Recording Requested By Fidelity National Title

RECORDED AT THE REQUEST OF AND WHEN RECORDED MAIL TO:

Orange County Flood Control District c/o CEO/Real Estate Services P.O. Box 4048 Santa Ana, CA 92702-4048

Mail Tax Statements as shown above

Recorded in Official Records, Orange County
Hugh Nguyen, Clerk-Recorder

* \$ R 0 0 1 1 7 6 5 4 5 6 \$ *

2020000281661 10:00 am 06/18/20

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THIS SPACE FOR RECORDER'S USE ONLY

APN: Portion of 345-071-01

DOCUMENTA	DV TD	ANSFER	TAX \$

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

☐ Unincorporated Area

OCFCD Parcel/Project: E04-105.1/Atwood Channel OCTA Parcel/Project: OR-004-01/Orangethorpe RR Grade Separation

EASEMENT DEED

For valuable consideration, receipt of which is hereby acknowledged,

ORANGE COUNTY WATER DISTRICT,

a subdivision of the State of California organized under Chapter 924 of the Statutes of 1933, as amended hereinafter referred to as "GRANTOR"

does hereby grant to

ORANGE COUNTY FLOOD CONTROL DISTRICT

a body corporate and politic hereinafter referred to as "GRANTEE," its, successor and assigns,

a perpetual non-exclusive easement and right of way for any and all lawful purposes permitted under the Orange County Flood Control Act, excluding recreational purposes without prior written consent from GRANTOR'S General Manager or designee (the "General Manager"), to include, but not to be limited to, flood control or water conservation purposes, and including the construction, repair and maintenance of flood control facilities and its appurtenances, or maintenance roads ("Facilities"), on, over, under, 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.

GRANTOR 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. USE AND OPERATIONS

GRANTEE'S rights shall include rights to utilize the surface and sub-surface of the Easement Area for the purpose of exercising the rights herein granted.

2. **CONSTRUCTION AND MAINTENANCE (PMES2.2N)**

Should it be necessary for GRANTEE to conduct any construction or excavation activities or otherwise disturb the surface of the Easement Area GRANTEE agrees to notify GRANTOR in writing sixty (60) days in advance of such planned activities, and obtain the General Manager's written approval of all plans prior to commencement of any such activities. Once approved by the General Manager, no changes or alterations shall be made to the plans without the prior written approval by the General Manager. Said approval shall not be withheld unreasonably, nor shall said approval be necessary in any emergency situation or in conducting routine maintenance activities which do not involve disturbance of the surface area.

In the event GRANTEE exercises such rights to utilize the Easement Area which use results in the disturbance of the Easement Area or damage to or destruction of any improvements or facilities within the Easement Area, GRANTEE at its sole cost and expense shall backfill with compacted earth to the grade of the immediately surrounding property following completion of GRANTEE'S construction activity (with respect to any unimproved excavated area); repair any damage to any GRANTEE Facilities or GRANTOR-owned improvements, facilities or groundwater protection or retention features ("GRANTOR Improvements") within the Easement Area, to the state that existed prior to such damage; or relocate, to an alternate location on GRANTOR'S property, as designated by the General Manager, any GRANTOR Improvements required to be removed as the result of GRANTEE'S construction activities. Notwithstanding the foregoing, GRANTEE shall not be responsible for the repair, replacement or relocation of any GRANTOR Improvements or other facilities or improvement, regardless of ownership, constructed or installed in, on, over, or across the Easement Area on or after August 1, 2012.

In the event any GRANTOR Improvement constructed or installed in, on, over, under or across the Easement Area on or after August 1, 2012 which may interfere with GRANTEE'S use of the Easement Area or which may interfere with the construction of any GRANTEE Facility approved in accordance with the provisions of this Section 2, GRANTOR agrees to relocate at its sole cost and expense any such GRANTOR Improvement, to a location that will not interfere with GRANTEE'S Facilities proposed to be constructed by or on behalf of GRANTEE.

