

Recording Requested By:

City of Colton

Mail To:

City of Colton

160 S. 10th Street

Colton, CA 92324

ATTN: Engineering Division

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

Project: Santa Ana River

System No.: 2.701

Parcel No.: 114

Dept. Code: 11600

**EASEMENT DEED
(Public Road)**

D.P. No.: 2-700

APN: 0163-361-18 (portion)

Date: March 22, 2023

The undersigned grantor(s) declare(s):

DOCUMENTARY TRANSFER TAX \$

- ☐ 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: Colton

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 COLTON, a California municipal corporation**, hereinafter referred to as "**Grantee**", a **non-exclusive easement** (hereinafter "easement" or "grant") for street, highway, road and/or bridge purposes including, without limitation, appurtenances such as culverts, slopes, embankments, curbs and sidewalks located on a certain portion ("**Easement Property**") of **Grantor's** real property ("**Fee Property**") situated in the County of San Bernardino, State of California and more particularly described in **Exhibit "A"**, Legal Description attached hereto and made a part hereof, and shown on **Exhibit "B"**, Plat, attached hereto and made a part hereof.

This 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 Property**. The use of the word "grant" herein shall not imply any warranty on the part of the **Grantor** with respect to the **Easement Property**.

Mail Tax Statement As Directed Above

This easement is also subject to the following terms, conditions and restrictions:

1. This easement is subject to the **Grantor's** superior right to use the **Easement Property**, and **Grantor** reserves to itself and its successors and assigns a continuing right to use and make any improvements to the **Easement Property** for **Grantor's** use.
2. **Grantor** may grant further permits, agreements, licenses, leases, easements, reservations, restrictions, terms, conditions, covenants, encumbrances, liens, or other rights over the **Easement Property** (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 Property**, as determined by **Grantor** in its sole discretion.
3. Prior to commencing the construction or replacement of **Grantee's** street, highway, road and/or bridge, and appurtenances pursuant to this grant, **Grantee** shall submit all plans for the excavation, construction, installation, removal, and replacement of such improvements to **Grantor** for **Grantor's** review and approval with **Grantor** to issue to **Grantee** a permit if such plans are approved by **Grantor** in **Grantor's** sole, reasonable discretion. The existence of **Grantee's** street, highway, road and/or bridge and attendant easement does not give **Grantee** any rights to do further work of any type within the **Easement Property** without first obtaining additional permit(s) from **Grantor** pursuant to the above-stated requirements and conditions.
4. **Grantee** shall be responsible for securing and maintaining all necessary permits and approvals from other appropriate local, state and federal agencies for its use of the **Easement Property**, and **Grantee** shall comply with all applicable laws and regulations concerning the construction of the street, highway, road and/or bridge and its use of **Easement Property**. **Grantor** shall cooperate with **Grantee**, in good faith, in obtaining any necessary permits and approvals.
5. Any street, highway, road, bridge or culvert constructed by or on behalf of **Grantee** on the **Easement Property** shall be designed to not interfere with or impede **Grantor's** conveyance of storm water or **Grantor's** flood control improvements, if any, now existing or later installed on the **Easement Property** by **Grantor**. **Grantee's** construction of its street, highway, road and/or bridge shall be in accordance with the plan approved by **Grantor** in accordance with paragraph 3 and must further meet all applicable construction standards and applicable laws,
6. **Grantee** shall not change the existing grade, modify the topography, or impede or diminish the floodwater conveyance capacity of the **Easement Property** or the **Fee Property** without prior written consent of **Grantor** (in **Grantor's** sole discretion).
7. **Grantee** shall at all times, and at its sole cost and expense, maintain the **Easement Property** and its street, highway, road and/or bridge improvement project constructed (or caused to be constructed) by **Grantee** and/or its agents in good condition and repair, and free of trash, debris, weeds and unauthorized uses. **Grantee** shall perform all necessary maintenance associated with the entire improvement project, such as bridge structure, box culverts and appurtenant structures including but not limited to wingwalls, curb and gutter, sidewalks and appurtenances thereto constructed within the **Easement Property** in conjunction with the street, highway, road and/or bridge project, and shall remove graffiti, and any unauthorized uses or encroachments within or on any part of the box culvert structure and its appurtenances, as well as performing all necessary weed abatement work within the **Easement Property**.

