

Attachment C

Recording requested by and
when recorded mail to:

Orange County Flood Control District
601 North Ross Street
Santa Ana, CA 92701

Space Above This Line Reserved for Recorder's Use

**DEPARTMENT OF THE ARMY
EASEMENT
LOCATED ON
PRADO FLOOD RISK MANAGEMENT BASIN
SAN BERNARDINO COUNTY, CALIFORNIA**

THE SECRETARY OF THE ARMY, hereinafter referred to as the Secretary, under and by virtue the authority vested in the Secretary by Title 10, United States Code, Section 2668, having found that the granting of this easement will be in the public interest and will not substantially injure the interests of the United States, hereby grants to **Orange County Flood Control District**, hereinafter referred to as the "Grantee," an easement for the a storm drainage facility which consists of the construction, operation, maintenance, repair and replacement of a 48-inch storm drain line and outlet structure within the Prado Flood Risk Management Basin, hereinafter referred to as the facilities, over, across, in, under and upon a forty foot (40') wide portion of the lands of the United States hereinafter referred to as the Premises as described and depicted in Exhibits A and B, which are attached hereto and made a part of.

THIS EASEMENT is granted subject to the following conditions:

1. TERM

This easement is granted in perpetuity.

2. CONSIDERATION

On or before the mutual execution and delivery of this easement, the Grantee, or Grantee's ground lessee shall pay to the United States the amount of one-hundred and No/100 Dollars (\$100), in full for the term hereof to the order of the Finance and Accounting Officer, Los Angeles District, and delivered to the U.S. Army Corps of Engineers, Attention: Chief of Real Estate Division, Los Angeles District, 915 Wilshire Blvd, Suite 930 Los Angeles, California 90017.

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3. NOTICES

All notices and correspondence to be given pursuant to this easement shall be addressed, if to the Grantee, to Orange County Flood Control District; 601 North Ross Street, 4th Floor, Santa Ana, CA 92701; and if to the United States, to the District Engineer, Attention: Chief of Real Estate Division, U.S. Army Corps of Engineers, Los Angeles District, 915 Wilshire Blvd, Suite 1109, Los Angeles, California 90017; or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given three (3) business days after enclosed in a properly sealed envelope, or wrapper, addressed as aforesaid, and deposited via certified mail, postage prepaid, in a post office regularly maintained by the United States Postal Service.

4. AUTHORIZED REPRESENTATIVES

Except as otherwise specifically provided, any references herein to "Secretary", "District Engineer", "Installation Commander", or "said Officer" shall include their duly authorized representatives. Any reference to "Grantee" shall include any duly authorized representatives. This provision is not intended to create personal liability for such duly authorized representatives.

5. SUPERVISION BY THE DISTRICT ENGINEER

The construction, operation, maintenance, repair or replacement of said facilities, including culverts and other drainage facilities, shall be performed at no cost or expense to the United States and subject to the general supervision of the District Engineer, hereinafter referred to as said Officer. Upon the completion of any of the above activities, the Grantee shall promptly restore the Premises to substantially the prior condition to the reasonable satisfaction of said Officer. The use and occupation of the Premises for the purposes herein granted shall be subject to rules and regulations as said Officer prescribes in writing from time to time, which shall not unreasonably interfere with the easement granted herein.

6. APPLICABLE LAWS AND REGULATIONS

The Grantee shall comply with all applicable Federal, state, county and municipal laws, ordinances, and regulations wherein the Premises are located.

7. CONDITION OF PREMISES

The Grantee acknowledges that it has inspected the Premises, knows its condition, and understands that the same is granted without any representations or warranties whatsoever and without any obligation with respect to such condition on the part of the United States.

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8. INSPECTION AND REPAIRS

The Grantee shall inspect the facilities at reasonable intervals and promptly repair any defects found by such inspection or when reasonably required by said Officer to repair any such defects.

9. TRANSFERS AND ASSIGNMENTS

Without prior written approval by said District Engineer, the Grantee shall neither transfer nor assign this easement or any part thereof nor grant any interest, privilege, or license whatsoever in connection with this easement, except as provided in the immediately succeeding sentence. Notwithstanding the foregoing, and in order to make it clear that this easement is available to the ground lessee of the Grantee for the term of such lease, as may be extended, the provisions and conditions of this easement shall inure to the benefit of the ground lessee and successors in interest with respect to the property benefitted by this easement.

