is in, on, and over DISTRICT'S Channel, and that the Easement Area may be subject to all hazards associated with flood conditions. GRANTEE agrees to assume all risks, financial or otherwise, associated with flood condition hazards.

GRANTEE hereby releases and waives all claims and recourse against DISTRICT and County including the right of contribution for loss of or damage to property, or injury to or death of any person arising from, growing out of or in any way connected with or related to this Easement Deed, including any damage to or interruption of use of the Easement Area to access GRANTEE'S Wall Structure caused by erosion, flood, or flood overflow conditions of the Channel, or caused by the operation, maintenance, repair, reconstruction, replacement, enlargement or improvement of the Channel or by DISTRICT'S flood control operations, except claims arising from the concurrent active or sole negligent acts of DISTRICT and/or County, their officers, agents, employees and contractors.

GRANTEE hereby agrees to indemnify, defend (with counsel approved in writing by DISTRICT), and hold harmless, DISTRICT and County, their elected and appointed officials, officers, agents, employees and contractors against any and all claims, losses, demands, damages, cost, expenses or liability for injury to any persons or property, arising out of the maintenance, use of or operations or activities conducted in, on, or over or across the Easement Area, and/or the exercise of the rights under this Easement Deed by GRANTEE, its agents, officers, employees, invitees or licensees, except for liability arising out of the concurrent active or sole negligent acts of DISTRICT, and/or County, their elected and appointed officials, officers, agents, employees or contractors including the cost of defense of any lawsuit arising therefrom. If DISTRICT and/or County is/are named as co-defendant(s) in a lawsuit, GRANTEE shall notify Director of such fact and shall represent DISTRICT/County in such legal action unless DISTRICT/County undertake(s) to represent itself/themselves as co-defendant(s) in such legal action, in which event, GRANTEE shall pay to DISTRICT/County its/their litigation costs, expenses, and attorneys' fees. If judgment is entered against DISTRICT/County and GRANTEE by a court of competent jurisdiction because of the concurrent active negligent acts of DISTRICT/County and GRANTEE, DISTRICT and GRANTEE agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

GRANTEE acknowledges that it is familiar with the language and provisions of California Civil Code Section 1542 which provides as follows:

*A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which, if known by him or her must have materially affected his or her settlement with the debtor.*

GRANTEE, being aware of and understanding the terms of Section 1542, hereby waives all benefit of its provisions to the extent described in this section.

**6. GRANTEE'S LIABILITY FOR HAZARDOUS OR TOXIC MATERIALS (PMES8.2S)**

GRANTEE shall not cause or permit any "Hazardous Material," as hereinafter defined, to be brought upon, kept, or used in or about the Easement Area. If GRANTEE breaches the obligations stated herein, or if contamination of the Easement Area by Hazardous Material otherwise occurs for which GRANTEE is legally liable to DISTRICT for damage resulting therefrom, then GRANTEE shall indemnify, defend with counsel approved in writing by DISTRICT, and hold harmless, DISTRICT and/or County, and their elected or appointed officials, officers, agents, and employees from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses (including, without limitation, diminution in value of the Easement Area, sums paid in settlement of claims, attorney fees, consultant fees, and expert witness fees) which arise during or after GRANTEE'S use of the Easement Area as a result of such contamination. This indemnification includes, without limitation, costs incurred by DISTRICT in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state, or local governmental entity or agency because of Hazardous Material being present in the soil or ground water under the Easement Area. GRANTEE shall promptly take all action, at its sole cost and expense, as is necessary to clean, remove, and restore the Easement Area to its condition prior to the introduction of such Hazardous Material by GRANTEE, provided GRANTEE shall first have obtained Director's written approval and the approval of any necessary governmental entities or agencies for any such remedial action.

As used herein, the term "**Hazardous Material**" means any hazardous or toxic substance, material, or waste which is or shall become regulated by any governmental entity or agency, including, without limitation, the County, the state of California, or the United States government.

**7. RESERVATIONS (PMES9.1N)**

DISTRICT hereby reserves for itself and its successors and assigns, such surface, subsurface and aerial rights in the Easement Area as will not unreasonably interfere with or prohibit the use by GRANTEE of the rights and easement herein granted.

In the event DISTRICT exercises such rights to utilize the Easement Area which use results in the disturbance of the Easement Area, DISTRICT'S only responsibility shall be to backfill with compacted earth to the grade of the surrounding property following completion of DISTRICT'S activity.

DISTRICT further agrees that it shall not grant to any other party any rights which unreasonably interfere with or prohibit the rights and easement herein granted to GRANTEE.

