


CITY COUNCIL ACTION REQUEST

Department(s): Office of Economic Development	CEQA: Not a Project, File No. PP17-003, Agreements/ Contracts (New or Amended) resulting in no physical changes to the environment	Coordination: Parks, Recreation and Neighborhood Services, Public Works, Office of the City Attorney and the City Manager's Budget Office	Dept. Approval: /s/ Nanci Klein
Council District(s): 8			CMO Approval:  3/3/2021

SUBJECT: ELECTRICAL UTILITY EASEMENT AGREEMENT BETWEEN THE CITY OF SAN JOSE AND PACIFIC GAS AND ELECTRIC COMPANY

RECOMMENDATION:

Adopt a resolution authorizing the City Manager, or their designee, to execute an Easement Agreement with Pacific Gas and Electric Company for electrical utilities installation and maintenance on City-owned property at Assessor's Parcel Number 670-29-025.

BASIS FOR RECOMMENDATION:

The City of San Jose is the owner of the 14.485-acre property identified as Assessor's Parcel Number ("APN") 670-29-025, known as the Arcadia Ballpark and more particularly described in Attachment A ("Property"). The Arcadia Development, Co., ("Arcadia") was obligated to dedicate 2.483 acres of park land to the City to support development of up to 250 residential units on an adjacent property, as shown on Attachment A ("Project") as part of the development requirements under their Parkland Agreement with the City dated November 8, 2018. However, Arcadia dedicated the Property and APN 670-46-022, an additional 1.75-acre parcel for a total of 16.235 acres, to the City, which satisfied all requirements in the Parkland Agreement and exceeded their requirement to dedicate parkland by 13.752 acres.

In order to support and energize the residential Project, the Pacific Gas and Electric Company ("PG&E") installed and energized two electrical boxes and underground conduits on the Property without securing the necessary property rights prior to installation. The electrical boxes are active and were required for electricity to be provided to the first phase of home construction of the Project. The correct process would have required the City to have facilitated the provision of the easement from Arcadia prior to dedicating the ball fields property. However, City and Arcadia did not know the final trenching plans or required easement areas at the time of dedication.

After consultation with the City Attorney's Office, staff recommends that no compensation be required by PG&E or Arcadia for conveyance of the 297 square foot electrical utility easement described in Attachment B ("Easement") on the City's Property. The value of the Easement is far less than the value of the excess Property that Arcadia dedicated to the City in satisfying the Parkland Agreement. Arcadia would still have exceeded all requirements under the Parkland Agreement if the Easement had been dedicated to PG&E prior to transfer of the Property to the City.

Climate Smart San Jose:

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

Commission Recommendation/Input:

No commission recommendation or input is associated with this action.

COST AND FUNDING SOURCE:
There are no additional costs to the City as a result of approving this recommendation.
FOR QUESTIONS CONTACT: Hayde Pacheco, Parks Manager-Capital Projects, (408) 396-0878 or Kevin Ice, Senior Manager, Real Estate Services (408) 535-8197.

Attachments

Attachment A: Property

Attachment B: Easement Agreement

Attachment A Subject Property



Attachment B
Easement Agreement

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

City of San José
Office of Economic Development
Real Estate Services
200 East Santa Clara Street, 12th Floor
San José, CA 95113-1905
Attn: Real Estate Manager

File/Doc. No:
APN: (#) 670-29-025

Space above this line for Recorder's Use

RECORDED WITHOUT FEE UNDER §6103 OF THE CALIFORNIA GOVERNMENT CODE.

EASEMENT AGREEMENT BY AND BETWEEN
THE CITY OF SAN JOSE AND PACIFIC GAS AND ELECTRIC COMPANY

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

RECITALS

- A. Grantor is the owner of property in San Jose, California, as described in **Exhibit A** attached hereto and incorporated herein ("Grantor Property"); and
- B. Grantee desires to enter upon a portion of the Grantor Property as described in **Exhibit B** attached hereto and incorporated herein ("Easement Area"), in order to excavate for, construct, reconstruct, replace, remove, maintain, inspect, and use electrical utilities; 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 agree as follows:

1. **Grant of Easement.** Grantor hereby grants to Grantee a permanent, non-exclusive easement ("Easement") on, under 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.

