

**MEMORANDUM OF UNDERSTANDING REGARDING GRANT OF EASEMENT  
BETWEEN THE CITY OF SAN JOSÉ AND PACIFIC GAS AND ELECTRIC  
COMPANY**

This Memorandum of Understanding (“MOU”) is made and entered into on this 16 day of August, 2021 (“Effective Date”) by and between CITY OF SAN JOSÉ, a California municipal corporation (“City”), and PACIFIC GAS AND ELECTRIC COMPANY, a California corporation (“PG&E”).

**RECITALS**

- A. WHEREAS, City has requested that PG&E install its new facilities (“Installation Work”) to accommodate City’s proposed building project on Santa Clara County Accessor’s Parcel Number 230-46-040 in San José, California (“Property”);
- B. WHEREAS, in order for PG&E to accommodate the City’s request, PG&E requires an easement for its distribution facilities;
- C. WHEREAS, PG&E is trying to accommodate the City’s proposed building project and construction schedule, PG&E is being asked to construct and energize service and distribution facilities before an easement is granted to PG&E and this is an exception to PG&E’s normal installation process;
- D. WHEREAS, City desires to allow PG&E access to the Property to start the installation work through a Temporary Construction Easement (TCE);
- E. WHEREAS, this MOU is a one-time accommodation to the City for PG&E to start the work and energize the distribution facilities and service line to facilitate City’s proposed building project; and
- F. WHEREAS, the intent of this MOU is to ensure that the City’s requested Installation Work can proceed without an easement deed granted to PG&E at the start of construction, and to memorialize City staff’s intent to recommend approval of an easement to PG&E at a later date.

NOW THEREFORE in return for the consideration, covenants, and promises contained in this MOU, the parties agree as follows:

1. Grant of Easement. City staff agrees to bring forth an easement agreement to City Council in substantially the same form as attached in Exhibit A (Easement Agreement). PG&E shall have the ability to review the Easement Agreement to ensure that it is in substantially the same form as Exhibit A.
2. Recommendation by City Staff. City staff shall bring to City Council for their consideration and approval the Easement Agreement as soon as practicable once the City Council is back in session. City staff shall prepare and submit a City staff report accompanying the Easement Agreement to the City Council with the City staff’s recommendation that the City

Council accept and execute the Easement Agreement.

3. Expedited Construction Schedule. Immediately upon execution of this MOU and the TCE, PG&E shall immediately work to schedule a crew to begin the Installation Work.

4. Term. This MOU shall remain in effect from the Effective Date to the date that the Easement Agreement is recorded.

5. Governing Law. This MOU shall be governed by and interpreted in accordance with the laws of the State of California.

6. Notices. All notices and other communications under this MOU shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, one business day following delivery to a reputable overnight courier for next day delivery, the third day after mailing if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid, or when a fax confirmation sheet indicates transmission by fax has been received. All such notices and other communications shall be addressed to the parties as follows:

**CITY OF SAN JOSÉ**

City of San José  
OED - Real Estate Services  
200 E. Santa Clara Street, 12th Floor  
San José, CA 95113  
Attn: Real Estate Manager

**PACIFIC GAS AND ELECTRIC COMPANY**

Pacific Gas and Electric Company  
111 Almaden Boulevard, Room 814  
San José, CA 95113  
Attn: David Neal

Any party may change its address for purposes of this paragraph by giving the other party written notice of the new address in the manner set forth above.

7. Amendments. Any changes to this MOU must be in writing and approved by PG&E and City. Any prior agreements, promises, negotiations or representations not expressly set forth in this agreement are of no force and effect.

8. Binding Effect. This MOU shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of City and PG&E.

9. Authorization. Each signatory below represents and warrants that he or she is duly authorized to enter into this MOU on behalf of the respective parties.

10. Execution in Counterparts. This MOU, as well as any amendments and supplements thereto, may be executed in counterparts, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original, and all such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written.

