

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

City of Costa Mesa
99 Fair Drive
Costa Mesa, California 92626

THIS SPACE FOR RECORDER'S USE ONLY

MAIL TAX STATEMENTS TO:

As shown above

Incorporated, City of Costa Mesa

Project/Parcel No: D03-658
Project: Greenville Banning Channel

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,"

do(es) hereby GRANT to: **CITY OF COSTA MESA, a municipal corporation**
hereinafter referred to as "GRANTEE,"

a non-exclusive sidewalk easement for purposes in, on and over the real property in the County of Orange, State of California, described in Exhibit A and shown on Exhibit B, both attached hereto and made a part hereof.

1. CONSTRUCTION AND MAINTENANCE (PMES2.2 S)

GRANTEE shall have all construction and/or maintenance plans approved in writing by DISTRICT'S Director of OC Public Works or designee (hereinafter referred to as "DIRECTOR") prior to commencement of any work; and upon completion of any work, GRANTEE shall immediately notify DIRECTOR in writing of such completion.

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. DIRECTOR will rely on the professional expertise of the Engineer of Record when approving GRANTEE'S construction and/or maintenance plans.

GRANTEE hereby acknowledges that the Easement Area lies within a portion of a flood control facility, commonly referred to as Greenville Banning Channel (hereinafter "the Channel").

GRANTEE shall perform all construction and/or maintenance in such a manner that will allow for unobstructed flood control operation and maintenance of the Channel by DISTRICT. GRANTEE shall maintain, at no cost to DISTRICT, all facilities constructed by GRANTEE pursuant to this easement in good repair and in safe condition.

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 DISTRICT after payment of normal processing fees. Said approval shall not be withheld unreasonably, nor shall said approval be necessary in any emergency situation.

Except in designated environmentally sensitive areas, GRANTEE shall have the right to cut such roots as may endanger or interfere with said underground facilities and shall have reasonable access to the Easement Area for the purpose of exercising the rights herein granted; 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 the same condition as existed prior to excavation, to DIRECTOR'S satisfaction. All facilities owned or constructed by GRANTEE pursuant to this Easement Deed shall be maintained by GRANTEE in good repair and in safe condition at no cost to DISTRICT.

2. 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.

In the event DISTRICT exercises such rights, DISTRICT'S only responsibility shall be to backfill with compacted earth to the grade of the surrounding property following completion of DISTRICT'S activity. GRANTEE shall restore GRANTEE'S facilities to the design and grade approved as provided for in Clause 1 above.

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

GRANTEE agrees that in the event (a) GRANTEE'S facilities are no longer required, or (b) GRANTEE'S use of said facilities 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 facilities, GRANTEE shall, at DIRECTOR'S request and at no cost to DISTRICT, remove and/or abandon said facilities 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 also 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 from title to the Easement Area.

4. RELOCATION (PMES4.1 S)

GRANTEE agrees that in the event GRANTEE'S facilities shall at any time interfere with the operation, maintenance, replacement, or improvement of DISTRICT'S property as determined by DIRECTOR, GRANTEE shall, within ninety (90) days of receipt of written notice from DIRECTOR, relocate at GRANTEE'S expense GRANTEE'S facilities to a site designated by DIRECTOR. All other terms and conditions of this Easement Deed shall remain the same.

5. REVISION OF LEGAL DESCRIPTION (PMES4.3 S)

In the event the attached Exhibit A is subsequently determined to inaccurately describe the location of said facilities, the parties agree that an amended Exhibit A, to be approved in writing by both parties, will be prepared by GRANTEE and recorded which will replace and supersede the attached Exhibit A. The amendment of Exhibit A will not affect, alter, or change this Easement Deed. Furthermore, this Easement Deed will be deemed to be amended and will relate back and be in place as of the initial date of this Easement Deed prior to said amendment of Exhibit A.

6. 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.

7. HOLD HARMLESS (PMES5.2 S)

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 except claims arising from the concurrent active or sole negligence 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 operation or maintenance of the property described herein, and/or GRANTEE'S exercise of the rights under this easement, except for 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.

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 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 paragraph.

8. GRANTEE’S LIABILITY FOR HAZARDOUS OR TOXIC MATERIALS (PMES6.1 S)

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, 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 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, the County of Orange, the State of California, or the United States government.

9. 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.

10. 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.

11. 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.

12. ATTORNEYS' 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 attorneys' fees and costs.

13. NOTICES (PMES21.1 S)

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, duly registered or certified 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, regular mail, or facsimile and, so given, shall be deemed to have been given upon receipt if provided by personal delivery or facsimile, or forty-eight (48) hours after mailing if provided by regular mail.

