

Recording Requested by:
Tuolumne City Sanitary District

WHEN RECORDED MAIL TO:

Tuolumne City Sanitary District
P.O. Box 1238
Tuolumne, California 95379
Attention: Brenda Bonillo

APN: **062-630-024**

Recording fees exempt per Gov Code § 6103

SPACE ABOVE THIS LINE FOR RECORDER'S USE

EASEMENT AND MAINTENANCE AGREEMENT

THIS EASEMENT AND MAINTENANCE AGREEMENT (hereinafter referred to as "**Agreement**") is entered into as of _____ 2023 by and between the **TUOLUMNE BAND OF ME-WUK INDIANS OF THE TUOLUMNE RANCHERIA CALIFORNIA**, a Federally recognized Indian Tribe, (hereinafter referred to as "**Grantor**") and **TUOLUMNE CITY SANITARY DISTRICT**, a Political Subdivision of the State of California (hereinafter referred to as "**Grantee**").

RECITALS

- A. *Grantor* is the current owner of that certain real property located in the County of Tuolumne, State of California, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (the "**Pipeline Property**").
- B. *Grantor* has received funding to construct the *Tuolumne Log Pond Dam Spillway Upgrade Project (State Dam No. 558)* in Tuolumne County (hereinafter referred to as the "**Spillway Project**") that necessitates as a condition of project approval the relocation of *Grantee's* Sewer Pipeline Facilities and appurtenances located on and near the current dam at *Grantor's* sole cost and expense. Collectively the *Grantor* and *Grantee* shall be referred to as the *Parties*.
- C. In order to accommodate *Grantor* and the *Spillway Project* conditions of approval, *Grantee* has requested a permanent easement and maintenance agreement in, over, across and through those certain and limited portions of the *Pipeline Property* described and depicted on Exhibit "B" attached hereto

and incorporated herein by this reference (the “*Easement Area*”) for the *Easement Facilities* and *Easement Uses* (as those terms are defined in Section 1 below).

- D. *Grantor* shall retain ownership of the bridge structure that the sewer pipeline rests upon and agrees to maintain the entire easement area, including said bridge structure, and *Grantee* shall accept ownership of the relocated sewer pipeline and appurtenances subject to the terms and conditions of this *Easement and Maintenance Agreement*.
- E. *Grantor* is willing to grant such *Easement and Maintenance Agreement* upon the terms and conditions set forth below and *Grantee* is willing to accept the relocation of *Grantee’s* sewer facilities to the new easement upon the terms and conditions set forth below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the *Parties* hereby agree as follows:

AGREEMENT

1. **Grant of Easement.** *Grantor* hereby grants to *Grantee* an exclusive easement in, over, across and through the *Easement Area*, more particularly described in “Exhibit B” attached hereto and incorporated herein, for the purposes of laying down, locating, constructing, reconstructing, removing, replacing, repairing, maintaining, operating and using those certain *Easement Facilities* depicted on those certain plans prepared by GEI Consultants, Inc., 2868 Prospect Park Drive, Suite 400, Rancho Cordova, CA 95670 dated May 31, 2022 for the transmission of sewage, drainage water and all necessary appurtenances, protective barriers, manholes, fixtures, facilities and for the purpose of access in connection therewith, exclusive of the *Sewer Pipe Bridge Support Structure* hereinafter referred to as the “*Bridge*” upon which pipeline rests (such improvements, exclusive of the *Bridge* being referred to in this Agreement as the “*Easement Facilities*”). The foregoing purposes are collectively referred to herein as the “*Easement Uses*.” *Grantee* shall retain ownership and maintenance responsibility for the *Bridge* including foundations, structural supports, retaining walls, and all other appurtenances with the exclusion of the actual *Easement Facilities*. No additional utilities or facilities will be added to the *Bridge* without the prior written approval of the *Grantor and the Grantee*.

In addition, *Grantor* shall provide a nonexclusive easement and a right to entry to *Grantee* through existing roadways and entrance points on the surrounding property to facilitate access to the *Easement Facilities*. In the event the *Grantee* needs additional area on a temporary basis for construction work on the *Easement Facilities*, *Grantor* shall provide an additional “Temporary Easement” on a case-by-case basis for this purpose at the request of *Grantee*.

2. **Term.** This Agreement shall continue in full force and effect from the date of recordation of this Agreement in perpetuity, unless this Agreement is amended, modified, or terminated in writing by an agreement executed, acknowledged, and

recorded by the *Grantor* and *Grantee*.

