

Recording Requested By:

City of Ontario

Mail To:

City of Ontario
City Clerk
303 East "B" Street
Ontario, CA 91764
ATTN: Engineering Division

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

Project: Lower Deer Crk Chnl
System No.: 1.501
Parcel No.: 278
Dept. Code: 11600

**EASEMENT DEED
(Public Road and Utilities)**

D.P. No.: 1.500 / 104
APN: 0218-141-07 (portion)
Date: October 19, 2021

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: Ontario

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 ONTARIO, a 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 and utilities 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 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**.
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**, **San Bernardino County**, 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 **San Bernardino County**):

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 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 San Bernardino County.

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 13.

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: Chairman, 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 ONTARIO, 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

EXHIBIT A
EASEMENT DEED OF RIGHT OF WAY DEDICATION
LEGAL DESCRIPTION

A.P.N. 0218-141-07

The land referred to in this description is situated in the City of Ontario, State of California, County of San Bernardino, and is described as follows:

BEING A PORTION OF THAT PART OF THE NORTH ONE-HALF OF THE SOUTH ONE-HALF OF THE SOUTHWEST ONE-QUARTER, OF SECTION 11, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO GOVERNMENT SURVEY, SAID PART DESCRIBED AS A STRIP OF LAND 100 FEET IN WIDTH IN THAT DOCUMENT RECORDED JANUARY 29, 1948 IN BOOK 2115 PAGE 32 OF OFFICIAL RECORDS OF SAN BERNARDINO COUNTY, SAID PORTION BEING ALL OF SAID PART DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHERLY LINE OF SAID 100 FOOT WIDE STRIP WITH THE EASTERLY LINE OF ARCHIBALD AVENUE, 30.00 FOOT WIDE HALF STREET;

THENCE NORTH 44°57'41" EAST A DISTANCE OF 4.19 FEET ALONG SAID NORTHERLY LINE OF SAID STRIP TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 750.00 FEET;

THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 03° 34' 29" AN ARC DISTANCE OF 46.79 FEET TO A POINT ON A LINE THAT IS PARALLEL WITH AND 35.00 FEET EASTERLY OF SAID EASTERLY LINE OF ARCHIBALD AVENUE;

THENCE SOUTH 0°02'19" EAST ALONG SAID PARALLEL LINE A DISTANCE OF 42.83 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 779.00 FEET, SAID CURVE BEING PARALLEL WITH AND 29.00 FEET SOUTHERLY OF SAID NORTHERLY LINE OF SAID STRIP, A RADIAL LINE THROUGH SAID POINT BEARS SOUTH 46° 15' 02" EAST;

THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 01° 12' 43" AN ARC DISTANCE OF 16.48 FEET;

THENCE CONTINUING ALONG SAID PARALLEL LINE SOUTH 44°57'41" WEST A DISTANCE OF 1.37 FEET TO A POINT ON A LINE PARALLEL WITH AND 22.50 FEET EASTERLY OF SAID EASTERLY LINE OF ARCHIBALD AVENUE;

THENCE SOUTH 0°02'19" EAST ALONG SAID PARALLEL LINE A DISTANCE OF 59.40 FEET TO A POINT ON A LINE THAT IS PARALLEL WITH AND 29.00 FEET NORTHERLY OF THE SOUTHERLY LINE OF SAID 100 FEET WIDE STRIP;

THENCE NORTH 44°57'41" EAST ALONG SAID PARALLEL LINE A DISTANCE OF 17.68 FEET TO A POINT ON A LINE PARALLEL WITH AND 35.00 FEET EASTERLY OF SAID EASTERLY LINE OF ARCHIBALD AVENUE;

THENCE SOUTH 0°02'19" EAST ALONG SAID PARALLEL LINE A DISTANCE OF 41.01 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID 100 WIDE STRIP;

THENCE SOUTH 44°57'41" WEST ALONG SAID SOUTHERLY LINE A DISTANCE OF 49.50 FEET TO A POINT ON SAID EASTERLY LINE OF ARCHIBALD AVENUE;

THENCE NORTH 0°02'19" WEST ALONG SAID EASTERLY LINE OF ARCHIBALD AVENUE A DISTANCE OF 141.42 FEET TO THE POINT OF BEGINNING.

CONTAINING 4,228 SQ. FT. (0.10 ACRES) MORE OR LESS




CARLA E. BERARD, P.L.S.



DATE

Exhibit “B”

Plat of Easement Property

SHEET 1 OF 2

EASEMENT DEED OF RIGHT OF WAY DEDICATION

NOTE:

THIS PLAT IS SOLELY AN AID IN THE PARCEL DESCRIBED IN EXHIBIT "A", IT IS NOT A PART OF THE WRITTEN LEGAL DESCRIPTION.

