

When Recorded, Return to:

Lewis Roca Rothgerber LLP  
201 East Washington Street  
Suite 1200  
Phoenix, Arizona 85004  
Attention: Heidi K. Short

SPACE ABOVE THIS LINE FOR RECORDER'S USE

### **Easement for Sewer (Standard Excavation)**

This Easement for Sewer (the "Easement Agreement") among The United States of America, acting by and through the Bureau of Indian Affairs, Department of the Interior, Central California Agency, 650 Capitol Mall, Suite 8-500, Sacramento, CA 95814 ("BIA") for, and on behalf and with the consent of Wilton Rancheria, a federally recognized tribe ("Wilton Rancheria"), under authority contained and under the Act of February 5, 1948 (62 Stat. 17; 25 USC 323-328); and Part 169, Title 25, *Code of Federal Regulations* (the "ROW Regulations"), which by reference are made a part hereof and Sacramento Area Sewer District, a county sanitation district formed pursuant to and operating under the authority of the County Sanitation District Act, commencing at Health and Safety Code section 4700 ("SASD").

#### **RECITALS**

A. Whereas Wilton Rancheria owns approximately 35.92 acres of real property located in Sacramento County, California legally described on Exhibit A attached hereto and made a part hereof (the "Wilton Rancheria Property").

B. Whereas Wilton Rancheria has an opportunity to develop a significant commercial development that will provide multiple benefits to Wilton Rancheria and its tribal members and which development will require utilities and infrastructure typical of commercial development, including wastewater and sewer lines and service.

C. Whereas Wilton Rancheria desires to grant a right-of-way to SASD, the primary wastewater and sewer service provider in the area of the Wilton Rancheria Property, in compliance with the ROW Regulations and recognizes SASD provides wastewater and sewer service on a daily basis to multiple property owners and that to act effectively and efficiently SASD must have consistency in the infrastructure used to provide sewer service to multiple

properties as well as consistency in the terms and conditions of grants of easements and rights of way from property owners for consistent daily operations and service to the multiple properties served by SASD.

NOW THEREFORE, Wilton Rancheria does hereby desire to grant to SASD and SASD does hereby desire to acquire a right-of-way for wastewater and sewer under the terms and conditions set forth in this Easement Agreement.

**1. GRANT.** In consideration of no monetary consideration and in lieu thereof certain infrastructure and wastewater and sewer services, Wilton Rancheria does hereby grant to SASD, an easement for sewer purposes (hereinafter referred to as "Easement"), inclusive of digging, constructing, reconstructing, repairing, operating, upgrading and maintaining sanitary sewer pipelines, of such dimensions as SASD shall deem necessary, together with all necessary appurtenances, including the right to excavate, construct, reconstruct, repair, operate, upgrade and maintain said facilities appertaining thereto, including a right-of-way over, under, upon and across all that real property, (hereinafter referred to as "Easement Area"), situated in the County of Sacramento, State of California, legally described on Exhibit B attached hereto and made a part hereof, together with the right of ingress to and egress from said Easement Area, for the purpose of exercising and performing all of the rights and privileges herein granted.

**2. TERM.** This right-of-way is for a term of ninety-nine (99) years from the Effective Date and will automatically be renewed for successive ten (10) year periods, so long as the right-of-way is used for the purpose above specified, unless all parties elect by written termination of this grant of easement not to so renew; provided, that this right-of-way may be cancelled by the Tribe and SASD under any negotiated remedies identified in section 13 (25 CFR 169.403) as set forth on Exhibit C attached hereto and incorporated herein, and/or in whole or in part by Wilton Rancheria (25 CFR 169.404) for any of the following causes upon 30 days written notice, and failure of the SASD within said notice period to correct the basis for cancellation (25 CFR 169.405):

a. A non-use of the right-of-way for any consecutive twenty-five year (25) period (for the purpose for which it was granted).

