

DEPARTMENT OF THE ARMY
EASEMENT FOR STORM DRAIN RIGHT-OF-WAY
LOCATED ON
BREA FLOOD CONTROL BASIN
ORANGE COUNTY, CALIFORNIA

THE SECRETARY OF THE ARMY under and by virtue of the authority vested in the Secretary by Title 10, United States Code, Section 2668, having found that the granting of this easement will be in the public interest and will not substantially injure the interests of the United States, hereby grants to, **CITY OF FULLERTON**, a Municipal Corporation of the state of California, hereinafter referred to as the Grantee, an easement for a storm drain (Unit A3) and appurtenant structures, hereinafter referred to as the Facilities, located within Tract 46, Drawing No. 122-K-19, over, across, in and upon the lands of the United States as identified in **EXHIBIT A**, hereinafter referred to as the Premises, and which are attached hereto and made a part hereof.

THIS EASEMENT is granted subject to the following conditions:

1. TERM

This easement is granted for a term of fifty (50) years, beginning October 16th, 2025, and ending October 15th, 2075.

2. CONSIDERATION

The consideration for this easement shall be the operation, and maintenance of a storm drain (Unit A3) and appurtenant structures for the benefit of the United States and the general public in accordance with the conditions herein set forth.

3. ADMINISTRATIVE FEES

Pursuant to Title 10 U.S.C. §2695, the Grantee shall pay annually in advance the amount of THREE THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$3,500.00) for the administration of this Easement, hereinafter referred to as the Administrative Fees, payable to USACE Finance Center, CEFC-AD, 5722 Integrity Drive, Millington, Tennessee 38054-5005, with "Easement No. DACW09-2-24-2221 Annual Administrative Fees" written on the check. Administrative Fees are subject to annual review and adjusted based on actual costs.

4. NOTICES

All correspondence and notices to be given pursuant to this easement shall be addressed, if to the Grantee, to City of Fullerton Public Works / Engineering Department ATTN: David Grantham, 303 W. Commonwealth Avenue, Fullerton, CA, 92832; and if to the United States, United States Army Corps of Engineers ATTN: Real Estate Contracting Officer, 915 Wilshire Boulevard, Suite 1109, Los Angeles, CA, 90017-3409, or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope or wrapper addressed as aforesaid, and deposited, postage prepaid, in a post office regularly maintained by the United States Postal Service.

5. AUTHORIZED REPRESENTATIVES

Except as otherwise specifically provided, any reference herein to "Secretary", "Real Estate Contracting Officer", or "said officer" shall include their duly authorized representatives. Any reference to "Grantee" shall include assignees, transferees and their duly authorized representatives.

6. SUPERVISION BY THE REAL ESTATE CONTRACTING OFFICER

The construction, operation, maintenance, repair or replacement of said Facilities, including culverts and other drainage Facilities, shall be performed at no cost or expense to the United States and subject to the approval of the Real Estate Contracting Officer, Los Angeles District, hereinafter referred to as Said Officer. Upon the termination of the above activities, the Grantee shall restore the Premises to the satisfaction of Said Officer, in accordance with condition No. 23 Restoration below. The use and occupation of the Premises for the purposes herein granted shall be subject to such rules and regulations as Said Officer prescribes in writing from time to time.

7. APPLICABLE LAWS AND REGULATIONS

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

8. CONDITION OF PREMISES

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

9. INSPECTION AND REPAIRS

The Grantee shall inspect the Facilities at reasonable intervals and immediately repair any defects found by such inspection or when required by said officer to repair any such defects.

10. PROTECTION OF GOVERNMENT PROPERTY

The Grantee shall be responsible for any damage that may be caused to property of the United States by the activities of the Grantee under this easement, and shall exercise due diligence in the protection of all property located on the Premises against fire or damage from any and all causes. Any property of the United States damaged or destroyed by the Grantee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Grantee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefor by the Grantee in an amount necessary to restore or replace the property to a condition satisfactory to said officer.

11. RIGHT TO ENTER

The right is reserved to the United States, its officers, agents, and employees to enter upon the Premises at any time and for any purpose necessary or convenient in connection with government purposes, to make inspections, to remove timber or other material, except property of the Grantee, to flood the Premises and/or to make any other use of the lands as may be necessary in connection with government purposes, and the Grantee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

12. TRANSFERS AND ASSIGNMENTS

Without proper written approval by said Real Estate Contracting Officer, the Grantee shall neither transfer nor assign this easement or any part thereof nor grant any interest, privilege or license whatsoever in connection with this easement. The provisions and conditions of this easement shall extend to and be binding upon and shall inure to the benefit of the representatives, successors and assigns of the Grantee.