10. PROTECTION OF GOVERNMENT PROPERTY

The Grantee shall be responsible for any damage that may be caused to the property of the United States due to the failure of the Grantee to exercise due diligence in the conduct of its activities under this easement and shall exercise due diligence in the conduct of its activities to protect all property of the United States located on the Premises against fire or damage from any and all other causes. Any such property of the United States damaged or destroyed by the Grantee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Grantee to substantially the prior condition satisfactory to said Officer, or at the election of said Officer, reimbursement made therefor by the Grantee in an amount necessary to restore or replace the property to a condition reasonably satisfactory to said Officer. Alterations contemplated by this easement shall not be considered damage to or destruction of property of the United States.

11. RIGHT TO ENTER AND FLOOD

The right is reserved to the United States, its officers, agents and employees to enter upon the Premises at any time and for any purposes necessary or convenient in connection with government purposes; to make inspections; to remove timber or other materials, except property of the Grantee including the storm drain improvements; to flood the Premises. In as much as the use of the Premises involves the creation and maintenance of ponds, any manipulation of the level of such ponds by the Secretary shall be for the government purposes of flood damage reduction or to operate the dam in connection with government purposes and the Grantee shall have no claims for damages on account thereof against the United States or any officer, agent or employee thereof.

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12. INDEMNITY

The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property of the Grantee, or for damages to the property or injuries to the person of the Grantee's officers, agents or employees or others who may be on the Premises at their invitation or the invitation of any one of them, and the Grantee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

13. RESTORATION

On or before termination of this easement, the Grantee shall, without expense to the United States, and within such time as said Officer may indicate, remove said facilities if required by the Government and restore the Premises to the reasonable satisfaction of said Officer. In the event the Grantee shall fail to remove said facilities and restore the Premises, the United States shall have the option to take over said facilities without compensation, or to perform the restoration at the expense of the Grantee, and the Grantee shall have no claim for damages against the United States or its officers or agents for such action. In the event of Termination of this Agreement, the Notice of Termination shall provide a reasonable period of time for Grantee to restore the Premises.

14. NON-DISCRIMINATION

The Grantee shall not discriminate against any person or persons or exclude them from participation in the Grantee's operations, programs or activities because of race, color, religion, sex, age, handicap or national origin in the conduct of operations on the Premises. The Grantee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board.

15. SUBJECT TO EASEMENTS

This easement is subject to all existing easements, or those subsequently granted as well as established access routes for roadways and utilities located, or to be located, on the Premises, provided that the proposed grant of any new easement or route will be coordinated with the Grantee, and easements will not be granted which will, in the reasonable opinion of the District Engineer, interfere with the use of the Premises by the Grantee.

16. TERMINATION

This easement may be terminated by the Secretary upon 30 days written notice to the Grantee for: (i) a Government purpose such as the right of way hereby granted interferes with the use or disposal of said land by the United States, or (ii) failure of the Grantee to comply with any or all of the conditions of this easement, or for non-use for a

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period of two (2) years, or for abandonment. Before any such termination, Grantee shall be given a reasonable period of time to cure such non-compliance, non-use or abandonment. Grantee may terminate this Agreement only with the consent of the Government.

17. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties hereto shall protect the Premises against pollution of its air, ground, and water. The Grantee shall promptly comply with any laws, regulations, conditions or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal by Grantee or its agents of any toxic or hazardous materials within the Premises is strictly prohibited. Such regulations, conditions, or instructions in effect or prescribed by the said Environmental Protection Agency or any Federal, state, interstate or local governmental agency are hereby made a condition of this easement. The Grantee shall not discharge waste or effluent from the Premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance pursuant to applicable laws and regulations.

b. The use of any pesticides or herbicides within the Premises shall be in conformance with all applicable Federal, state, and local laws and regulations. The Grantee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the Premises.

c. The Grantee will use all reasonable means available to protect the environment and natural resources of the Premises, and where damage nonetheless occurs arising from the Grantee's activities, the Grantee shall be liable to restore the damaged resources.

18. HISTORIC PRESERVATION

The Grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural, or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the Premises, the Grantee shall immediately notify said Officer and protect the site and material from further disturbance until said Officer gives clearance to proceed.

19. SOIL AND WATER CONSERVATION

The Grantee shall maintain, in a manner reasonably satisfactory to said officer, all soil and water conservation structures that may be constructed by the Grantee on the Premises during the term of this easement, and the Grantee shall take appropriate measures during construction activities to prevent or control soil erosion within the right-of-way herein granted. Any soil erosion occurring outside the Premises resulting from

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the construction activities of the Grantee shall be corrected by the Grantee as reasonably directed by said officer.

