

BARRANCA CHANNEL AGREEMENT

This BARRANCA CHANNEL AGREEMENT, hereinafter referred to as "AGREEMENT," for purposes of identification hereby numbered D12-053, and dated ____ day of _____, 2014 is,

BY and BETWEEN

The City of Tustin, a municipal corporation, hereinafter referred to as "CITY,"

AND

Orange County Flood Control District, a body corporate and politic, hereinafter referred to as "DISTRICT,"

Which are sometimes individually referred to as "PARTY," or collectively referred to as "PARTIES."

RECITALS

WHEREAS, the CITY, DISTRICT, and the County of Orange entered into that certain Cooperative Agreement D02-119 dated March 11, 2003, as amended ("**COOPERATIVE AGREEMENT**") wherein the CITY reconstructed a segment of Barranca Channel at the Armstrong Avenue crossing and, in Section 5.2.2, agreed to design and, after receiving DISTRICT'S written approval, construct ultimate Barranca Channel flood control improvements between Red Hill Avenue and the Barranca Parkway crossing ("**Channel Segment**") more specifically illustrated on **Exhibit A** entitled "**LOCATION MAP**" attached hereto, and by this reference made a part hereof.

WHEREAS, the PARTIES intend this Agreement to satisfy the

CITY'S Cooperative Agreement Section 5.2.2 obligations and establish the terms upon which channel improvements would be accepted by DISTRICT. The Channel Segment improvements constructed under this AGREEMENT, as well as those improvements constructed by the City of Irvine and to be constructed by Vestar Development Co. referenced below, shall hereinafter collectively be referred to as "**Flood Control Improvements**"; and

WHEREAS, City of Irvine has constructed portions of the Flood Control Improvements between Aston Street and Red Hill Avenue from STA. 123+50 to STA. 129+05.84 and from STA. 4+70.24 to STA. 7+25.00 under DISTRICT's County Property Permit ("**CPP**") number 2009-00201, which improvements are not yet accepted by DISTRICT; and

WHEREAS, Vestar Development Co., as an agent of CITY, pursuant to Section 5.1.1 of the COOPERATIVE AGREEMENT, has been permitted by DISTRICT to construct portions of the Flood Control Improvements between Barranca Parkway crossing and Von Karman Avenue from STA. 87+14.33 to STA. 98+05.37 in compliance with the terms and conditions specified in CPP number 2004-01451, which improvements are not yet completed or accepted by DISTRICT; and

WHEREAS, CITY desires to construct a box culvert within the Channel Segment rather than an open channel; and

WHEREAS, pursuant to Resolution No. 03-230 of the Orange County Board of Supervisors and according to the Runoff Management Plan, prepared for the former Marine Corps Air Station within the CITY ("**MCAS-TUSTIN**"), and the Reuse Plan/Specific Plan prepared by RBF

Attachment A

Consulting dated December 2004, CITY agreed to construct a drainage systems tributary to covered Barranca Channel to accommodate 100-year High Confidence Design Criteria and accepted responsibility for the incremental additional costs for repair or reconstruction of a covered channel as compared to an open channel and to comply with all other requirements set forth in this Resolution as applicable to the Flood Control Improvements; and

WHEREAS, the CITY, the current fee owner of the MCAS-TUSTIN, and DISTRICT agree to execute and record an "Easement Deed Amendment and Quitclaim Deed", which is substantially in the same form as **Exhibit B** ("**Amendment**") in accordance with the terms of this AGREEMENT. By the Amendment, the Parties will (1) modify the easement area granted to DISTRICT by the U.S Government in that Grant of Easement executed on October 21, 1970 and recorded in the Official Records of Orange County as Book 9924 and Page 289 on December 14, 1971 (a copy of which is attached hereto as **Exhibit C**), (2) permit a portion of the easement area surface to be used by CITY for public roadway purposes under certain terms and conditions, and (3) memorialize the requirements of Resolution No. 03-230; and

WHEREAS, it is mutually agreed and in the public's interest that DISTRICT and CITY share in the cost of the future repair and reconstruction of proposed covered flood control channel to enable use of the surface by CITY.

NOW, THEREFORE, IT IS AGREED by and between the PARTIES hereto as follows:

The provisions, definitions, and statements of intention set forth in the Recitals, above, are incorporated into this AGREEMENT as though fully set forth below.

SECTION 1. PURPOSE

The purpose of this AGREEMENT is to establish the terms and conditions related to the reconstruction of the Channel Segment, operation and maintenance of the Flood Control Improvements, as well as DISTRICT'S acceptance of the Flood Control Improvements and the right-of-way upon which the Channel Segment improvements are located.

SECTION 2. DESCRIPTION OF FLOOD CONTROL IMPROVEMENTS

The Flood Control Improvements include those Channel Segment improvements to be constructed by the CITY in accordance with this Agreement, located between Red Hill Avenue and the Barranca Parkway crossing; as well as those improvements constructed by the City of Irvine and constructed or to be constructed by Vestar Development Co. The Channel Segment improvements will consist of underground conduits, an inlet structure, an outlet structure and related features. CITY intends to use the surface of these Channel Segment improvements as a public roadway and landscaped area.

SECTION 3. PROJECT COORDINATION

A. CITY'S Director of Public Works, or authorized designee, hereinafter referred to as "**Construction Manager**", shall be CITY'S representative in all matters pertaining to this AGREEMENT.

B. DISTRICT'S Director of the Orange County Public Works (OC Public Works), or an authorized designee, hereinafter referred to as "**Director**", shall be DISTRICT'S representative in all matters pertaining to this AGREEMENT.

SECTION 4. CITY'S RESPONSIBILITIES

A. CITY shall deliver a fully executed Amendment and Access Easement (as defined below in Section 4.D) prior to DISTRICT'S acceptance of the Flood Control Improvements.

B. Prior to DISTRICT'S acceptance of Flood Control Improvements, CITY shall ensure that all local public and private drainage facilities that enter Barranca Channel right-of-way, but which are not part of DISTRICT'S responsibilities including but not limited to storm drains, drainage inlets and other devices that are identified on the construction plans for Flood

Control Improvements are owned, operated and maintained by CITY, or an appropriate entity, person, or commercial association. CITY shall identify those third parties responsible for the ongoing operation and maintenance of these facilities, and any facility not owned by the CITY. The CITY shall cause the other entities to apply for a CPP, which will contain reasonable conditions for the ongoing operation and maintenance of said structures. DISTRICT will not accept the Flood Control Improvements until all CPP's are in place. Each individual entity including CITY shall at no cost to DISTRICT, apply and receive a CPP for construction, operation and maintenance of such facilities from DISTRICT (which permit shall be issued at no cost to CITY only).

C. CITY will be responsible for operation and maintenance of the Barranca Channel Segment and the other segments of the Flood Control Improvements until such time as all portions of the Flood Control Improvements are accepted by the DISTRICT, and the Amendment and Access Easement are recorded.

D. Grant DISTRICT an access easement in substantially the same form as Exhibit D ("Access Easement") over and

across the CITY owned and maintained Barranca Retarding Basin, Facility F09B01, "C" Street, and access from Armstrong Road for DISTRICT's Barranca Channel operation and maintenance purposes.

E. CITY will prepare and obtain Director's approval of legal descriptions for the Amendment and Access Easement, which are to be conveyed to DISTRICT in accordance with the terms of this AGREEMENT. If any adjustments to the legal descriptions are needed after the recordation, Director and Construction Manager may approve such adjustments and execute any documents to effectuate those adjustments, re-record the appropriate deed with the revised legal description.

F. CITY will, at no cost to DISTRICT, submit to Director a title report demonstrating condition of title for the Amendment and Access Easement that will be conveyed to DISTRICT for the Channel Segment of the Flood Control Improvements. CITY shall remove all the title exceptions not listed in Exhibit E attached hereto and made a part hereof. The title report shall be updated within 60 days of the conveyance of the Amendment and/or Access Easement. CITY shall be obligated to remove any new title exceptions contained in such updated title report(s) that Director determines

adversely affects the ownership interest to be conveyed in Amendment and/or Access Easement.

Upon recordation, CITY shall pay any premium and associated costs for issuance of a CLTA Standard Coverage Policy of Title Insurance to DISTRICT in the amount of \$120,000 (One Hundred Twenty Thousand Dollars) for a title policy which covers both conveyances to DISTRICT. The Title Policy shall show the interest(s) conveyed to DISTRICT, subject only to those title exceptions specified in Exhibit E and those allowed by Director pursuant to this Section.

- G. CITY shall cause its contractors to prepare a Soils Management Plan that includes performing pre-construction soils testing and an action plan to address areas of contaminated soil encountered during construction. The Soils Management Plan shall be submitted through DISTRICT's CPP department for Director's prior approval and shall be implemented during any grading or subsurface work at the construction site. The ground excavation or grading activities should be observed by a monitor experienced in recognizing hazardous materials or petroleum hydrocarbons to be retained by CITY's contractors at no cost to DISTRICT. If such hazardous materials or petroleum hydrocarbon is discovered during grading and

excavation, CITY shall remediate the area and dispose the material per the Soil Management Plan and obtain Director's approval.

H. CITY shall, at no cost to DISTRICT, prepare and obtain Director's approval of a Hazardous Materials Assessment ("HMA") of any new properties to be added to the easement area prior to conveyance of the Amendment, easements or any portion thereof to DISTRICT. CITY shall remediate any condition revealed in the HMA or discovered during construction that Director finds to be reasonably unacceptable by Director, in accordance with the terms of this AGREEMENT, before acceptance of the Flood Control Improvements by DISTRICT.

I. CITY shall, upon completion of all segments of the Flood Control Improvements and prior to acceptance by DISTRICT, as required by Director, perform a final inspection of the entire Flood Control Improvements, correct any damage or distress found and remove any debris or silt, entirely at CITY's expense to Director's satisfaction.

SECTION 5. DISTRICT'S RESPONSIBILITIES

A. DISTRICT shall accept and record in the Official

Records of Orange County, California, the Amendment and Access Easement deeds which have been properly signed and acknowledged by DISTRICT and CITY after Director certifies that (1) the CITY constructed Channel Segment in accordance with approved plans and (2) the CITY has complied with the terms of this AGREEMENT and Sections 5.1 and 5.2 of the COOPERATIVE AGREEMENT, a copy of which are attached hereto as Exhibit F.

B. DISTRICT shall **not** accept ownership and responsibility for operation and maintenance of Flood Control Improvements until the Amendment and Access Easement deeds have been recorded. Should the CITY not comply with its responsibilities set forth in Section 5 of the COOPERATIVE AGREEMENT, DISTRICT reserves the right to not accept ownership and operational and maintenance responsibilities for the Flood Control Improvements

C. Upon completion of all segments of the Flood Control Improvements and prior to acceptance by DISTRICT, Director, at Director's sole discretion may require CITY to perform a final inspection of the entire Flood Control Improvements, correct any damage or distress found and remove any debris or silt, entirely at CITY's expense to Director's satisfaction.

D. If requested by the CITY, Director agrees to provide notice to any public utility to rearrange or relocate its public utility facilities when the CITY and Director concur in the determination that such facilities conflict with the construction of the Flood Control Improvements. Within the limitations provided herein, DISTRICT agrees to invoke and exercise its lawful rights under any applicable permits, licenses, prior rights, etc., to cause such relocations and to cooperate with CITY as appropriate to effectuate such rearrangement or relocation at the expense of the affected public utility. In the event the public utility fails to make the rearrangement or relocation, DISTRICT shall, to the full extent allowed by law and/or the applicable permit or license, assign its rights to cause such rearrangement or relocation to the CITY and in addition, if approved by the Board of Supervisors, cooperate with and join with CITY as a party in any litigation which becomes necessary as a result of a public utility's failure to perform such rearrangement or relocation; provided that such rearrangements or relocations shall be made at no cost to DISTRICT, including, but not limited to, any litigation costs. Other than as specifically provided

herein, CITY shall be responsible for making all necessary arrangements with such public utilities for their protection, relocation or removal in accordance with any applicable policies, procedures, permits, licenses, etc., that may apply to such public utilities.

SECTION 6. NOTICES

A. Notices or other communications which may be required or provided under the terms of this AGREEMENT shall be given as follows:

CITY: Director, Public Works Department
City of Tustin
300 Centennial Way
Tustin, CA 92780
Phone (714) 573-3150
Facsimile No. (714) 734-8991

DISTRICT: ORANGE COUNTY FLOOD CONTROL DISTRICT
Director of Orange County Public Works
Re: Barranca Channel(F09)D12-053
P.O. Box 4048
Santa Ana, CA 92702-4048

B. All notices shall be in writing and deemed effective when delivered in person or deposited in the United States mail, first class, postage prepaid and addressed as above. Notwithstanding the above, PARTIES may also provide notices by facsimile transmittal, and any such notice so given shall be deemed to have been given upon

receipt during normal business hours or, in the event of receipt after business, on the following business day. Any notices, correspondence, reports and/or statements authorized or required by this AGREEMENT, addressed in any other fashion shall be deemed not given.

- C. The PARTIES may change the address to which notices are to be sent by giving notice of such change to the other PARTY.

SECTION 7. TERMINATION

- A. The term of this AGREEMENT shall commence upon approval by CITY and DISTRICT'S Board of Supervisors, and shall terminate upon the completion of all obligations as provided for in this AGREEMENT.

- B. At any time prior to the start of CITY'S construction of the Channel Segment of the Flood Control Improvements as noted in Section 2 (DESCRIPTION OF FLOOD IMPROVEMENTS), CITY may, with or without cause, terminate this AGREEMENT in accordance with the terms and conditions described in this AGREEMENT. Notice of Termination shall be in writing and shall state the date upon which such termination is effective.

Notwithstanding the above, the CITY may not terminate this AGREEMENT, unless the CITY has a permit or license to operate and maintain any and all Flood Control Improvements located upon DISTRICT-owned land or right-of-way.

C. The following survive the termination of this AGREEMENT: Section 4E (CITY RESPOSIBILITIES), Section 8 (INDEMNIFICATION), Section 9 (HAZARDOUS OR TOXIC MATERIALS), and Section 10 (WAIVER OF RIGHTS); provided that only Section 8 (INDEMNIFICATION) and Section 10 (WAIVER OF RIGHTS) shall survive should CITY terminate this AGREEMENT pursuant to Section 7B above.

SECTION 8. INDEMNIFICATION

A. CITY agrees to indemnify, defend (with counsel approved in writing by DISTRICT), and hold harmless DISTRICT and the County of Orange ("COUNTY"), their elected and appointed officials, officers, employees, agents (including their contractors and subcontractors), licensees, and representatives (collectively, the "DISTRICT/COUNTY INDEMNITEES"), and each of them, and its and their property from all loss, liability, damages, claims, costs and expenses (including attorneys' fees and court costs) arising out of, based

upon or relating to a breach of the AGREEMENT by CITY, the willful misconduct or negligent acts or omissions of CITY the CITY INDEMNITEES (as defined in Section 8.B below), use of the Flood Control Improvements including the Channel Segment and its surface by the CITY, CITY INDEMNITEES, including but limited to the general public using the public roadway in connection with this AGREEMENT; provided, however, that nothing contained in this subsection shall operate to relieve DISTRICT/COUNTY or DISTRICT/COUNTY INDEMNITEES from any loss, liability, damages, claims, costs, or expenses to the extent determined by a court of competent jurisdiction to have been proximately caused by the willful misconduct or negligent acts of DISTRICT/COUNTY or DISTRICT/COUNTY INDEMNITEES, or any of them. If judgment is entered against CITY and DISTRICT/COUNTY by a court of competent jurisdiction because of the concurrent active negligence of DISTRICT/COUNTY or DISTRICT/COUNTY INDEMNITEES, CITY and DISTRICT agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment. Notwithstanding anything stated above, nothing contained herein shall relieve CITY of any insurance requirements or obligations elsewhere in this AGREEMENT. Payment shall not be a condition precedent

to recovery under the forgoing indemnity.

B. DISTRICT hereby agrees to indemnify, defend (with counsel approved in writing by CITY), release and hold harmless CITY, its elected and appointed officials, officers, employees, agents (including their contractors and subcontractors), licensees, invitees, and representatives (collectively, the "CITY INDEMNITEES"), and each of them, and its and their property from all loss, liability, damages, claims, costs and expenses (including attorneys' fees and court costs) arising out of, based upon or relating to a breach of this AGREEMENT by DISTRICT or the willful misconduct or negligent acts of DISTRICT/COUNTY or DISTRICT/COUNTY INDEMNITEES in connection with this AGREEMENT; provided, however, that nothing contained in this subsection shall operate to relieve CITY or CITY INDEMNITEES from any loss, liability, damages, claims, costs, or expenses to the extent determined by a court of competent jurisdiction to have been proximately caused by the willful misconduct or negligent acts of CITY or CITY INDEMNITEES, or any of them. If judgment is entered against CITY and DISTRICT/COUNTY by a court of competent jurisdiction because of the concurrent active negligence of CITY OR CITY INDEMNITEES, CITY and

DISTRICT agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment. Payment shall not be a condition precedent to recovery under the forgoing indemnity.

SECTION 9. HAZARDOUS OR TOXIC MATERIALS

A. DISTRICT acknowledges that the location of the Flood Control Improvements was previously owned by the United States of America, acting by and through the Department of the Navy ("**DON**"). The DON conveyed the subject property to CITY by Quitclaim Deed from the United States Government dated September 5, 2006 and recorded on September 12, 2006 as instrument no. 2006000606385 ("**Deed**") with the Orange County Recorder. Pursuant to Section 2.4.3 entitled Additional Remediation Obligation [CERCLA 42 U.S.C Section 9620 (h) (3) (A) (ii) (II)] of the Deed, the United States covenants and warrants that they shall conduct any additional remedial action found to be necessary after the date of transfer for any hazardous substances existing on the subject property prior to the date of the Deed. In addition, under provisions Section 2.4.4 entitled Access [CERCLA 42 U.S.C. Section 9260 (h) (3) (A) (iii)] of the Deed, the CITY agreed, on behalf of itself or any assigns, as a covenant running with the

land, that the United States shall have the right with reasonable notice to enter upon the property to carry out response action, or corrective action on the adjoin property. If requested by CITY, DISTRICT shall provide such reasonable access to the United States. There are no rights or claims on account of such entries against the United States of America, or its agents.

B. CITY agrees to establish a Soils Management Plan and perform all required actions in accordance with Section 4.G herein to remediate any/all areas of contaminated soil encountered during the construction in accordance with this Agreement.

C. Nothing in this AGREEMENT is intended to abate the obligations of the PARTIES as established in Section 13 (Hazardous and Toxic Materials) of the COOPERATIVE AGREEMENT.

SECTION 10. WAIVER OF RIGHTS

The failure by CITY or DISTRICT to insist upon strict performance of any of the terms, covenants or conditions of this AGREEMENT shall not be deemed a waiver of any right or remedy that CITY or 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 this AGREEMENT thereafter, nor a waiver of any remedy for the subsequent breach or default of any term, covenant or condition of this AGREEMENT.

SECTION 11. SEVERABILITY

If any part of this AGREEMENT is held, determined or adjudicated to be illegal, void or unenforceable by a court of competent jurisdiction, the remainder of this AGREEMENT shall be given effect to fullest extent reasonably possible.

SECTION 12. ATTORNEYS' FEES/COSTS

Should litigation be necessary to enforce any terms or provisions of this AGREEMENT, then each PARTY shall bear its own litigation and collection expenses, witness fees, court costs and attorneys' fees.

SECTION 13. EXHIBITS

This AGREEMENT incorporates by this reference, the following exhibits, which are attached hereto:

- 13.1 Exhibit A- Location Map
- 13.2 Exhibit B- Easement Deed Amendment and Quitclaim Deed
- 13.3 Exhibit C- Grant of Easement (O.R. 9924/289)
- 13.4 Exhibit D- Access Easement

13.5 Exhibit E- Title Exceptions

13.6 Exhibit F- Cooperative Agreement D02-119, Section 5

SECTION 14. WAIVER AND INTERPRETATION

Titles or captions herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this AGREEMENT or any provisions hereof. No provision in this AGREEMENT is to be interpreted for or against PARTY because that PARTY or its legal representative drafted such provision.

SECTION 15. AUTHORITY

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

SECTION 16. AMENDMENT(S)

It is mutually understood and agreed that no addition to, alteration of, or variation of the terms of this AGREEMENT, nor any oral understanding or agreement not incorporated herein, shall be valid unless made in writing and signed and approved by all necessary PARTIES.

SECTION 17. ENTIRE AGREEMENT

This AGREEMENT, its exhibits, Agreement D02-119, the COOPERATIVE AGREEMENT, and any CPP issued for the Flood Control Improvements, or any portions thereof, set forth the entire AGREEMENT between CITY and DISTRICT and may be modified only by future written amendment between the PARTIES hereto, in accordance with Section 16.

SECTION 18. NO THIRD PARTY BENEFICIARIES

Nothing in the AGREEMENT shall create any rights or liabilities for any entity not a party hereto.

SECTION 19. EXECUTION IN COUNTERPARTS

This AGREEMENT may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one AGREEMENT. To facilitate execution of this AGREEMENT, the PARTIES may execute and exchange by telephone facsimile counterparts of the signature pages.

Attachment A

Barranca Channel Agreement No. D12-053

IN WITNESS WHEREOF, each PARTY hereto has executed this AGREEMENT by its duly authorized representatives as of the date set forth above.