Approved as to form:

By: × Cameron Day - 9-15-21  
Cameron Day (9/15/2021)  
Email: cameron.day@sanjoseca.gov  
\_\_\_\_\_  
CAMERON DAY  
Deputy City Attorney

**CITY OF SAN JOSÉ,  
a California municipal corporation**

By: × Sarah Zarate  
Sarah Zarate (9/16/2021)  
Email: sarah.zarate@sanjoseca.gov  
\_\_\_\_\_  
SARAH ZARATE  
Director of Administration, Policy,  
and Intergovernmental Relations  
Office of the City Manager

**PACIFIC GAS AND ELECTRIC  
COMPANY, a California corporation**

By: × Joseph O'Neal  
jbo1@pge.com (9/15/2021)  
Email: jbo1@pge.com  
\_\_\_\_\_  
JOSEPH O'NEAL  
Manager  
Land Surveying and Engineering  
Support

**EXHIBIT A**  
**Easement Agreement**

**RECORDING REQUESTED BY AND WHEN  
RECORDED MAIL TO:**

**AND MAIL TAX STATEMENT TO:**

PACIFIC GAS AND ELECTRIC COMPANY  
245 Market Street, N10A, Room 1015  
P.O. Box 770000  
San Francisco, CA 94177

Location: City/Uninc \_\_\_\_\_  
Recording Fee \$ \_\_\_\_\_  
Document Transfer Tax \$ \_\_\_\_\_

- This is a conveyance where the consideration and Value is less than \$100.00 (R&T 11911).  
 Computed on Full Value of Property Conveyed, or  
 Computed on Full Value Less Liens & Encumbrances Remaining at Time of Sale  
 Exempt from the fee per GC 27388.1 (a) (2); This document is subject to Documentary Transfer Tax

\_\_\_\_\_  
Signature of declarant or agent determining tax

LD#

Space above this line for Recorder's Use

RECORDED WITHOUT FEE UNDER SECTION 6103 GOVERNMENT CODE OF THE STATE OF CALIFORNIA

**EASEMENT AGREEMENT BY AND BETWEEN**  
**THE CITY OF SAN JOSE AND PACIFIC GAS AND ELECTRIC COMPANY**  
(1120 Coleman Avenue)

**THIS EASEMENT AGREEMENT** (the "Agreement") is made by and between CITY OF SAN JOSE, a California municipal corporation, ("Grantor"), and PACIFIC GAS AND ELECTRIC COMPANY, a California corporation, ("Grantee"), collectively referred to as the "Parties", effective upon execution by Grantor (the "Effective Date").

**RECITALS**

- A. Grantor is the owner of property, Assessor's Parcel Number 230-46-040, in San Jose, California, as described in **Exhibit A** attached hereto and incorporated herein ("Property"); and
- B. Grantee desires to enter upon a portion of the Grantor's Property as described and shown in **Exhibit B** attached hereto and incorporated herein ("Easement

Area”), in order to excavate for, construct, reconstruct, install, inspect, maintain, replace, remove, and use electrical and communication facilities; and

- C. Grantor is amenable to permitting a right to enter the Easement Area to Grantee for the purposes described herein.

**NOW THEREFORE**, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. Grant of Easement. Grantor hereby grants to Grantee a permanent, non-exclusive easement (“Easement”) on, over, under and through the Easement Area for the purposes hereinafter described, subject to all existing licenses, easements, leases, encumbrances and claims of title affecting the Grantor’s Property.
2. Purpose. Subject to the limits herein stated, the Easement granted herein is for the purpose of excavation and installation of such underground conduits, pipes, manholes, service boxes, wires, cables, and electrical conductors; aboveground marker posts, risers, and service pedestals; underground and aboveground switches, fuses, terminals, and transformers with associated concrete pads; and fixtures and appurtenances necessary to any and all thereof, as Grantee deems necessary for the distribution of electric energy and communication purposes located within the Easement Area, upon, in, through, along and across the portion of the Grantor’s Property as described in **Exhibit A**.
3. Term. The term of the Easement shall be perpetual and permanent from and after the Effective Date.
4. Terms and Conditions. The Easement is given subject to the following terms and conditions.
  - 4.1 Compliance with Laws. Grantee shall obtain and maintain all necessary permits, licenses and approvals, from the relevant agencies and comply with all current laws, ordinances, orders, rules, regulations and permits with respect to its use of the Easement Area pursuant to this Agreement and submit this Agreement for recording in the Official Records of Santa Clara County.
  - 4.2 Other Terms and Conditions of Use.

Grantor further grants to Grantee the right, from time to time, to trim or to cut down, without Grantee paying compensation, any and all trees and brush now or hereafter within said Easement Area, and shall have the further right, from time to time, to trim and cut down trees and brush along each side of said easement area which now or hereafter in the opinion of Grantee may interfere with or be a hazard to the facilities installed

hereunder, or as Grantee deems necessary to comply with applicable state or federal regulations.