**8. CONVEYANCE SUBJECT TO EXISTING INTERESTS (PMES10.1S)**

This Easement Deed is subject to existing contracts, leases, licenses, easements, encumbrances, and claims which may affect the Easement Area, and the use of the word "grant" herein shall not be construed as a covenant against the existence of any thereof.

Nothing contained herein, or in any document related hereto, shall be construed to imply the conveyance to GRANTEE of rights in the Easement Area which exceed those owned by DISTRICT or any representation or warranty, either express or implied, relating to the nature or condition of the Easement Area or DISTRICT'S interest therein.

**9. TAXES AND ASSESSMENTS (PMES11.1S)**

Should this Easement Deed create a possessory interest which is subject to the payment of taxes levied on such interest, it is understood and agreed that all taxes and assessments (including but not limited to said possessory interest tax) which become due and payable upon the Easement Area or upon fixtures, equipment, or other

property installed, constructed or used by GRANTEE thereon in connection with this Easement Deed, shall be the full responsibility of GRANTEE, and GRANTEE shall cause said taxes and assessments to be paid promptly when due.

**10. NOTICES (PMES12.1S)**

All notices, documents, correspondence and communications concerning this Easement Deed shall be addressed as set forth in this Section, or as the Parties may hereafter designate by written notice; and shall be sent through the United States mail with postage prepaid. Any such mailing shall be deemed served or delivered forty-eight (48) hours after mailing. Each Party may change the address for notices by giving the other party at least ten (10) calendar days' prior written notice of the new address.

Notwithstanding the above, either Party may also provide notices, documents, correspondence, or such other communications to the other by personal delivery or by facsimile and so given shall be deemed to have been given upon receipt if provided by personal delivery; or if by facsimile on the day transmitted provided transmitted by 4:30 P.M. (PT) on the receiving Party's regular business day, otherwise delivery shall be deemed to have been given on the next business day.

To DISTRICT:

Orange County Flood Control District  
c/o OC Public Works/Real Estate Services  
Re: E02-353/Carbon Crk Diversion Channel  
300 N. Flower Street, 6th Floor  
Santa Ana, CA 92703  
Facsimile: 714/834-2870

To GRANTEE:

Orange County Transportation Authority  
c/o Real Property Department  
550 S. Main Street  
P.O. Box 14184  
Orange, CA 92863-1584

**11. VENUE (PMES13.1S)**

The Parties hereto agree that this Easement Deed has been negotiated and executed in the state of California and shall be governed by and construed under the laws of California. In the event of any legal action to enforce or interpret this Easement Deed, the sole and exclusive venue shall be a court of competent jurisdiction located in the County of Orange, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties hereto specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

**12. WAIVER OF RIGHTS (PMES14.1S)**

The failure of DISTRICT to insist upon strict performance of any of the terms, covenants, or conditions of this Easement Deed shall not be deemed a waiver of any right or remedy that DISTRICT may have, and shall not be deemed a waiver of the right to require strict performance of all the terms, covenants, and conditions of the Easement Deed thereafter, nor a waiver of any remedy for the subsequent breach or default of any term, covenant, or condition of the Easement Deed.

**13. SEVERABILITY (PMES15.1S)**

If any term, covenant, condition, or provision of this Easement Deed is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

**14. ATTORNEYS' FEES (PMES16.1S)**

In any action or proceeding brought to enforce or interpret any provision of this Easement Deed, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorneys' fees and costs.

**15. ASSIGNMENT**

This Easement Deed is personal and exclusive to GRANTEE, and GRANTEE shall not assign or convey any of GRANTEE'S interest, rights, or obligations under this Easement Deed to a third party, except that GRANTEE may assign or transfer its interest in this Easement Deed to another public entity provided that GRANTEE'S interest, rights and obligations in this Easement Deed are conveyed in their entirety. In the event of a conveyance of GRANTEE'S interest in this Easement Deed, GRANTEE agrees that the instrument of conveyance shall include a provision obligating the transferee, assignee or grantee to keep, perform and be bound by all the terms, covenants and conditions of this Easement Deed. GRANTEE further agrees to record the instrument of conveyance and provide Director with a copy of the recorded document within 45 days of recording.

**16. SUCCESSORS AND ASSIGNS (PMES18.1S)**

The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties hereto.

**17. AUTHORITY (PMES20.1S)**

The Parties to this Easement Deed represent and warrant that this Easement Deed has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.

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Signatures on following pages.