CITY OF TUSTIN,
a municipal corporation
of the State of California

Date: 4/9/14

BY: 
Jeffrey C. Parker
City Manager

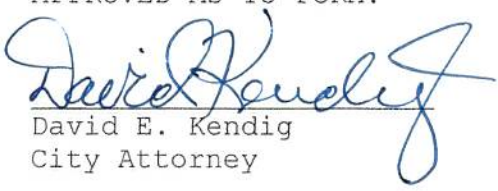
ATTEST:

Date: 6/9/14

BY: 
~~Jeffrey C. Parker~~ Erica Rabe
City Clerk Services Supervisor

APPROVED AS TO FORM:

Date: 6/5/14


David E. Kendig
City Attorney

Barranca Channel Agreement No. D12-053

ORANGE COUNTY FLOOD CONTROL DISTRICT,
a body corporate and politic

Date: _____

By _____
Chair of the Board of Supervisors
Orange County, California


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

Attest:

Date: _____

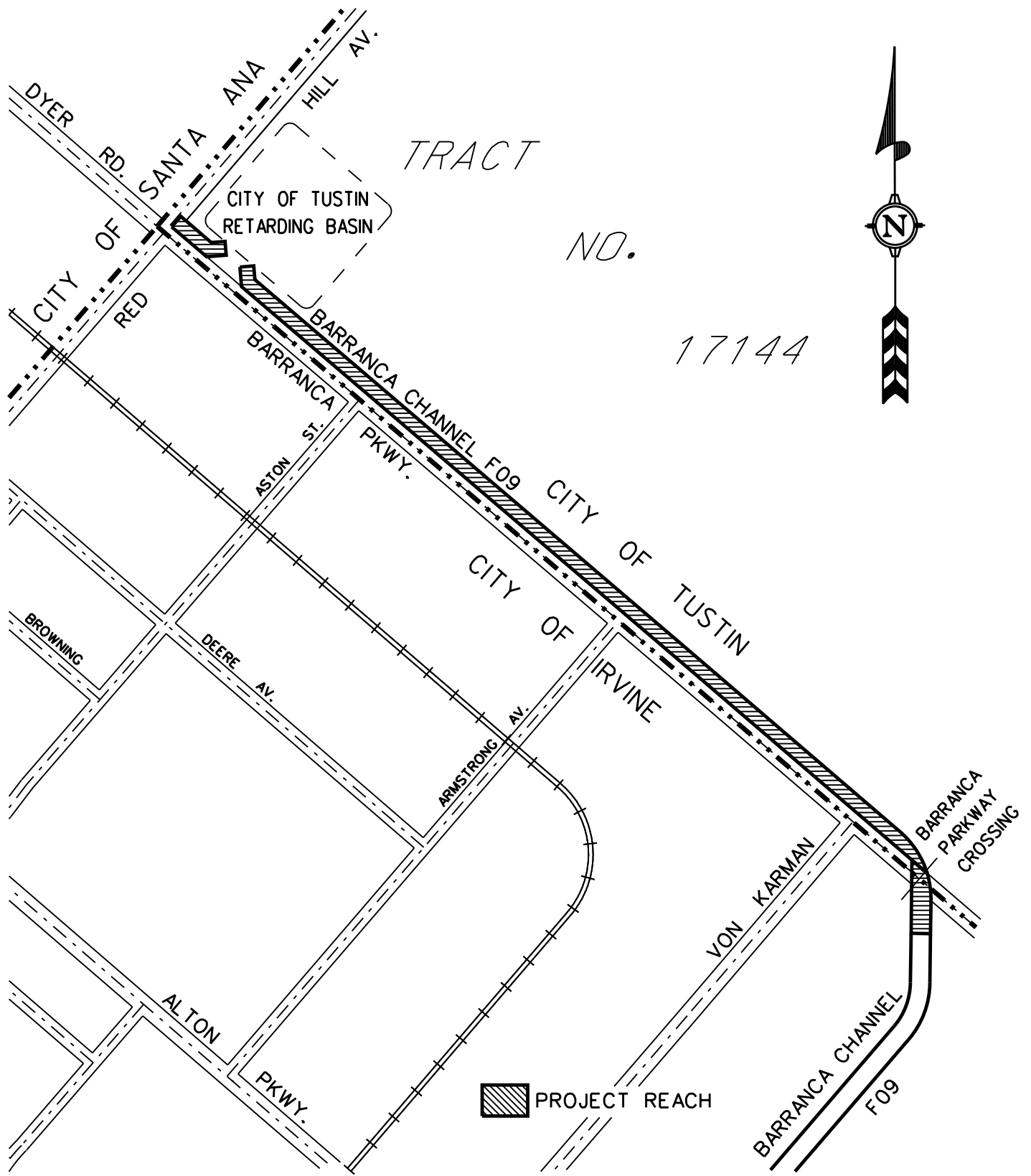
By _____
Susan Novak
Clerk of the Board of Supervisors
Orange County, California

APPROVED AS TO FORM:
Office of the COUNTY COUNSEL
Orange County, California

By:  _____
Deputy

Date: 3-25-2014

EXHIBIT A



OC PUBLIC WORKS
 OC SURVEY
 RIGHT - OF - WAY

ID # 2013 - 023

SCALE : 1" = 600'

LOCATION MAP

Sheet 1 of 1

PROJECT : BARRANCA CHANNEL IMPROVEMENTS, AGREEMENT NO. D12-053

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

County of Orange, OC Public Works
Right of Way Engineering
P.O. Box 4048
Santa Ana, CA 92702-4048

Mail Tax Statements as shown above

THIS SPACE FOR RECORDER'S USE ONLY

APN:

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 Tustin

Parcel No: F09-201, 201.1, 205, 206
Project: Barranca Channel

**EASEMENT DEED AMENDMENT
AND QUITCLAIM DEED**

This Easement Deed Amendment and Quitclaim Deed ("**Amendment**") is entered into between the CITY OF TUSTIN, a municipal corporation, hereinafter referred to as "**CITY**," and the ORANGE COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic hereinafter referred to as "**DISTRICT**." CITY and DISTRICT may sometimes hereinafter be individually referred to as "**Party**" or jointly as "**Parties**".

RECITALS

- A. Pursuant to that document entitled "Grant of Easement" dated October 21, 1970 and recorded December 14, 1971 in Book 9924, Page 289 of the Official Records of Orange County, California as Instrument No. 10985 ("**Barranca Easement**"), DISTRICT holds easement rights in, over, and across that certain real property described in that document as "**Premises**". The Premises are to be modified by this Amendment and the Premises as modified by this Amendment shall hereinafter be referred to as "**Easement Area**".
- B. Pursuant to that certain Quitclaim Deed recorded September 12, 2006 in the Official Records of Orange County, California as Instrument No. 2006000606385 ("**Deed**"), CITY acquired all rights, title, and interest held by the United States of America, acting by and through the Department of the Navy ("**DON**"), the "grantor" in the Barranca Easement.
- C. CITY and DISTRICT entered into that certain Agreement D02-119 dated March 17, 2003 ("**Agreement**") which enabled the CITY to construct certain improvements within the Easement Area, including an underground concrete conduit sufficient to support an HS20 44 highway

loading, an inlet, outlet and related structures within the Easement Area in accordance with DISTRICT'S standards and criteria ("**Flood Control Improvements**"). The CITY constructed the Flood Control Improvements in order to utilize its covered surface as a public road.

- D. In conjunction with the Agreement, CITY agreed to assume obligations and responsibilities which run with the land that are associated with utilization of the Flood Control Improvements surface within the Easement Area. For that purpose, the Parties agree to amend the Barranca Easement with the terms and conditions herein which shall relate back and be deemed in place as of the initial recording date of the Barranca Easement. Other than the terms herein, this Amendment shall not otherwise affect, alter, or change the Barranca Easement. As to any inconsistency existing between with the terms of this Amendment and the terms in the Barranca Easement, the Parties agree the terms of this Amendment shall control.

For valuable consideration, receipt of which is hereby acknowledged, the Parties agree to the following terms, conditions, and reservations:

1. RECITALS

Each of the above Recitals is incorporated herein and is true and correct.

2. MODIFICATION OF EASEMENT AREA

The Premises are modified as follows:

- a) DISTRICT quitclaims to CITY the area described in "**Exhibit 1**" and depicted in "**Exhibit 2**"; and
- b) City conveys to DISTRICT new easement areas as described in "**Exhibit 3**" and depicted in "**Exhibit 4**" for the purpose of DISTRICT's ownership and operation and maintenance of Flood Control Improvements.

3. CITY'S USE OF THE SURFACE

- a) CITY shall have the right to use the surface of a portion of the Easement Area depicted in Exhibit 3 for a public roadway;
- b) CITY's use of the surface within the Easement Area shall be compatible with and not prejudicial to the flood control and water conservation purposes of construction, installation, maintenance, operation, repair, reconstruction, and replacement of the Flood Control Improvements. Therefore, the CITY agrees its rights with respect to the surface of the Flood Control Improvements in the Easement Area are subject to the following express limitations, terms, and conditions:
 - i) Except for those existing streets, curbs, paving, landscaping and related roadway improvements above the Easement Area, no buildings or permanent structures or additional earth fill will be permitted within the Easement Area unless approved as provided below. In addition, no block wall creating a water barrier across the Easement Area will be permitted.
 - ii) No improvements or other construction activities shall be commenced within the Easement Area until the plans for such construction have first been

approved in writing by the Director, Orange County Public Works of the County of Orange or his/her designee (hereinafter referred to as "**Director**"). If CITY is granting utility companies or other third parties rights by permit, franchise, or otherwise for improvements or other construction activities within the Easement Area, said third parties construction or installation shall not commence until the plans have been approved by the Director and a County Property Permit has been obtained with payment of normal processing fees therefor. Except for improvements owned by DISTRICT, all surface improvements owned, constructed, placed within, upon, under or above the Easement Area by CITY which may be allowed by the Director shall be operated and maintained at no cost to DISTRICT.

- iii) In the event DISTRICT finds it necessary in the future to enter on and disturb the surface or subsurface of the above described land in order to maintain, repair, reconstruct, replace, improve or enlarge the Flood Control Improvements, DISTRICT'S only responsibility shall be to restore any section of the Flood Control Improvements affected to the same load specifications as originally constructed and to backfill with compacted earth to the grade of the surrounding property following completion of DISTRICT'S activity. CITY shall restore affected surface improvements to design and grade as approved by Director at CITY'S sole expense.
- iv) Unless the Director determines an emergency exists making prior notice to the CITY impracticable, DISTRICT shall give CITY prior written notice if DISTRICT intends to disturb the surface of the Easement Area. That notice shall be given by DISTRICT to CITY not less than 60 days prior and shall specify 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 CITY or CITY's adjoining property and to minimize the period of time that the surface of the Easement Area will be disturbed.

4. FLOOD CONTROL IMPROVEMENT REPLACEMENT OBLIGATIONS

In the event of (a) damage or destruction to all or a portion of the Flood Control Improvements as a result of acts of God or other causes beyond the control of and not caused by the acts or omissions of DISTRICT or CITY, or (b) the need to replace all or a portion of the Flood Control Improvements (restoration, repair and replacement of all or a portion of the Flood Control Improvements for either of the above reasons, or a change in DISTRICT'S criteria for appropriate flood protection (hereinafter referred to as a "**Replacement**"), then the Parties agree that their responsibilities regarding a Replacement and for payment of the costs of the Replacement thereof shall be governed by the provisions contained in "**Exhibit 5**" attached hereto and made a part hereof.

5. HOLD HARMLESS

Section 6 of the Barranca Easement is hereby deleted in its entirety and replaced with the following:

“Section 6. HOLD HARMLESS

CITY agrees to hold DISTRICT harmless from any claims for damages and cost of the Flood Control Improvements caused by overloading of said Flood Control Improvements and shall reimburse DISTRICT for the costs of Flood Control Improvements repair or reconstruction caused by such overloading unless same is due to the acts or conduct of the District, its employees, agents or contractors.

CITY agrees to hold DISTRICT harmless from any claims for damage to CITY's installations caused by flood or overflow conditions. However, nothing in this paragraph shall operate to relieve DISTRICT from any claims for damage to the extent determined by a court of competent jurisdiction to have been caused by the willful misconduct or negligent acts or omissions of DISTRICT, its employees, agents or contractors. For purposes of determining liability related to the operation and maintenance of the Flood Control Improvements, the PARTIES acknowledge and agree that DISTRICT shall not be deemed negligent if DISTRICT operates and maintains the Flood Control Improvements in substantial conformance with standard DISTRICT practices used for similar DISTRICT facilities.

CITY, its successors or assigns, agrees to indemnify, defend with counsel approved in writing by DISTRICT, and hold harmless DISTRICT and the County of Orange, their elected and appointed officials, officers, agents and employees from any and all penalties, liabilities or losses resulting from claims or court actions arising directly or indirectly out of any injury to persons or damage to property by reason of the acts or omissions, intentional or otherwise, of CITY, its agents, employees, contractors, franchisees, or licensees in exercising any of the privileges herein reserved or in consequence thereof, including but not limited to use of the Easement Area by CITY, its employees, contractors, invitees, franchisees, or licensees.

Unless otherwise provided in this Amendment, the terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the Parties hereto, all of whom shall be jointly and severally liable hereunder.”

6. HAZARDOUS MATERIALS

The rights and obligations of the DISTRICT and CITY as it relate to the presence or release of hazardous substance and materials within the Easement Area are as follows:

- a) DISTRICT acknowledges that the Easement Area was previously owned by the United States of America, acting by and through the DON. Pursuant to Section 2.4.3 entitled Additional Remediation Obligation [CERCLA 42 U.S.C Section 9620 (h) (3) (A) (ii) (II)] of the Deed, the United States covenants and warrants that they shall conduct any additional remedial action found to be necessary after the date of transfer for any hazardous substances existing on the subject property prior to the date of the Deed. In addition, under provisions Section 2.4.4 entitled Access [CERCLA 42 U.S.C. Section 9260 (h) (3) (A) (iii)] of the Deed, the CITY agreed, on behalf of itself or any assigns, as a covenant running with the land, that the United States shall have the right with reasonable notice to enter upon the property to carry out response action, or corrective action on the adjoin property. There are no rights or claims on account of such entries against the United States of America, or its agents.

- b) Nothing in this Amendment is intended nor shall anything in this Amendment be construed to transfer to DISTRICT or County of Orange or their successors or assigns or to relieve CITY or its successors or assigns or predecessors in title of any responsibility or liability that the CITY or its successors or assigns or predecessors in title now has, has had or comes to have with respect to human health or the environment, including but not limited to responsibility or liability relating to pre-existing hazardous or toxic substances or materials (as such terms as those used in this sentence are defined by statute, ordinance, case law, government regulations or other provisions of the law). Furthermore, DISTRICT may exercise its right under law to bring action, if necessary, to recover clean-up costs and penalties paid, if any, from CITY or any others who are ultimately determined by a court of competent jurisdiction and/or a federal, state or local regulatory or administrative governmental agency or body having jurisdiction, to have responsibility for said hazardous or toxic substances or materials upon, within, or under the real property interests transferred pursuant to this Amendment. Notwithstanding the forgoing, CITY shall be and remain liable for any hazardous or toxic substances or materials or which are mobilized, released or otherwise exposed because of CITY'S construction activities, upon, within, or under the Easement Area. However, DISTRICT shall notify CITY of its discovery of any hazardous substance or material and allow the CITY to conduct any necessary investigation of such substance or material to determine the source of the hazardous substance and material and remediation prior to the DISTRICT exercising its right to clean up such substance and seek recovery of clean-up costs from the CITY. Notwithstanding the foregoing, DISTRICT shall be and remain liable for any hazardous or toxic substances or materials which become located, because of DISTRICT'S operations, upon, within, or under the Easement Area.

7. NOTICES

All notices, documents, correspondence, and communications concerning this Amendment shall be addressed as set forth in this paragraph, 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, DISTRICT may also provide notices, documents, correspondence, or such other communications to CITY 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.

To CITY:

City of Tustin
c/o Director, Public Works Department
300 Centennial Way
Tustin, CA 92780
Phone (714) 573-3150
Facsimile No. (714) 734-8991

To DISTRICT:

Orange County Flood Control District
c/o OC Public Works/Real Estate Services
RE: Barranca Channel (F09) Easement
P.O. Box 4048
Santa Ana, CA 92702-4048
Facsimile No. (714) 834-2395

8. VENUE

The Parties hereto agree that this Amendment 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 Amendment, 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.

9. WAIVER OF RIGHTS

The failure of the DISTRICT to insist upon strict performance of any of the terms, covenants, or conditions of this Amendment 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 Amendment thereafter, nor a waiver of any remedy for the subsequent breach or default of any term, covenant, or condition of the Amendment.

10. ATTORNEY'S FEES

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

11. SUCCESSORS AND ASSIGNS

This Amendment shall be binding on the successors and assigns of the Parties hereto.

12. AUTHORITY

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

Signature Pages Follow

CITY

CITY OF TUSTIN, a municipal corporation
of the State of California

Date: _____

By: _____

Jeffrey C. Parker
City Manager

ATTEST:

DATE: _____

By: _____

Jeffrey C. Parker
City Clerk

APPROVED AS TO FORM:

Date: _____

By: _____

David E. Kendig
City Attorney

DISTRICT'S signature on following page

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

On _____, 20__ before me, _____, a 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.


Signature _____

(Seal)

EXHIBIT B

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

ORANGE COUNTY FLOOD CONTROL
DISTRICT

By:  _____
Deputy

By: _____
Chairman, Board of Supervisors
Orange County, California

Date: 3-25-2014

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

ATTEST:

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

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

On _____, 20__ before me, _____, a 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.

Signature _____

(Seal)

**RBF Consulting
14725 Alton Parkway
Irvine, California 92618**

**August 5, 2013
JN 10-104755/134065
Page 1 of 2**

EXHIBIT 1

**LEGAL DESCRIPTION
O.C.F.C.D. FACILITY NO. F09**

That certain parcel of land situated in the City of Tustin, County of Orange, State of California, lying within a portion of Block 9 or Irvine's Subdivision as shown on a map thereof filed in Book 11, Page 88 of Miscellaneous Record Maps in the Office of the County Recorder of said Orange County, being all of that 50.00 feet strip of land as described in that certain Grant of Easement to the Orange County Flood Control District recorded December 14, 1971 in Book 9924, Page 289 of Official Records in said Office of the County Recorder, BOUNDED ON THE NORTHWEST by the southeasterly line of that certain strip of land described as follows:

Being a strip of land 50.00 feet wide, the centerline of which is described as follows:

COMMENCING at the centerline intersection of Barranca Parkway and Red Hill Avenue as shown on Tract No. 17144 filed in Book 906, Pages 5 through 14 of Miscellaneous Maps in the Office of the County Recorder of said Orange County; thence along said centerline of Barranca Parkway South 49°19'41" East 239.06 feet; thence North 40°40'19" East 110.00 feet to a point on the southwesterly line of Lot "MM" as shown on said tract and the **TRUE POINT OF BEGINNING**, said point also being on a non-tangent curve concave northwesterly and having a radius of 90.00, a radial line of said curve from said point bears North 03°05'28" West; thence Northwesterly along said curve 68.74 feet through a central angle of 43°45'47".

The sidelines of said strip shall be lengthened or shortened so as to terminate northeasterly by the southwesterly line of said Lot "MM".

and BOUNDED ON THE SOUTHEAST by the northwesterly line of that certain strip of land described as follows:

Being a strip of land 50.00 feet wide, the centerline of which is described as follows:

COMMENCING at said centerline intersection of Barranca Parkway and Red Hill Avenue as shown on said Tract No. 17144; thence along said centerline of Barranca Parkway South 49°19'41" East 716.09 feet; thence North 40°40'19" East 110.00 feet to a point on the southwesterly line of said Lot "MM", said point also being on a non-tangent curve concave easterly and having a radius of 90.00 feet, a radial line of said curve from said point bears North 84°26'13" East; thence along said curve southerly and southeasterly 68.75 feet through a

**RBF Consulting
O.C.F.C.D. Facility No. F09**

**August 5, 2013
JN 10-104755/134065
Page 2 of 2**


Exhibit 1

central angle of 43°45'54" and the **TRUE POINT OF BEGINNING**; thence retracing along said last curve and prolongation thereof northwesterly and northerly 73.52 feet through a central angle of 46°40'37"; thence tangent from said curve North 02°39'04" West 24.17 feet.

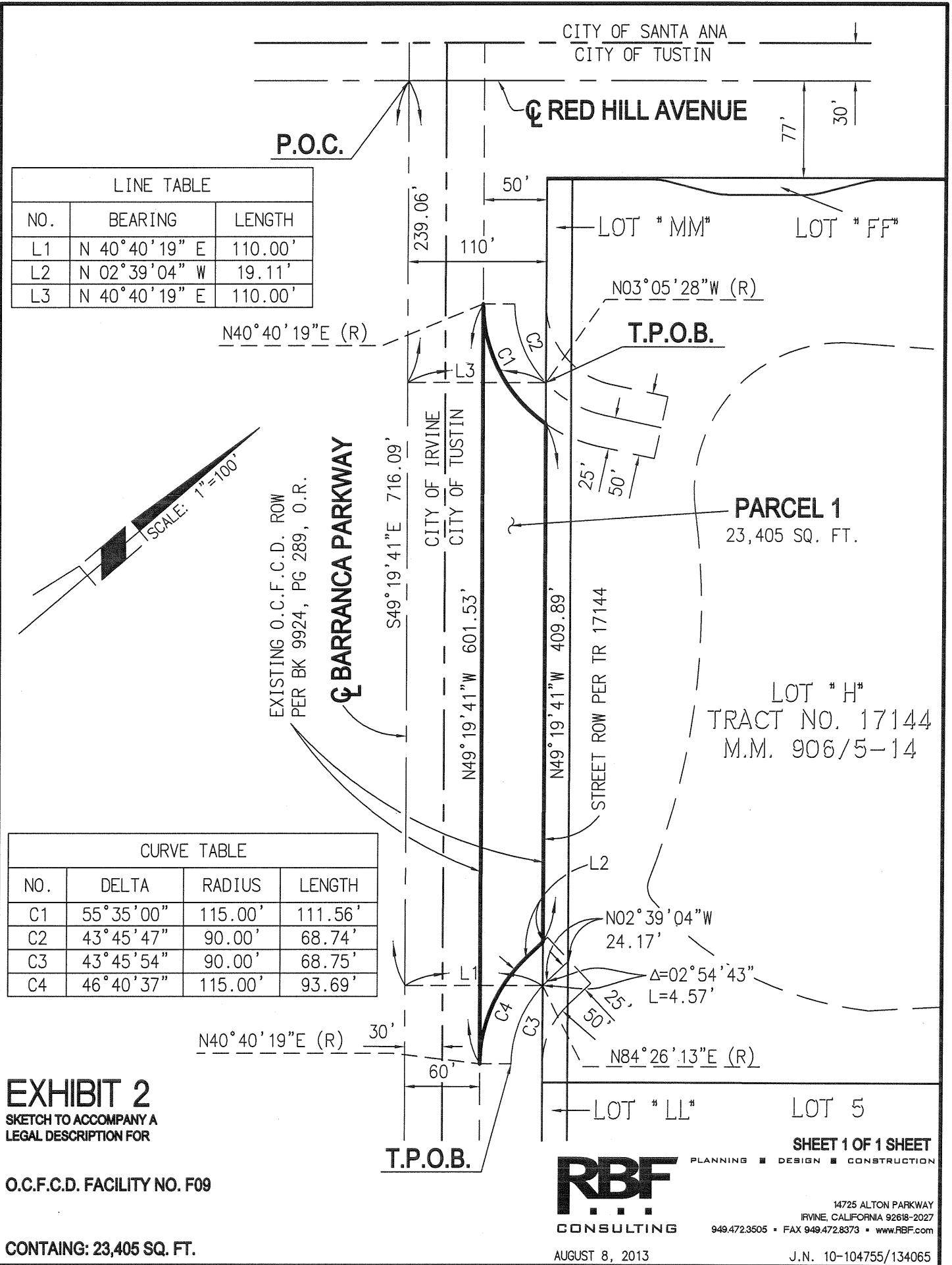
CONTAINING: 23,405 Square Feet

SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of Record.

