

**Appendix 500-C EASEMENT AGREEMENT TO THIRD PARTY**

**EASEMENT AGREEMENT**

This Easement Agreement (Agreement) is entered into on the \_\_\_\_ day of \_\_\_\_\_, 2010 by and between GROVELAND COMMUNITY SERVICES DISTRICT, a political subdivision of the State of California and a community services district formed and operating pursuant to the provisions of Government Code Section 61000 et seq., (hereinafter “Grantor”) and \_\_\_\_\_, a \_\_\_\_\_, (hereinafter referred to “Grantee”).

**RECITALS**

A. Grantor is the owner of certain real property located in the County of Tuolumne, State of California, consisting of property particularly described in Exhibit A which is attached hereto and incorporated herein by this reference (hereinafter the “Property”).

B. Grantee is a \_\_\_\_\_.

C. Grantee desires to acquire certain rights in the Property by means of an easement for the installation, construction, operation, maintenance and repair of (Example: electrical or communication facilities; facilities, materials and equipment for supply and distribution of natural gas; etc.) \_\_\_\_\_ and related appurtenances together with the right of ingress and egress from the Property.

D. Grantor hereby finds that it is in the public interest to grant an easement to Grantee for the purposes specified in Recital C in consideration for which Grantor will receive consideration as specified in Section 4 hereof. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOW THEREFORE in consideration of the promises and of the mutual obligations and agreements herein contained, the parties hereby agree as follows:

1. THE PROPERTY

A. The legal description of that portion of the Property to be subject to the easement granted by Grantor to Grantee pursuant to the terms of this Agreement is attached hereto as Exhibit A and incorporated herein by this reference.

B. Grantor and Grantee hereby agree that the Property (including a right of way for ingress and egress thereto) may be surveyed by mutually agreed upon licensed surveyor at the sole cost of Grantee, and such survey shall then replace Exhibit A and become a part hereof and shall control and describe the Property in the event of any discrepancy between such survey and the description contained in Exhibit A hereto.

2. GRANT OF PERPETUAL EASEMENT

A. In consideration of the compensation to be provided by Grantee pursuant to provisions of Section 4 hereof, Grantor hereby grants to Grantee a perpetual exclusive easement in gross for public utility purposes which includes, but is not limited to the right to install, operate, maintain, repair, replace, add to, delete from, \_\_\_\_\_ facilities and related, pipes, power supplies, electronic data acquisition and control, communication, buildings, tanks, fencing and all related appurtenances and work auxiliary thereto, and incidental rights thereto in, over, under, across, upon, and within that portion of the real property described in Exhibit A attached hereto and incorporated herein by this reference, subject to all the other terms and conditions of this Agreement.

B. Grantor also hereby grants to Grantee a perpetual nonexclusive right of ingress and egress over and across a portion of the Property to the extent necessary to utilize this easement. These rights of ingress and egress shall exist over that portion of the Property described in Exhibit A attached hereto. In exercising the right of ingress and egress, Grantee must use reasonable care and must compensate Grantor for any damage resulting from the exercise of these rights of ingress and egress. Grantor and Grantee agree that such rights of ingress and egress shall be executed so as to cause the less practicable damage and inconvenience to Grantor.

C. The easement granted in this Agreement is an easement in gross to install (describe facilities to be installed in the easement) facilities together with related improvements.

D. Grantor reserves the right to use the Property for purposes which will not interfere with Grantee's rights and privileges granted pursuant to this Agreement. However, Grantor agrees that it shall not erect, construct, or maintain any building, structures, or concrete slab work, nor make any excavation within or drill or operate any well, nor plant any trees or other landscaping within or upon the easement described in this Agreement without first obtaining written consent of Grantee.

3. TERM

The easement granted in this Agreement shall be (a perpetual easement; or for a term of ninety-nine (99) years).

4. COMPENSATION

The parties hereto agree that the compensation payable by Grantee to Grantor in consideration for the grant of the easement from Grantor to Grantee pursuant to the terms of this Agreement shall consist of the following: \_\_\_\_\_

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5. USE OF THE PROPERTY

A. Grantee may use the Property only for the purpose of constructing, maintaining and operating \_\_\_\_\_ facilities, together with all \_\_\_\_\_ and related facilities necessary to provide \_\_\_\_\_ services, and for any other uses which are incidental thereto. The construction of such facilities shall be at Grantee's sole expense. Grantee shall maintain the Property comprising the easement area in a reasonable and safe condition throughout the term of this Agreement. Grantee agrees not to expand the dimensions or height of its facilities on the Property in addition to Grantee's facilities as provided for in this Agreement, without the prior written approval of Grantor's Board of Directors, which approval shall not be unreasonably withheld or delayed.

