

**TEMPORARY CONSTRUCTION EASEMENT AGREEMENT BY AND BETWEEN
THE CITY OF SAN JOSE AND EFUEL INVESTMENTS SAN JOSE LLC, A
CALIFORNIA LIMITED LIABILITY COMPANY**

THIS **TEMPORARY CONSTRUCTION EASEMENT AGREEMENT** (the "Agreement") is made by and between EFUEL INVESTMENTS SAN JOSE LLC, a California limited liability company ("Grantor"), and the CITY OF SAN JOSE, a municipal corporation of the State of California ("Grantee"), effective upon February 2, 2022, which is the date Grantor receives just compensation from Grantee (the "Effective Date").

RECITALS

- A. Grantor is the owner of that certain property located at East Taylor Street in San José, California, Assessor's Parcel Numbers 254-01-017 and 254-01-019, as described in **Exhibit A**, attached hereto and incorporated herein ("Grantor Property"); and
- B. Grantee desires to temporarily enter upon a portion of the Grantor Property as described in **Exhibit B**, attached hereto and incorporated herein ("Easement Area"), for ingress and egress purposes to perform construction work immediately adjacent to Grantor Property as part of the Coyote Creek Trail – Mabury to Watson Park Project ("Project"); and
- C. Grantor is amenable to permitting a temporary 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. **Temporary Construction Easement.** Grantor hereby grants to Grantee, its officers, employees, agents and contractors, a temporary, non-exclusive construction easement ("Easement") on, under, over and through the Easement Area for the purposes hereinafter described, subject to all licenses, easements, leases, encumbrances and claims of title affecting the Grantor Property for the Term.
2. **Purpose.** Subject to the limits herein stated, the Easement granted herein is for the sole purpose of ingress and egress.
3. **Term.** The term of the Easement shall begin upon the date the California Department of Transportation accepts the Grantee's right-of-way certification to proceed with the Project ("Term Commencement Date") and expire twenty-four (24) months after the Term Commencement Date, at midnight ("Term"). Grantee shall provide Grantor written notice of the Term Commencement Date. If

requested by Grantor following expiration, Grantee shall deliver to Grantor a quitclaim of the interest granted to Grantee pursuant to this Agreement.

4. Terms and Conditions. The Easement is given subject to the following terms and conditions.

4.1 Compensation. Grantee shall pay Grantor One Hundred Thirty-Two Thousand Dollars (\$132,000.00) in return for the rights granted under this Agreement.

4.2 As-Is Condition and Assumption of Risk. Grantee accepts the condition of the Easement Area as-is and acknowledges that Grantor is under no obligation to provide any additional preparations or improvements to the Easement Area prior to use by Grantee.

Grantor represents and warrants that Grantor has no knowledge of any hazardous materials release on Grantor Property and that, to the best of Grantor's knowledge, Grantor Property is free and clean of any environmental contamination. If any hazardous materials, environmental contamination, or other unforeseen conditions are discovered on Grantor Property during the course of work by Grantee, Grantee may immediately cease work and shall have no further obligations under this Agreement or as a result of the entry onto the Grantor Property.

4.3 Indemnification. Grantee will indemnify and hold harmless Grantor from all claims, injuries, liability or damages directly resulting solely from the grossly negligent acts of Grantee, its employees, agents, consultants or contractors on the Grantor Property pursuant to this Agreement. Grantee's obligations under this section shall not extend to any claims, demands, losses, expenses or liabilities arising from Grantor's breach of any of the terms, conditions, representations or warranties contained in this Agreement, or out of the negligent or intentional acts of anyone other than the Grantee or its employees, agents, consultants or contractors

4.4 Survival. The provisions of subsections 4.3 and 4.4 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.

4.5 Maintenance and Restoration of Easement Area. At all times during the term of the Easement, Grantee shall maintain the Easement Area in a safe, clean and orderly condition, as is reasonable given its non-exclusive use of Grantor's Property. Following the expiration or earlier termination of the Easement, Grantee shall fully restore the Easement Area to its pre-existing condition. If the restoration is not so performed by Grantee within

thirty (30) calendar days after notification by Grantor, Grantor shall have the right, but not the obligation, to perform the necessary restoration.