Approved as to Form  
Office of the County Counsel  
Orange County, California

By: [Signature]  
Deputy

Date: 7/15/2012

**DISTRICT**

Orange County Flood Control District,  
a body corporate and politic

By: [Signature]  
Chairman, Board of Supervisor  
Orange County, California

Signed and certified that a copy of this document  
has been delivered to the Chairman of the Board per  
G.C. Sec. 25103, Reso 79-1535

ATTEST:

[Signature]  
Susan Novak  
Clerk of the Board of Supervisors  
Orange County Flood Control District  
Orange County, California

*GRANTEE'S SIGNATURE ON FOLLOWING PAGE*

**ACKNOWLEDGMENT**

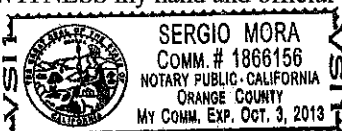
STATE OF CALIFORNIA )  
COUNTY OF ORANGE )

On Aug 3, 2012 before me, Sergio Mora, Notary Public, personally appeared  
Susan Novak

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.



Signature [Signature]



**CERTIFICATE OF ACCEPTANCE**

This is to certify that the interest in real property conveyed by the Easement Deed dated July 5 2012 from Orange County Flood Control District, a body corporate and politic, to the Orange County Transportation Authority (OCTA), a public entity, by the within instrument, the provisions of which contain certain terms and conditions which are incorporated by this reference as though fully set forth in this Certification, is hereby accepted and agreed to by the undersigned officer(s) on behalf of the OCTA pursuant to authority conferred by the OCTA Board of Directors Resolution No. 2010-010 adopted on March 8, 2010, and the Grantee agrees to be bound by the terms and conditions in the within instrument and consents to recordation thereof by its duly authorized officer.

Dated: \_\_\_\_\_

8/8/12

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

Jim Beil

Executive Director, Capital Programs

## EXHIBIT 'A'

### LEGAL DESCRIPTION

#### CARBON CREEK DIVERSION CHANNEL (E02)

##### OR-001-05 (Wall Easement)

(E02-353)

That portion of Lot 2, Block 'K' of Kraemer Tract, in the City of Anaheim, County of Orange, State of California, as shown on map recorded in Book 12, Pages 87 and 88, of Miscellaneous Records, in the Office of the County Recorder of Los Angeles County, California, described as Parcel 302 in the deed to the Orange County Flood Control District, recorded May 19, 1960 in Book 5251, Page 466 of Official Records in the Office of the County Recorder of said Orange County, more particularly described as follows:

**BEGINNING** at the intersection of the southerly line of Orangethorpe Avenue and the westerly line of Miller Street (90 feet wide) as shown on a map filed in Book 96, Page 48 of Record of Survey in the Office of the County recorder of said Orange County said intersection also being the most westerly corner of Parcel 1 described in the deed to the City of Anaheim, recorded November 21, 1966 in Book 8108, Page 877 of said Official Records; thence southerly along said westerly line of Miller Street South 15°54'12" East 282.72 feet to the most easterly southeast corner of said Parcel 302 being the **TRUE POINT OF BEGINNING**; thence along said boundary line of said parcel South 74°08'09" West 20.00 feet; thence leaving said boundary line North 15°54'12" West 47.98 feet to the beginning of a curve concave westerly having a radius of 520.00 feet; thence northerly along said curve through a central angle of 10°09'10" a distance of 92.14 feet; thence North 73°25'02" East 20.27 feet to the beginning of a non-tangent curve concave westerly having a radius of 540.00 feet, a radial line to said curve bears North 64°17'52" East; thence southerly along said non-tangent curve through a central angle of 09°47'56" a distance of 92.35 feet to said

westerly line of Miller Street; thence along said westerly line South 15°54'12" West  
48.00 feet to the **TRUE POINT OF BEGINNING**.

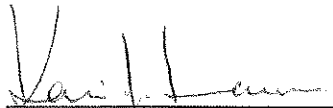
Containing 2,805 square feet.

Bearings and distances shown hereon are based on the California Coordinate System of  
1983, Zone 6, 1983 North American Datum, 2007.00 Epoch Adjustment. Divide  
distances shown by 0.99999084 to obtain ground distances.

As shown on Exhibit 'B' attached hereto by this reference made a part hereof.

This real property description has been prepared by me, or under my direction, in  
conformance with the Professional Land Surveyors Act.





Kari J. Launen

L.S. No. 5679

Expiration Date: 9/30/2011

MARCH 20, 2012

Date