13. INDEMNITY

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

14. SUBJECT TO EASEMENTS

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

15. REQUIRED SERVICES

The Grantee shall furnish through said Facilities such services as may be required from time to time for governmental purposes, provided that payment for such service will be made by the United States at rates which shall be mutually agreeable but which shall never exceed the most favorable rates granted by the Grantee for similar service.

16. RELOCATION OF FACILITIES

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

17. TERMINATION

This easement may be terminated by the Secretary upon 30 days written notice to the Grantee if the Secretary shall determine that the right-of-way hereby granted interferes with the use or disposal of said land by the United States, or it may be revoked by the Secretary for failure of the Grantee to comply with any or all of the conditions of this easement, or for non-use for a period of two (2) years, or for abandonment.

18. SOIL AND WATER CONSERVATION

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

19. ENVIRONMENTAL PROTECTION

- a. Within the limits of their respective legal powers, the parties hereto shall protect the Premises against pollution of its air, ground and water. The Grantee shall comply with any laws, regulations, conditions or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the Premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by the said Environmental Protection Agency, or any Federal, state, interstate or local governmental agency are hereby made a condition of this easement. The Grantee shall not discharge waste or effluent from the Premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.
- b. The use of any pesticides or herbicides within the Premises shall be in conformance with all applicable Federal, state, interstate, and local laws and regulations. The Grantee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the Premises.
- c. The Grantee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from the Grantee's activities, the Grantee shall be liable to restore the damaged resources.

20. PRELIMINARY ASSESSMENT SCREENING

Intentionally omitted per ER200-2-3 w Errata, para. 10-10 b. (2).

21. HISTORIC PRESERVATION

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

22. NON-DISCRIMINATION

The Grantee shall not discriminate against any person or persons because of race, color, age, sex, handicap, national origin, or religion in the conduct of operations on the Premises.

23. RESTORATION

On or before the termination or revocation of this easement, the Grantee shall, without expense to the United States and within such time as said officer may indicate, restore the Premises to the satisfaction of said officer. In the event the Grantee shall fail to restore the Premises, at the option of said officer, said improvements shall either become the property of the United States without compensation therefore, or said officer shall have the option to perform the restoration at the expense of the Grantee, and the Grantee shall have no claim for damages against the United States or its officers or agents for such action.

24. DISCLAIMER

This instrument is effective only insofar as the rights of the United States in the Premises are concerned; and the Grantee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this easement does not eliminate the necessity for obtaining any Department of the Army permit which may be required pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (30 Stat. 1151; 33 U.S.C. § 403), Section 404 of the Clean Water Act (33 U.S.C. § 1344) or any other permit or license which may be required by Federal, state, interstate or local laws in connection with the use of the Premises.

25. DETERMINATION REGARDING EXECUTIVE ORDER 13658

- a. It has been determined this contract is not subject to Executive Order 13658 or the regulations issued by the Secretary of Labor in 29 CFR Part 10 pursuant to the Executive Order.
- b. If a duly authorized representative of the United States discovers or determines, whether before or subsequent to executing this contract, that an erroneous determination regarding the applicability of Executive Order 13658 was made, contractor, to the extent permitted by law, agrees to indemnify and hold harmless the United States, its officers, agents, and employees, for and from any and all liabilities, losses, claims, expenses, suites, fines, penalties, judgments, demands or actions, costs, fees, and damages directly or indirectly arising out of, caused by, related to, resulting from or in any way predicated upon, in whole or in part, the erroneous Executive Order 13658 determination. This includes contractor releasing any claim or entitlement it would otherwise have to an equitable adjustment to the contract and indemnifying and holding harmless the United States from the claims of subcontractors and contractor employees.

EASEMENT NO. DACW09-2-24-2221

THIS EASEMENT is not subject to Title 10, United States Code, Section 2662, as amended.

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of the Army this _____ day of _____, 2025.

Cheryl L. Connett
District Chief, Real Estate Division
Real Estate Contracting Officer

THIS EASEMENT is also executed by the Grantee this _____ day of _____, 2025.