3. Construction, Maintenance, Repairs, and Inspections.

A. By Grantee. All survey expenses and costs for the creation of the legal description and maps of the *Pipeline Property* and the *Easement Area* shall be borne equally by the *Parties*. The *Grantee* shall periodically inspect, maintain, repair, reconstruct, and replace the *Easement Facilities* to insure the safe, lawful, and reasonable operation of such *Easement Facilities*. All costs and expenses for such inspection, maintenance, repair, reconstruction, and replacement of the *Easement Facilities* shall be borne solely by the *Grantee*. The *Grantee* shall give the *Grantor* at least fourteen (14) days prior written notice of any laying down, location, construction, reconstruction, removal, replacement, or repair of the *Easement Facilities*, except in the event of a bona fide emergency, in which event whatever notice is reasonable under the circumstances shall be given. Any laying down, location, construction, reconstruction, removal, replacement, or repair of the *Easement Facilities* by the *Grantee* shall be performed in a manner which, to the extent reasonable under the then existing circumstances, minimizes disruption to the *Pipeline Property* and *Grantor's* operations on the *Easement Area*.

If, at any time, the *Grantor* should fail to perform any of its obligations under Section 3.B below, then the *Grantee* shall provide the *Grantor* with written notice thereof. The *Grantor* shall thereafter use reasonable efforts to cure any such failure within fourteen (14) days of the *Grantor's* receipt of such notice. If the *Grantor* fails to cure any such failure within such fourteen (14) day period, then the *Grantee* shall have the right, but not the obligation, to correct such failure at the *Grantor's* expense; provided, however, if such cure is one that will reasonably require more than fourteen (14) days to complete, the *Grantee* shall not have the right to cure such failure if the *Grantor* commences cure within such fourteen (14) day period and diligently prosecutes the cure to completion within a reasonable period of time.

B. By Grantor. The *Grantor* shall provide the *Grantee* the Construction Record Drawings or As-Built Drawings of the *Easement Facilities* and *Bridge* within thirty (30) days of *Spillway Project* completion. In addition, the *Grantor* shall maintain the entire *Easement Area* free of vegetation, debris, and combustible materials on a continuous basis at *Grantors* sole cost and expense. The *Grantor* shall also maintain the *Bridge* including foundations, structural supports, retaining walls, and all other appurtenances with the exclusion of the actual *Easement Facilities* at all times and at *Grantors* sole expense. The *Grantor* shall give the *Grantee* at least fourteen (14) days prior written notice of any major maintenance or repair of the *Bridge Foundation or Bridge Structure* that may affect the *Easement Facilities*, except in the event of a bona fide emergency, in which event whatever notice is reasonable under the circumstances shall be given. Any construction, reconstruction, removal, replacement, or repair of the *Bridge Foundation, Bridge Structure, or appurtenances* by the *Grantor* shall be performed in a manner which, to the extent reasonable under the then existing circumstances, minimizes disruption to the *Easement Facilities* and

Grantee's operations in the *Easement Area*. The *Parties* shall undertake joint inspections of the *Easement Area* in accordance with Section 3.C below.

If, at any time, the *Grantee* should fail to perform any of its obligations under Section 3.A above, then the *Grantor* shall provide the *Grantee* with written notice thereof. The *Grantee* shall thereafter use reasonable efforts to cure any such failure within fourteen (14) days of the *Grantee's* receipt of such notice. If the *Grantee* fails to cure any such failure within such fourteen (14) day period, then the *Grantor* shall have the right, but not the obligation, to correct such failure at the *Grantee's* expense; provided, however, if such cure is one that will reasonably require more than fourteen (14) days to complete, the *Grantor* shall not have the right to correct such failure if the *Grantee* commences cure within such fourteen (14) day period and diligently prosecutes the cure to completion within a reasonable period of time.

- C. Joint Annual Inspection.** The *Parties* shall conduct an *Annual Inspection* jointly of the *Easement Facilities* and *Easement Area*. Such *Annual Inspection* shall be conducted no later than June 30, of each year and will consist of a visual inspection of the *Bridge Foundation, Bridge Structure, Easement Facilities, and Easement Area*.

The *Parties* during the inspection shall address any construction plans to the infrastructure and annual vegetation, debris, and combustible material removal required under this agreement. In the event that the *Parties* determine that a potential issue or problem is uncovered that is beyond their expertise, or if there is a dispute between the *Parties* as to the need for additional inspections, the *Parties* agree to hire an appropriate professional to conduct an inspection to determine the extent of the issue or problem. The cost of such inspection and any recommended repair shall be borne by the Party responsible for the facilities under this agreement found in need of maintenance or repair (e.g., *Bridge* failure - *Grantor*; *Pipeline* failure not caused by *Bridge* failure - *Grantee*), or as mutually agreed by the *Parties* in writing. If an inspection is requested by one Party only and no defects are uncovered, the requesting *Party* shall be responsible for the cost of inspection. In addition, *Grantor*, at *Grantor's* sole cost and expense, shall have the *Bridge* inspected at least once every fifteen (15) years starting from the date of the *Spillway Project* completion by a California licensed Structural Engineer to certify its integrity and suitability for continued use.