20. RELOCATION OF FACILITIES

In the event all or any portion of the Premises occupied by the said facilities shall be needed by the United States, or in the event the existence of said facilities is determined to be detrimental to governmental activities, the Grantee shall from time to time, upon notice to do so, and as often as so notified, relocate said facilities to such other location on the Premises as may be reasonably designated by said officer. In the event said facilities shall not be relocated within ninety (90) days after such notice, The United States may cause such relocation at the sole expense of the Grantee.

21. DISCLAIMER

This easement is effective only insofar as the rights of the United States in the Premises are concerned. The Grantee shall obtain any permit or license which may be required by Federal, state, or local statute in connection with the use of the Premises. It is understood that the granting of this easement does not preclude the necessity of obtaining a Department of the Army permit for activities which involve the discharge of dredge or fill material or the placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 USC 403), and Section 404 of the Clean Waters Act (33 USC 1344), if applicable.

22. EXECUTIVE ORDER 13658

a. It has been determined this easement is not subject to Executive Order 13658 or the regulations issued by the Secretary of Labor in 29 CFR part 10 pursuant to the Executive Order.

b. If a duly authorized representative of the United States discovers or determines, whether before or subsequent to executing this easement, that an erroneous determination regarding the applicability of Executive Order 13658 was made, Grantee, to the extent permitted by law, agrees to indemnify and hold harmless the United States, its officers, agents, and employees, for and from any and all liabilities, losses, claims, expenses, suits, fines, penalties, judgments, demands or actions, costs, fees, and damages directly or indirectly arising out of, caused by, related to, resulting from or in any way predicated upon, in whole or in part, the erroneous Executive Order 13658 determination. This includes Grantee releasing any claim or entitlement it would otherwise have to an equitable adjustment to the Grantee and indemnifying and holding harmless the United States from the claims of Grantee's employees.

23. EXECUTIVE ORDER 13706

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a. It has been determined this easement is not subject to Executive Order 13706 or the regulations issued by the Secretary of Labor in 29 CFR part 13 pursuant to the Executive Order.

b. If a duly authorized representative of the United States discovers or determines, whether before or subsequent to executing this easement, that an erroneous determination regarding the applicability of Executive Order 13706 was made, Grantee, to the extent permitted by law, agrees to indemnify and hold harmless the United States, its officers, agents, and employees, for and from any and all liabilities, losses, claims, expenses, suits, fines, penalties, judgments, demands or actions, costs, fees, and damages directly or indirectly arising out of, caused by, related to, resulting from or in any way predicated upon, in whole or in part, the erroneous Executive Order 13706 determination. This includes Grantee releasing any claim or entitlement it would otherwise have to an equitable adjustment to this easement and indemnifying and holding harmless the United States from the claims of Grantee's employees.

24. SITE SPECIFIC CONDITIONS

The parties hereto agree and acknowledge that the use and occupation of the Premises by the Grantee pursuant to this easement must be compatible with the use by lessee San Bernardino County under lease agreement PACW09-0102301164 and any successor agreement thereto ("Golf Course Lease"). Notwithstanding the foregoing, the United States agrees that (i) this easement is compatible with the Golf Course Lease, and (ii) this easement shall not be terminated, and the rights of the Grantee hereunder shall continue in full force and effect, following the expiration or sooner termination of the Golf Course Lease. To the extent there is a conflict between the activities covered by this easement and the Golf Course Lease, Grantee shall bring to District Engineer to resolve use.

25. REASONABLENESS STANDARD

Notwithstanding any other provision of this easement, the United States agrees not to unreasonably interfere with the rights granted herein, or unreasonably condition, withhold, or delay its consent.

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of the Army, this ___ day of _____, 2024.

Cheryl Connett
Real Estate Contracting Officer
U.S. Corps of Engineers

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THIS EASEMENT is also executed by the Grantee this _____ day of _____, 2024.

NAME
TITLE
ORANGE COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic

Approved as to Form

DocuSigned by:
Michael Haubert

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Office of the County Counsel
Orange County, California

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 order of the Board of Supervisors of the County of Orange, California, acting as the governing board of the **ORANGE COUNTY FLOOD CONTROL DISTRICT**, and the **ORANGE COUNTY FLOOD CONTROL DISTRICT** consents to recordation thereof by its duly authorized officer.

NAME
TITLE
ORANGE COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic