

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

City of Costa Mesa
Attn: City Clerk
P.O. Box 1200
Costa Mesa, CA 92628-1200

Mail Tax Statements as shown above

THIS SPACE FOR RECORDER'S USE ONLY

THIS IS TO CERTIFY THAT THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PER GOVT. CODE 27383 AND IS EXEMPT FROM DOCUMENTARY TRANSFER TAX PER REVENUE & TAXATION CODE SEC. 11922.

By: _____
City of Costa Mesa

Incorporated, City of Costa Mesa

Facility: Susan Street Off-ramp/Gisler Channel
Parcel No: D03S03-157__

EASEMENT DEED

FOR A 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:

the **CITY OF COSTA MESA,**
a municipal corporation,
hereinafter referred to as "**GRANTEE,**"

a perpetual non-exclusive easement over, upon, and across that certain real property located in the City of Costa Mesa, County of Orange, State of California, described in "**Exhibit A**" and shown in "**Exhibit B,**" attached hereto and made a part hereof (hereinafter referred to as the "**Easement Area**") to construct, reconstruct, improve, repair, and maintain a freeway off-ramp from the northbound 405 Freeway onto Susan Street ("**Freeway Off-ramp**"), expressly contingent upon the written agreement of the State of California Department of Transportation (CalTrans), as the anticipated assignee of Grantee's rights and obligations hereto, to the terms and conditions set forth herein.

It is understood and agreed by DISTRICT and GRANTEE (hereinafter sometimes referred to as

"Party" or "Parties") hereto and their successors and assigns, that said Easement Area and right of way herein granted in this Easement Deed ("**Easement Deed**") shall be subject to the following terms and conditions:

1. ASSIGNMENT

This Easement Deed is personal and exclusive to GRANTEE, and GRANTEE shall not assign or transfer any of GRANTEE'S interests, rights, or obligations under this Easement Deed, except that GRANTEE may assign or transfer its interest in this Easement Deed to a public agency provided that GRANTEE'S interest, rights and obligations are transferred or assigned in their entirety and that GRANTEE provides Director with a copy of the recorded transfer or assignment document within 45 days of recording, which recorded document includes a provision that the transferee or assignee agrees to keep, perform and be bound by all the terms, covenants and conditions of this Easement Deed.

2. CONSTRUCTION AND MAINTENANCE (PMES2.2 N)

GRANTEE hereby acknowledges that the Easement Area lies over a portion of a flood control facility, commonly referred to as Gisler Channel (hereinafter referred to as the "**Flood Control Channel**").

GRANTEE shall have all construction and/or maintenance plans approved in writing by DISTRICT'S Director of Resources & Development Management Department or designee (hereinafter referred to as "**Director**") prior to commencement of any work in and about the Easement area; and upon completion of any work, GRANTEE shall immediately notify Director in writing of such completion. GRANTEE further agrees to perform all construction and/or maintenance in such a manner that will allow for unobstructed flood control operations and maintenance of the Flood Control Channel by DISTRICT.

Director's approval of GRANTEE'S construction and/or maintenance plans shall not be deemed approval from the standpoint of structural safety, suitability for purpose or conformance with building or other codes or other governmental requirements. DISTRICT is not responsible for design, assumptions, or accuracy of GRANTEE'S construction and/or maintenance plans.

Should it be necessary for GRANTEE to disturb the surface of the Easement Area subsequent to the completion of the initial installation of necessary facilities, GRANTEE agrees to notify Director in writing sixty (60) days in advance and to obtain Director's written approval of all plans prior to commencement thereof and to obtain a permit for construction from Director after payment of normal processing fees. Said approval shall not be withheld unreasonably, nor shall said approval be necessary in any emergency situation.

All Freeway Off-ramp improvements owned or constructed by or on behalf of GRANTEE pursuant to this Easement Deed shall be constructed and maintained by GRANTEE in good repair and in safe condition at no cost to DISTRICT.

3. REMOVAL AND/OR ABANDONMENT (PMES3.1 S)

GRANTEE agrees that in the event (i) GRANTEE'S Freeway Off-ramp improvements are no longer required, or (ii) GRANTEE'S use of said Freeway Off-ramp ceases for a continuous period of more than one (1) year without written notice from GRANTEE to DISTRICT of the

circumstances affecting such suspension and of GRANTEE'S intention to resume usage of the Freeway Off-ramp, GRANTEE shall, at Director's request and at no cost to DISTRICT, remove and/or abandon said Freeway Off-ramp improvements within ninety (90) days after receipt of written notice from Director to remove and/or abandon. Following such removal and/or abandonment, GRANTEE shall, at no cost to DISTRICT, restore the Easement Area to the condition that existed prior to the granting of the easement, to Director's satisfaction.

GRANTEE shall, at the request of the Director, execute and deliver to Director for recordation in the Official Records of Orange County, California, a Quitclaim Deed sufficient to remove the encumbrance of this Easement Deed from title.

4. RESTORATION BY DISTRICT FOR ELECTIVE REPAIRS

Except as provided in Section 6 below, in the event DISTRICT finds it necessary in the future to enter on and disturb the surface or subsurface of the Easement Area in order to maintain, repair, reconstruct, replace, improve or enlarge DISTRICT'S Flood Control Channel, DISTRICT'S only responsibility shall be to avoid to the extent reasonably possible damage or destruction to any of the Freeway Off-ramp improvements and to restore any affected section of the Flood Control Channel to the same load specification as originally constructed and to backfill with compacted earth to the grade of the surrounding property, and DISTRICT shall have no responsibility or liability for restoring the Freeway Off-ramp improvements owned, constructed, placed or installed by or on behalf of GRANTEE (or the then applicable public entity responsible for operation and maintenance of the Freeway Off-ramp) on, upon or above the Easement Area unless it fails to act reasonably.

5. NOTICE FOR DISTRICT ENTRY

Except in an emergency situation determined to exist by Director, if DISTRICT intends to disturb the surface of the Easement Area, DISTRICT shall give GRANTEE no less than sixty (60) days' prior written notice specifying the date of such entry, the duration thereof and the nature of the work to be performed by DISTRICT. DISTRICT further agrees to use its best efforts to minimize any inconvenience to GRANTEE and to minimize the period of time that the surface of the Easement Area will be disturbed.

6. REQUIRED FLOOD CONTROL CHANNEL REPLACEMENT

In the event of (i) damage or destruction to all or a portion of the Flood Control Channel as a result of acts of God or other causes (financial inability excepted) beyond the control of and not caused by the acts or omission of DISTRICT or GRANTEE, or (ii) the need to replace all or a portion of the Flood Control Channel at the end of its useful life (a repair or replacement of all or a portion of the Flood Control Channel for either of the aforesaid reasons is hereinafter referred to as a "**Required Replacement**"), then the Parties agree that their respective responsibilities regarding a Required Replacement, and responsibility for payment of the costs thereof shall be governed by the following provisions:

A. Useful Life of the Flood Control Channel

For purposes of this Easement Deed, the "useful life" of the Flood Control Channel shall be considered to be fifty (50) years from January 2000.

B. Repair Responsibility

DISTRICT shall be responsible to perform all repairs to, or restoration or replacement of the Flood Control Channel in the event of a Required Replacement, but DISTRICT shall not be responsible for replacing any Freeway Off-ramp improvements in, on, above, or about the Easement Area which may be affected by the Required Replacement. DISTRICT shall commence a Required Replacement as soon as practicable after Director has determined that a Required Replacement is necessary, and DISTRICT shall diligently continue such repair, restoration or replacement to completion, subject to delays caused by acts of God, labor strikes, or other matters beyond the reasonable control of DISTRICT.

Any repairs to and/or replacement of any Freeway Off-ramp improvements in, on, above, or about the Flood Control Channel that are required as a result of a Required Replacement shall be performed by GRANTEE at GRANTEE'S sole cost and expense.

7. COMPLIANCE WITH APPLICABLE WATER QUALITY REQUIREMENTS (PMES4.4 S)

GRANTEE shall ensure that all construction in the Easement Area is performed in accordance with any NPDES 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, so as to ensure that pollutants are not discharged into the DISTRICT's flood control system.