B. Licenses and Permit. Grantee shall at Grantee's sole cost and expense obtain and maintain during the term of Agreement all required federal, state or local regulatory or governmental licenses or permits required for the construction, installation, maintenance or use of the \_\_\_\_\_ facilities.

C. It is understood and agreed that Grantee's ability to use the Property is dependent upon Grantee's obtaining all the certificates, permits, licenses and other approvals which may be required from any federal, state or local authority and/or any easements which are required from any third parties in addition to Grantor. Grantor shall cooperate with Grantee, but at no expenses to Grantor, in its efforts to obtain such approvals and/or easements and Grantor shall take no action which will adversely affect the status of the Property with respect to Grantee's proposed uses thereof. If any application by Grantee for any such certificate, permit, license, easement or approval is denied or rejected, or if any such certificate, permit, license, easement or approval is cancelled, or expires, or lapses or is otherwise withdrawn or terminated through no fault of Grantee, or if, due to technological changes or for any other use related reason, Grantee reasonably determines that it will be unable to use the Property for Grantee's intended purposes, then Grantee shall have the right to immediately terminate this Easement as provided below.

D. Grantee shall have the right, but not the obligation, at any time following the full execution of this Easement to enter the Property for the purpose of making necessary inspections and engineering surveys, including soil tests where applicable, and other reasonably necessary tests to

determine the suitability of the Property for Grantee's facilities and for the purpose of preparing for the construction of Grantee's \_\_\_\_\_ facilities. During any test or preconstruction work, Grantee will have insurance as set forth in Section 13 hereof. Grantee will notify Grantor of any proposed tests or preconstruction work and will coordinate the scheduling of same with Grantor. If Grantee determines that the Property is unsuitable for Grantee's contemplated use, then Grantee will notify Grantor and this Easement Agreement will terminate.

E. All of Grantee's construction and installation work on the Property shall be performed at Grantee's sole cost and expense and in a good and workmanlike manner. Title to Grantee's facilities and equipment placed on the Property by Grantee shall be held by Grantee. All of Grantee's facilities shall remain the property of Grantee and are not fixtures. Upon the expiration, cancellation or termination of this Agreement, Grantee shall surrender the Property to Grantor in the condition in which the Property existed upon execution of this Agreement, less ordinary wear and tear.

F. Grantor shall provide access to Grantee and its employees, agents, contractors and subcontractors, to the Property twenty-four (24) hours a day, seven (7) days a week, at no charge. Grantor represents and warrants that it has full rights of ingress to and egress from the Property, and hereby grants such rights to Grantee to the extent required to construct, maintain, install and operate Grantee's \_\_\_\_\_ facilities on the Property. Grantee's exercise of these rights shall not interfere with Grantor's use of the Property for District purposes.

## 6. TERMINATION

A. (Only applicable if the easement is not a perpetual easement). Grantee shall notify Grantor of Grantee's exercise of its right to terminate this Agreement pursuant to the provisions of Section 5C above, and this Agreement shall terminate upon Grantor's receipt of such notice. Such termination shall relieve both parties of any further obligations under this Agreement, although each shall continue to have any and all remedies for any breach of obligation which occurred prior to the date of termination.

B. Upon expiration or earlier termination of this Agreement, Grantee agrees to record a quitclaim deed or other instrument evidencing the termination of Grantee's easement interest in the Property.

## 7. TAXES

A. It is understood that Grantor is exempt from the payment of real property taxes on the Property pursuant to California Constitution Article XIII Section 3(b).

B. Possessory Interest Taxes. Under this Agreement the possessory interest subject to property taxation may be created. Notice is hereby given pursuant to Revenue and Taxation Code section 107.6 that such possessory interest may be subject to property taxation if created, and that the party in whom the possessory interest is vested may be subject to the payment of property taxes levied on such interest. Also, the interest created by this Agreement may be subject to special taxation pursuant to the Mello-Roos Community Facilities Act of 1983 (Government Code section

53311 et seq.) and the party in whom the possessory tax levied on such interest pursuant to that Act. Grantee shall have the right in its own name, or to the extent necessary Grantor's name, to contest in good faith by all appropriate proceedings the amount, applicability or validity in any possessory tax assessment pertaining to the Property and Grantee's operations thereon.

In the event Grantee initiates such contest, Grantor shall responsibly cooperate with Grantee, provided such contest will not subject any part of the Property to forfeiture or loss.

If at any time payment of any tax or assessment becomes necessary and Grantee has exhausted its remedies with respect to contesting the amount, applicability or validity of any such tax or assessment pertaining to the Property, Grantee shall then timely pay such tax or assessment.