Except in areas in which such activities require regulatory agency approval, or are otherwise designated as environmentally sensitive, GRANTEE shall have the right to cut such roots as may endanger or interfere with GRANTEE'S Facilities provided, however, that any excavation shall be made in such a manner as will cause the least injury to the surface of the ground and any improvements and/or landscaping around such excavation, and that the earth so removed shall be replaced and the surface of the ground and any improvements and/or landscaping around such excavation, damaged shall be promptly restored by GRANTEE at its expense to comparable condition as existed prior to excavation, to the General Manager's satisfaction.

GRANTEE shall, at no cost to GRANTOR, maintain in good repair and in safe condition, all GRANTEE Facilities constructed, used or placed upon the Easement Area by or on behalf of GRANTEE pursuant to this Easement Deed.

3. 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 construction in the Easement Area is performed in accordance with any NPDES (National Pollutant Discharge Elimination System) permit requirements or other water quality statutes, regulations, ordinances, or permits applicable to the construction, including but not limited to use of appropriate best management practices.

4. TERMINATION OR ABANDONMENT (PMES3.1N)

GRANTEE agrees that if GRANTEE no longer requires the Easement Area, GRANTEE shall provide written notice to GRANTOR of GRANTEE'S intention to cease usage of the Easement Area. In such event, GRANTEE shall, at GRANTOR'S request and at no cost to GRANTOR, remove and/or abandon GRANTEE'S Facilities and restore the Easement Area to the condition that existed prior to the granting of this Easement Deed, to GRANTOR'S reasonable satisfaction.

AT GRANTOR'S request, Orange County Flood Control District's Director, OC Public Works, or designee ("**Director**"), shall execute and deliver to GRANTOR for recordation in the Official Records of Orange County, California, a Quitclaim Deed sufficient to remove the encumbrance of this Easement Deed from title.

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

GRANTEE hereby agrees to indemnify, defend and hold harmless, GRANTOR and its 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 damage to any property, arising out of the maintenance, use of or operations or activities conducted in, on, or over 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 GRANTOR and its elected and appointed officials, officers, agents, employees or contractors including the cost of defense of any lawsuit arising therefrom. If GRANTOR is named as co-defendant(s) in a lawsuit, GRANTEE shall notify GRANTOR of such fact and shall represent GRANTOR in such legal action unless GRANTOR undertake(s) to represent itself as co-defendant in such legal action, in which event, GRANTEE shall pay to GRANTOR its litigation costs, expenses, and attorneys' fees. If judgment is entered against GRANTOR and GRANTEE by a court of competent jurisdiction because of the concurrent active negligent acts of GRANTOR and GRANTEE, GRANTOR 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 (PMES8.2N)

GRANTEE shall not cause or permit any "Hazardous Material," "Hazardous Waste," or "Hazardous Chemical" as hereinafter defined, to be brought upon, kept, or used in or about the Easement Area.

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Notwithstanding the foregoing, GRANTEE may use small quantities of Hazardous Materials that are used in the ordinary, customary, and lawful business operations permitted to be conducted on flood control facilities, including the use of Hazardous Materials or Hazardous Chemicals in the operation of vehicles and equipment on, over and across the Easement Area and Hazardous Materials or Hazardous Chemicals used to control vegetation in flood control facilities. Any and all Hazardous Materials, Hazardous Waste or Hazardous Chemicals permitted in or on the Easement Area shall be stored, used or disposed of in strict compliance with all laws, rules regulations, orders, permits, restrictions, policies or the like enacted now or hereafter relating to or governing in any way, the environmental condition of soil, air, water, groundwater or the presence of Hazardous Materials, Hazardous Waste or Hazardous Chemicals in or affecting all or any portion of the Easement Area. GRANTEE shall comply with the Clean Water Act requirements issued by the California Regional Water Quality Control Board National Pollution Discharge Elimination System (NPDES) for any use that may discharge fluids, of any type, on to the ground or cause storm water discharge of fluids on any type into the adjacent groundwater recharge basins.