DISTRICT

Orange County Flood Control District
OC Public Works
Real Estate Services
300 North Flower
Santa Ana, Ca. 92703

GRANTEE

City of Costa Mesa
99 Fair Drive
Costa Mesa, Ca. 92626

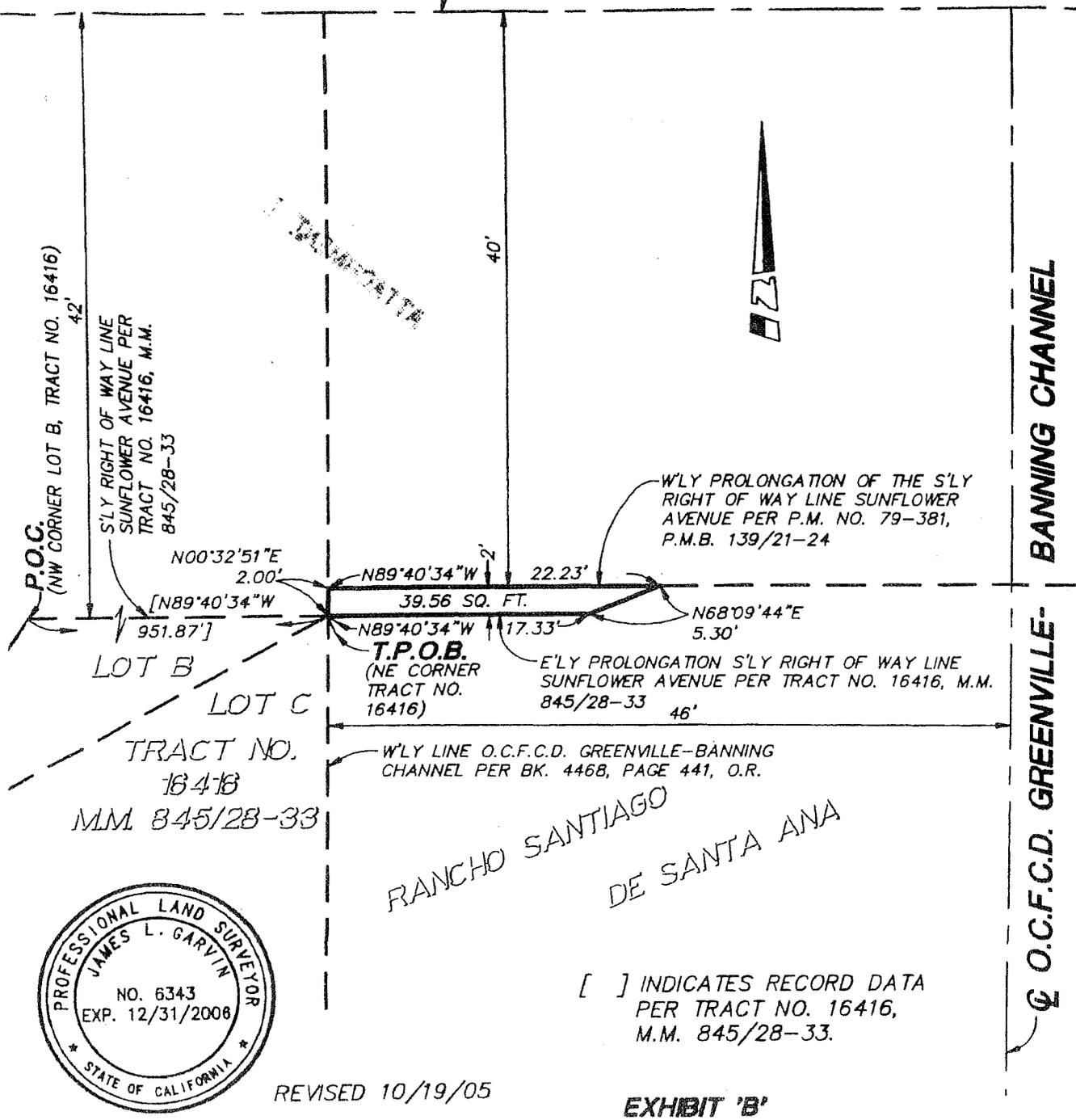
14. ATTACHMENTS TO DOCUMENT (PMES20.1 S)

This document includes the following, which are attached hereto and made a part hereof:

Exhibit "A" Legal Description

Exhibit "B" Map

SUNFLOWER AVENUE



REVISED 10/19/05

[] INDICATES RECORD DATA
PER TRACT NO. 16416,
M.M. 845/28-33.

EXHIBIT 'B'

HUITT-ZOLIARS

Huitt-Zollars, Inc. Irvine
430 Exchange, Suite 200, Irvine, CA 92602-1315
Phone (714) 734-5100 Fax (714) 734-5155

APPROVED BY

James L. Garvin

10-19-2005

SKETCH TO ACCOMPANY
A LEGAL DESCRIPTION

PARCEL D03-658

SCALE 1"=10'

DRAWN BY MPD

CHECKED BY JLG

DATE 11/24/2004

JOB NO.
10-0829-13