EXHIBIT 2 attached and by this reference made a part hereof.


Kurt R. Troxell, L.S. 7854 8/8/2013 Date





LINE TABLE		
NO.	BEARING	LENGTH
L1	N 40°40'19" E	110.00'
L2	N 02°39'04" W	19.11'
L3	N 40°40'19" E	110.00'

CURVE TABLE			
NO.	DELTA	RADIUS	LENGTH
C1	55°35'00"	115.00'	111.56'
C2	43°45'47"	90.00'	68.74'
C3	43°45'54"	90.00'	68.75'
C4	46°40'37"	115.00'	93.69'

EXHIBIT 2
 SKETCH TO ACCOMPANY A
 LEGAL DESCRIPTION FOR

O.C.F.C.D. FACILITY NO. F09

CONTAINING: 23,405 SQ. FT.

RBF CONSULTING
 PLANNING ■ DESIGN ■ CONSTRUCTION
 14725 ALTON PARKWAY
 IRVINE, CALIFORNIA 92618-2027
 949.472.3505 • FAX 949.472.8373 • www.RBF.com

AUGUST 8, 2013 J.N. 10-104755/134065

**RBF Consulting
14725 Alton Parkway
Irvine, California 92618**

**August 8, 2013
JN 134065
Page 1 of 1**

EXHIBIT 3

**LEGAL DESCRIPTION
O.C.F.C.D. FACILITY NO. F09
STORM DRAIN**

Those certain parcels of land situated in the City of Tustin, County of Orange, State of California, being those certain portions of Lot 23 of Tract No. 17026 as shown on a map thereof filed in Book 884, Pages 1 through 14 of Miscellaneous Maps in the Office of the County Recorder of said Orange County, described as follows:

PARCEL 1

A strip of land 50.00 feet wide, the centerline of which is described as follows:

COMMENCING at the centerline intersection of Barranca Parkway and Red Hill Avenue as shown on said Tract No. 17026; thence along said centerline of Barranca Parkway South 49°19'41" East 239.06 feet; thence North 40°40'19" East 110.00 feet to a point on the southwesterly line of said Lot 23 and the **TRUE POINT OF BEGINNING**, said point also being on a non-tangent curve concave northwesterly and having a radius of 90.00, a radial line of said curve from said point bears North 03°05'28" West; thence along said curve northeasterly 53.27 feet through a central angle of 33°54'54"; thence tangent from said curve North 52°59'38" East 46.60 feet.

Said strip of land shall be lengthened or shortened so as to terminate southwesterly in said southwesterly line of Lot 23.

CONTAINING: 5099 Square Feet.

PARCEL 2

A strip of land 50.00 feet wide, the centerline of which is described as follows:

COMMENCING at said centerline intersection of Barranca Parkway and Red Hill Avenue as shown on said Tract No. 17026; thence along said centerline of Barranca Parkway South 49°19'41" East 716.09 feet; thence North 40°40'19" East 110.00 feet to a point on the

Exhibit 3

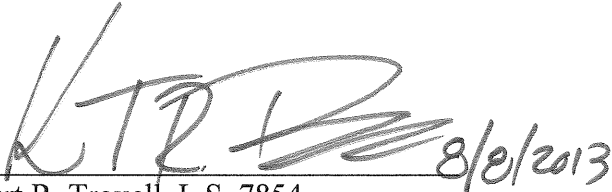
southwesterly line of said Lot 23 and the **TRUE POINT OF BEGINNING**, said point also being on a non-tangent curve concave easterly and having a radius of 90.00 feet, a radial line of said curve from said point bears North 84°26'13" East; thence along said curve northerly 4.57 feet through a central angle of 02°54'43"; thence tangent from said curve North 02°39'04" West 24.17 feet.

Said strip of land shall be lengthened or shortened so as to terminate southwesterly in said southwesterly line of Lot 23.

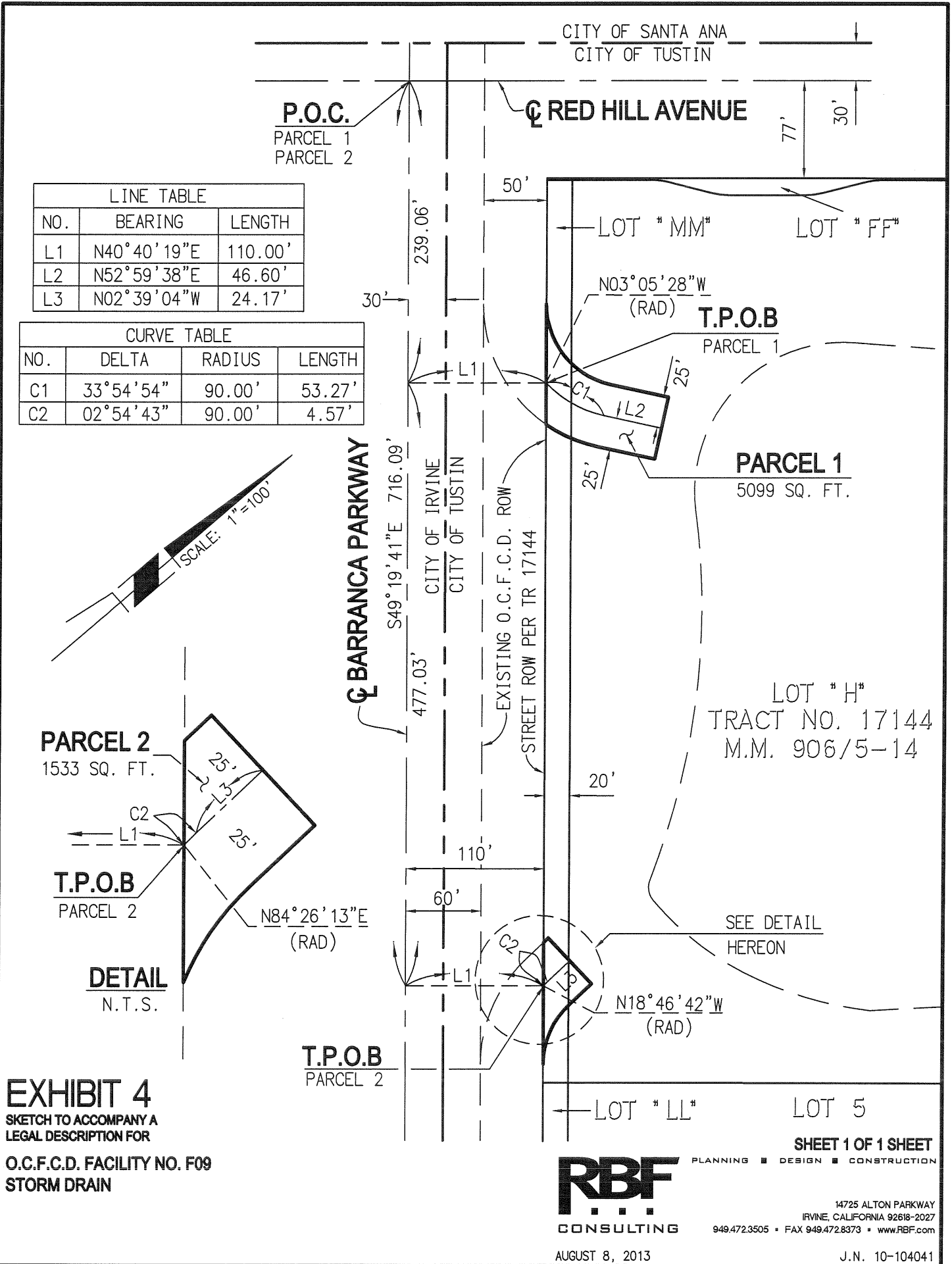
CONTAINING: 1533 Square Feet.

SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of Record.

EXHIBIT 4 attached and by this reference made a part hereof.

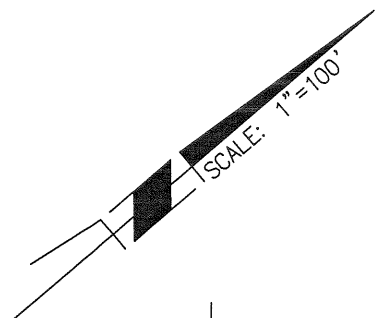

Kurt R. Troxell, L.S. 7854





LINE TABLE		
NO.	BEARING	LENGTH
L1	N40° 40' 19" E	110.00'
L2	N52° 59' 38" E	46.60'
L3	N02° 39' 04" W	24.17'

CURVE TABLE			
NO.	DELTA	RADIUS	LENGTH
C1	33° 54' 54"	90.00'	53.27'
C2	02° 54' 43"	90.00'	4.57'



PARCEL 2
1533 SQ. FT.

T.P.O.B.
PARCEL 2

DETAIL
N.T.S.

T.P.O.B.
PARCEL 2

EXHIBIT 4
SKETCH TO ACCOMPANY A
LEGAL DESCRIPTION FOR
O.C.F.C.D. FACILITY NO. F09
STORM DRAIN

LOT "MM" LOT "FF"
LOT "H"
TRACT NO. 17144
M.M. 906/5-14
LOT "LL" LOT 5

PARCEL 1
5099 SQ. FT.

SEE DETAIL
HEREON

SHEET 1 OF 1 SHEET

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IRVINE, CALIFORNIA 92618-2027
949.472.3505 • FAX 949.472.8373 • www.RBF.com

AUGUST 8, 2013 J.N. 10-104041

Exhibit 5

REPLACEMENT COST SHARE

In the event of a Replacement of all or a portion of the Flood Control Improvements as described in Section 4 of this Amendment, the respective responsibilities and obligations of the CITY and DISTRICT shall be as follows.

1. Replacement Responsibilities: DISTRICT shall perform all Replacement of the Flood Control Improvements. DISTRICT shall not be responsible for repairing, restoring, or replacing any surface improvements above the Flood Control Improvements that are subject to Replacement. DISTRICT shall commence such Replacement as soon as practicable, although the precise schedule shall be determined by the Director after consultation with CITY, upon the Director's determination that Replacement is necessary. After commencement of construction, DISTRICT shall diligently work to complete the Replacement, subject to delays caused by acts of God, labor strikes or other matters beyond the reasonable control of DISTRICT.

