

RECORDING REQUESTED BY:

**CENTRAL CONTRA COSTA  
SANITARY DISTRICT**

AFTER RECORDING RETURN TO:

CENTRAL CONTRA COSTA  
SANITARY DISTRICT  
ENVIRONMENTAL SERVICES DIVISION  
5019 IMHOFF PLACE  
MARTINEZ, CA 94553-4392

A.P. N.: 125-010-022 & 023 (portion of)

## **GRANT OF EASEMENT**

For good and valuable consideration, including but not limited to the agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, CONTRA COSTA COUNTY, a political subdivision of the State of California, ("GRANTOR"), hereby grants to Central Contra Costa Sanitary District, a special district of the State of California, ("GRANTEE"), a non-exclusive right to a perpetual subsurface easement and right of way for installing, constructing, reconstructing, removing, replacing, repairing, upgrading, maintaining, operating and using one 96-inch concrete pipe for sanitary sewage conveyance and one 10-inch high-density polyethylene pipe for recycled water conveyance and appurtenances thereto (such equipment, the "Facilities"), and for no other purposes whatsoever, along and in that certain parcel of land situated in the County of Contra Costa, State of California, described as follows:

**FOR LEGAL DESCRIPTION AND PLAT, SEE ATTACHED EXHIBITS "A" AND "B"**

The foregoing grant is made subject to the following terms and conditions:

- 1. CONSIDERATION:** As consideration for the GRANTOR granting this easement, GRANTEE shall pay to GRANTOR those amounts set forth in that certain Easement Purchase Agreement dated as of June \_\_, 2009 between GRANTEE and GRANTOR.
- 2. GRANTOR'S USE OF THE PROPERTY:** The property subject to this easement (the "Property") is used primarily for airport and other public purposes. The Property is within an area known as the Air Operations Area (the "AOA"). AOA means any area used or intended to be used by an airport for the landing, takeoff, or surface maneuvering of aircraft. The

AOA includes paved or unpaved areas that are used or intended to be used for the unobstructed movement of aircraft in addition to its associated runway, taxiway or apron. In addition, the Property is used as a golf course pursuant to a long term lease between the GRANTOR and Buchanan Fields Golf Course, Inc. GRANTEE acknowledges and agrees that the uses described herein constitute the primary uses of the Property and that any and all rights granted or implied by this grant of easement are secondary and subordinate to the primary uses of the Property by the GRANTOR, its successors and assigns. GRANTEE may not, at any time, use or permit the public to use the easement area in any manner that will interfere with or impair the GRANTOR's primary use of the Property. GRANTEE may not fence the Property without the prior written approval of the GRANTOR, and, if fencing is installed, GRANTEE shall remove the fencing when requested by GRANTOR to do so. GRANTEE may not otherwise obstruct the easement area.

3. **GRANTOR TITLE:** GRANTEE hereby acknowledges GRANTOR's title to the Property and agrees never to assail or resist said title.

4. **CONSTRUCTION AND MAINTENANCE ACTIVITIES:**

(a) Safety. It is the explicit intention of this Section 4 to ensure the safety of aircraft, the safety of GRANTEE's equipment and personnel, and the free and unobstructed movement of aircraft on the airport. In its construction and maintenance activities, GRANTEE will take all actions deemed necessary by the Director of Airports to ensure the safety of aircraft and the unimpeded operation of the airport and will ensure that its contractors do the same. Such actions include, but are not limited to those set forth below.

(b) Access for Construction and Maintenance Activities. Prior to conducting any activities on the Property (including, but not limited to, installation, construction, reconstruction, removal, replacement, repair, upgrade, maintenance, operation, and excavation), other than those described in subsections 4(c) and 4(d), GRANTEE shall (i) submit specific plans and specifications to the Director of Airports for his review, which review may include a review by the County's Public Works Department ("Public Works"), (ii) obtain a written permit from the Director of Airports for such entry, and (iii) obtain an encroachment permit, if required by Public Works. GRANTEE may not enter the Property with equipment to conduct activities pursuant to this subsection at any time until a written permit for such entry has been issued

by the Director of Airports or his designee. GRANTEE shall bear the entirety of the cost of any review in addition to the cost of any engineering and inspections that result from the review and/or GRANTEE's activities on the Property.

