

Recording Requested By:

City of Fontana

Mail To:

City of Fontana 8353
Sierra Avenue
Fontana, CA 92335
ATTN: Department of Engineering

Record without fee subject to
Gov't Code 6103 and 27383

Project: Hawker-Crawford Channel
System No.: 1.806-1A
Parcel No.: 190
Dept. Code: 11600

**EASEMENT
DEED**
Sewer Pipeline

D.P. No.: 1.800 /
APN: 0226-075-62 (portion)
Date: January 4, 2023

The undersigned grantor(s) declare(s):

DOCUMENTARY TRANSFER TAX \$0.00 Conveyance to Government Entity R&T

- 11922 computed on full value of property conveyed, or
- computed on full value less liens and encumbrances remaining at the time of sale
- Unincorporated Area City: Fontana

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the **SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT**, a body corporate and politic, hereinafter referred to as "**Grantor**", does hereby grant to **CITY OF FONTANA**, a Municipal Corporation hereinafter referred to as "**Grantee**",

a non-exclusive easement (hereinafter "easement" or "grant") for Grantee to excavate, construct, install, replace, maintain, repair and use one subterranean public sewer pipeline and necessary surface appurtenances thereto (collectively, the "**Sewer Pipeline**"), said easement is located on a certain portion ("**Easement Area**") of Grantor's real property ("**Fee Property**") situated in the City of Fontana, County of San Bernardino, which Sewer **Easement Area** is more particularly described in Exhibit "A", Legal Description and shown on Exhibit "B", Plat, attached hereto and made a part hereof.

The easement is granted subject to all permits, agreements, licenses, leases, easements, reservations, restrictions, terms, conditions, covenants, encumbrances, liens and claims of title which may affect said **Easement Area**. The use of the word "grant" herein shall not imply any warranty on the part of the Grantor with respect to the **Easement Area**.

THE EASEMENT IS GRANTED SUBJECT TO THE FOLLOWING TERMS, CONDITIONS AND RESTRICTIONS:

1. This easement is subject to the **Grantor's** superior right to use the **Easement Area** and **Grantor** reserves to itself and its successors and assigns a continuing right to use and make any improvements to the **Easement Area** for **Grantor's** use without any compensation to **Grantee**, whether for damages or otherwise, or claims by **Grantee** with respect thereto.

2. **Grantor** may temporarily close off the **Easement Area** (or portions thereof) to **Grantee** (which includes **Grantee Parties**) if **Grantor** determines such closure is necessary to preserve the public's health and safety as determined in **Grantor's** sole discretion and shall make best efforts to give **Grantee** at least 48 hours prior notice of any planned closure. In the event of a closure of the **Easement Area** by **Grantor**, **Grantor** shall promptly commence reasonable efforts to mitigate the condition necessitating the closure and, subject to the preservation of the public's health and safety, diligently prosecute efforts to achieve the reopening of the **Easement Area**.

3. The **Easement Area** may be used solely for access to and from, and to excavate, construct, install, replace, maintain and repair, remove, and use a Sewer Pipeline and for no other purposes. Construction and installation of the Sewer Pipeline requires issuance by **Grantor** to **Grantee** of one or more permits. **Grantee** shall not park vehicles within the **Easement Area** nor permit any portion of the **Easement Area** to be blocked off or obstructed in any manner. **Grantor** shall at all times have free and clear access over and across the **Easement Area**.

4. **Grantee** shall at all times and at its sole cost and expense, maintain the **Easement Area** and all improvements constructed (or caused to be constructed) thereon, as permitted by this easement. The **Grantee** shall keep the **Easement Area** in good condition and repair and free of weeds and trash. **Grantee** shall be responsible for any damage caused by the use of the **Easement Area** by **Grantee** and any permitted improvements thereon, and **Grantee** shall promptly repair all such damage to **Grantor's** complete satisfaction at **Grantee's** sole cost and expense.

5. **Grantor** may grant further permits, agreements, licenses, leases, easements, reservations, restrictions, terms, conditions, covenants, encumbrances, liens, or other rights over the **Easement Area** (or portions thereof) for the benefit of other entities not parties to this grant, provided that such further grants do not materially and adversely interfere with **Grantee's** use of the **Easement Area**, as reasonably determined by **Grantor**.

6. **Grantee** shall submit, in advance of the commencement of any improvements, all plans for installation and construction or reconstruction of improvements within the **Easement Area** to **Grantor** for review and approval, which approval shall be granted or denied in **Grantor's** sole discretion and **Grantee** shall obtain a permit from the **Grantor** for such work. Any permitted improvements constructed by **Grantee** shall be at **Grantee's** sole cost and expense.

7. Any Sewer Pipeline constructed by or on behalf of **Grantee** on the **Easement Area** shall be designed to be, and be constructed underground, with the exception of necessary surface appurtenances, which will be located in a manner not to interfere with or impede the **Grantor's** use of the surface of the **Easement Area**, or **Grantor's** conveyance of storm water or implementation of other flood control measures, or **Grantor's** flood control improvements, if any, now existing or later installed on the **Easement Area** or **Fee Property** by **Grantor**. **Grantee's** construction of its Sewer Pipeline shall be in accordance with the plan approved by **Grantor** in accordance with Paragraph 6 and must further meet all applicable construction standards and laws

applicable to the Sewer Pipeline, including (but not limited to) allowing vehicles meeting an H-20 wheel loading to travel over and across the said pipeline without causing any damage to said pipeline or the **Easement Area**. With the exception of gross negligence or intentional misconduct by **Grantor** or **Grantor's** employees, agents, contractors, volunteers, licensees and/or invitees, **Grantor** shall not be responsible for any damage to the **Grantee's** Sewer Pipeline caused by vehicles or equipment traveling or operating over and across said pipeline, or by erosion or other water- related occurrences, or by any other causes.

8. **Grantee** shall not park vehicles within the **Easement Area**, nor permit any portion of the **Easement Area** to be blocked off or obstructed in any manner (except temporarily during periods of **Grantee's** construction and/or maintenance of the Sewer Pipeline as approved by **Grantor** in its sole discretion). **Grantor** shall at all times have free and clear access through and over the **Easement Area** (except as temporarily approved by **Grantor** during periods of **Grantee's** construction and/or maintenance) for vehicular traffic.

9. Any costs incurred by **Grantor** for **Grantor's** use of the **Easement Area**, whether to construct, reconstruct, maintain, or otherwise use the **Easement Area** for **Grantor's** existing and/or future improvements on the **Easement Area** that are attributable to the use of the **Easement Area** by **Grantee** and the presence of any permitted **Grantee** improvements shall be solely borne by **Grantee**. In the event that **Grantor** determines that it is necessary for any permitted **Grantee** improvements located on the **Easement Area** to be relocated or modified due to **Grantor's** use of the **Easement Area**, **Grantee** shall promptly remove or modify said improvements as required by **Grantor**, at **Grantee's** sole cost and expense.

10. **Grantor** shall not be required to contribute any part of the costs associated with **Grantee's Sewer Pipeline** on the **Easement Area** and furthermore, if **Grantor** is included in an assessment district to pay such costs, **Grantee** shall promptly reimburse **Grantor** for any assessment therefore levied upon it upon **Grantor** demand.

11. **Grantee** agrees to indemnify, defend (with counsel reasonably approved by **Grantor**) and hold harmless the **Grantor** and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this grant of easement from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by **Grantor** on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The **Grantee's** indemnification obligation applies to **Grantor's** "active" as well as "passive" negligence but does not apply to the **Grantor's** "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

12. **Grantee** agrees to comply with the following insurance requirements:

A. Additional Insured - All policies, except for the Workers' Compensation policy, shall contain endorsements naming the **Grantor** and its officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of this easement. The additional insured endorsements shall not limit the scope of coverage for the **Grantor** to vicarious liability but shall allow coverage for the **Grantor** to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

B. Waiver of Subrogation Rights - **Grantee** shall require the carriers of required coverages to waive all rights of subrogation against the **Grantor**, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit **Grantee** and **Grantee's** employees or agents from waiving the right of subrogation prior to a loss or claim. **Grantee** hereby waives all rights of subrogation against the **Grantor**.