2. Costs of Replacement: DISTRICT shall be responsible for paying 65% of all the costs of the Replacement of the Flood Control Improvements (hereinafter referred to as "**DISTRICT'S Share**"), and CITY shall be responsible for paying the remaining 35% of such costs (hereinafter referred to as "**CITY'S Share**"). DISTRICT and CITY have agreed to this cost share of responsibility for paying the Replacement costs based upon their mutual agreement as to the cost differential of keeping the Flood Control Improvements as an underground concrete box conduit for the CITY'S benefit of utilizing the surface as a public street, as opposed to an open channel facility. The repairs and/or replacement of any surface improvements above the Flood Control Improvements that are required as a result of the Replacement of the Flood Control Improvements shall be performed by CITY at its expense and shall not be considered in the allocation of costs related to a Replacement of the Flood Control Improvements hereunder.

Payment of Costs: Prior to commencement of the Replacement, DISTRICT shall provide CITY with a good faith estimate of the Replacement cost of the Flood Control Improvements, with a breakdown of CITY'S Share and DISTRICT'S Share for such cost. CITY shall pay CITY'S share to DISTRICT within sixty (60) days of CITY'S receipt of DISTRICT'S invoice together with reasonable documentary evidence of the nature and necessity of the costs based on DISTRICT'S good faith estimate. Within sixty (60) days of construction, DISTRICT will provide CITY with a statement of the actual construction costs expended for the Replacement. Within sixty (60) days thereafter, CITY shall deliver to DISTRICT payment of any difference between the amount of CITY'S Share previously paid and CITY'S Share of the actual costs. If CITY'S Share paid to DISTRICT exceeds CITY'S Share of the actual costs, DISTRICT shall refund to CITY the excess amount paid by CITY within sixty (60) days of completion of construction.

CERTIFICATE OF ACCEPTANCE

THIS IS TO CERTIFY, that the interest quitclaimed by this Amendment from the ORANGE COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic, to the CITY OF TUSTIN, a municipal corporation, is hereby accepted pursuant to authority granted to the undersigned by order of _____ the on _____, 20__, subject to the terms, conditions and reservations set forth therein, and the CITY consents to the recordation of said Amendment.

CITY OF TUSTIN,

By: _____

Date: _____

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by this Amendment 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.

DISTRICT _____ ORANGE COUNTY FLOOD CONTROL

Dated: _____

By: _____

Shane Silsby, Director
OC Public Works
Orange County, California
Per Minute Order __

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

By: _____
Deputy

Date: _____

744

F09-2
PCL-201

F09-201
Barranca Channel

10985

GRANT OF EASEMENT

FREE

RECORDED AT REQUEST OF
FIRST AMER. TITLE INS. CO.
IN OFFICIAL RECORDS OF
ORANGE COUNTY, CALIF.
8:00 AM DEC 14 1971
J. WYLIE CARLYLE, County Recorder

NR(1) 9547 OR-9924-289

EX-9924-289

1057928-826501

THIS INDENTURE, made this 21st day of October, 1970,
between the UNITED STATES OF AMERICA, hereinafter called the
Government, acting by and through the Department of the Navy,
and the ORANGE COUNTY FLOOD CONTROL DISTRICT, a body corporate
and politic, formed by an act of the Legislature of the State of
California, having its principal place of business in the County
of Orange, State of California, hereinafter called the District.

WHEREAS, the Government is the owner in fee simple of a
parcel of land known and identified as the Marine Corps Air
Station (Helicopter), Santa Ana, California, hereinafter called
the Station; and

WHEREAS, the District has requested the conveyance of an
easement for the construction, installation, maintenance, opera-
tion, repair and replacement of a flood control drainage channel
for flood control and water conservation purposes across that
portion of the Station, hereinafter described; and

WHEREAS, the Secretary of the Navy has found that the grant
of such an easement on the terms and conditions hereinafter
stated will not be incompatible with the public interest:

NOW, THEREFORE, this indenture witnesseth that, in considera-
tion of One Hundred Five Thousand Dollars (\$105,000.00)
paid by the District to the Government, the Government hereby
grants unto the said District, its successors and assigns, in
perpetuity from the date hereof, an easement for flood control
and water conservation purposes covering the construction,
installation, maintenance, operation, repair and replacement of a
flood control drainage channel, hereinafter called the Channel,
such easement to be confined to that portion of the Station, here-
inafter called the Premises, which is shown on Exhibit "A",

ENCLOSURE 7/7

F09-201

NF(R)-9547

PAGE 9924 PAGE 290

identified as Orange County Flood Control District Map No. F09-2,

attached hereto and made part hereof, and described as follows:

That portion of Lot 101 of Block 47 and those portions of Lots 103 and 104 of Block 9, of Irvine's Subdivision, in the County of Orange, State of California, per Map recorded in Book 1, Page 88 of Miscellaneous Record Maps in the Office of the County Recorder of said County, said portion being a strip of land 50.00 feet in width, lying 25.00 feet, when measured at right angles, on each side of the following described center line:

BEGINNING at a point in the Southeasterly line of Red Hill Avenue (60 feet wide) as described in Decree on Declaration of Taking, Civil 2398-Y, filed January 19, 1943, in the District Court of the United States, Southern District of California, Central Division, said point being 55.00 feet Northeasterly from the Southwesterly line of Lot 104; thence parallel with said Southwesterly line of said Lots 101, 103 and 104, having a bearing of South 50° 08' 08" East (South 49° 58' 55" East Record, per said Declaration of Taking, Civil 2398-Y), a distance of 4195.57 feet to the beginning of a tangent curve, concave Southwesterly and having a radius of 200.00 feet; thence Southerly 151.95 feet along the arc of said curve, through a central angle of 43° 31' 52" to its intersection with the Southwesterly line of said Lot 101, said point of intersection being South 50° 08' 08" East, a distance of 4363.32 feet from the most Westerly corner of said Lot 104, containing 4.99 acres, more or less.

THIS EASEMENT is granted subject to the following terms and conditions:

1. All work, including the relocation of Government owned improvements, in connection with the construction, installation, maintenance, operation, repair and replacement of the Channel shall be done without cost or expense to the Department of the Navy and in accordance with plans and specifications previously approved by the Commander, Southwest Division, Naval Facilities Engineering Command, hereinafter referred to as the Commander. Future widening, deepening, concreting, or other improvements not provided for in said plans, shall be undertaken only after drawings and specifications for such work have been submitted to and approved by the Commander.

2. All Government roads, fences, utilities and other improvements which must be moved because of the construction or reconstruction of the Channel shall be relocated or replaced by

the District in a manner like or similar in utility and quality to that which existed prior to said relocation or replacement as determined by the Commanding Officer of the Station.

3. The District shall, without cost or expense to the Department of the Navy, and at the option of and to the satisfaction of the Commanding Officer of the Station, promptly repair or replace all Government property damaged or destroyed by the District, its agents, employees or contractors, as a result of the construction, the reconstruction, installation, use, maintenance, operation, repair and replacement of the Channel.

4. The District shall maintain the Premises and the Channel in good condition at all times and shall promptly make all repairs thereto which may be necessary for the preservation of the condition of the Premises and the continued operation and maintenance of said Channel.

5. The District's rights hereunder shall be subject to such reasonable rules and regulations as may be promulgated by the Government to insure that the exercise of such rights shall not unreasonably interfere with Government activities at the Station.

6. The District shall assume all liability for such damages as any Government lessee at the Station shall suffer as a result of the construction, reconstruction, installation, maintenance, operation, repair and replacement of the Channel.

7. All or any part of the rights herein granted may be terminated upon failure by the District to comply with any of the terms and conditions of this grant, upon abandonment of the rights granted herein, or upon non-use of such rights for a period of two consecutive years. It is understood by the parties hereto that the Channel will be constructed on said easement area within reasonable time after the date of this grant, but the District's failure to construct said Channel within a two year

NPR-9547
BOOK 9924 PAGE 292

period for reasons beyond its control will not be construed as non-use or abandonment.

8. The Government may use the Premises which are the subject of this easement for any purpose which does not create an unreasonable interference with the use or enjoyment by the District of the easement rights granted herein and which does not, as supported by competent engineering analysis, impair the hydraulic functioning of said Channel.

9. Under the terms of Clause 7, above, upon termination of the easement granted herein if desired by the Government, the District at its expense shall remove any and all improvements installed or constructed hereunder and restore the Premises to the same or as good condition as that which existed prior to the exercise by the District of its rights hereunder, such restoration to be effected to the satisfaction of the Commander.

IN WITNESS WHEREOF, the Government, acting by and through the Department of the Navy, has caused this instrument to be executed on the day and year first above written.

UNITED STATES OF AMERICA

J. E. Powell
J. E. POWELL
Captain, CGC, USN

By _____
By direction of the Commander,
Naval Facilities Engineering
Command, acting under the
direction of the Secretary
of the Navy

Approved
By *Stuart P. Foutz*
Counsel for SOWESTDI

STATE OF CALIFORNIA)
COUNTY OF SAN MATEO) ss.

On this 21st day of October, 1970, before me
Beverly J. Mattia, a Notary Public in and for said
County and State, personally appeared J. E. Powell
known to me to be the person whose name is subscribed to the

NF(R)-9547

9924 293

within instrument, and acknowledged that he executed the same by direction of the Commander, Naval Facilities Engineering Command, acting under the direction of the Secretary of the Navy, U.S.A.



Beverly J. Martin
Notary Public

ATTEST:

W. E. ST JOHN, County Clerk of the County of Orange and ex officio Clerk of the Board of Supervisors of the Orange County Flood Control District

By _____
Deputy

APPROVED AS TO FORM
Adrian Kuyper
County Counsel

By *Adrian Kuyper*

APPROVED AS TO DESCRIPTION AND ENGINEERING
H. G. Osborne
Chief Engineer

By *H. G. Osborne*

RECOMMENDED FOR APPROVAL
Stanley E. Krause, Director
Dept. of Real Property Services