- 4. Damage to Easement Area, Easement Facilities or Pipeline Property.** If either *Party* should damage or destroy any portion of the *Easement Area, Easement Facilities* or *Pipeline Property*, unless otherwise agreed to, the responsible *Party* for the damage shall, at the written notice of election of the other *Party*, either (a) repair, reconstruct or replace such damaged or destroyed portion of the *Easement Area, Easement Facilities* or *Pipeline Property* (at the responsible *Party's* sole cost and expense) or (b) reimburse the other *Party* upon demand for all reasonable costs and expenses actually incurred by such *Party* in repairing, reconstructing or replacing such damaged portion of the *Easement Area, Easement Facilities* or *Pipeline Property*, as applicable.

5. No Unreasonable Interference. *Grantor* agrees it will not use or permit the use of the *Easement Area* in such a manner to unreasonably interfere with the use and enjoyment by *Grantee* of the Easement. *Grantor* agrees that the Easement granted to *Grantee* as described in this Agreement includes the right of use of the Easement, in accordance with the provisions of this Agreement, by *Grantee's* employees, agents, tenants, contractors, subcontractors, licensees, and other representatives.

6. Covenants.

A. Mechanic's Liens and Removal of Liens. The *Parties* shall keep the *Pipeline Property* and *Easement Area* free and clear of all design professional's, mechanic's, or materialmen's liens which may arise out of any work or other activities performed on the *Pipeline Property* or *Easement Area*. To the extent any such liens are recorded against a *Party* or *Easement Area*, the violating *Party* shall cause such lien to be released and removed within fifteen (15) days of knowledge or being served notice of such filing and/or recording, either by satisfaction or by the posting of a release bond in the amount required by statute.

B. Insurance. At all times during the term of this Agreement the *Parties* shall maintain a policy of comprehensive general public liability insurance provided by an insurance carrier properly licensed to business in California, including a contractual liability endorsement, and personal injury liability coverage which shall include coverage against claims for any injury, death, or damage to persons or property occurring on, in, or about the *Easement Area* with a combined single minimum limit of not less than \$1,000,000 per occurrence. Each *Party* will be responsible for all loss, cost, and expense of their respective insurance policies and any deductibles. Each *Party* retains the option to change its insurance carrier at any time. The *Parties* agree to name the other *Party*, its agents, contractors, tenants, and any other third parties required by the *Party* as additional insured under its liability program up to a minimum limit of \$1,000,000 per occurrence. Each *Party* shall provide the other *Party* thirty (30) days written notice from the insurer prior to cancellation of coverage.

C. Indemnification. To the furthest extent permitted by law, the *Parties* agree to indemnify, defend and hold the other *Party* and its respective officers, directors, shareholders, partners, members, managers, affiliates, employees, representatives, agents, invitees, mortgagees, successors and assigns harmless from and against any and all claims, actions, causes of action, demands, damages, costs, liabilities, losses, judgments, expenses or costs of any kind or nature whatsoever (including, without limitation, attorney's fees), at law or in equity, ("**Claims**") incurred by the indemnified *Party* for property damage (real or personal), death or injury to persons arising from or relating to the indemnifying *Party's* use or activities associated with the *Easement Facilities*, *Easement Uses*, *Pipeline Property* and/or *Bridge*. An indemnitor's obligations under this section will not extend to any Claims to the extent such Claims arise from the negligence, willful misconduct, or intentional act of any indemnitee.

D. Notices. Any notice, consent, approval, or request for consent required or permitted to be given under this Easement and Maintenance Agreement shall be given in writing and shall be effective (a) if personally delivered, upon delivery or refusal to accept such delivery; or (b) if mailed, three (3) days after mailing, by United States registered or certified mail, postage pre-paid, return receipt requested, to the applicable address set forth below:

If to *Grantor*: Tuolumne Band of Me-Wuk Indians
P.O. Box 699
[19595 Mi-Wu Street (for Personal Service)]
Tuolumne, CA 95379
Attention: Tribal Administrator

If to *Grantee*: Tuolumne City Sanitary District
P.O. Box 1238
[18050 Box Factory Road (for Personal Service)]
Tuolumne, California 95379
Attention: General Manager

The foregoing address and addressees may be changed by giving notice of such change in the manner provided for in this Section 5. D.