Grantor also grants to Grantee the right to use such portion of said lands contiguous to said Easement Area as may be reasonably necessary in connection with the excavation, construction, reconstruction, replacement, removal, maintenance and inspection of said facilities.

Grantor hereby covenants and agrees not to place or construct, nor allow a third party to place or construct, any building or other structure, or store flammable substances, or drill or operate any well, or construct any reservoir or other obstruction within said Easement Area, or diminish or substantially add to the ground level within said Easement Area, or construct any fences that will interfere with the maintenance and operation of said facilities.

Grantor further grants to Grantee the right to apportion to another public utility (as defined in Section 216 of the California Public Utilities Code) the right to excavate for, construct, reconstruct, replace, remove, maintain, inspect, and use the communications facilities within said Easement Area including ingress thereto and egress therefrom.

Grantor acknowledges that they have read the "Grant of Easement Disclosure Statement", attached as **Exhibit C**.

The provisions hereof shall inure to the benefit of and bind the successors and assigns of the respective parties hereto, and all covenants shall apply to and run with the land.

- 4.3 As-Is Condition and Assumption of Risk. Grantee accepts the condition of the Easement Area as-is. and acknowledges that: i) Grantor is under no obligation to provide any additional preparations or improvements to the Easement Area prior to use by Grantee, and ii) its use of the Easement Area is entirely at its own risk.
- 4.4 Release and Waiver. Grantee waives and releases Grantor and its officers, employees and agents from any and all liability to Grantee, its officers, employees or agents for any loss, damage, liability, or liability for damages, whether for loss of or damage to property, or injury to or death of persons, which may arise out of use of the Easement Area by Grantee, its officers, employees or agents, except such loss or damage as is caused by or arises out of the gross negligence or willful misconduct of Grantor, its officers, employees or agents. The foregoing shall include any loss, damage, claim, or liability for damages or injury caused by or resulting from Grantee's introduction or generation of Hazardous Materials, as defined in **Exhibit D**, on the Easement Area, or the creation of

increased hazard to the public from existing and construction materials or equipment arising from the use of the Easement Area by Grantee, its officers, employees, agents or contractors. However, Grantee shall not be responsible for any cleanup of Hazardous Materials not caused, generated or disturbed by Grantee, its officers, employees, agents or contractors.

- 4.5 Survival. The provisions of subsections 4.1 through 4.6 shall survive expiration or earlier termination of the Easement as to liabilities and other Claims arising out of events that occur prior to expiration or earlier termination of the Easement.
- 4.6 Indemnification. Grantee shall indemnify, defend, and hold harmless Grantor and its officers, employees and agents against any and all claims, liabilities, losses, damages, suits, actions, expenses, and demands of any kind or nature, resulting from or arising out of Grantee's use of the Easement Area (collectively "Claims"), including entries of Grantee's officers, employees, agents or contractors, except such loss or damage as is caused by or arises out of the active negligence or willful misconduct of Grantor, its officers, employees or agents. The foregoing shall include, but not be limited to, any Claims resulting from Grantee's introduction or generation of Hazardous Materials on the Easement Area, or the creation of increased hazard to the public from existing materials arising from the entries of Grantee, its employees, agents or contractors, however, Grantee shall not be responsible for any cleanup of Hazardous Materials not caused, generated or disturbed by Grantee, its officers, employees, agents or contractors.
- 4.7 Maintenance. At all times during Grantee's access onto the Easement Area, Grantee shall use the Easement Area in a safe, clean and orderly condition.
- 4.8 Restoration of Easement Area. Grantee shall fully restore the Easement Area, to its original or better pre-existing condition.
- 4.9 Grantor Access to Easement Area. The Easement is non-exclusive. Grantor shall continue to have the right to use and access the Easement Area in its entirety and grant such use and access rights to third parties, so long as such access and use does not unreasonably interfere with Grantee's free use and enjoyment of the Easement Area on a non-exclusive basis.
- 4.10 Reversion. In the event of abandonment of said electrical and communication facilities, and non-use thereof for a continuous period of one year shall be conclusive evidence of such abandonment, all of the rights hereunder shall forthwith revert to Grantor.