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 GRANTOR for damage resulting therefrom, then GRANTEE shall indemnify, defend with counsel approved in writing by GRANTOR, and hold harmless, GRANTOR and its 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 GRANTOR 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 GRANTOR'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," "Hazardous Waste," or "Hazardous Chemicals" means those terms as used in CERCLA (42 U.S.C. § 9601 (14)) or SARA (42 U.S.C. § 11021 (e)) or any similar Federal, State, or local law, statue, ordinance, regulation or order.

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

GRANTOR 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 current and future uses by GRANTEE of the rights and easement herein granted, and GRANTOR agrees that it shall not grant to any other party, any surface, subsurface or aerial rights which unreasonably interferes with or prohibits the use by GRANTEE of the rights and easement herein granted.

GRANTOR agrees that GRANTOR, its contractors, agents and representatives shall obtain GRANTEE'S written consent prior to performing any construction activity or placement of any facilities with the Easement Area, and shall condition third parties to obtain GRANTEE'S written approval through Orange County's Public Property Permit process prior to commencement of any construction activities or placement of any facilities in, on, over, across or under the Easement Area, which approval shall not be unreasonably withheld. GRANTOR further agrees that rights granted to third parties by reason of this clause shall contain provisions that such rights are subject to this Easement Deed and that the surface of the Easement Area, if disturbed, shall be restored in kind as nearly as practicable to its original condition upon the completion of any activity.

GRANTOR reserves the right unto itself to perform any and all work involved in protecting, replenishing and/or conserving the basin groundwater supply and any other work necessary to the functions or purposes of GRANTOR, as set forth in the Orange County Water District Act, Chapter 924 of the California Statutes of 1933, as amended, upon any portion or all of the Easement Area at any time to the extent that such uses do not unreasonably interfere with GRANTEE'S rights to use the Easement Area.

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

This Easement Deed is subject to existing contracts, leases, licenses, easements, encumbrances, and claims which are of record or which have been disclosed by GRANTOR.

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 GRANTOR, or any representation or warranty, either express or implied, relating to the nature or condition of the Easement Area or GRANTOR'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 Director or the General Manager 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. Director or General Manager 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 Director or the General Manager 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 GRANTOR:

Orange County Water District Property Management Department P.O. Box 8300 Fountain Valley, CA 92728-8300 Telephone: (714) 378-3200

Facsimile: (714/378-3332

To GRANTEE:

Orange County Flood Control District c/o CEO/Real Estate Services RE: E04-105.1/Atwood Channel 601 N. Ross Street, Suite 250-C Santa Ana, CA 92701

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 GRANTOR 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 GRANTOR 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. NO NUISANCE

GRANTEE shall not maintain, commit or permit the maintenance or commission of any waste or any nuisance (as defined in California Civil Code section 3479) on the Easement Area and GRANTEE shall not use the Easement Area for any unlawful purpose.

16. SECURITY

GRANTEE acknowledges that the Easement Area is taken and accepted by GRANTEE in an "as-is" condition, and that use of the Easement Area does not include the cost of security guard or any other security services or measures. GRANTEE further acknowledges that GRANTOR makes no representation or warranty, express or implied, regarding the security of the Easement Area or the need for or propriety of any security measures at the Easement Area; and GRANTEE further acknowledges that GRANTOR shall have no obligation whatsoever to provide guard service or any other security measures. At such times when GRANTEE, its agents, employees, invitees use the Easement Area, GRANTEE expressly assumes responsibility for the protection and security of the Easement Area, GRANTEE, its agents, employees, invitees and property within the Easement Area from any and all acts of any third party.