Signature

David Grantham
City Engineer/
Assistant Director of Public Works

Signature

Stephen Bise
Public Works Director

DEPARTMENT OF THE ARMY

CORPS OF ENGINEERS, SOUTH PACIFIC DIVISION,
 LOS ANGELES DISTRICT, REAL ESTATE DIVISION
 ADMINISTRATIVE & TECHNICAL SERVICES SECTION
 915 WILSHIRE BOULEVARD, SUITE 1109
 LOS ANGELES, CALIFORNIA 90017

DATE:	29 December 2022
UNIT:	"A-3"
ACQUISITION TRACT:	46
ASSESSOR'S PARCEL:	028-050-54
ACREAGE:	0.055+/- Acres
GRANTEE:	City of Fullerton
PROJECT:	Brea Flood Control Basin
DOCUMENT NO.:	DACW09-2-24-2221
LOCATION:	City of Fullerton, Orange County, California
CESPL-AM-AT FILE: DWG No.	122-K-19

In the City of Fullerton, County of Orange, State of California, being that portion of the Southeast 1/4 of Section 21, township 3 South, Range 10 West, San Bernardino Meridian, described as follows:

A strip of land 10 feet wide, 5 feet on either side of the following described centerline:

Beginning at an angle point in the Westerly boundary line of Parcel 46 as described in certified copy of Final Judgment of Condemnation, recorded in Book 1295, Page 286 of Official Records of said Orange County; said angle point being the Northerly terminus of that certain course described in said Judgment of Condemnation as having a bearing of South 00° 06' 38" East (record South 00° 05' 12" East) and a length of 239.96 feet; thence from said **Point of Beginning** and entering said Parcel 46, North 86° 23' 22" East, a distance of 240.00 feet to the point of ending.

The sidelines of said strip of land shall be prolonged or shortened so as to terminate in said Westerly boundary of Parcel 46.

Containing 2,404 square feet.

Prepared under the direction of

Keith M. Klagge
Keith M. Klagge, P.L.S. 9534

12/29/2022
Date



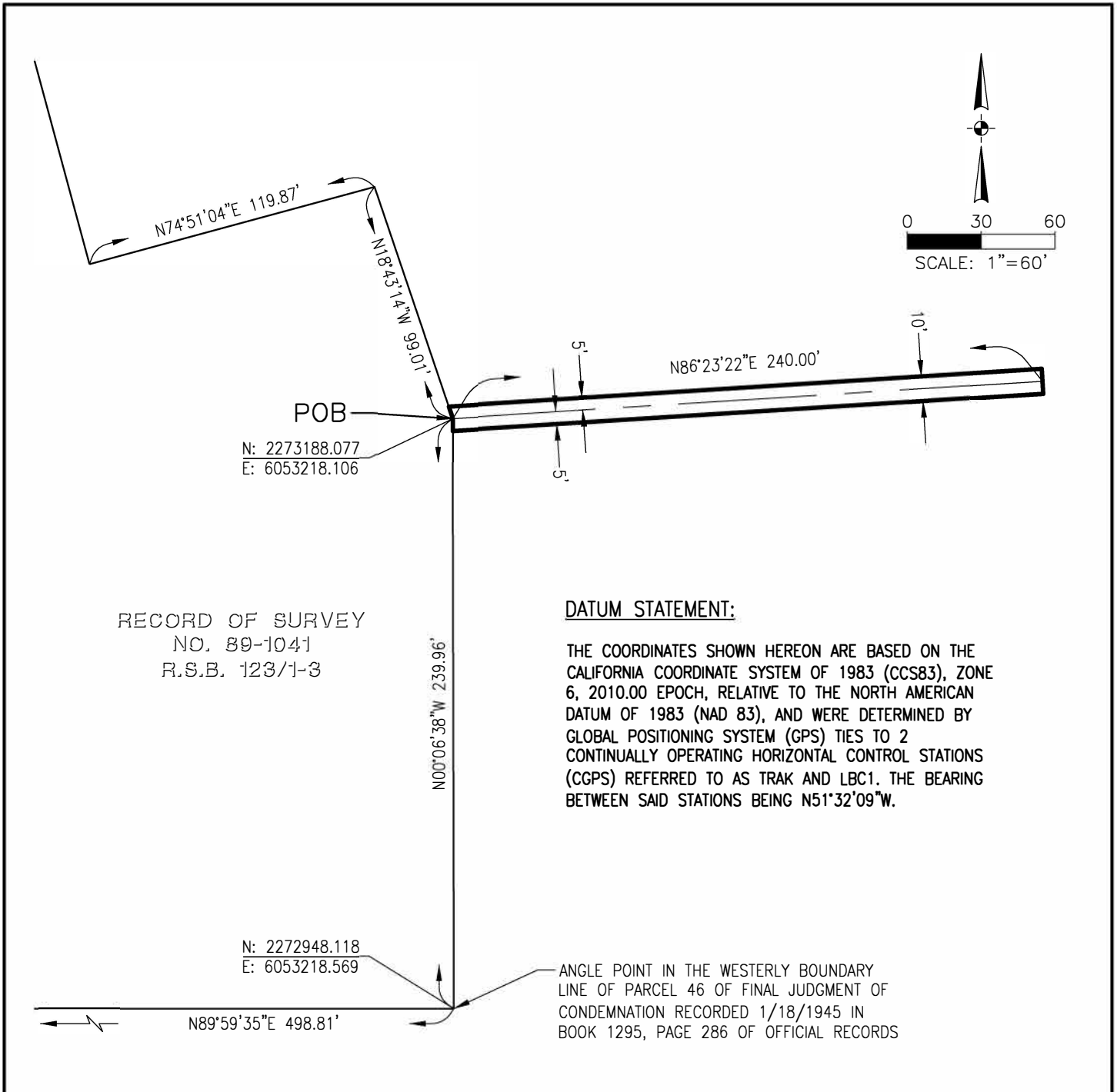
Checked by: Douglas A. Ritchie
Douglas A. Ritchie