4.11 Building Restriction. Grantor shall not place or construct, nor allow a third party to place or construct, any building or other structure, or store flammable substances, or drill or operate any well, or construct any reservoir or other obstruction within said Easement Area, or diminish or substantially add to the ground level within said Easement Area, or construct any fences that will interfere with the maintenance and operation of said facilities.

5. Notices. All notices given in conjunction with this Agreement shall be written, and shall be effective upon personal delivery to the other party or, if by mail, three (3) days after deposit in the U.S. Mail, first class postage prepaid to the applicable address stated below, or to such other address as the party may designate by written notice:

GRANTOR:	City of San José OED - Real Estate Services 200 E. Santa Clara Street, 12th Floor San José, CA. 95113 Attn: Real Estate Manager
GRANTEE:	Pacific Gas and Electric Company 111 Almaden Boulevard, Room 814 San Jose, CA 95113 Attn: Karen Nguyen

6. Exhibits. All Exhibits and addenda referred to herein, and any exhibits or schedules which may from time to time be referred to in any duly executed amendment hereto, are by such reference incorporated herein and shall be deemed a part of this Agreement as set forth fully herein. The Exhibits to this Agreement as are:

- Exhibit A – Description of Property
- Exhibit B – Legal Description and Plat Map of Easement Area
- Exhibit C – Grant of Easement Disclosure Statement
- Exhibit D – Definition of Hazardous Materials

7. Counterparts. This Agreement may be executed in any number of separate counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

9. Amendment. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the parties hereto.
10. Assignment. Grantee shall not assign or transfer any interest in this Agreement nor the performance of any of Grantee's obligations hereunder, without the prior written consent of Grantor, and any attempt by Grantee to so assign or transfer this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

**IN WITNESS WHEREOF**, the parties have executed this instrument the day and year written below.

**“GRANTOR”**

APPROVED AS TO FORM: CITY OF SAN JOSE,  
a California municipal corporation

_____	_____	_____
CAMERON DAY Deputy City Attorney	SARAH ZARATE Director of Administration, Policy, and Intergovernmental Relations Office of the City Manager	Date

**“GRANTEE”**

PACIFIC GAS AND ELECTRIC  
COMPANY,  
a California Corporation

_____	_____
JOSEPH O’NEAL Manager Land Surveying and Engineering Support	Date

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, \_\_\_\_\_ a  
Notary Public, 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: \_\_\_\_\_

Name: \_\_\_\_\_  
(typed or printed)

(Seal)

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, \_\_\_\_\_ a  
Notary Public, 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: \_\_\_\_\_