For protection of the airport's airspace, all GRANTEE activities are subject to the Federal Regulation Title 14 Part 77 standards and notification requirements for objects affecting navigable airspace (FAA Permit Form 7460). The permit application must contain sufficient detail to enable the Director of Airports to determine if the Federal Aviation Administration ("FAA") review and/or approval will be required. The allowable mobile object height limit is the most conservative restriction for an runway protection zone on the Property, as defined in the then-current Buchanan Field Airport (CCR) Master Plan (the "Height Limit"). As of the effective date of this grant of easement, the Height Limit is no greater than 9.5 feet above the existing ground surface elevation.

Applications for permission to enter the Property to conduct activities pursuant to this subsection should be submitted to the Director of Airports at least ten (10) working days prior to the proposed entry.

Once GRANTEE has obtained its written permission from the Director of Airports to enter the Property to conduct activities pursuant to this subsection, GRANTEE shall advise the Director of Airports, or his designee, of the specific date, time and duration of planned activities on the Property in order to permit the Director of Airports to issue Notices to Airmen ("NOTAMS") within the 72-hour notice period required by FAA regulations when surface activities occur within an AOA. In addition, GRANTEE shall at all times conduct its activities in conformance with any conditions imposed by the Director of Airports.

(c) Access for Inspection Purposes – Person Entry Without Use of Equipment. If GRANTEE requires access to the Property for inspection purposes only, by person-entry without the use of equipment, the notification process is as follows: GRANTEE shall submit a written request for permission to the Director of Airports. GRANTEE may not enter the Property until the Director of Airports or his designee has granted such permission. It is recommended that applications for permission to enter the Property to conduct activities pursuant to this subsection be submitted to the Director of Airports at least five (5) working days prior to the proposed entry.

(d) Access for Emergency Repairs. If GRANTEE needs immediate access to the Property to effect Emergency Repairs, as defined below, GRANTEE shall contact the Director of Airports or his designee and any Co-users, as defined in subsection (e) below, and request immediate access for the emergency work. For purposes of this grant of easement, Emergency Repairs means all necessary work to respond to an unplanned event that would pose an imminent threat of overflow or would release sewage or recycled water to the environment if no immediate action were taken by the GRANTEE and where emergency work has been authorized by the GRANTEE's Board of Directors as permitted in Section 22050(b)(1) of the California Public Contract Code.

To enable the Director of Airports to (i) evaluate the request, and (ii) determine if NOTAMS are necessary, when requesting access to effect Emergency Repairs, GRANTEE shall provide sufficient information of the time the Emergency Work is to take place, the expected duration of the work, as well as the height of equipment proposed to be used,. If the Emergency Repairs require use of equipment that exceeds the Height Limit, FAA review and/or approval may be required, which could delay access for the emergency work. The Director of Airports will endeavor to respond to requests for access for Emergency Repairs as promptly as possible.

(e) Co-Users. It is understood and agreed that GRANTOR may have leases, licenses, easements and/or rights with others for all or a portion of the Property (all holders of such leases, licenses, easements and rights, including Buchanan Fields Golf Course, Inc., the "Co-users"). GRANTEE shall obtain the consent of any Co-user with a possessory interest in the Property prior to entering the Property for any purpose. GRANTEE shall reimburse all Co-users for any costs and expenses they incur as a result of GRANTEE's actions pursuant to this grant of easement, including any loss of business.

(f) Compliance with Laws. GRANTEE shall perform all of its activities in compliance with all applicable statutes, ordinances, resolutions, regulations, orders, and policies now in existence or adopted from time to time by the United States, the State of California, the County of Contra Costa and other government agencies with jurisdiction over Buchanan Field Airport.