By *Stanley E. Krause*
Real Property Agent

By *Paul H. Hennessey*
Assistant Director

CERTIFICATE OF ACCEPTANCE

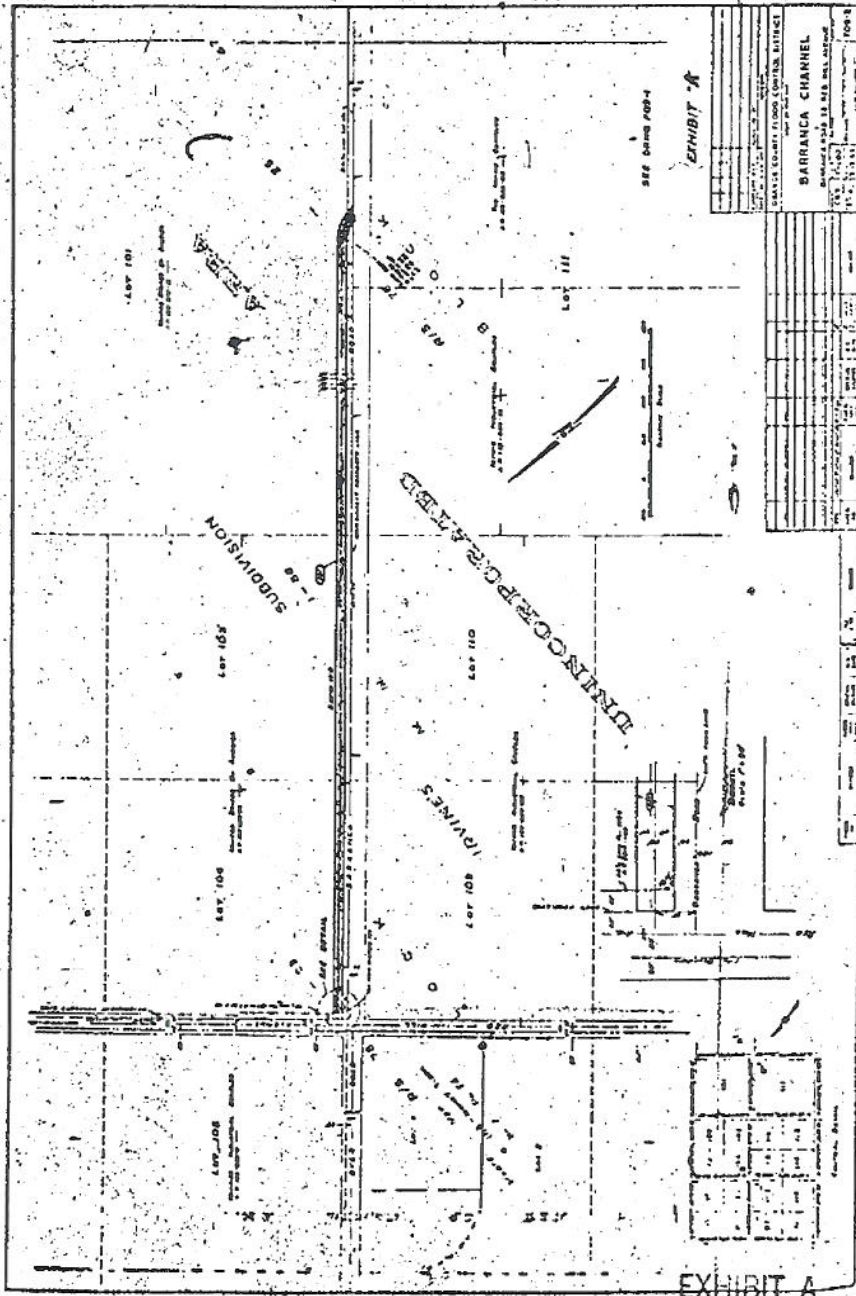
This is to certify that the interest in real property conveyed by the within deed or grant to the Orange County Flood Control District, a body corporate and politic, is hereby accepted by the undersigned officer or agent on behalf of the Board of Supervisors of Orange County, California, acting as the governing board of the Orange County Flood Control District, pursuant to authority conferred by resolution of the said Board of Supervisors adopted on and the grantee consents to recordation thereof by its duly authorized officer.

Dated *December 7, 1971*

By *Paul H. Hennessey*
Assistant Director
Department of Real Property Services

NFR-9547

9924 PAGE 294



END OF RECORDED DOCUMENT

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

County of Orange
OC Public Works
Real Estate Services
300 North Flower, 6th Floor
Santa Ana, California 92703

Mail Tax Statements as shown above

THIS SPACE FOR RECORDER'S USE ONLY

**APN: Portions of 430-27-024, 430-27-026, 430-27-056
430-27-057, 430-27-058, 430-27-060, & 430-27-067**

**This is to certify that this document is exempt
from recording fees per Govt. Code Sec. 27383
and is exempt from Document Transfer Tax per
Rev. & Taxation Code Sec. 11922.**

- Unincorporated Area
- Incorporated, City of Tustin

By: _____
OCPW REAL ESTATE SERVICES

Project/Parcel No: F09-202,203,204
Project Name: Barranca Channel

EASEMENT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

CITY OF TUSTIN, a municipal corporation,
hereinafter referred to as "**GRANTOR,**"

hereby grants to

ORANGE COUNTY FLOOD CONTROL DISTRICT,
a body corporate and politic, hereinafter referred to as "**DISTRICT,**"

a perpetual, non-exclusive easement ("**Easement**") for vehicular and pedestrian access to a segment of DISTRICT'S adjacent flood control facility known as the Barranca Channel (the "**Facility**") on, within, over and along a roadway, driveway, Barranca Retarding Basin (Basin), parking area or road, paved or otherwise, having at least a 20-foot-wide clearance and being reasonably direct from a public street ("the **Easement Area**") located on the real property in the City of Tustin, County of Orange, state of California, described in "Exhibit A," and illustrated in "Exhibit B," (the "**Property**") which exhibits are attached hereto and by reference made a part hereof.

The purpose of the Easement is for vehicular and pedestrian ingress and egress for operating, maintaining, improving, reconstructing, enlarging and replacing DISTRICT'S Facility.

It is understood and agreed by GRANTOR and DISTRICT (hereinafter referred to collectively as "**Parties**" or individually as "**Party**") and their successors and assigns the rights herein granted are subject to and limited by the following:

1. MODIFICATION OF EASEMENT AREA

GRANTOR retains the right to change, modify, eliminate, add to or replace the Easement Area at any time upon ninety (90) days written notice to DISTRICT so long as GRANTOR maintains a minimum 20-foot-wide clearance travelway for DISTRICT use from a public street to DISTRICT'S Facility and receives approval from DISTRICT'S Director, OC Public Works or designee ("**Director**") which approval shall not be unreasonably withheld or delayed. Such 20-foot wide clearance travelway shall be reasonably direct from a public street to DISTRICT'S Facility. Said right to relocate is personal to GRANTOR and as such is nontransferable, unless the transfer of such right to a specified successor-in-interest of GRANTOR is expressly permitted in writing by Director.

2. REVISION OF LEGAL DESCRIPTION (PMES5.1 N)

Upon completion of any development or redevelopment of any portion of the Property, GRANTOR shall provide to DISTRICT an "as-built" plot plan with the Easement Area clearly marked thereon. Upon any proposed alteration of the Property which results in a change in Easement Area, GRANTOR shall give written notice of said proposed change to the Director and Director shall have sixty (60) days to provide his or her approval of said proposed change, which approval shall not be unreasonably withheld or delayed. If said proposed change is approved by Director, GRANTOR shall provide to DISTRICT an "as-built" plot plan with the new Easement Area. GRANTOR shall provide an Easement Area with a travelway with 20-foot wide clearance, and a 50-foot by 50-foot turnaround area where needed, at all times for DISTRICT'S use.

In the event it becomes necessary to modify the Easement Area as provided in Section 1 above and the legal description described in attached Exhibit A, is subsequently determined to inaccurately describe the location of the Easement Area, the Parties agree that GRANTOR shall cause the legal description and illustration to be revised upon written approval of the revised legal description by Director. GRANTOR and Director shall amend this Easement Deed so as to replace the original legal description with the revised legal description and illustration attached thereto respectively as "Revised Exhibit A", and "Revised Exhibit B", and such amended Easement Deed shall be recorded by GRANTOR at no cost to DISTRICT. The Parties agree that the amendment of Exhibit A and Exhibit B and the re-recording of the Easement Deed shall not affect, alter, or change any of the terms, conditions, prior rights, or reservations of this Easement Deed and further agree that the amended and re-recorded Easement Deed shall relate back and be in place as of the initial date of this Easement Deed prior to the revision of Exhibit A and Exhibit B.

3. GRANTOR LIABILITY FOR HAZARDOUS OR TOXIC MATERIALS (D7.1 S)

Nothing in this Easement is intended nor shall anything in this Easement Deed be construed to transfer to DISTRICT or its successors or assigns or to relieve GRANTOR or its successors or assigns or predecessors in title of any responsibility or liability GRANTOR or its successors or assigns or predecessors in title now has, has had or comes to have with respect to human health or the environment, including but not limited to responsibility or liability relating to hazardous or toxic substances or materials (as such terms as those used in this sentence are defined by statute, ordinance, case law, governmental regulation or other provision of the law). Furthermore, DISTRICT may exercise its rights under law to bring action, if necessary, to recover clean-up costs and penalties paid, if any, from GRANTOR or any others who are ultimately determined by a court of competent

jurisdiction and/or a Federal, state or local regulatory or administrative governmental agency or body having jurisdiction, to have responsibility for said hazardous toxic substances or materials upon, within, or under the real property interests transferred pursuant to this Easement Deed. Notwithstanding the forgoing, DISTRICT shall be and remain liable for any hazardous or toxic substances or materials which become located, because of DISTRICT'S operations, upon, within, or under the real property interests transferred pursuant to this Easement Deed.

4. AMENDMENTS (DES19.1 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 any of the Parties. Any amendment or cancellation of this Easement Deed shall be recorded in the Official Records of the County of Orange.

5. AUTHORITY (DES20.1 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.

6. NOTICE (DES11.1 S)

All notices, documents, correspondence, and communications concerning this Easement Deed shall be addressed as set forth in this paragraph, 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, DISTRICT may also provide notices, documents, correspondence, or such other communications to GRANTOR 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.

If to GRANTOR: City of Tustin
c/o Director, Public Works Department
300 Centennial Way
Tustin, CA 92780
Phone (714) 573-3150
Facsimile No. (714) 734-8991

If to DISTRICT: Orange County Flood Control District
c/o Director, OC Public Works
P. O. Box 4048
RE: Barranca Channel (F09) Access Easement
Santa Ana, CA 92702-4048
Facsimile No. (714) 834-2395

Attachment A

EXHIBIT D

GRANTOR

CITY OF TUSTIN,
a municipal corporation of the State of California

Date: _____

By: _____
Jeffrey C. Parker
City Manager

ATTEST:

Date: _____

By: _____
Jeffrey C. Parker
City Clerk

APPROVED AS TO FORM:

Date: _____

By: _____
David E. Kendig
City Attorney

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
COUNTY OF ORANGE)

On _____, 20__ before me, _____, a
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.

Signature _____

(Seal)

DISTRICT

ORANGE COUNTY FLOOD CONTROL
DISTRICT

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

By: 
Deputy

Date: 3-25-2014

By: _____
Shane Silsby, P.E., Director
OC Public Works
Orange County, California
Per Minute Order __

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
COUNTY OF ORANGE)

On _____, 20__ before me, _____, a
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.

Signature _____

(Seal)

EXHIBIT D

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 _____ of the said Board of Supervisors, and the ORANGE COUNTY FLOOD CONTROL DISTRICT consents to recordation thereof by its duly authorized officer.

ORANGE COUNTY FLOOD CONTROL DISTRICT

Dated: _____

By: _____
Shane Silsby, P.E., Director
OC Public Works
Per Minute Order dated _____

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

By:  _____
Deputy

Date: 3-25-2014

EXHIBIT E

Title Exceptions

The Easement Amendment and Access Easement are to be conveyed to DISTRICT free and clear from all liens, encumbrances, taxes, assessments, leases (recorded or unrecorded), covenants, conditions, restrictions, reservations, rights and easements except the exceptions listed below as itemized in that certain First American Title Company Preliminary Title Report No. NHSC-44235715(tc) dated 1/27/2014, an any title exceptions not required to be cleared pursuant to Section 4 (F).