**3. MITIGATION MEASURES.** (25 CFR 169.123) The SASD agrees to comply with any mitigation measures or conditions described to protect environmental, biological and cultural resources within the right-of-way area as defined in the environmental compliance documentation.

**4. RESERVATION OF JURISDICTION.** (25 CFR 169.10, 169.125) The tribe maintains its existing jurisdiction over the land, activities, and persons within the right-of-way and this grant does not diminish to any extent: (a) the tribe's power to tax the land, any improvements on the land, or any person or activity within the right-of-way; (b) the tribe's authority to enforce tribal law of general or particular application on the land subject to and within the right-of-way, as if there were no grant of right-of-way; (c) the tribe's inherent sovereign power to exercise

civil jurisdiction over non-members on Indian land; or (d) the character of the land subject to the right-of-way as Indian country under 18 U.S.C. 1151.

5. **LAWS.** (25 CFR 169.9) SASD shall comply with all applicable federal and tribal law.

6. **REGULATORY PROVISIONS.** (25 CFR 169.125):

- a. On tribal land, the tribe has the right to reasonable access to the lands subject to the grant to determine SASD's compliance with consent conditions or to protect public health and safety;
- b. The SASD has no right to any of the products or resources of the land, including but not limited to, timber, forage, mineral and animal resources, unless otherwise provided for in the grant;
- c. BIA may treat any provision of a grant that violates Federal law as a violation of the grant;
- d. If historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with this grant, all activity in the immediate vicinity of the properties, resources, remains, or items will cease and the SASD will contact BIA and Wilton Rancheria to determine how to proceed and appropriate disposition.
- d. SASD must:
  - i. Construct and maintain improvements within the right-of-way in a professional manner consistent with industry standards;
  - ii. Comply with all applicable laws and obtain all required permits;
  - iii. Operate, repair and maintain improvements consistent with the right-of-way grant;
  - iv. Refrain from interfering with the SASD's use of the land, provided that the SASD's use of the land is not inconsistent with the right-of-way;
  - v. Notify the BIA and Wilton Rancheria if it files for bankruptcy or is placed in receivership.
- e. Unless SASD would be prohibited by law from doing so, SASD must also:
  - i. Hold the United States and the Wilton Rancheria harmless from any loss, liability, or damages resulting from the SASD's use or occupation of the premises; and

- ii. Indemnify the United States and the Wilton Rancheria against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or release or discharge of any hazardous material from the premises that occurs during the term of the grant, regardless of fault, with the exception that SASD is not required to indemnify the Wilton Rancheria for liability or cost arising from the Wilton Rancheria's negligence or willful misconduct.

**7. ENCROACHMENT (25 CFR 169.128).** The SASD may not unreasonably withhold its consent for a new right-of-way within its existing right-of-way that does not interfere with the use or purpose of its right-of-way.

**8. PERMANENT IMPROVEMENTS (25 CFR 169.130).** SASD shall be the owner of any permanent improvements constructed during the term of the Grant and said permanent improvements, appurtenances, fixtures and equipment placed within the right-of-way shall be removed or an option for SASD to take possession of and title to the permanent improvements or as otherwise negotiated.

**9. RESTRICTIONS.** Any use of this Easement Area by Wilton Rancheria or its assignees or successors in interest, shall not be allowed without the prior written approval of SASD, except for the following uses (collectively, the "Allowable Uses"): (i) lawn or similar groundcover; (ii) areas planted with species whose mature growth does not exceed five (5) feet in height and which are not environmentally protected; or (iii) non-colored and non-patterned asphalt and concrete driveways, sidewalks, bikepaths, surface parking, curbs and gutters. Any of said Allowable Uses shall not be installed in a manner that will impede vehicular access by SASD for maintenance purposes. Other than the aforementioned Allowable Uses, each use proposed by Wilton Rancheria must be approved in writing by SASD's District Engineer, with said approval being in the District Engineer's sole discretion, prior to construction within or use of the Easement Area by Wilton Rancheria. For any required written approval, Wilton Rancheria shall contact the SASD Main Office. All use activities, including but not limited to Allowable Uses, shall not in any way limit SASD's rights under this Easement. Even if SASD's District Engineer has approved the use within the Easement Area, SASD retains the right to remove all or any part of the approved use to allow SASD to use the Easement Area at any time pursuant to the rights granted herein. Except for the Allowable Uses identified above, SASD shall not be liable for any cost related to the removal or replacement of said improvements constructed by Wilton Rancheria within the Easement Area.