30 JAN 2024
Date

////////////////////////////////////END OF DESCRIPTION////////////////////////////////////

NOTE: Department of the Army Engineer Circular No. 405-1-03. "MAPPING" dated 30 Dec 2000, Chapter 3, Section XII "LEGAL DESCRIPTIONS", Paragraph 3-42d, requires all Corps of Engineers legal descriptions to include parenthetical Systeme Internationale (metric) equivalents for all foot-pound expressions of distance and/or area. However, to avoid cluttering and confusion, the same circular's Section V "PROJECT MAP DETAILS", Paragraph 3-24y, recommends against such dual dimensioning on maps.

EXHIBIT "A"



RECORD OF SURVEY
NO. 89-1041
R.S.B. 123/1-3

DATUM STATEMENT:

THE COORDINATES SHOWN HEREON ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983 (CCS83), ZONE 6, 2010.00 EPOCH, RELATIVE TO THE NORTH AMERICAN DATUM OF 1983 (NAD 83), AND WERE DETERMINED BY GLOBAL POSITIONING SYSTEM (GPS) TIES TO 2 CONTINUALLY OPERATING HORIZONTAL CONTROL STATIONS (CGPS) REFERRED TO AS TRAK AND LBC1. THE BEARING BETWEEN SAID STATIONS BEING N51°32'09\"W.

N: 2272948.118
E: 6053218.569

ANGLE POINT IN THE WESTERLY BOUNDARY LINE OF PARCEL 46 OF FINAL JUDGMENT OF CONDEMNATION RECORDED 1/18/1945 IN BOOK 1295, PAGE 286 OF OFFICIAL RECORDS

EXHIBIT "A"

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, SOUTH PACIFIC DIVISION
LOS ANGELES DISTRICT, REAL ESTATE DIVISION

BREA FLOOD CONTROL BASIN

EASEMENT TO CITY OF FULLERTON

UNIT "A-3"
DACW09-2-24-2221

PREPARED BY:



1340 Reynolds Ave., Ste. 110
Irvine, California 92614
Phone: (949) 768-0731

CITY OF FULLERTON
COUNTY OF ORANGE
STATE OF CALIFORNIA

15 DEC 2022

DWG: 122-K-19

22COF15 - Unit A-3 Closure Report.txt

12/29/2022

Closure Report

Thu Dec 29 13:21:06 2022

Deed Name: Unit A-3

Starting Coordinates: Northing 2273188.077, Easting 6053218.106

Bearing	Distance	Type	Radius	Arc Len	Delta	Tangent
Description						
N 18°43'14" W	5.18	LINE				
N 86°23'22" E	241.35	LINE				
S 03°36'38" E	10.00	LINE				
S 86°23'22" W	240.31	LINE				
N 00°06'38" W	5.01	LINE				

Ending Coordinates: Northing 2273188.079, Easting 6053218.106

Area: 2404.14 S.F., 0.0552 Acres

Total Perimeter Distance> 501.846

Closure Error Distance> 0.0016 Error Bearing> N 19°02'55" W

Closure Precision> 1 in 308511.2