

Recorded at the request of:
Contra Costa Water District

After recording return to:
Contra Costa Water District
1331 Concord Avenue
Concord, CA 94520

Mail Tax Statement to:
Contra Costa County Flood Control
and Water Conservation District
255 Glacier Avenue
Martinez, CA 94553

**THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383
GOVERNMENT CODE.**

Portion of Assessor's Parcel Number: 159-260-XXX

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 FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a flood control district organized under the laws of the State of California, (hereinafter "DISTRICT") hereby grants to CONTRA COSTA WATER DISTRICT, a county water district organized under the County Water District Law, (hereinafter "GRANTEE") a nonexclusive right to a perpetual subsurface easement for the installation, operation, maintenance, repair, and replacement of two 36-inch water pipelines and appurtenances thereto, and for no other purposes whatsoever, along, under, and in all of the hereinafter described parcel of land situated in an unincorporated area of Martinez in the County of Contra Costa, State of California, described as follows:

FOR DESCRIPTION AND PLAT MAP, SEE ATTACHED EXHIBIT "A" and "B"

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

1. **PRIMARY USE OF THE PROPERTY:** The primary use of the Property subject to this easement (hereinafter the "Property") is for Flood Control purposes, including, but not limited to, conveyance or tidal and storm waters, revegetation and habitat creation, access, maintenance, repair, and reconstruction of facilities supporting these Flood Control purposes. GRANTEE acknowledges and agrees that the use just described constitutes the primary use of the Property and that any and all rights granted or implied by this Grant of Easement are secondary and subordinate to the primary use of the Property by the DISTRICT, its successors and assigns. GRANTEE shall not, at any time, use or permit the public to use the easement area in any manner that will interfere with or impair the DISTRICT's primary use of the Property. GRANTEE shall not fence said easement without the prior written approval of the DISTRICT and shall remove any fencing when requested by DISTRICT to do so. GRANTEE shall not otherwise obstruct the easement area.

2. **DISTRICT TITLE:** GRANTEE hereby acknowledges DISTRICT's title to the Property and agrees never to assail or resist said title.
3. **CONSTRUCTION AND MAINTENANCE ACTIVITIES:**
 - a) GRANTEE shall, prior to any construction, reconstruction, remodeling, excavation, installation, or plantings within the subsurface easement area, submit specific plans and specifications to the DISTRICT for review and approval. Such approval, together with any additional requirements to be in the form of a written permit issued by DISTRICT to GRANTEE.
 - b) Normal maintenance by GRANTEE of its facilities within the subsurface easement area, including inspection and cleaning of existing pipelines, shall not require prior notice to the DISTRICT. GRANTEE shall perform maintenance of its facilities so as to prevent damage to the site.
4. **MODIFICATION, RELOCATION AND REMOVAL OF GRANTEE'S FACILITIES:** DISTRICT reserves the right to require GRANTEE to modify its facilities, to relocate said facilities within the easement area or, at DISTRICT's sole discretion, to remove its facilities from the easement area to another site selected by DISTRICT, at GRANTEE's sole expense. If DISTRICT directs GRANTEE to remove its facilities from the easement area to a site outside the easement area, DISTRICT shall provide the GRANTEE with a similar easement for the new site. GRANTEE shall be responsible for all Costs of relocating its facilities but shall not be required to pay for the relocated easement area. In the event that GRANTEE fails to commence the required work within one year after being directed to do so by DISTRICT, or such reasonable extension as DISTRICT may agree to, or fails to complete the required work within a reasonable time thereafter, DISTRICT may perform or complete the work at the expense of GRANTEE, which expense GRANTEE agrees to pay to DISTRICT promptly upon demand, including but not limited to engineering costs and any legal expenses incurred to collect such costs. If GRANTEE's facilities are removed from the current easement area to a new easement area, GRANTEE shall promptly quitclaim to DISTRICT its interest in the prior easement area.
5. **SUBSURFACE RIGHTS:** This GRANT OF EASEMENT grants only subsurface rights to the grantee and no surface rights are included in this easement. Any desired surface rights will need to be in the form of a written permit issued by DISTRICT to GRANTEE.
6. **DAMAGE TO DISTRICT PROPERTY:** Any and all DISTRICT 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 DISTRICT's discretion and direction, be repaired or replaced by DISTRICT, 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 thirty days after being directed to do so by DISTRICT, or such reasonable extension as DISTRICT may agree to in writing, or fails to complete the required work within a reasonable time thereafter, DISTRICT may perform or complete the work at the

expense of GRANTEE, which expense GRANTEE agrees to pay to DISTRICT promptly upon demand, including but not limited to engineering costs and any legal expenses incurred to collect such costs.

7. **DAMAGE TO GRANTEE'S FACILITIES:** DISTRICT shall have no responsibility for the protection, maintenance, damage to, or removal of GRANTEE's facilities, appurtenances or improvements, caused by or resulting from DISTRICT'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 for its own facilities.
8. **NON-EXCLUSIVE EASEMENT:** The easement granted hereunder is non-exclusive. This easement is subject and subordinate to all existing rights, rights of way, licenses, 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. DISTRICT shall have the right to require GRANTEE to modify, remove or relocate its facility within the easement area or to a similar easement to be granted to GRANTEE by DISTRICT at no cost, in a timely manner at GRANTEE's sole cost as reasonably necessary to accommodate the DISTRICT's, or any other existing user's right to construct, replace, enlarge, repair, maintain and operate its facilities, in the same manner as required by Section 4 of this easement, including the rights and remedies contained therein. GRANTEE agrees to take all precautions required to avoid damage to the facilities of the existing users. If GRANTEE damages the facilities or improvements of any existing user, GRANTEE shall repair or replace such facilities at GRANTEE's sole cost and expense. Nothing contained herein shall be construed to prevent DISTRICT from granting other easements, franchises, licenses, or rights of way over said lands, provided however, that said subsequent uses do not unreasonably prevent or obstruct GRANTEE's easement rights hereunder.
9. **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 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 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 to GRANTEE's facilities.
 - 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.

10. **NO WARRANTIES:** GRANTEE understands and acknowledges that DISTRICT 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 DISTRICT.
11. **ABANDONMENT:** In the event GRANTEE shall cease to use the easement herein continuously for a period of one year, or in the event GRANTEE abandons its facilities or fails to use the easement for the purpose for which it is granted, then all rights of GRANTEE in and to said lands shall thereupon cease and terminate and shall immediately revert to and vest in DISTRICT or its successors. Upon any such termination of GRANTEE's rights, GRANTEE shall, upon request by DISTRICT, and at GRANTEE's sole cost and expense, remove all of its facilities from the easement area and restore said Property to its original condition. Upon the failure of GRANTEE to do so, this work may be performed by DISTRICT at GRANTEE's expense, which expense GRANTEE agrees to pay to DISTRICT upon demand. GRANTEE shall execute any Quitclaim Deeds required by DISTRICT in this regard.
12. **NO ASSIGNMENT OF EASEMENT:** No rights granted hereunder shall be transferred, apportioned, or assigned without the prior written consent of DISTRICT.
13. **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 DISTRICT's adjacent lands lying outside of the aforesaid strip of land described herein.
14. **ENTIRE AGREEMENT:** This grant of easement contains the entire agreement between the parties hereto and shall not be modified in any manner except by an instrument in writing executed by the parties or their respective successors in interest.

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