**MODIFICATION, RELOCATION AND REMOVAL OF GRANTEE'S FACILITIES:** This grant of easement is subject and subordinate to the prior and continuing right and obligation of GRANTOR, its successors and assigns, and Co-users to use the Property for airport and other public purposes and GRANTOR expressly reserves the right to use the Property for such purposes.

GRANTEE agrees that in its use of this easement and the exercise of its rights under the easement, it shall in no way interfere with GRANTOR's reserved rights hereunder.

If the Director of Airports determines that any portion of the Facilities unreasonably interferes with GRANTOR'S reserved rights, the Director of Airports, or his designee, may require GRANTEE to relocate or modify the Facilities. Upon such determination, GRANTEE and GRANTOR shall take the following steps:

- i. If the GRANTOR's non-emergency use of the easement area may require the relocation or modification of the Facilities, GRANTOR shall notify GRANTEE of same in writing at least seven months in advance of the scheduled start of any work to be performed by GRANTOR.
- ii. GRANTEE shall respond to said notice within 14 days of receipt with requested information and, if deemed necessary, a statement of intent to evaluate reasonable alternatives to the GRANTOR's proposal.
- iii. Within 45 days following the mailing of the statement of intent to study alternative designs, GRANTEE shall submit to the GRANTOR reasonable engineering or construction alternatives to GRANTOR's plan.
- iv. GRANTOR agrees to consider, in good faith, any reasonable engineering or construction alternatives, timely submitted by GRANTEE. Late proposals, submitted past the 45-day period that jeopardize GRANTOR's construction schedule will not be considered.
- v. If a reasonable engineering or construction alternative exists that satisfies airport and other public purposes and makes the relocation or modification of the Facilities unnecessary, then GRANTEE must pay GRANTOR any incremental increase in design,

right of way and construction costs that are incurred by GRANTOR in evaluating and/or carrying out that reasonable alternative.

- vi. GRANTOR shall provide GRANTEE notice of the final engineering or construction decision within 60 days of receipt of proposed alternatives from GRANTEE. If the GRANTOR, in the reasonable exercise of its discretion, determines that relocation or modification of the Facilities is necessary to accommodate GRANTOR's use, at least four months prior to scheduled advertisement date of GRANTOR work, GRANTOR shall so notify GRANTEE in writing (such notice, the "Final Notice").
- vii. At GRANTEE's sole cost and expense, GRANTEE shall complete modifications or relocations of the Facilities prior to the commencement of GRANTOR's work unless a later date has been agreed upon by the GRANTOR prior to sending the Final Notice.
- viii. Where possible, GRANTOR will grant to GRANTEE, at no cost to GRANTEE, replacement easements (within the existing GRANTOR's right of way, if available), if such replacement easements are necessary to achieve the relocation or modification. GRANTEE shall deliver an executed quitclaim deed, quitclaiming all of GRANTEE's interest in and to the property from which GRANTEE is relocated. The GRANTOR will also actively pursue the use of federal or state monies for relocation of GRANTEE's facilities where applicable. GRANTEE shall bear GRANTOR's cost to pursue such monies.
- ix. If the GRANTOR does not, or is unable to, grant a replacement easement, and such failure or inability causes a reduction in the easement area, GRANTOR will reimburse GRANTEE that portion of the Grant Fee that equals the Grant Fee multiplied by a fraction, the numerator of which is the reduction in the size of the easement area, expressed in square feet and the denominator of which is the size of the original easement area, expressed in square feet. GRANTOR's obligation to reimburse any portion of the Grant Fee expires on the twentieth anniversary of the date of this agreement.