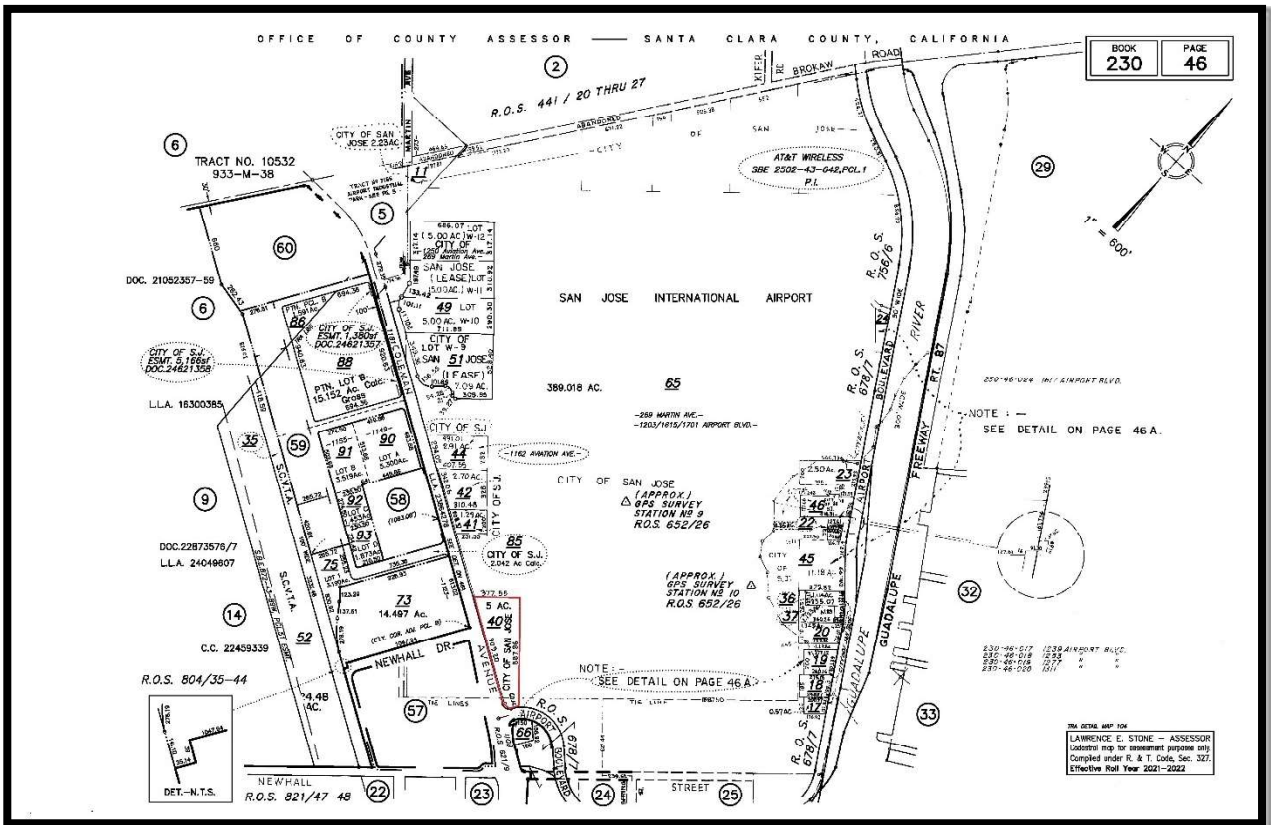
Name: \_\_\_\_\_

(typed or printed)

(Seal)

# EXHIBIT A

## Description of Property



## **EXHIBIT B**

### **Legal Description and Plat Map of Easement Area**



August 25, 2021  
BKF No. 20181534

Page 1 of 2

#### **EXHIBIT "A"** Legal Description

#### **PG&E UTILITY EASEMENT**

San Jose Aircraft Rescue and Fire Fighting Facility  
(1120 Coleman Avenue, San Jose, CA)

Real property in the City of San Jose, County of Santa Clara, State of California, described as follows:

Being a portion of the lands of the City of San Jose, as said lands is described in that certain Lease, entitled "Lease of the City-Owned Land at San Jose Municipal Airport to State of California for Aeronautical Laboratory", recorded November 18, 1960 in Book 4985 at Page 682, Official Records of Santa Clara County, more particularly described as follows:

**COMMENCING** at a found 3/8" diameter iron pin with punch mark set in concrete base, inside monument well at the intersection of Coleman Avenue and Airport Boulevard, accepted the position of said monument shown as "Found PK Nail", as said monument is shown on that certain Map of Tract No. 10532, filed for record on October 6, 2020 in Book 933 of Maps at Pages 38 through 42 inclusive, Records of Santa Clara County;

Thence leaving said monument and along the monument line of said Coleman Avenue, North 57°34'50" West, 610.40 feet;

Thence leaving said monument line, North 32°25'10" East, 68.00 feet to southwesterly line of said lands of City of San Jose, as described in said Lease (4985 O.R. 682), said point being also the **TRUE POINT OF BEGINNING** of this legal description;

Thence leaving said southwesterly line, the following courses and distances:

North 11°08'52" West, 95.50 feet;  
North 48°47'53" East, 140.24 feet;  
South 41°12'07" East, 46.18 feet;  
North 48°47'53" East, 10.63 feet;  
South 41°12'07" East, 18.00 feet;  
South 48°47'53" West, 16.00 feet;  
North 41°12'07" West, 6.14 feet;  
South 48°47'53" West, 6.73 feet;  
North 41°12'07" West, 48.04 feet;  
South 48°47'53" West, 122.37 feet;  
South 11°08'52" East, 63.24 feet;  
South 57°34'50" East, 24.93 feet;  
South 32°25'10" West, 26.08 feet to said southwesterly line of said lands of City of San Jose;

Thence along said southwesterly line, North 57°34'50" West, 13.92 feet to the **TRUE POINT OF BEGINNING** of this legal description.

Containing an area of 3,480 square feet, more or less.