- C. Policies Primary and Non-Contributory - All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the Grantor.
- D. Severability of Interests - **Grantee** agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross-liability exclusions that preclude coverage for suits between **Grantee** and the **Grantor** or between the **Grantor** and any other insured or additional insured under the policy.
- E. Proof of Coverage - **Grantee** shall furnish Certificates of Insurance to **Grantor** evidencing the insurance coverage, including endorsements, as required, prior to **Grantee's** execution of this easement document, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to **Grantor**, and **Grantee** shall maintain such insurance throughout the term of the easement. Within fifteen (15) days of the mutual execution of this easement, **Grantee** shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.
- F. Acceptability of Insurance Carrier - Unless otherwise approved by the San Bernardino County Department of Risk Management (hereinafter "Risk Management"), insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A-VII".
- G. Acceptability of Insurance Carrier - Unless otherwise approved by the San Bernardino County Department of Risk Management (hereinafter "Risk Management"), insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A-VII".
- H. Deductibles and Self-Insured Retention - Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.
- I. Failure to Procure Coverage - In the event that any policy of insurance required under this easement does not comply with the requirements, is not procured, or is canceled and not replaced, the **Grantor** has the right but not the obligation or duty to obtain insurance if it deems necessary and any premiums paid by the **Grantor** will be promptly reimbursed by **Grantee**.
- J. Insurance Review - Insurance requirements are subject to periodic review by the **Grantor** during normal business hours and no more than twice during any single calendar year. **Grantor's** Director of Risk Management or designee is authorized, but not required, to increase, reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or needed, or not needed, to protect the interests of the **Grantor**. In addition, if Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the **Grantor**, inflation, or any other item reasonably related to the **Grantor's** risk.

K. Any failure, actual or alleged, on the part of the **Grantor** to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the **Grantor**.

L. **Grantee** agrees to provide insurance set forth in accordance with the requirements herein. If **Grantee** uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, **Grantee** agrees to amend, supplement or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of this easement.

M. Without in any way affecting the indemnity herein provided and in addition thereto, **Grantee** shall secure and maintain throughout the duration of the easement the following types of insurance with limits as shown:

(1) Workers' Compensation/Employers Liability - A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of **Grantee** and all risks to such persons under this easement.

If **Grantee** has no employees, it may certify or warrant to the **Grantor** that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the **Grantor's** Director of Risk Management.

With respect to **Grantees** that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

(2) Commercial/General Liability Insurance - **Grantee** shall carry General Liability Insurance covering all operations performed by or on behalf of **Grantee** providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- (a) Premises operations and mobile equipment.
- (b) Products and completed operations.
- (c) Broad form property damage (including completed operations).
- (d) Explosion, collapse and underground hazards.
- (e) Personal injury
- (f) Contractual liability.
- (g) \$2,000,000 general aggregate limit.

(3) Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence. If **Grantee** is transporting one or more non-employee passengers in **Grantee's** use of the **Easement Area**, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence. If **Grantee** owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

(4) Umbrella Liability Insurance - An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

(5) Environmental Liability Insurance – **Grantee** shall, during any installation, construction, or reconstruction of improvements within the **Easement Area**, carry Environmental Liability Insurance with a combined single limit of not less than five million (\$5,000,000) per claim or occurrence. Subsequent to the installation, construction, or reconstruction of improvements within the **Easement Area**, **Grantee** may carry Environmental Liability Insurance with a combined single limit of not less than two million (\$2,000,000) per claim or occurrence. The required additional insured endorsement shall protect **Grantor** without any restrictions.

If insurance coverage is provided on a "claims made" policy, the "retroactive date" shall be shown and must be before the date this easement is mutually executed. The claims made insurance shall be maintained or "tail" coverage provided throughout the duration of the easement and for a minimum of five (5) years after the termination of this easement.

(6) Subcontractor Insurance Requirements. **Grantee** agrees to require all parties, including (but not limited to) subcontractors, architects, or others it hires or contracts with related to the excavation, construction, installation, replacement, maintenance and repair, removal, use, or any other work performed by or on behalf of **Grantee** at the **Easement Area** to provide insurance covering the contracted operation with the same policies and provisions required of **Grantee** in this easement and with builder's risk property insurance, providing all risk, including theft coverage for all property and materials to be used for or related to the work and said insurance policies shall not have any coinsurance penalty. All policies required under this provision shall include waiver of subrogation rights against **Grantor** and shall name **Grantor** as an additional insured. **Grantee** agrees to monitor and review all such coverage and assumes all responsibility ensuring that such coverage is provided as required herein.