17. EASEMENT AREA "AS-IS"

GRANTEE acknowledges that the Easement Area is being provided to GRANTEE on an "as-is" basis, and GRANTEE takes and occupies the Easement Area without reliance upon any representation by GRANTOR, or any of its officers, employees, agents or representatives, or any other person, concerning the Easement Area, its fitness for GRANTEE'S intended use or any other particular purpose of use, potential or capabilities, their value, or any other promise, representation or inducement not expressly set forth in this Easement Deed.

18. NO REPRESENTATION OR WARRANTY CONCERNING EASEMENT AREA

GRANTEE acknowledges that neither GRANTOR, nor any of its officers, employees, agents or representatives, has made any written or oral representation, promise, or warranty, expressed or implied, concerning the Easement Area, its fitness for GRANTEE'S intended use or any other purpose or use, its potential or capabilities, its value, or any other matter not expressly set forth in this Easement Deed.

19. 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.

20. 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 Rutan & Tucker LLP

By:

General Counsel for Orange County Water District

Date: 20/2-02-19

GRANTOR

ORANGE COUNTY WATER DISTRICT.

a subdivision of the State of California organized under Chapter 924 of the Statutes of 1933, as amended

By:

Michael R. Markus P.E., General Manager

Michael R.

Markus

GRANTEE'S SIGNATURE ON FOLLOWING PAGE

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ACKNOWLEDGMENT

State of California) County of Orange)

On MARCH 1, 20 19 before me, Janice M. Quant Normany Public, personally (Insert name of Notary Public & title)

appeared Michael R. MARKUS and VICENTE SARMIENTO

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.

(Seal)

JANICE M. DURANT Notary Public - California Orange County Commission # 2272835 My Comm. Expires Jan 20, 2023 Signature

Teresa M () want

Approved as to Form

Office of the County Counsel Orange County, California

GRANTEE

ORANGE COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic

By:

Khalid Bazmi

Interim Director, OC Public Works Per Minute Order dated July 31, 2012

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ACKNOWLEDGMENT

State of California)

County of Orange)

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.

WITNESS my hand and official seal.

(Seal)

CHRISTINE M. LONG Notary Public - California **Orange County** Commission # 2269873 My Comm. Expires Jan 2, 2023

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CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the within deed or grant to the ORANGE COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic, is hereby accepted by the undersigned officer or agent on behalf of the Board of Supervisors of Orange County, California, acting as the governing board of the ORANGE COUNTY FLOOD CONTROL DISTRICT, pursuant to authority conferred by minute order dated July 31, 2012 of the said Board of Supervisors, and the ORANGE COUNTY FLOOD CONTROL DISTRICT consents to recordation thereof by its duly authorized officer.

GRANTEE

ORANGE COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic

By:

Khalid Bazmi

Interim Director, OC Public Works

Date:

EXHIBIT 'A'

LEGAL DESCRIPTION APN 345-071-01

OR-004-01 (Drainage Easement)

(E04-105.1)

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, more particularly described as follows:

BEGINNING at the intersection of the easterly line of said Lot 2 and the southerly line of the land described in Grant Deed to Orange County Flood Control District recorded December 5, 1958 in Book 4506, Page 200 of Official Records of Orange County; thence westerly along said southerly line North 86°35'20" West 48.66 feet to the TRUE POINT OF BEGINNING; thence continuing along said southerly line North 86°35'20" West 20.39 feet to the beginning of a curve concave southerly, having a radius of 955.00 feet; thence southwesterly along said curve through a central angle of 25°53'35" a distance of 431.58 feet; thence leaving said southerly line North 74°27'34" East 136.97 feet to the beginning of a curve concave southerly, having a radius of 948.00 feet; thence northeasterly along said curve through a central angle of 18°57'06" a distance of 313.57 feet to the TRUE POINT OF BEGINNING.

Containing 1,706 square feet (0.04 acres).

Bearing and distances shown hereon are based on the California Coordinate System of 1983, Zone 6. Divide distances shown by 0.99999084 to obtain ground distances.

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

Date

Kari J. Launen

L.S. No. 5679

Expiration Date: 9/30/2013