**As shown on EXHIBIT "B" plat attached hereto and by this reference made a part hereof.**

**EXHIBIT "A"**  
Legal Description

**PG&E UTILITY EASEMENT**

San Jose Aircraft Rescue and Fire Fighting Facility  
(1120 Coleman Avenue, San Jose, CA)

Page 2 of 2

The bearing N57°34'50"W of the monument line of Coleman Avenue, between found monuments at Airport Boulevard and Newhall Drive, as said bearing and monuments are shown on that certain Map of Tract No. 10532, filed for record on October 6, 2020 in Book 933 of Maps at Pages 38 through 42 inclusive, Records of Santa Clara County, was taken as the basis of bearings for this legal description.

The above description of real property was prepared by me, or under my supervision, in conformance with the requirements of Section 8726 (g, k, l, m) of the Business and Professions Code of the State of California.

By: John Koroyan  
John Koroyan  
P.L.S. No. 8883



Date: AUG. 25, 2021



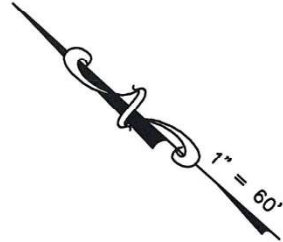
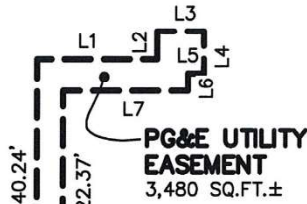
CITY OF SAN JOSE

APN: 230-46-065

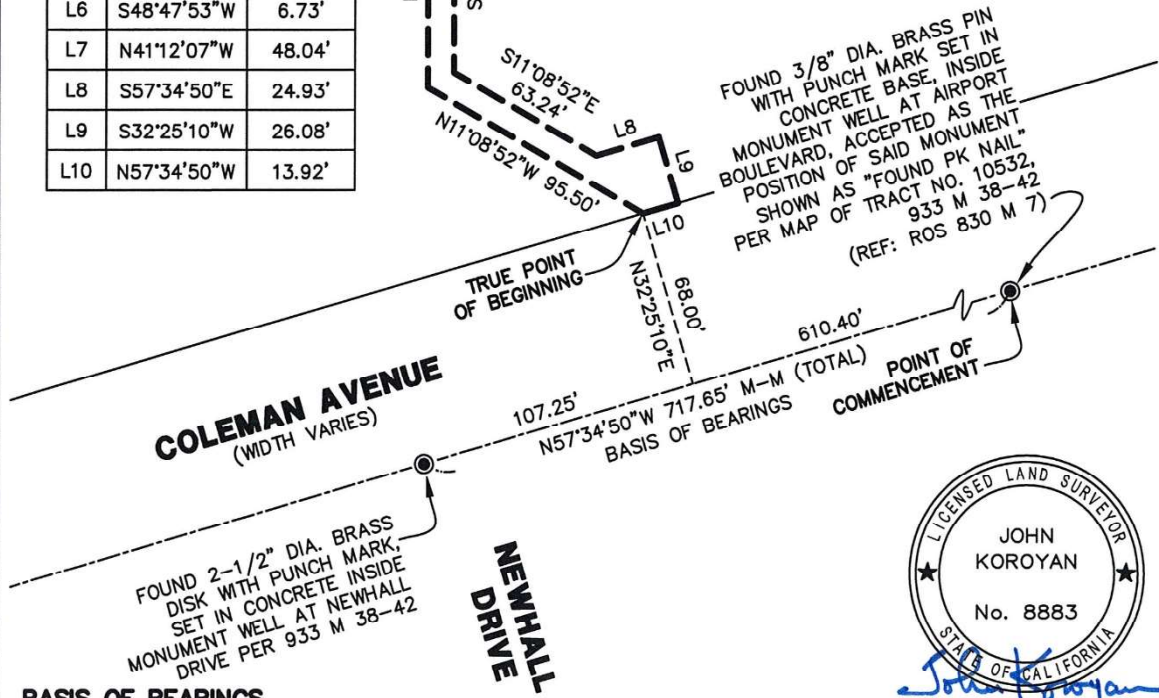
CITY OF SAN JOSE  
A MUNICIPAL CORPORATION