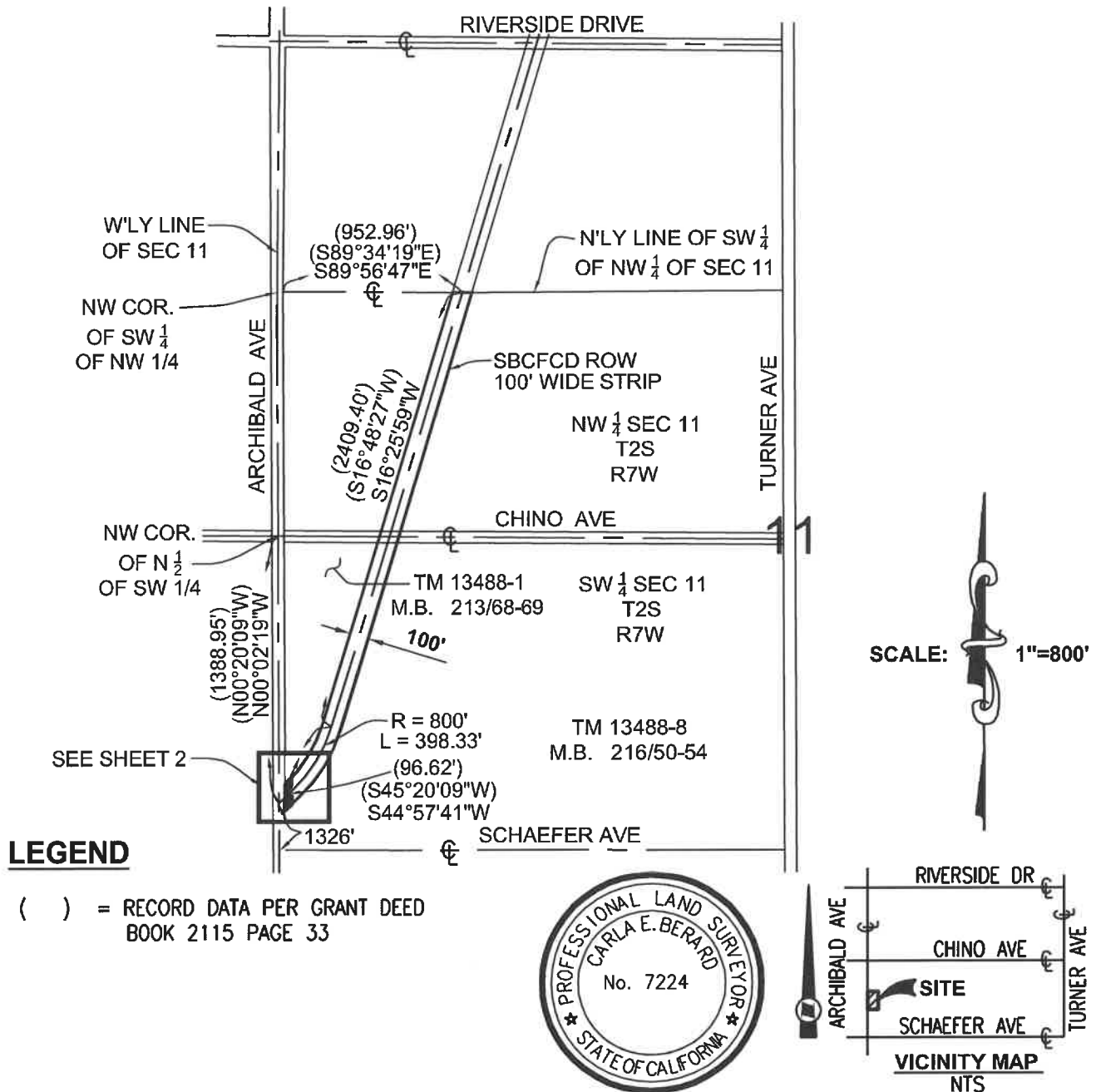


EXHIBIT B

SHEET 2 OF 2

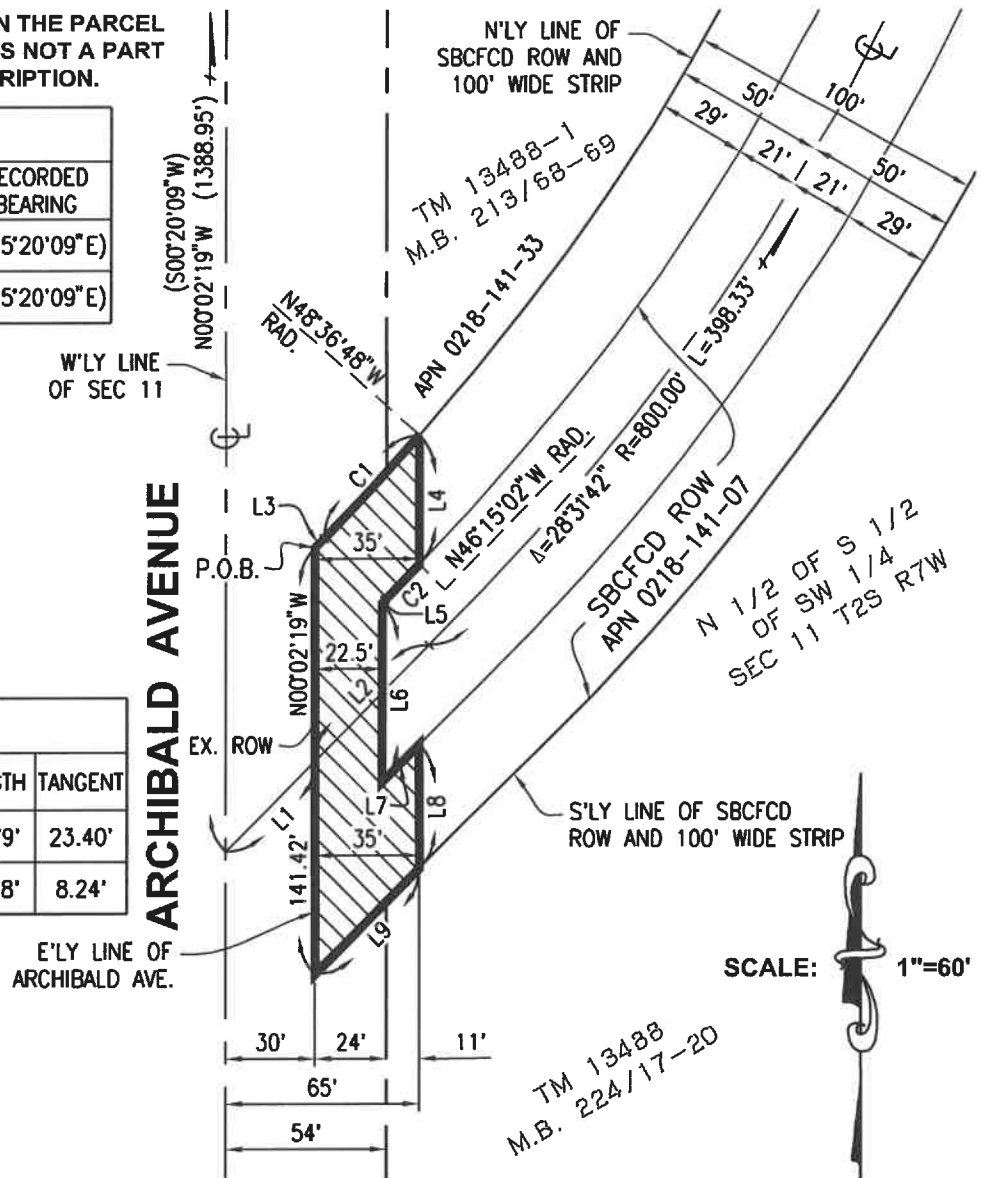
EASEMENT DEED OF RIGHT OF WAY DEDICATION

NOTE:

THIS PLAT IS SOLELY AN AID IN THE PARCEL DESCRIBED IN EXHIBIT "A", IT IS NOT A PART OF THE WRITTEN LEGAL DESCRIPTION.

LINE TABLE			
LINE #	LENGTH	BEARING	RECORDED BEARING
L1	(42.43')	N44°57'41"E	(N45°20'09"E)
L2	(54.19')	N44°57'41"E	(N45°20'09"E)
L3	4.19'	N44°57'41"E	
L4	42.83'	N0°02'19"W	
L5	1.37'	N44°57'41"E	
L6	59.40'	N0°02'19"W	
L7	17.68'	S44°57'41"W	
L8	41.01'	N0°02'19"W	
L9	49.50'	N44°57'41"E	

CURVE TABLE				
CURVE #	RADIUS	DELTA	LENGTH	TANGENT
C1	750.00'	3°34'29"	46.79'	23.40'
C2	779.00'	1°12'43"	16.48'	8.24'



LEGEND



= EASEMENT DEED OF RIGHT OF WAY DEDICATION AREA TO THE CITY OF ONTARIO FOR PUBLIC STREET AND PUBLIC UTILITY PURPOSES CONTAINING 0.10 ACRES (4,228 SQ. FT.) MORE OR LESS

() = RECORD DATA PER GRANT DEED BOOK 2115 PAGE 33



LDKING
Engineers/Surveyors

975 N. HAVEN AVENUE
Suite 200
Ontario, CA 91764
Phone: (909) 945-0526

**SKETCH TO ACCOMPANY
LEGAL DESCRIPTION**

Certificate of Acceptance

This is to certify that the interest in real property conveyed by Easement Deed for permanent easement and right of way for public road and public utility purpose by San Bernardino County Flood Control District to the City of Ontario, California ("Grantee"), a municipal corporation, is hereby accepted by the undersigned officer pursuant to authority conferred by Resolution 2007-148 of the City Council adopted on December 18th, 2007, and the Grantee consents to the recordation thereof by its duly authorized officer.

CITY OF ONTARIO: _____
Khoi Do P.E. / City Engineer / Date

ATTEST: _____
City Clerk