

Recorded at the request of:
Contra Costa County Flood
Control & Water Conservation
District

Return to:
City Clerk
City of San Pablo
13831 San Pablo Avenue
Building 1
San Pablo, CA 94806

EXEMPT FROM RECORDING FEES PURSUANT TO GOV'T. CODE SECTION 27383 AND DOCUMENTARY TRANSFER TAX
PURSUANT TO REVENUE AND TAXATION CODE SECTION 11922

Portion of Assessor's Parcel No. 411-010-XXX

DOCUMENTARY TRANSFER TAX \$NONE

GRANT OF EASEMENT

THIS INDENTURE, made by and between CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a flood control district, organized under the laws of the State of California, hereinafter called the GRANTOR, and the City of San Pablo, a California municipal corporation, hereinafter called the GRANTEE,

WITNESSETH:

That the GRANTOR, for value received, hereby grants to the GRANTEE a non-exclusive, perpetual easement and right of way (hereinafter "Easement Area") for installing, constructing, reconstructing, removing, replacing, repairing, upgrading, maintaining, operating and using a 24-inch storm drain line and outfall across Grantor's property for flood control purposes and transmission of drainage water, and all necessary braces, connections, fastenings, fences or other protective barriers or facilities, and other appliances and fixtures for use in connection therewith or appurtenant thereto, in, under, along, and across that certain real property in the City of San Pablo, County of Contra Costa, State of California, described as follows:

FOR DESCRIPTION SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

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

1. **U.S. ARMY CORPS OF ENGINEER'S PROJECT:** The Easement Area is part of the U.S. Army Corps of Engineers, (hereinafter "Corps") Wildcat and San Pablo Creeks Project. The Project provides flood protection to the surrounding communities. Approval by the Flood Protection and Navigation and Section of the San Francisco District, U.S. Army Corps of Engineers is required under 33 USC (United States Code) 408 (Section 408) for any modification to "Corps Project".
2. **CONSTRUCTION AND MAINTENANCE ACTIVITIES:** Prior to any construction, reconstruction, remodeling, excavation, installation, or plantings within the Easement Area, GRANTEE shall submit specific plans and specifications to the GRANTOR for review and approval. Such approval, together with any additional GRANTOR requirements, will be in the form of a written permit issued by GRANTOR to GRANTEE.
3. **DAMAGE TO DISTRICT PROPERTY:** Any and all GRANTOR Property, facilities, landscaping or other improvements, removed or damaged as a result of the use of the easement area by GRANTEE, or any other person or entity acting under GRANTEE's direction or control, shall, at GRANTOR's discretion and direction, be repaired or replaced by GRANTOR, 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 shall be repaired or replaced by GRANTEE, at the sole cost and expense of GRANTEE, equivalent to or better than their existing condition. In the event that GRANTEE fails to commence the required work within 120 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.

- 4. DAMAGE TO GRANTEE'S FACILITIES:** GRANTOR shall have 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 shall be the sole responsibility of the GRANTEE to provide and maintain adequate protection and surface markings for its own facilities.

5. INDEMNIFICATION, AS-IS CONDITION OF PROPERTY:

a) In the exercise of all rights under this easement, GRANTEE shall be 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, DISTRICT, its officers, agents, employees and contractors from and against any and all threatened or actual loss, damage (including foreseeable and unforeseeable consequential damages), 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 caused 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 Liabilities arising through the sole negligence or sole willful misconduct of the DISTRICT, its officers or employees. GRANTEE acknowledges that Property subject to this easement is in a flood control area. GRANTEE agrees that GRANTEE shall never have, claim or assert any right or action against DISTRICT or the County of Contra Costa in the event of damage to or disruption of GRANTEE's facilities caused or contributed to by flooding or water, and shall indemnify, defend, save, protect and hold DISTRICT harmless from all Liabilities resulting from such damage or disruption.

b) GRANTEE further agrees to defend, indemnify, save, protect and hold harmless, DISTRICT 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 DISTRICT 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 DISTRICT 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 DISTRICT. GRANTEE agrees that neither GRANTEE, its heirs, successors or assigns shall ever claim have or assert any right or action against DISTRICT 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 DISTRICT 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 DISTRICT 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 DISTRICT 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 use, release or disposal of any hazardous substance, including all costs, claims, damages (including property and personal injury) caused by the uncovering, release or excavation of hazardous materials (including petroleum) as a result of GRANTEE's construction, reconstruction, maintenance, use, replacement, or removal of its 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.

The easement herein granted shall include the right by said GRANTEE, its officers, agents and employees, and by persons under contract with it and their employees whenever and wherever necessary for flood control purposes, to enter upon said land with personnel, vehicles and equipment, to remove all trees and vegetation thereon that interfere with the purpose for which the easement herein is granted.

It is understood that GRANTOR is not responsible for repairing or replacing any of GRANTEE's improvements within the area described in Exhibit "A" herein.

This indenture and all of the covenants herein contained shall inure to the benefit of and be binding upon the heirs, successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the GRANTOR has executed this indenture this _____ day of _____, 2017.

CONTRA COSTA COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT

By _____
Federal Glover
Chair, Board of Supervisors

STATE OF CALIFORNIA)
COUNTY OF CONTRA COSTA)

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

On _____ before me, _____ Clerk of the Board of Supervisors, Contra Costa County, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

Deputy Clerk