4985 O.R. 682 (DOC. 1909430)  
REC. 11-18-1960  
APN: 230-46-040

LINE TABLE		
NO.	BEARING	LENGTH
L1	S41°12'07"E	46.18'
L2	N48°47'53"E	10.63'
L3	S41°12'07"E	18.00'
L4	S48°47'53"W	16.00'
L5	N41°12'07"W	6.14'
L6	S48°47'53"W	6.73'
L7	N41°12'07"W	48.04'
L8	S57°34'50"E	24.93'
L9	S32°25'10"W	26.08'
L10	N57°34'50"W	13.92'



(SCALE IN FEET)



**BASIS OF BEARINGS**

THE BEARING N57°34'50"W OF THE MONUMENT LINE OF COLEMAN AVENUE, BETWEEN FOUND MONUMENTS AT AIRPORT BOULEVARD AND NEWHALL DRIVE, AS SAID BEARING AND MONUMENTS ARE SHOWN ON THAT CERTAIN MAP OF TRACT NO. 10532, FILED FOR RECORD ON OCTOBER 6, 2020 IN BOOK 933 OF MAPS AT PAGES 38 THROUGH 42 INCLUSIVE, RECORDS OF SANTA CLARA COUNTY, WAS TAKEN AS THE BASIS OF BEARINGS FOR THIS PLAT.

**EXHIBIT "B"**  
PLAT TO ACCOMPANY  
LEGAL DESCRIPTION



1730 N. FIRST STREET  
SUITE 600  
SAN JOSE, CA 95112  
408-467-9100  
www.bkf.com

Subject PG&E UTILITY EASEMENT  
SAN JOSE AIRCRAFT RESCUE AND FIRE FACILITY  
 Job No. 20181534 SAN JOSE, CA  
 By JG Date 08-25-2021 Chkd. JVK  
 SHEET 1 OF 1

## EXHIBIT C

### Grant of Easement Disclosure Statement

Utility Distribution Easement (02/2020)

**Pacific Gas and Electric Company**



#### EXHIBIT "C"

#### GRANT OF EASEMENT DISCLOSURE STATEMENT

This Disclosure Statement will assist you in evaluating the request for granting an easement to Pacific Gas and Electric Company (PG&E) to accommodate a utility service extension to PG&E's applicant. **Please read this disclosure carefully before signing the Grant of Easement.**

- You are under no obligation or threat of condemnation by PG&E to grant this easement.
- The granting of this easement is an accommodation to PG&E's applicant requesting the extension of PG&E utility facilities to the applicant's property or project. Because this easement is an accommodation for a service extension to a single customer or group of customers, PG&E is not authorized to purchase any such easement.
- By granting this easement to PG&E, the easement area may be used to serve additional customers in the area and **may be used to install additional utility facilities**. Installation of any proposed facilities outside of this easement area will require an additional easement.
- Removal and/or pruning of trees or other vegetation on your property may be necessary for the installation of PG&E facilities. You have the option of having PG&E's contractors perform this work on your property, if available, or granting permission to PG&E's applicant or the applicant's contractor to perform this work. Additionally, in order to comply with California fire laws and safety orders, PG&E or its contractors will periodically perform vegetation maintenance activities on your property as provided for in this grant of easement in order to maintain proper clearances from energized electric lines or other facilities.
- The description of the easement location where PG&E utility facilities are to be installed across your property must be satisfactory to you.
- The California Public Utilities Commission has authorized PG&E's applicant to perform the installation of certain utility facilities for utility service. In addition to granting this easement to PG&E, your consent may be requested by the applicant, or applicant's contractor, to work on your property. Upon completion of the applicant's installation, the utility facilities will be inspected by PG&E. When the facility installation is determined to be acceptable the facilities will be conveyed to PG&E by its applicant.

By signing the Grant of Easement, you are acknowledging that you have read this disclosure and understand that you are voluntarily granting the easement to PG&E. Please return the signed and notarized Grant of Easement with this Disclosure Statement attached to PG&E. The duplicate copy of the Grant of Easement and this Disclosure Statement is for your records.

## EXHIBIT D

### Definition of Hazardous Materials

For the purpose of this Agreement, “**Hazardous Materials**” shall mean any and all: (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental Laws; (b) materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and, (c) substances, products, by-products, wastes or other materials which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational, health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste.

For the purposes of this Agreement, “**Environmental Laws**” shall mean and include all federal, state, and local laws, statutes, ordinances, regulations, resolutions, decrees, and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational, health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Materials, including without limitation, all federal or state super-lien or environmental clean-up.