8. UTILITIES

Grantee shall be responsible directly to the serving entities for all utilities required by Grantee's use of the Property. Should electric power be provided by Grantor, Grantee shall install an electric meter and Grantee's usage shall be read by Grantor, or at Grantor's option, by Grantee, on a monthly basis, and the cost of electricity used by Grantee shall be paid by Grantee to Grantor as a payment separate from rent and shall be computed at the then current public utility rate assessed by that public utility responsible for providing electrical power to Grantee.

9. MAINTENANCE

Grantee shall be solely responsible for the maintenance of the Property comprising the easement and all improvements installed thereon, and shall solely responsible for all expenses incurred with connection with its use of Property. Grantee shall at its own expense throughout the term of this Agreement, or so long as it shall remain in possession of the Property, keep, maintain and replace in good repair all portions of the equipment located upon the Property. Grantee warrants that it will allow no debris or unused hardware to be left or stored on the Property.

10. STOP NOTICES AND/OR MECHANIC LIENS

Grantee shall promptly pay and discharge all claims for labor performed, supplies furnished, and services rendered at the request of Grantee and shall keep Grantor's Property free of all stop notices, mechanic and material-man's liens in connection therewith. Grantee shall provide at least ten (10) days prior written notice to Grantor before any labors performed, supplies furnished, or services rendered, and Grantor shall have the right to post notices of non-responsibility. If any such lien is filed, Grantee shall cause such lien to be released and removed within ten (10) days after the date of filing, and if Grantee fails to do so, Grantor make take such action as may be necessary to remove such lien, and Grantee shall pay Grantor such amounts expended by Grantor together with interest thereon at the maximum interest rate from the date of expenditure.

11. ASSIGNMENT

A. Should Grantor, at any time during the term of this Agreement, sell, lease, transfer or otherwise convey all or any part of the Property to any person other than Grantee, then such transfer shall be under and subject to this Agreement and all of Grantee's rights hereunder, and any transfer by Grantor of any portion of the Property subject to the easement created by this Agreement shall be under and subject to the right of Grantee in and to such easement.

B. Grantee may not assign or otherwise transfer all or any part of its interest in this Agreement or the easement, without the prior written consent of Grantor, such consent not to be unreasonably withheld.

12. INDEMNIFICATION

Grantee hereby agrees to defend, indemnify, hold harmless and protect Grantor, its officers, directors, agents, employees, and invitees, from and against any and all claims, losses, damages, demands, liabilities, suits, costs (including attorneys' fees), penalties, judgments or obligations as a result of personal injury and/or property damage in connection with or arising out of Grantee's development, construction, occupation, use, operation, maintenance and/or removal of its facilities on the Property. This indemnification is effective and shall apply whether or not any such action is alleged to have been caused in part by the Grantor as a party indemnified hereunder. This indemnification shall not include any claim arising from the sole negligence or willful misconduct of the Grantor, its officers, directors, agents or employees. The provisions of this paragraph shall survive the termination or expiration of this Agreement.

13. INSURANCE

i. Property Insurance

Grantee shall obtain and maintain insurance coverage to protect all personal property, trade fixtures and equipment located in or about the Property, and on Grantee's improvements and utility installations thereon from theft, fire, or other loss or damage customarily covered by such property insurance policies. Such insurance shall be full replacement cost coverage.

ii. Liability Insurance

1. Grantee shall obtain and keep in force a commercial general liability policy of insurance protecting Grantee and Grantor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Property and the easement rights thereon. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$5 million per occurrence and shall include all the coverages typically provided by the Broad Form Comprehensive General Liability Endorsement. The limits of said insurance shall not, however, limit the liability of Grantee nor relieve Grantee of any obligation hereunder, including indemnification obligations to Grantor. All insurance carried by Grantee shall be primary to and not contributory with any similar

insurance carried by Grantor with regards to the Property, and Grantor insurance shall be considered excess insurance only. Grantee shall also obtain workers' compensation insurance as required by law and automobile liability insurance with a combined single occurrence limit of \$1 million per accident.

2. Grantee shall provide Grantor with certificates evidencing the existence and the amounts of the required insurance coverages. No such policy shall be cancelled or subject to modification except after thirty (30) days prior written notice to Grantor. Grantee may comply with these insurance obligations by endorsement to any blanket policy of insurance carried by Grantee, so long as such blanket policy meets all the requirements set forth herein.

E. DEFAULT

A. The occurrence of any one or more of the following events shall constitute an Event of default hereunder by Grantee.

1. The failure by Grantee to timely provide the compensation to Grantor for this Agreement and easement or such failure shall continue for a period of thirty (30) days after written notice thereof as received by Grantee from Grantor.