5. **DAMAGE TO GRANTOR'S PROPERTY:** (a) If as a result of use of the easement area by GRANTEE, or any other person or entity acting under GRANTEE's direction or control, any of

GRANTOR's property, facilities, landscaping or other improvements is removed or damaged, then, (i) at GRANTOR's discretion and direction, GRANTOR may repair or replace such property, facilities, landscaping or other improvements, with all reasonable costs and expenses to be paid by GRANTEE (including but not limited to engineering costs and legal costs of collecting any unpaid expenses) or (ii) GRANTEE shall repair or replace such property, facilities, landscaping or other improvements to a condition that is equivalent to or better than their condition prior to being removed or damaged at GRANTEE'S sole cost and expense,. In the event that GRANTEE fails to commence the required work within 30 days after being directed to do so by GRANTOR, or such reasonable extension as GRANTOR may agree to in writing, or fails to complete the required work within a reasonable time thereafter, GRANTOR may perform or complete the work at the expense of GRANTEE, which expense GRANTEE agrees to pay to GRANTOR promptly upon demand, including but not limited to engineering costs and any legal expenses incurred to collect such costs.

(b) If GRANTEE damages the facilities or improvements of any Co-users, GRANTEE shall repair or replace such facilities at GRANTEE's sole cost and expense.

6. **DAMAGE TO GRANTEE'S FACILITIES:** GRANTOR has no responsibility for the protection, maintenance, damage to, or removal of GRANTEE's facilities, appurtenances or improvements, caused by or resulting from GRANTOR's use of the Property or work or operation thereon. It is the sole responsibility of the GRANTEE to provide and maintain adequate protection and surface markings for its own facilities. Subject to the foregoing, if GRANTEE's properly marked, protected and maintained facilities are damaged by the active negligence or willful misconduct of GRANTOR, including GRANTOR's contractors or agents, GRANTOR shall repair the damage at its sole cost and expense or, at the discretion of and upon written notice from GRANTOR, the damage shall be repaired by GRANTEE and the pre-approved reasonable cost of such repair shall be paid for by GRANTOR. Under no circumstance shall GRANTOR have any liability to GRANTEE or to any other person or entity, for consequential or special damages, or for any damages based on loss of use, revenue, profits or business opportunities arising from or in any way relating to, any damage or destruction of any portion of the GRANTEE's facilities. GRANTEE hereby acknowledges that its sole remedy for any damage to or destruction of any portion of GRANTEE's facilities, to the extent GRANTOR is otherwise so liable under this grant of easement, shall be to require GRANTOR to repair or replace the damaged or destroyed portion or reimburse GRANTEE for

GRANTEE's pre-approved reasonable costs and expenses in repairing or replacing the damaged or destroyed portion.

7. **NON-EXCLUSIVE EASEMENT:** The easement granted hereunder is non-exclusive. This easement is subject and subordinate to all existing rights, rights of way, licenses, leases, reservations, franchises and easements of record, or that would be evident from a physical inspection or accurate survey of the Property, in and to the Property. Nothing contained herein may be construed to prevent GRANTOR from granting other easements, franchises, licenses, leases or rights of way over said lands, provided however, that said subsequent uses do not unreasonably prevent or obstruct GRANTEE's easement rights hereunder.

GRANTEE shall be responsible for any and all damages, costs and loss of revenue or income due to disruption of business by GRANTEE's activities within the easement area. GRANTOR has a lease will continue to lease the property.

8. **INDEMNIFICATION, AS-IS CONDITION OF PROPERTY:** (a) In the exercise of all rights under this easement, GRANTEE is responsible for any and all injury to the public, to persons and to property arising out of or connected with GRANTEE's use of the Property. GRANTEE shall indemnify, defend, save, protect and hold harmless, GRANTOR, its officers, agents, employees and contractors from and against any and all threatened or actual loss, damage, liability, claims, suits, demands, judgments, orders, costs, fines, penalties or expense of whatever character including but not limited to those relating to inverse condemnation, and including attorneys' fees, (hereinafter collectively referred to as "Liabilities") to persons or property, direct or consequential, directly or indirectly contributed to or cause by the granting of this easement, GRANTEE's operations, acts or omissions pursuant to this easement, or the GRANTEE's use of the easement, save and except the proportion of Liabilities arising through the negligence or willful misconduct of the GRANTOR, its officers or employees.