7. Binding Effect and Governing Law. This Easement and Maintenance Agreement and all covenants and restrictions contained herein shall, to the fullest extent permitted by law and equity and without regard to technical classifications or designations, be deemed to be covenants running with the land of the *Grantor* and shall be binding upon and inure to the benefit of the *Parties* hereto and their respective successors and assigns. This Agreement is made with the intent of satisfying Section 1468 of the California Civil Code and shall be recorded at the Tuolumne County Recorder's Office. This Agreement shall be governed and construed in accordance with the laws of the State of California and any litigation or other actions shall be filed in the County of Tuolumne.

8. Entire Agreement. This Agreement, including the recitals and Exhibits "A," "B" attached hereto constitutes the entire agreement between the *Parties* with respect to the grant of easement and maintenance agreement hereunder.

9. Amendments. Subject to Section 8 above, this Agreement may be amended, modified, or supplemented only by a written document executed by all of the *Parties* hereto (or their successors and assigns) and duly recorded in the County of Tuolumne.

Mortgagee Protection. With respect to any Mortgage recorded against the *Grantor* or *Grantor's* property subsequent to the recording of this Agreement such mortgagee or any purchaser at a foreclosure sale resulting from such mortgage or other party taking title to the *Grantor's* Property shall take subject to this Agreement and the terms and conditions set forth herein. The term "**Mortgage**" shall mean any recorded mortgage or deed of trust encumbering the *Grantor's* Property.

- 10. No Partnership or Third-Party Beneficiaries.** This Agreement and any further documents or actions executed by the Parties in connection with this Agreement will not create nor be deemed under any circumstances to create any joint venture or partnership between the Parties or to render the Parties joint ventures' or partners. This Agreement is only for the benefit of the *Parties* hereto and their successors and assigns as set forth in Section 8 above. Except as set forth in Section 6.C, no other person or entity or property shall be entitled to rely hereon, receive any benefit here from or enforce any provision hereof against any *Party* hereto (or their respective successors assigns).
- 11. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 12. Severability.** If any term or provision of this Agreement is ever determined to be invalid or unenforceable for any reason, that term or provision will be severed from this Agreement without affecting the validity or enforceability of the remainder of this Agreement.
- 13. Further Actions.** Each of the Parties agrees to execute and deliver all further documents and to take all further actions reasonably necessary or appropriate to effectuate the purposes of this Agreement.
- 14. Counting Days.** All references in this Agreement to "days" will mean calendar days unless expressly referred to as "business days." If the day for performance of any obligation under this Agreement is a Saturday, Sunday, or legal holiday, then the time for performance of that obligation will be extended to the first following day that is not a Saturday, Sunday, or legal holiday.
- 15. Time of the Essence.** Time is of the essence in the performance of the Parties' respective obligations under this Agreement.
- 16. Further Assurances.** Each Party agrees to do such things, perform such acts, and make, execute, acknowledge, and deliver such documents as may be reasonably necessary and customary to carry out the intent and purposes of this Agreement, so long as any of the foregoing do not materially increase any party's obligations hereunder or materially decrease a party's rights hereunder.
- 17. Authority.** Both Parties represent and warrant that they have the authority to execute this Agreement and each individual signing on behalf of a party to this Agreement states that he or she is the duly authorized representative of the signing party and that his or her signature on this Agreement has been duly authorized by, and creates the binding and enforceable obligation of, the part on whose behalf the representative is signing.
- 18. Interpretation.** Headings in this Agreement are for convenience of reference only and will not affect the meaning or interpretation of any provision of this Agreement. As used in this Agreement: (a) the singular will include the plural (and vice versa) and the masculine or neuter gender will include the feminine gender (and vice versa) when the context so requires; (b) locative adverbs such as "herein," "hereto," and "hereunder" will refer to this Agreement in its entirety and not to any specific section or paragraph; (c) the

terms “include,” “including,” and similar terms will be construed as though followed immediately by the phrase “but not limited to”; and (d) “shall” or “will” is mandatory and “may” is permissive. The Parties have jointly participated in the negotiation and drafting of this Agreement, and this Agreement will be construed fairly and equally for the Parties, without regard to any rules of construction relating to the Party who drafted a particular provision of this Agreement.

In Witness Whereof, the *Parties* have executed this Easement and Maintenance Agreement as of the date first above written.

“GRANTOR”

Tuolumne Band of Me-Wuk Indians

By: _____

ATTEST:

By: _____

“GRANTEE”

Tuolumne City Sanitary District

John Feriani
President, Board of Directors

ATTEST:

Brenda Bonillo
District Secretary / Clerk of the Board

EXHIBIT “A”
To
Easement and Maintenance Agreement

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