8. **Grantor** shall at all times have free and clear access through and over the **Easement Property** (except as temporarily approved by **Grantor** during periods of **Grantee's** construction and/or maintenance).

9. Any costs incurred by **Grantor** for **Grantor's** use of the **Easement Property**, including (but not limited to) any costs incurred by **Grantor** for the construction, reconstruction, maintenance, and use of any **Grantor** flood control improvements, if any, now existing or later installed on the **Easement Property** or the **Fee Property** attributable to the presence of **Grantee's** street, highway, road and/or bridge shall be borne by **Grantee**, at **Grantee's** sole cost. In the event that **Grantor** requires that **Grantee's** street, highway, road and/or bridge located on the **Easement Property** be relocated, modified, or protected due to **Grantor's** existing or future use of the **Easement Property** or the **Fee Property**, **Grantee** shall promptly relocate, modify, or protect **Grantee's** street, highway, road and/or bridge as directed by **Grantor** and **Grantee** shall bear, at its sole expense, all such relocation, modification and protection costs. **Grantee** shall pothole its facilities and provide such information to **Grantor** upon **Grantor's** request, or **Grantor** shall perform such potholing at **Grantee's** expense. Notwithstanding anything to the contrary in this paragraph, prior to relocation, modification or protection of **Grantee's** street, highway, road and/or bridge except in cases of emergency as determined by **Grantor** in its sole discretion when no prior notice is required, **Grantor** shall provide **Grantee** with written notice and 2 years to complete any required relocation, modification or protection within the **Easement Property**.

10. **Grantor** shall not be required to contribute any part of the costs associated with **Grantee's** street, highway, road and/or bridge on the **Easement Property** 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**, the **County of San Bernardino** and their authorized officers, employees, agents and volunteers (**Indemnitees**) 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 **Indemnitees'** "Active" as well as "passive" negligence but does not apply to the **Indemnitees'** "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

12. **Grantee** agrees to comply with the following insurance requirements (for the purpose of this paragraph, **Grantor** shall be deemed to include the **County of San Bernardino**):

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 noncontributory 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 **Grantee's** acceptance 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. 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.

H. 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**.

I. Insurance Review - Insurance requirements are subject to periodic review by the **Grantor**. **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.

J. 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**.

K. **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.

L. 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 Property**, 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** with a combined single limit of not less than five million (\$5,000,000) 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 the easement was signed by **Grantor**. 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 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** for the street, highway, road and/or bridge at the **Easement Property** 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 street, highway, road and/or bridge 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 **Grantee's** default of the terms, conditions and/or restrictions set forth herein, **Grantor** shall give written notice to **Grantee** of the same. Except in the case of the 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, reasonable 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**, or **Grantee's** successors and assigns, 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.

14. 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.

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

16. 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.

17. 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.

18. 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 WITNESS WHEREOF **Grantor** and **Grantee** have executed this Easement Deed for street, highway, road and/or bridge purposes on the day and year written below and have agreed to be bound by the terms and provisions hereof.

GRANTOR:

SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT

By: _____

Name: _____

Title: Chair, Board of Supervisors

Date: _____

ACCEPTANCE OF TERMS AND CONDITIONS

This is to certify that the interest in real property conveyed by the Easement Deed for street, highway, road and/or bridge purposes by the SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT to the CITY OF COLTON, is accepted by the undersigned officer on behalf of Grantee and Grantee agrees to be bound by the terms and provisions hereof.

GRANTEE:

By: _____

Name: _____

Title: _____

Date: _____

Exhibit “A”

Legal Description of Easement Property

July 27, 2021
BKF Job No: 20191182

LEGAL DESCRIPTION
EXHIBIT A: ROADWAY EASEMENT
APN 0163-361-18

Real property situate in the City of Colton, County of San Bernardino, State of California, described as follows:

Being a portion of the lands of the San Bernardino County Flood Control District (S.B.C.F.C.D.), a body corporate and politic, being a portion of Lot 11 of Bandini Donation as shown by map on file in Book 3 of Maps at Page 24, Records of San Bernardino County lying within that certain Grant Deed recorded on October 4, 1974 in Book 8530, Page 995 of Official Records of San Bernardino together with any portion of the vacated Riverside Road by the Resolution of the City Council of the City of Colton recorded on November 7, 1960 in Book 5278, Page 150 of Official Records of San Bernardino County and excepting those portions known as Peters Right of Way described in that Grant Deed recorded June 15, 1964 in Book 6169, Page 721 of Official Records of San Bernardino County, more particularly described as follows:

COMMENCING at a point in the southerly line of right-of-way described in that deed to State of California recorded on May 31, 1939 in Book 1349, Page 292 of Official Records of San Bernardino County said point being South 84°18'19" West, 51.76 feet (per record "South 84°45'39" West, 51.76'") from the southeasterly corner of said Lot 11 of Bandini Donation (3 M.B. 24) said point being the southeasterly corner of the exception to Parcel G said Grant Deed (Bk. 6169, Pg. 721, O.R.);

Thence continuing along the last described course being the southerly line of said exception, South 84°18'19" West, 137.82 feet to the southeasterly corner of said Parcel G, said point being the **TRUE POINT OF BEGINNING**;

Thence along the easterly line of said Parcel G and the northerly extension thereof North 7°42'40" East, 308.99 feet;

Thence South 84°55'20" East, 25.28 feet to the westerly line of South La Cadena Drive;

Thence along said westerly line South 5°04'04" West, 301.15 feet to an angle point in said westerly line being also the southeasterly corner of said lands of S.B.C.F.C.D.;

Thence along the southerly line of said lands South 84°18'19" West, 40.24 feet to the **TRUE POINT OF BEGINNING**.

Containing an area of 9,854 square feet, more or less.

For: BKF Engineers



Davis Thresh, P.L.S. No. 6868

11/16/2020

Dated



Exhibit “B”

Plat of Easement Property

LANDS OF SAN BERNARDINO COUNTY
FLOOD CONTROL DISTRICT
POR. LOT 11 OF 3 MB 24 WITHIN BK. 8530,
PG. 995, O.R. WITH BK. 5278, PG. 150,
O.R., EXCEPTING BK. 6169, PG. 721, O.R.
APN 0163-361-18

ROADWAY EASEMENT
9,854 SQ. FT.±

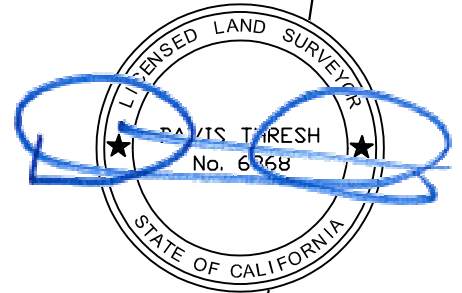
NOTE: THIS PLAT IS SOLELY
AN AID IN LOCATING THE
PARCEL DESCRIBED IN THE
ATTACHED DOCUMENT, IT IS
NOT A PART OF THE WRITTEN
DESCRIPTION THEREIN.

LANDS OF SAN
BERNARDINO COUNTY
FLOOD CONTROL DISTRICT
PARCEL G
BK. 6169, PG. 721, O.R.
APN 0163-361-05

LANDS OF SAN
BERNARDINO COUNTY
FLOOD CONTROL DISTRICT
APN 0163-361-13

LEGEND & ANNOTATION

POC = POINT OF COMMENCEMENT
TPOB = TRUE POINT OF BEGINNING
—— = DESCRIBED AREA
—— = LOT LINE



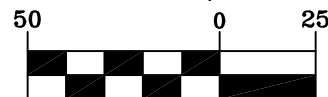
S. LA CADENA DR.

RANCHO SAN BERNARDINO
JURUPA

SOUTHEASTERLY CORNER
OF LOT 11, 3 M.B. 24

POC

TPOB



(SCALE IN FEET)



CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Easement Deed _____, 202__, from San Bernardino County Flood Control District, a body corporate and politic, to the City of Colton, a California Municipal Corporation, by the within instrument, the provisions of which are incorporated by this reference as though fully set forth in this Certification, is hereby accepted by the undersigned officer(s) on behalf of the City of Colton pursuant to authority conferred by the City Council and the Grantee consents to recordation thereof by its duly authorized officer.

Dated: _____

By: _____
William R. Smith
City Manager