1. Any installment of general and special county and city taxes, if any, allocable to a period subsequent to the time title is vested in DISTRICT.
3. The lien of special tax assessed pursuant to Chapter 2.5 commencing with Section 53311 of the California Government Code for Community Facilities District No. 13-01, as disclosed by Notice of Special Tax Lien recorded May 16, 2013 as Instrument No. 2013000296640 of Official Records.
4. The lien of supplemental taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code.
6. The terms and provisions contained in the document entitled "Short Form Notice of Agreement" recorded May 14, 2002 as Instrument No. 20020404589 of Official Records.
7. Easements, Covenants and Conditions contained in the deed from The United States of America, as Grantor, to the City of Tustin, California, as Grantee, recorded May 14, 2002 as Instrument No. 20020404594 of Official Records. Document re-recorded April 9, 2003 as Instrument No. 2003000392129 of Official Records.
8. The fact that the land lies within the boundaries of the MCAS Tustin Redevelopment Project Area, as disclosed by the document recorded June 18, 2003 as Instrument No. 2003000710836 of Official Records
9. Easements, Covenants and Conditions contained in the deed from Tustin Public Financial Authority, a joint powers authority organized and existing under the laws of the State of California, as Grantor, to City of Tustin, a California municipal corporation, as Grantee, recorded October 4, 2006 as Instrument No. 2006000661919 of Official Records. The effect of a document entitled "Reversion Quitclaim Deed", recorded August 5, 2010 as Instrument No. 2010000374995 of Official Records.
12. Abutter's rights of ingress and egress to or from Barranca Parkway and Red Hill Avenue have been dedicated or relinquished on the filed Map.

Project: Barranca Channel (F09) – Armstrong Avenue Crossing and Armstrong Avenue Storm Drain, Peters Canyon Channel (F06) and Peters Canyon Bikeway

Agreement No. D02-119

1 authorized designee, hereinafter referred to as "DIRECTOR," shall be DISTRICT'S
2 representative in all matters pertaining to this AGREEMENT.

3 **SECTION 4. TERM**

4 **4.1.** The term of this AGREEMENT shall commence upon execution by CITY and DISTRICT'S
5 Board of Supervisors, and shall terminate, with the exception of Sections 5.2. and 5.3.3.4.
6 below, upon completion and acceptance of all CHANNEL IMPROVEMENTS by
7 DIRECTOR in writing, based on the determination that the CHANNEL IMPROVEMENTS
8 have been satisfactorily completed per the approved BARRANCA CHANNEL PLANS and
9 the PETERS CANYON CHANNEL PLANS, except as noted in Section 4.2, below.

10 **4.2.** Those sections of this AGREEMENT that pertain to legal, policy and/or administrative
11 matters including the sections discussing "Indemnification," "Hazardous or Toxic Materials,"
12 "Successors and Assigns," "Attorney's Fees/Costs" and "Governing Law and Venue,"
13 (Sections numbered 12, 13, 15, 18 and 24 respectively), shall succeed the termination date
14 initiated by DIRECTOR'S written concurrence, as specified in Section 4.1, above.

15 **SECTION 5. CITY'S RESPONSIBILITIES**

16 **5.1. BARRANCA CHANNEL IMPROVEMENTS**

17 **5.1.1. Design and Construction.** Design and construct the BARRANCA CHANNEL
18 IMPROVEMENTS at no cost to DISTRICT. Construction shall not begin until
19 receiving the necessary encroachment permit(s) through PFRD/Public
20 Works/Engineering & Permit Services/County Property Permits, and paying all
21 required permit application and construction inspection fees. The BARRANCA
22 CHANNEL IMPROVEMENTS are being designed to convey the 100-year design
23 discharge for Barranca Channel with the assumption that the future Barranca
24 Channel will be a fully enclosed boxed channel. However, should the Barranca
25 Channel between Redhill Avenue and the Barranca Parkway crossing be
26 constructed in the future, different than the CITY'S assumption of a fully enclosed

Project: Barranca Channel (F09) – Armstrong Avenue Crossing and Armstrong Avenue Storm Drain, Peters Canyon Channel (F06) and Peters Canyon Bikeway

Agreement No. D02-119

1 boxed channel, and the determination made that the BARRANCA CHANNEL
2 IMPROVEMENTS are hydraulically deficient and incompatible with approved future
3 improvements of Barranca Channel, the CITY shall be responsible for
4 reconstruction or modification of the BARRANCA CHANNEL IMPROVEMENTS at
5 its sole cost. The CITY may assign design and construction responsibilities and
6 costs for BARRANCA CHANNEL IMPROVEMENTS to a private development
7 entity or other public entity other than the CITY, at its discretion. No such
8 assignment by CITY shall operate to release the CITY from any of its obligations
9 under this Agreement without the prior written approval of DISTRICT, which
10 approval DISTRICT may withhold or grant in the exercise of its sole discretion. The
11 CITY, its representatives or assignees shall be responsible to:

12 5.1.1.1. Administer and obtain all government agency approvals for said
13 BARRANCA CHANNEL IMPROVEMENTS, including, but not limited to the
14 selection of contractors, management of contractors' work, administration
15 of contractors for compliance with the requirements of all applicable local
16 building codes and other regulations.

17 5.1.1.2. Obtain prior to construction date, DISTRICT'S advance written approval of
18 any regulatory permits, including but not limited to permits from the U. S.
19 Army Corps of Engineers (COE) and California State Department of Fish
20 and Game (CSDF&G) or other agencies, which obligate the DISTRICT with
21 special maintenance requirements.

22 5.1.1.3. Appoint a representative to function as CITY'S resident engineer, to
23 coordinate all aspects of construction of BARRANCA CHANNEL
24 IMPROVEMENTS with DISTRICT.

25 5.1.1.4. Provide all necessary preliminary engineering, identification and location of
26 utilities, and construction engineering services for BARRANCA CHANNEL

Project: Barranca Channel (F09) – Armstrong Avenue Crossing and Armstrong Avenue Storm Drain, Peters Canyon Channel (F06) and Peters Canyon Bikeway

Agreement No. D02-119

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IMPROVEMENTS, at no cost to DISTRICT.

5.1.1.5. Construct BARRANCA CHANNEL IMPROVEMENTS in accordance with approved plans and specifications, in conformance with all terms and conditions of the approved encroachment permit(s), and to the written satisfaction of DISTRICT.

5.1.1.6. Provide DISTRICT, its agents, employees and invitees, with access to BARRANCA CHANNEL IMPROVEMENT areas, to perform their responsibilities pursuant to this AGREEMENT.

5.1.1.7. Obtain DISTRICT’S advance written approval of proposed changes to approved BARRANCA CHANNEL PLANS, prior to implementing such changes.

5.1.1.8. Furnish one (1) set of mylar copies of the approved “As-Built” construction drawings for the BARRANCA CHANNEL IMPROVEMENTS to DISTRICT.

5.1.2. Right-of-Way. Plans for BARRANCA CHANNEL IMPROVEMENTS currently do not necessitate any additional right-of-way dedication to the DISTRICT given that all BARRANCA CHANNEL IMPROVEMENTS are proposed within the existing Barranca Channel right-of-way easement. In the event of any unforeseen additional right-of-way needs, the CITY or its assignees shall at no cost to the DISTRICT, dedicate, or cause the dedication of additional right-of-way necessary for the BARRANCA CHANNEL improvements to the DISTRICT in a form meeting the written approval of the DISTRICT.

5.1.3. Hazardous Material Assessments. Obtain, or through conditions of development approval cause others to obtain, DISTRICT’S approval of a Hazardous Materials Assessment of any additional TUSTIN LEGACY right-of-way that is to be conveyed to DISTRICT, prior to DISTRICT’S acceptance of such right-of-way.

5.2. FUTURE BARRANCA CHANNEL IMPROVEMENTS

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5.2.1. Barranca Channel Reconstruction Responsibilities. Following the completion of BARRANCA CHANNEL IMPROVEMENTS, the CITY agrees to correct at no cost to DISTRICT, any portion of the BARRANCA CHANNEL IMPROVEMENTS found in the future, to be deficient in or incompatible with providing a 100-year level of protection due to inconsistencies between the CITY’S design assumptions made in constructing future improvements, and more detailed drainage studies that are completed regarding any future improvements to the Barranca Channel (between Redhill Avenue and the Barranca Parkway crossing). DISTRICT’S review and written approval of any subsequent efforts to correct such a deficiency, shall be obtained via the permit application process through the PFRD/Public Works/Engineering & Permit Services/County Property Permits. Any proposed reconstruction of the BARRANCA CHANNEL IMPROVEMENTS as part of the future improvement may be done in coordination with the ultimate improvements of the Barranca Channel. Nothing shall preclude the CITY from assigning this obligation to another public or private entity other than the COUNTY or DISTRICT. No such assignment by CITY shall operate to release the CITY from any of its obligations under this Agreement without the prior written approval of DISTRICT, which approval DISTRICT may withhold or grant in the exercise of its sole discretion.

5.2.2. Design and Construction of Ultimate Barranca Channel Improvements. Design and construct ultimate Barranca Channel improvements between Redhill Avenue and the Barranca Parkway crossing, at no cost to DISTRICT, either through the City of Tustin, Tustin Community Redevelopment Agency or conditions of development approval within the TUSTIN LEGACY after receiving DISTRICT’S written approval for any proposed improvements and any regulatory permits, including but not limited to permits from the COE and CSDF&G or other

1 agencies, which obligate the DISTRICT with special maintenance requirements,
2 provided however that the CITY shall not be responsible for any construction of
3 ultimate Barranca Channel improvements necessary for any Barranca Parkway
4 roadway widening that is proposed by the City of Irvine and/or the City of Santa
5 Ana.

6 **5.2.3. Right-of-way for Ultimate Barranca Channel Improvements.** In the event that
7 additional right-of-way is needed to accommodate future ultimate Barranca
8 Channel improvements, the CITY or its assignees shall at no cost to the
9 DISTRICT, dedicate, or cause the dedication of such additional right-of-way to the
10 DISTRICT in a form meeting the written approval of the DIRECTOR.

11 **5.3 PETERS CANYON CHANNEL IMPROVEMENTS**

12 **5.3.1 Design and Construction.** Design and construct PETERS CANYON CHANNEL
13 IMPROVEMENTS and improvements for the Peters Canyon Bikeway, a regional
14 Class I “paved off-road bikeway” adjacent to Parcels 33 and 34, at no cost to
15 DISTRICT, either through the City of Tustin, Tustin Community Redevelopment
16 Agency or conditions of development approval within TUSTIN LEGACY. COUNTY
17 reserves the right to request CITY to include design and construction of a regional
18 riding and hiking trail at COUNTY’s full expense in CITY project. Construction shall
19 not begin until receiving the necessary encroachment permit(s) through
20 PFRD/Public Works/Engineering and Permit Services/County Property Permits,
21 and paying all required permit application and construction inspection fees.
22 PETERS CANYON CHANNEL IMPROVEMENTS shall be designed to convey the
23 100 year design discharge for Peters Canyon Channel with the assumption that the
24 design and construction will be located within the right-of-way limits defined in
25 Section 2.2. However, in conjunction with the assumed right-of-way limits, the
26 CITY agrees that it will be responsible for any reconstruction, modification or added