

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

This FIRST AMENDMENT to the TEMPORARY CONSTRUCTION EASEMENT AGREEMENT (“First Amendment”) 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”), and shall become effective upon February 8, 2023, which is the date Grantor receives just compensation from Grantee (the “Effective Date”).

**RECITALS**

**WHEREAS**, on February 2, 2022, Grantor and Grantee entered into that certain Temporary Construction Easement Agreement entitled “Temporary Construction Easement Agreement by and between the CITY OF SAN JOSE and EFUEL INVESTMENTS LLC, a California limited liability company” (“Original Agreement”), to permit Grantee’s access to the Property for the purposes pursuant to the terms of the Original Agreement, with an expiration date twenty-four (24) months after the Term Commencement Date, which Grantee was to provide written notice to Grantor. All capitalized terms used but not defined herein shall have the meaning provided in the Original Agreement;

**WHEREAS**, on May 10, 2022, Grantee provided Grantor with written notice of the Term Commencement Date. The Original Agreement is set to expire on May 9, 2024;

**WHEREAS**, Grantee wishes to amend the Easement Area and provide just compensation to Grantor for the amended Easement Area; and

**WHEREAS**, both parties hereto wish to extend the term of the Original Agreement through November 9, 2024.

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

1. **Amendment of Easement Area.** Exhibit B of the Original Agreement is hereby replaced by Exhibit A of this First Amendment, attached hereto and incorporated herein.
2. **Extension of Term.** Section 3 of the Original Agreement is replaced in full by the following:
  - “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”), which is May 10, 2022, and expire twenty-four (24) months after the Term Commencement Date, at midnight, which is on May 9, 2024 (“Original Term”). Grantor shall allow Grantee to extend the term of this Agreement for an additional six (6) months following the expiration of the Original Term (“Extended Term”), provided that Grantee compensates Grantor for use of the property during the Extended Term which amount is specified in Section 4.1 below. If requested by Grantor following expiration, Grantee shall deliver to Grantor a quitclaim of the interest granted to Grantee pursuant to this Agreement.”

3. Compensation. Section 4.1 of the Original Agreement is replaced in full by the following:

“4.1 Compensation. Grantee has paid, and Grantor acknowledges receipt of, One Hundred Thirty-Two Thousand Dollars (\$132,000.00) in return for the rights granted under this Agreement during the Original Term on February 2, 2022. Grantee shall pay Grantor Thirty-Two Thousand Three Hundred Forty-Nine Dollars (\$32,349.00) for the Extended Term upon execution of the First Amendment.”

4. No Other Amendments. Grantor and Grantee acknowledge and agree that the Original Agreement, as amended by this First Amendment, constitutes the entire agreement by and between Grantor and Grantee relating to the Temporary Construction Easement Agreement, and supersedes any and all other agreements written or oral between the parties hereto.
5. Reaffirmation. In the event of an inconsistency between this First Amendment and the Original Agreement, the terms and conditions of this First Amendment shall govern and control the rights and obligations of the parties hereto. All other terms and conditions of the Original Agreement not changed, amended, or modified by this First Amendment shall remain in full force and effect.
6. Counterparts. This First Amendment 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. Unless otherwise prohibited by law or policy of a Party, the Parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a writing as set forth in Evidence Code Section 1550. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the City. Each Party (i) has agreed to permit the use, from

time to time and when allowed by law, of electronic signatures in order to expedite the transaction contemplated by this First Amendment, (ii) intends to be bound by electronic signature, (iii) is aware that the other will rely on the electronic signature, and (iv) acknowledges such reliance and waives any defenses (other than fraud) to the enforcement of any document based on the fact that a signature was sent by telecopy. As used herein, the term “electronically signed contract” shall include any signature sent via facsimile or via email in portable document format (“.pdf”).

7. Governing Law. This First Amendment shall be governed by and construed in accordance with the laws of the State of California.

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

“Grantee”

APPROVED AS TO FORM:

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

*Cameron Day*

*Nanci Klein*

Email: cameron.day@sanjoseca.gov  
Date: 01/26/2023 GMT

Email: nanci.klein@sanjoseca.gov  
Date: 01/26/2023 GMT

\_\_\_\_\_  
CAMERON DAY  
Senior Deputy City Attorney

\_\_\_\_\_  
NANCI KLEIN  
Director of Economic Development and Cultural Affairs

“Grantor”

EFUEL INVESTMENTS SAN JOSE  
LLC, a California limited liability company

*Don Harper*

Email: donharper04@gmail.com  
Date: 01/25/2023 GMT

\_\_\_\_\_  
DONALD HARPER  
Member

**EXHIBIT A TO FIRST AMENDMENT**  
**Legal Description and Plat Map of Easement Area**

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 also 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, 367.39 feet;

Thence along a tangent curve to the right with a radius of 50.00 feet and a central angle of 75° 04' 17", having an arc length of 65.51 feet;

Thence continuing along said centerline South 05° 18' 50" East, 74.37 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 10,145 square feet (0.29 acres), more or less.

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.

**EXHIBIT A TO FIRST AMENDMENT (continued)**  
**Legal Description and Plat Map of Easement Area**

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, consisting of the initials "SG" followed by a stylized "C", written over a horizontal line.

Steve G. Choy, PLS 6672

**EXHIBIT A TO FIRST AMENDMENT (continued)**

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