2. The failure by Grantee to observe or perform any of the express or implied covenants or provisions of this Agreement to be observed or performed by Grantee where such failure to continue for a period of thirty (30) days after written notice thereof is received by Grantee from Grantor; provided, however, that it shall not be deemed an Event of Default by Grantee if Grantee shall commence to cure such failure within said thirty (30) day period and thereafter diligently prosecute such cure to completion.

B. If there occurs an Event of Default by Grantee, in addition to any other remedies available to Grantor at law or in equity, Grantor shall have the option of any of the following remedies:

1. Terminate by written notice Grantee's right to possession of the Property and thereby terminate this Agreement and terminate the Easement provided for in this Agreement pursuant to a condition subsequent that Grantee continue to pay to Grantor the compensation provided for in this Agreement and that Grantee continue to abide by all the terms and conditions of this Agreement as a condition of continuing to enjoy the benefits of the Easement granted to Grantee by Grantor pursuant to the terms of this Agreement; or

2. To have this Agreement and the Easement described herein to continue in full force and effect with Grantee at all times having the right to possession of the Property.

F. NOTICES

All notices hereunder must be in writing and, unless otherwise provided herein, shall be deemed valid if sent by certified mail, return receipt requested, addressed as follows (or to any other mailing address which the party to be notified may designate to the other party by such notice). Should Grantor or Grantee have a change of address, the other party shall immediately be notified as provided in this paragraph of such change.

Grantee: \_\_\_\_\_  
Attention: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, California \_\_\_\_\_

Grantor: Groveland Community Services District  
Attention: General Manager  
18966 Ferretti Road  
Groveland, CA 95321-0350

16. MISCELLANEOUS PROVISIONS

A. Grantor represents, covenants and warrants that Grantor is seized of good and sufficient title to an interest in the Property and has full authority to enter into and execute this Agreement and convey an easement in gross with respect to the Property. Grantor further covenants that there are no undisclosed liens, judgments or impediments of title on the Property that would affect this Agreement or the easement. Grantee represents, covenants and warrants that Grantee has full authority to enter into and execute this Agreement and said easement.

B. It is agreed and understood that this Agreement (together with the Grant Deed attached hereto and marked Exhibit B and incorporated herein by this reference) contains all the agreements, promises and understandings between the Grantor and Grantee, and no verbal or oral agreements, promises or understandings shall or will be binding upon either Grantor or Grantee, and any addition, variation or modification of this lease shall be void and ineffective unless made in writing and signed by the parties hereto.

C. This Agreement and the performance hereof shall be governed, interpreted, construed and regulated by the laws of the State of California.

D. This Agreement, and each and every covenant and condition herein, is intended to benefit the Property and shall extend to and bind the heirs, personal representatives, successors and assigns of the parties hereto.

E. If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, then such portion shall be deemed modified to the extent necessary in such court's opinion to render such a portion enforceable and, as so modified, such portion of the balance of this Agreement shall continue in full force and effect.



F. If either party hereto institutes any action or proceeding in court to enforce any provision hereof, or any action for damages by reason of any alleged breach of any of the provisions hereof, then the prevailing party in any such action or proceeding shall be entitled to receive from the losing party such amount as the court may adjudge to be reasonable attorneys' fee for the services rendered to the prevailing party, together with its other reasonable litigation costs and expenses.

G. In addition to the other remedies provided for in this Agreement, Grantor and Grantee shall be entitled to immediate restraint by injunction of any violation of any of the covenants, conditions or provisions herein contained.

H. Force Majeure. If the performance of this Agreement, or of any obligation hereunder is prevented, restricted, or interfered with by reason of lightning, earthquake or other act of God, embargos, government ordinances or requirements, civil or military authorities, acts or omissions of carriers, inability to obtain necessary materials or services from suppliers, power outages or brownouts, mechanical or electronic communication failures, acts of terrorism, or other causes beyond the reason control of the party whose performance is affected (excluding financial conditions, negligence or willful misconduct), then the party affected, upon giving prompt notice to the other party shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference (and the other party will likewise be excluded from performance of its obligations on a day-to-day basis to the extent such party's obligations relate to the performance are preventive, restricted, or interfered); provided that the parties so affected shall use reasonable efforts to avoid or remove such causes of nonperformance and both parties shall proceed to perform their obligations under this Agreement whenever such causes are removed or cease.

IN WITNESS WHEREOF, Grantor and Grantee have duly executed this Agreement on the day and year first above written.

Grantor: GROVELAND COMMUNITY SERVICES DISTRICT, a political subdivision of the State of California

By: \_\_\_\_\_

Grantee: \_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_