8. HOLD HARMLESS (PMES5.2 N)

GRANTEE hereby releases and waives all claims and recourse against DISTRICT and County of Orange ("**County**"), including the right of contribution for loss or damage of persons or property, arising from, growing out of or in any way connected with or related to this Easement Deed except claims arising from the concurrent active or sole negligence of DISTRICT and/or County, their officers, agents, employees and contractors or as otherwise provided herein. 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 use of the Easement Area described herein or exercise of the rights under this Easement Deed by GRANTEE or GRANTEE'S invitees. GRANTEE'S indemnity and defense obligations shall not apply to any liability arising out of the concurrent active or sole negligence 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 or County is/are named as co-defendant(s) in a lawsuit, GRANTEE shall notify DISTRICT 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 negligence 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, and GRANTEE shall also be entitled to

reimbursement of attorneys' fees, litigation costs and expenses paid on behalf of DISTRICT/County.

9. GRANTEE'S LIABILITY FOR HAZARDOUS OR TOXIC MATERIALS (PMES6.1 N)

GRANTEE or GRANTEE'S invitees shall not cause or permit a release of any "Hazardous Material," as hereinafter defined, on or from the Easement Area. If GRANTEE breaches the obligations stated herein, or if there is a release of Hazardous Material by GRANTEE'S invitees, 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, 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 or GRANTEE'S invitees 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 DISTRICT'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, DISTRICT acting in its governmental capacity, the State of California, or the United States government.

10. RESERVATIONS (PMES7.1 S)

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

11. CONVEYANCE SUBJECT TO EXISTING INTERESTS (PMES8.1 S)

This grant 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 property which exceed those owned by DISTRICT, or any representation or warranty, either express or implied, relating to the nature or condition of the property or DISTRICT'S interest therein.

12. VENUE (PMES9.1 S)

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 Orange County, 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.

13. SEVERABILITY (PMES10.1 S)

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. SUCCESSORS AND ASSIGNS (PMES11.1 S)

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

15. CALENDAR DAYS (PMES13.1 S)

Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.

16. ATTORNEY FEES (PMES14.1 S)

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 attorney fees and costs.

15. AMENDMENTS (PMES16.1 S)

No alteration or variation of the terms of this Easement Deed shall be valid unless made in writing and signed by the Parties, and no oral understanding or agreement not incorporated herein shall be binding on either of the Parties. Any amendment or cancellation of this Easement Deed shall be recorded in the Official Records of the County of Orange.

16. AUTHORITY (PMES17.1 S)

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.

17. HEADINGS (PMES18.1 S)

The headings in this Easement Deed are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

18. WAIVER OF RIGHTS (PMES19.1 S)

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.

19. NOTICES (PMES21.1 n)

All notices, documents, correspondence, and communications concerning this easement shall be addressed as set forth in this clause, 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 twenty-four (24) 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, Federal Express or other overnight delivery service, or facsimile and, so given, shall be deemed to have been given upon receipt.

To DISTRICT:

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

To GRANTEE:

City of Costa Mesa
P.O. Box 1200
Costa Mesa, CA 92628-1200

20. ENTIRE AGREEMENT (PMES12.1 S)

This Easement Deed contains the entire agreement between the Parties with respect to the matters herein and there are no restrictions, promises, warranties or undertakings other than those set forth or referred to herein.

APPROVED AS TO FORM:
County Counsel

By: _____
Deputy

Date: _____

DISTRICT

Orange County Flood Control District,
a body corporate and politic

By: _____
Bryan Speegle, Director
Resources & Development Management
Department, Pursuant to Minute Order
dated _____

APPROVED AS TO FORM:

GRANTEE

City of Costa Mesa,
a Municipal Corporation

By: _____
City Attorney

By: _____
Mayor

dated _____

dated _____

Attest:

By: _____
City Clerk

dated _____

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

ACKNOWLEDGEMENT

On _____, 200__, before me, _____ a Notary Public in and for said County and State, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons(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 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.

WITNESS my hand and official seal.

Signature _____

Document: Easement Deed
Grantor/Grantee: OCFCD/City of Costa Mesa