13. In the event of (a) abandonment by **Grantee** of the **Easement Area** and the rights granted herein, or (b) **Grantor** exercises its right to declare this easement deed null and void pursuant to Paragraph 20 hereof, this easement shall automatically terminate, and **Grantee** shall thereupon, without cost to **Grantor**, restore the **Easement Area** to a condition as near as possible to that which existed on the date this easement is executed by **Grantor**, and deliver to **Grantor** a quitclaim of the **Easement Area** and the rights granted herein. Non-use of the **Easement Area** for a period of ten (10) years from the date this easement is executed by **Grantor** shall constitute conclusive evidence of such abandonment.

14. In the event of a default by **Grantee** of the terms, conditions and/or restrictions set forth herein, other than those provided in Paragraph 13, **Grantor** shall give written notice to **Grantee** of the same. Except in the case of an emergency as determined by **Grantor** in its sole discretion, **Grantee** shall have thirty (30) calendar days from the date of the **Grantor's** notice to cure the default. If **Grantee**, within thirty (30) calendar days from the date of the **Grantor's** notice to cure the default (except in the case of an emergency as determined by **Grantor** in its sole discretion), commences the elimination of such default and continuously and diligently proceeds in good faith to eliminate such default, then the period for correction shall be extended for such length of time as is reasonably necessary to complete such correction. In the event **Grantee** fails to cure the default within the time prescribed herein, **Grantor** has the right but not the obligation to cure said default at the sole expense of **Grantee** and without liability to **Grantor** for loss thereof. **Grantee** and **Grantee's** successors and assigns agree to pay **Grantor** on demand all expenses incurred by **Grantor** in curing such default of **Grantee**. In addition, **Grantor** may pursue all other remedies available to it at law or in equity and such remedies shall be cumulative.

15. Notwithstanding the application of Section 1542 of the California Civil Code, which provides:

"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or the released party."

Grantee expressly waives and relinquishes all rights and benefits afforded them by said Section 1542, and any and all similar laws of any State or territory of the United States. This agreement shall act as a release of future claims that may arise from the above-mentioned claims, actions, losses, damages, liabilities, and injuries whether currently known, unknown, foreseen, or unforeseen. **Grantee** understands and acknowledges the significance and consequences of such specific waiver of Section 1542 and hereby assumes full responsibility for any claims, actions, losses, damages, liabilities, and injuries that it or its employees, contractors, agents, and volunteers may hereafter incur.

16. The easement, as well as the terms, conditions and restrictions, created hereby shall constitute covenants running with the land and shall be binding upon and shall benefit all successors and assigns of **Grantor** and **Grantee** respectively.

17. This easement shall be governed by the laws of the State of California.

18. This grant may only be amended by a writing executed by both **Grantor** and **Grantee** and recorded in the Official Records of the County of San Bernardino.

19. If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorneys' fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorneys' fees directly arising from a third-party legal action against a party hereto and payable under Paragraph 11.

20. If a court of competent jurisdiction declares any provision of this easement invalid, illegal, or otherwise unenforceable, the remaining provisions shall continue in full force and effect, unless the purpose of this easement is frustrated. In such case **Grantor** reserves the right, in its sole discretion, to declare this easement deed null and void, and the **Grantee** shall then comply with the restoration terms of Paragraph 13 hereof. Notwithstanding anything to the contrary herein, Paragraphs 11 and 15 shall survive the termination or expiration of this easement.

ACCEPTANCE OF TERMS AND CONDITIONS

IN WITNESS WHEREOF **Grantor** and **Grantee** have executed this Easement Deed the day and year written below and have agreed to be bound by the terms and conditions hereof.

GRANTOR: SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT

By: _____

Name: _____

Title: Chair, Board of Supervisors

Date: _____

GRANTEE: CITY OF FONTANA

By: _____

Name: _____

Title: _____

Date: _____