**10. AMENDMENT.** This grant may not be amended except as provided in 25 CFR 169.204 - 169.206.

**11. ASSIGNMENT (25 CFR 169.207).** This grant may be assigned without applicable consent and BIA approval and within 30 days, a copy of the assignment and supporting documents will be sent to BIA for recording in the appropriate Land Titles and Records Office.

**13. EFFECTIVE DATE (25 CFR 169.301).** This grant will be effective on the date it is approved.

**14. REMEDIES (25 CFR 169.403).** Any disputes regarding violations, abandonment, or non-use may be addressed as set forth in accordance with 25 CFR 169.403.

**15. BINDING EFFECT.** The condition for this grant shall extend to and be binding upon and inure to the benefit of the successors of the SASD.

**16. ADDITIONAL CONDITIONS OR RESTRICTIONS.** This grant incorporates by reference the conditions or restrictions set out in Wilton Rancheria's consents, attached here.

[Signatures on following page]

IN WITNESS WHEREOF, WILTON RANCHERIA, pursuant to the delegated authority found in 209 DM 8, 230 DM 1, and 3 IAM 4 and supplements thereto (or applicable delegation of authority), is granting and executing this grant of easement on this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_.

**UNITED STATES OF AMERICA**

BY \_\_\_\_\_  
U.S. Department of the Interior  
Bureau of Indian Affairs  
Regional Director/Superintendent

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

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 \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, notary public,  
date name of notary officer

personally appeared \_\_\_\_\_,  
name(s) of signer(s)

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 of Notary

—————OPTIONAL SECTION—————

**CAPACITY CLAIMED BY SIGNER**

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

- INDIVIDUAL
- CORPORATE OFFICER(S)

Title(s)

- PARTNER(S)      LIMITED
- GENERAL

ATTORNEY-IN-FACT

TRUSTEE(S)

GUARDIAN/CONSERVATOR

OTHER: \_\_\_\_\_

**SIGNER IS REPRESENTING:**

Name of Person(s) or entity(ies)

\_\_\_\_\_  
 \_\_\_\_\_

**OPTIONAL SECTION:**

DATA REQUESTED HERE IS NOT REQUIRED BY LAW.

TITLE OR TYPE OF DOCUMENT: \_\_\_\_\_

NUMBER OF PAGES \_\_\_\_\_ DATE \_\_\_\_\_

SIGNER(S) OTHER THAN NAMED ABOVE \_\_\_\_\_

**CERTIFICATE OF ACCEPTANCE**  
**Sacramento Area Sewer District**

This is to certify that the interest in real property conveyed by the within deed, the provisions of which are incorporated by this reference as though fully set forth in this Certification, to the Sacramento Area Sewer District, a county sanitation district formed pursuant to and operating under the authority of the County Sanitation District Act, commencing at Health and Safety Code section 4700, is hereby accepted by the undersigned officer pursuant to authority conferred by Resolution No. SD-0267 of the Board of Directors of said District adopted on October 11, 2017 and the SASD consents to recordation thereof by its duly authorized officer.

\_\_\_\_\_

SASD Director of Operations

\_\_\_\_\_

Date



**Exhibit A**  
**Legal Description of Wilton Rancheria Property**

**Exhibit B**  
**Legal Description of Easement Area**

## **Exhibit C Negotiated Remedies**

None