- 4.6 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. Grantor shall refrain from interfering with Grantee's work on Grantor Property.
- 4.7 Grantor represents and warrants that its signatory(ies) to this Agreement is/are authorized to execute this Agreement on Grantor's behalf.
- 4.8 This Agreement represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder.
- 4.9 In the event that the Grantee's use of the Easement Area interferes with the existing tenants' operations, Grantee shall coordinate with Grantor to determine reasonable accommodations for all necessary uses.
5. Notices. Unless otherwise stated herein, 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, or, if via e-mail, when sent provided the sender receives an acknowledgement from the intended recipient (e.g. return receipt, return e-mail, or other written acknowledgement):

Grantor: eFUEL Investments San Jose, LLC
c/o Don Harper
3061 Capri Lane
Costa Mesa, CA 92626

Grantee: City of San José
Real Estate Services
200 East Santa Clara Street, 12th floor
San José, CA 95113-1905
Attn: Real Estate Manager
E-Mail: kevin.ice@sanjoseca.gov

With a copy to: San Jose City Attorney's Office
200 East Santa Clara Street
San José, CA 95113-1905
Attn: Real Estate Attorney
Fax: (408) 998-3131
E-Mail: cao.main@sanjoseca.gov

6. Title VI Assurances. The parties to this contract shall, pursuant to Section 21.7(a) of Title 49, Code of Federal Regulations, comply with all elements of Title VI of the Civil Rights Act of 1964. This requirement under Title VI and the Code of Federal Regulations is to complete the USDOT-Non-Discrimination Assurance requiring compliance with Title VI of the Civil Rights Act of 1964, 49 C.F.R. Parts 21 and 28 C.F.R. Section 50.3. Further, no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity that is the subject of this contract.

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



APPROVED AS TO FORM:

Attorney
Cameron Day
Deputy City Attorney IV U
cameron.day@sanjoseca.gov
Cameron Day
Cameron Day (1/7/2022)
Email: cameron.day@sanjoseca.gov

“Grantee”

CITY OF SAN JOSE,
a municipal corporation of the State of
California

Nanci Klein
Nanci Klein (1/10/2022)
Email: nanci.klein@sanjoseca.gov

NANCI KLEIN
Director of Economic Development and
Cultural Affairs

“Grantor”

EFUEL INVESTMENTS SAN JOSE LLC,
a California limited liability company

Donald Harper
donharper04@gmail.com (1/6/2022)
Email: donharper04@gmail.com

Name: Don Harper
Title: Member

EXHIBIT A
Aerial of Grantor Property



EXHIBIT B

Legal Description and Plat Map of Easement Area

DESCRIPTION OF REAL PROPERTY

All that certain real property situate in the City of San José, County of Santa Clara, State of California, being a portion of the parcels of land as described on that certain Grant Deed recorded January 15, 2019 as Document No. 24098466, Official Records, Santa Clara County Records, and being more particularly described as follows:

PARCEL A:

BEGINNING at a point on the southeasterly line of Taylor Street, also being the southwest corner of PARCEL ONE and the northwest corner of PARCEL TWO, as described in said Grant Deed;

Thence along the centerline of a strip, **20.00' wide**, South 80° 23' 07" East, 373.00 feet, to a point, hereinafter referred to as **Point "A"**;

Thence continuing along said centerline South 05° 18' 50" East, 91.50 feet;

Thence continuing along said centerline South 34° 05' 26" East, 34.52 feet, more or less, to the lands conveyed to *Santa Clara County Flood Control and Water District*, by that certain Grant Deed recorded May 10, 1972, as Document No. 4253947, in Book 9827 of Official Records, page 369, Santa Clara County Records, and also being the **POINT OF TERMINUS** of this description.