(b) GRANTEE further agrees to defend, indemnify, save, protect and hold harmless, GRANTOR from any and all actual or threatened claims, costs, actions or proceedings to attack, set aside, void, abrogate or annul this grant of easement or any act or approval of GRANTOR related thereto.



(c) GRANTEE accepts the easement area in an "as is" physical condition, with no warranty, guarantee, representation or liability, express or implied on the part of the GRANTOR as to any matter, including but not limited to the physical condition of the Property and/or the condition and/or possible uses of the land or any improvements thereon, the condition of the soil or the geology of the soil, the condition of the air, surface water or groundwater, the presence of known and unknown faults, the presence of any hazardous substance, materials, or other kinds of contamination or pollutants of any kind in the air, soil, groundwater or surface water, or the suitability of the Property for the construction and use of the improvements thereon. It shall be the sole responsibility of GRANTEE, at its sole cost and expense, to investigate and determine the suitability of the soil, water, geologic, environmental and seismic conditions of the Property for the intended use contemplated herein, and to determine and comply with all building, planning and zoning regulations relative to the Property and the uses to which it can be put. GRANTEE relies solely on GRANTEE's own judgment, experience and investigations as to the present and future condition of the Property or its suitability for GRANTEE's intended use and is not relying in any manner on any representation or warranty by GRANTOR. GRANTEE agrees that neither GRANTEE, nor its heirs, successors or assigns will ever claim to have, and will not assert, any right or action against GRANTOR for any loss, damage or other matter arising out of or resulting from the presence of any hazardous substance or any other condition of the Property at the commencement of the easement or from the release of any hazardous substance in, on or around any part of the Property or in the soil, water, subsurface strata or ambient air by any person or entity other than the GRANTOR following the commencement of this easement. As used herein, "hazardous substance" means any substance, material or waste which is or may become designated, classified or regulated as being "toxic," "hazardous" or a "pollutant" under any federal, state or local law, regulation or ordinance. Nothing in this section is intended in any way to restrict the right of GRANTEE to seek contribution or indemnity from any person or entity other than GRANTOR whose activities are a cause of any discharge, leakage, spillage or emission of hazardous materials on or to the Property.

(d) To the extent permitted by law, GRANTEE shall indemnify, defend, save, protect and hold the GRANTOR harmless from and against any and all claims, demands, Liabilities, expenses (including without limitation attorneys fees and consultants fees), penalties, damages, consequential damages and losses, and costs (including but not limited to the

costs of any required or necessary testing, remediation, repair, removal, cleanup or detoxification of the Property and surrounding properties and from and against the preparation of any cleanup, remediation, closure or other required plans whether such action is required or necessary prior to or following the termination of the easement), of any kind or nature, to the extent caused or contributed to by GRANTEE's operation or performance under this easement, or GRANTEE's construction, reconstruction, maintenance, use, replacement, or removal of the Facilities, to the extent that such activities increase the costs attributable to the cleanup or remediation of such hazardous materials.

(e) The obligations contained in this section shall survive the expiration or other termination of this easement.

9. **NO WARRANTIES:** GRANTEE understands and acknowledges that GRANTOR makes no representations, warranties or guarantees of any kind or character, express or implied, with respect to the Property, and GRANTEE is entering into this transaction without relying in any manner on any such representation or warranty by GRANTOR.
  
10. **ABANDONMENT:** In the event GRANTEE discontinues use of all or any portion of the easement hereby granted for a period of one year, then all of GRANTEE's rights in and to such portion of the easement will cease and terminate. In the event GRANTEE uses the easement for a purpose other than the purposes for which it is granted, then all of GRANTEE's rights in and to the easement will cease and terminate and title thereto shall immediately revert to and vest in the GRANTOR or its successor. In either case, upon request, GRANTEE shall deliver an executed quitclaim deed, quitclaiming all of GRANTEE's interest in and to the affected portion of the Property. Upon any termination of GRANTEE's rights hereunder, GRANTEE shall, upon request by GRANTOR, and at GRANTEE's sole cost and expense, abandon all its facilities in accordance with GRANTEE's standard specifications and restore the Property to a condition equivalent to or better than its original condition. If GRANTEE fails to effect the remediation of the Property, the remediation may be performed by GRANTOR at GRANTEE's expense, which expense GRANTEE agrees to pay to GRANTOR upon demand. GRANTEE shall execute any Quitclaim Deeds required by GRANTOR upon termination of GRANTEE'S rights hereunder.

