

Recorded at the request of and
after recording return to:
City of Martinez
City Clerk
525 Henrietta Street
Martinez, CA 94553

Mail Tax Statements to:
Contra Costa County
Public Works Department
Real Estate Division
255 Glacier Drive
Martinez, CA 94553

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

Portion of A.P.N.: 373-262-004

GRANT OF WATER LINE 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, (hereinafter "COUNTY"), hereby grants to the CITY OF MARTINEZ, a municipal corporation of the State of California (hereinafter "GRANTEE"), a nonexclusive, perpetual surface and subsurface easement and right of way ("Water Line Easement") for installing, constructing, reconstructing, removing, replacing, repairing, upgrading, maintaining, operating and using Grantee's water pipelines, backflow preventer devices, meters, meter boxes, and related appurtenances ("Facilities") together with access for ingress and egress thereto, and for no other purposes whatsoever, along and in all of the hereinafter described parcel of land situated in the County of Contra Costa, State of California, commonly known as 651 Pine Street, and as further described as follows:

FOR DESCRIPTION AND PLAT MAP, SEE ATTACHED EXHIBITS "A" AND "B"

The area of the parcel of land in and on which the easement is located shall be referred to herein as the "Water Line Easement" and is so designated and labeled as such on Exhibits "A" and "B".

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

1. PRIMARY USE OF THE PROPERTY: The Water Line Easement is located within COUNTY-owned property commonly identified as Assessor's Parcel No. 373-262-004 ("Property"). The primary use of the Property is for various Contra Costa County offices and facilities.

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 Water Line Easement are secondary and subordinate to the primary use of the Property by the COUNTY, its successors, and assigns. GRANTEE shall not, at any time, use or permit the public to use the Water Line Easement area in any manner that will interfere with or impair the COUNTY's primary use of the Property. GRANTEE shall not fence said Water Line Easement without the prior written approval of the COUNTY, which said approval shall not be unreasonably denied or conditioned and shall remove any fencing when requested by COUNTY to do so. GRANTEE shall not otherwise obstruct the Water Line Easement area.

2. COUNTY TITLE: GRANTEE hereby acknowledges COUNTY'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 Water Line Easement area, submit specific plans and specifications to the COUNTY for review and approval. Such approval, together with any additional requirements to be in the form of a written permit issued by COUNTY to GRANTEE.

(b) Normal maintenance by GRANTEE of its Facilities within the Water Line Easement area shall not require prior notice to the COUNTY. GRANTEE shall perform maintenance of its Facilities so as to prevent damage to the Property and neighboring properties.
4. DAMAGE TO COUNTY PROPERTY: Any and all COUNTY Property, facilities, landscaping or other improvements, removed or damaged as a result of the use of the Water Line Easement area by GRANTEE, or any other person or entity acting under GRANTEE's direction or control, shall, at COUNTY's discretion and direction, be repaired or replaced by COUNTY, 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 COUNTY, or such reasonable extension as COUNTY may agree to in writing, or fails to complete the required work within a reasonable time thereafter, COUNTY may perform or complete the work at the expense of GRANTEE, which expense GRANTEE agrees to pay to COUNTY promptly upon demand, including but not limited to engineering costs and any legal expenses incurred to collect such costs.
5. DAMAGE TO GRANTEE'S FACILITIES: COUNTY shall have no responsibility for the maintenance or removal of GRANTEE's Facilities, appurtenances, or improvements, caused by or resulting from COUNTY's use of the Property for the primary uses described in Section 1, COUNTY's work or operation thereon, or any third parties. It shall be 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 facilities are damaged by the sole, active negligence or willful misconduct of COUNTY, COUNTY shall repair the damage at its sole cost and expense or, at the discretion of and upon written notice from COUNTY, the damage shall be repaired by GRANTEE and the pre-approved reasonable cost of such repair shall be paid for by COUNTY.

6. NON-EXCLUSIVE EASEMENT: The Water Line Easement granted hereunder is non-exclusive. This Water Line 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. 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 COUNTY or 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 COUNTY 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.

7. INDEMNIFICATION, AS-IS CONDITION OF PROPERTY: (a) In the exercise of all rights under this Grant of 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 Water Line Easement or GRANTEE'S installation, construction, reconstruction, removal, replacement, repair, upgrade, maintenance, operation, or use of the Facilities, or GRANTEE'S exercise of its rights hereunder. GRANTEE shall indemnify, defend, save, protect and hold harmless, COUNTY, 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 Water Line Easement, GRANTEE's operations, acts or omissions pursuant to this Water Line Easement, or the GRANTEE's use of the Water Line Easement or GRANTEE'S installation, construction, reconstruction, removal, replacement, repair, upgrade, maintenance, operation, or use of the Facilities, or GRANTEE'S exercise of its rights hereunder, save and except Liabilities arising through the sole negligence or sole willful misconduct of the COUNTY, its officers or employees.

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

c) GRANTEE accepts the Water Line Easement area in an "as is" physical condition, with no warranty, guarantee, representation or liability, express or implied on the part of the COUNTY 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 COUNTY. GRANTEE agrees that neither GRANTEE, its heirs, successors or assigns shall ever claim to have or assert any right or action against COUNTY 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 Water Line 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 COUNTY following the commencement of this Water Line 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 COUNTY 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 COUNTY 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 Water Line Easement), of any kind or nature, to the extent caused or contributed to by GRANTEE's operation or performance under this Water Line 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 Water Line Easement.

8. NO WARRANTIES: GRANTEE understands and acknowledges that COUNTY 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 COUNTY.
9. ABANDONMENT: In the event GRANTEE shall cease to use the Water Line Easement herein continuously for a period of five years, or in the event GRANTEE abandons its Facilities or fails to use the Water Line 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 COUNTY or its successors. Upon any such termination of GRANTEE's rights, GRANTEE shall, upon request by COUNTY, and at GRANTEE's sole cost and expense, remove all of its Facilities from the Water Line Easement area and restore said Property to its original condition. Upon the failure of GRANTEE to do so, this work may be performed by COUNTY at GRANTEE's expense, which expense GRANTEE agrees to pay to COUNTY upon demand. GRANTEE shall execute any Quitclaim Deeds required by COUNTY in this regard.
10. NO ASSIGNMENT OF EASEMENT: No rights granted hereunder shall be transferred, apportioned or assigned without the prior written consent of the COUNTY.
11. NO SECONDARY RIGHTS: Except to the extent this Grant of Water Line Easement provides otherwise, nothing herein contained shall be deemed to construe that access or other secondary rights are conveyed by this document over any of COUNTY's adjacent lands lying outside of the aforesaid strip of land above described.
12. ENTIRE AGREEMENT: This Grant of Water Line 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.
13. CONSTRUCTION: This Grant of Water Line Easement shall 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 Water Line 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 shall not apply to the interpretation of this Grant of Water Line Easement.

14. SUCCESSORS AND ASSIGNS: 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, this Grant of Water Line Easement is signed and executed this _____ day of _____ 2023.

CONTRA COSTA COUNTY

GRANTEE
CITY OF MARTINEZ

By _____
John Gioia
Chair, Board of Supervisors

By _____
Michael Chandler
City Manager

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.

STATE OF CALIFORNIA)
COUNTY OF CONTRA COSTA)

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

APPROVED AS TO FORM
by County Counsel
July, 1999

AB:
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