The westerly terminal line of said 20.00' wide strip to be said southeasterly line of Taylor Street and the easterly terminal line of said 20.00' wide strip to be the northwesterly lines of said lands described in Document No. 4253947, the sidelines to extend or shorten at said terminal lines.

Containing approximately 10,059 square feet (0.23 acres), more or less.

TOGETHER WITH:

PARCEL B:

COMMENCING at a hereinabove described **Point "A"**, thence South 46° 58' 47" West, 12.64 feet to the **Point of Beginning**;

Thence South 05° 18' 50" East, 25.00 feet;

Thence North 32° 02' 58" West, 32.32 feet;

Thence South 80° 23' 07" East, 15.00 feet to the Point of Beginning;

Containing approximately 182 square feet (0.004 acres), more or less.

EXHIBIT B (continued)

Legal Description and Plat Map of Easement Area

The Basis of Bearing for this description is the southeasterly line of Taylor Street as shown on that particular map entitled, "Right-Of-Way Record Map", DR. No. R-40.6 dated November 2, 1990 with the State of California, Cal Trans District 4 Office.

Attached hereto and by reference a part hereof is a plat labeled "PLAT TO ACCOMPANY DESCRIPTION OF REAL PROPERTY" depicting the subject property.

This description was prepared from record information.

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.