11. **NOTICES:** All notices, consents, or other instruments or communications provided for under this easement must be in writing, signed by the party giving the notice, and will be deemed properly given and received when (i) actually delivered to the addressee in person, or (ii) on the next business day if sent via prepaid overnight courier service for next business day delivery, or (iii) three business days after depositing same in the United States Mails, if sent by registered or certified mail, postage prepaid to:

Contra Costa County  
Public Works Department  
Real Property Division  
255 Glacier Drive  
Martinez, CA 94553  
Attn: Principal Real Property Agent

Buchanan Field Airport  
550 Sally Ride Drive  
Concord, CA 94520  
Attn: Director of Airports

Central Contra Costa Sanitary District  
Engineering Department  
Environmental Services Division  
5019 Imhoff Place  
Martinez, CA 94553  
Attn: Manager

12. **NO INTERFERENCE:** The parties covenant and agree that: no building, improvement, structure or other above-ground obstruction will be placed, erected, installed or permitted upon the Property that will interfere with the purposes aforesaid; and (ii) no party shall interfere with or obstruct the use and enjoyment of this grant of easement. In the event of any violation of the terms of this section, such violation will be corrected and eliminated immediately upon receipt of notice from the non-interfering party, and the non-interfering party shall have the right to correct and eliminate such violation, in which event the defaulting party shall promptly reimburse the non-interfering party for the actual costs thereof.
13. **NO ASSIGNMENT OF EASEMENT:** GRANTEE'S rights hereunder may not be transferred, apportioned or assigned without the prior written consent of GRANTOR.

14. **NO SECONDARY RIGHTS:** Nothing herein contained shall be deemed to construe that access or other secondary rights are conveyed by this document over any of GRANTOR's adjacent lands lying outside of the easement area described in Exhibit "A" and "B".
  
15. **ENTIRE AGREEMENT:** This grant of easement contains the entire agreement between the parties hereto and may not be modified in any manner except by an instrument in writing executed by the parties or their respective successors in interest.
  
16. **CONSTRUCTION:** This grant of easement may not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. The parties to this grant of easement and their counsel have read and reviewed this grant of easement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party does not apply to the interpretation of this grant of easement.

**The masculine form of nouns and pronouns includes the feminine, and vice versa.**

17. **SUCCESSORS AND ASSIGNS:** This indenture and all of the covenants herein contained inure to the benefit of and are binding upon the heirs, successors and assigns of the respective parties hereto.
  
18. **ENFORCEABLE TERMS:** If any term or provision of this grant of easement is held to be invalid or unenforceable, the remainder of this grant of easement is not affected.
  
19. **GOVERNING LAW AND LITIGATION VENUE:** This grant of easement is governed by the laws of the State of California.

IN WITNESS WHEREOF, this Grant of Easement is signed and executed this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

CONTRA COSTA COUNTY

GRANTEE(S)  
CENTRAL CONTRA COSTA  
SANITARY DISTRICT

By \_\_\_\_\_  
Chair, Board of Supervisors

By \_\_\_\_\_  
James A. Nejedly  
President of the Board of Directors

By \_\_\_\_\_  
Elaine R. Boehme  
Secretary of the Board of Directors

Date \_\_\_\_\_

APPROVED AS TO FORM

APPROVED AS TO FORM

By Silvano B. Marchesi, County Counsel

By: \_\_\_\_\_ By: \_\_\_\_\_  
Kathleen M. Andrus                      Kenton L. Alm  
Deputy County Counsel                      Counsel for the District

ODR:sr  
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