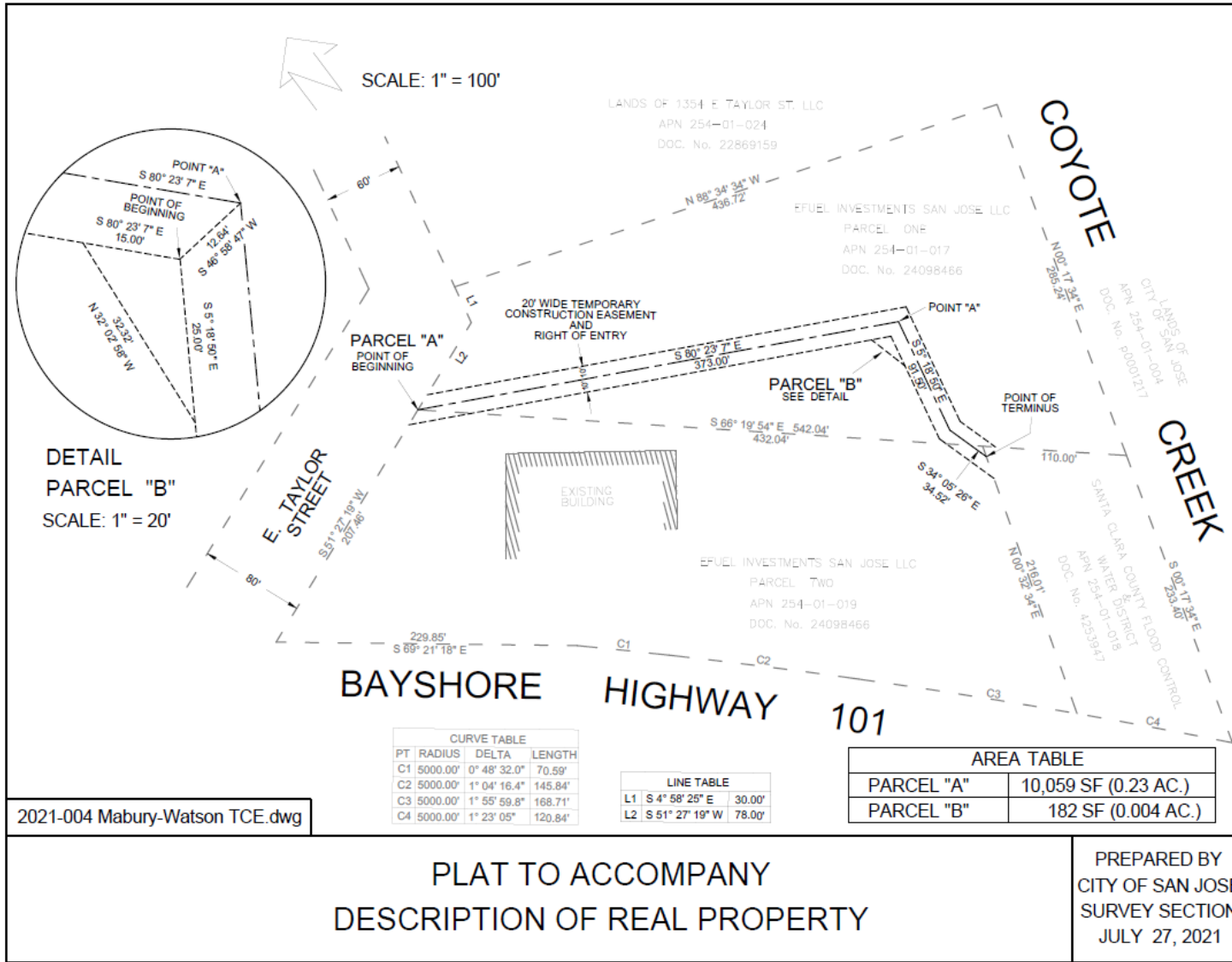


A handwritten signature in blue ink, appearing to read "S G", positioned above a horizontal line.

Steve G. Choy, PLS 6672

EXHIBIT B (continued)

Legal Description and Plat Map of Easement Area



City of San José Contract/Agreement Transmittal Form

Route Order

Attached / Completed

Electronically Signed

TO: City Attorney
 City Manager
 City Clerk **OR** Return to
Dept. (circle one)

Insurance Certificates / Waivers Electronically Signed: Yes
 Business Tax Certificate Audit Trail Attached (if applicable)
 Contacted Clerk re: Form 700 Scanned Signature Authorization
 Supplemental Memorandums (if applicable): Select One

Type of Document: New Contract

Type of Contract: Use of Real Property

REQUIRED INFORMATION FOR ALL CONTRACTS:

Existing GILES # OC-001200

Contractor: EFUEL INVESTMENTS SAN JOSE LLC, a California limited liability company

Address: 3061 Capri Ln, Costa Mesa, CA 92626, USA

Phone: _____ Email: _____

Contract Description: Temporary Construction Easement agreement between the City of San Jose ("Grantee") and eFUEL Investments San Jose LLC ("Grantor") to temporarily enter a portion of Assessor's Parcel Numbers 254-01-017 and 254-01-019 at East Taylor St

Term Start Date: 2/2/2022 Term End Date: 2/1/2024 Extension: Select one

Method of Procurement: N/A RFB, RFP or RFQ No.: _____ Date Conducted: _____

Agenda Date (if applicable): _____ Agenda Item No.: _____

Resolution No.: _____ Ordinance No.: _____

Original Contract Amount: \$132,000 Amount of Increase/Decrease: _____

Option #: ___ of ___ Option Amount: _____ NTE/Updated Contract Amount: _____

Fund/Appropriation: 375/4110

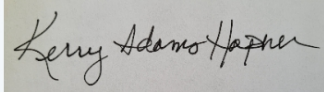
Form 700 Required (Selection mandatory for processing): No Revenue Agreement: No

Tax Certificate No.: 2446859934 Expiration Date: _____

Department: OED (60)

Department Contact: Yen Bui / (408) 693-7561 Customer (Finance Only): Á

Notes: Resubmitting with the "Effective Date" pre-populated to reflect the date the Grantor received "just compensation."

Department Director Signature:  _____
Email: kerry.adams.hapner@sanjoscca.gov Date _____

Office of the City Manager Signature: _____ Date _____