Attachment B (Continued)

Easement Agreement

2. Purpose. Subject to the limits herein stated, the Easement granted herein is for the sole purpose of excavating for, constructing, reconstructing, replacing, removing, maintaining, inspecting, and using electrical utilities.
3. Term. The term of the Easement shall be perpetual.
4. Terms and Conditions. The Easement is given subject to the following terms and conditions.
 - 4.1 Compensation. Grantee shall pay Grantor no fee in return for the rights granted under this Agreement.
 - 4.2 Compliance with Laws; Other Conditions of Use. 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.
 - 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 sole active 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 Hazardous Materials, as defined in **Exhibit C**, on or under the Easement Area.
 - 4.5 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 sole 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 Hazardous Materials on or under the Easement Area.

Attachment B (Continued)

Easement Agreement

- 4.6 Insurance. During the term of the Easement, Grantee shall have and maintain the minimum insurance requirements as set forth in the attached **Exhibit D**.
- 4.7 Maintenance 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.
- 4.8 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.
- 4.9 Reversion. In the event of abandonment of said electrical 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.
- 4.10 Vegetation Management. Grantee shall have the right, from time to time, to trim or to cut down 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.
- 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
Office of Economic Development / Real Estate
200 East Santa Clara Street, 12th floor
San José, CA 95113-1905
Attn: Real Estate Manager

with a copy to

Office of the City Attorney
City of San Jose
200 East Santa Clara Street, 16th Floor

Attachment B (Continued)

Easement Agreement

San José, CA 95113-1905

Attn: Real Estate Attorney

Grantee:

Pacific Gas and Electric Company

245 Market Street, N10A, Room 1015

P.O. Box 770000

San Francisco, CA 94177

6. Covenants Running with the Land. The parties to this Agreement hereby acknowledge and agree that the easements and other rights conferred by this Agreement are intended to, and do, constitute covenants that run with the land and shall inure to the benefit of and be binding upon the parties and their respective grantees, heirs, successors, and assigns.
7. Successors and Assigns. This Easement is binding on and inures to the benefit of the respective heirs, successors and assigns of the parties, and shall be governed by the laws of the State of California.
8. Entirety. This instrument contains the entire agreement by and between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this instrument shall be of no force or effect. Any subsequent modifications shall be made in writing and signed by Grantor and Grantee and recorded in the Office of the County Recorder of Santa Clara County, California.

Attachment B (Continued)

Easement Agreement

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

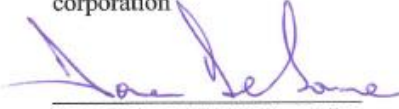
APPROVED AS TO FORM: "Grantor"
CITY OF SAN JOSE, a California
municipal corporation

CAMERON DAY
Deputy City Attorney

LELAND WILCOX
Chief of Staff,
Office of the City Manager

Date

APPROVED AS TO FORM: "Grantee"
PACIFIC GAS AND ELECTRIC
COMPANY, a California
corporation


DONNA DE SOUZA, PLS
Supervisor- Land Surveying and
Engineering Support

4/29/20

Date

<p>I hereby certify that a resolution was adopted on the <u>29th</u> day of <u>April</u>, 20<u>20</u>, by the <u>Donna De Souza</u> authorizing the foregoing grant of easement.</p> <p>By _____</p>
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EXHIBITS

EXHIBIT A: Description of Grantor Property
EXHIBIT B: Description of Easement Area
EXHIBIT C: Definition of Hazardous Materials
EXHIBIT D: Insurance Requirements

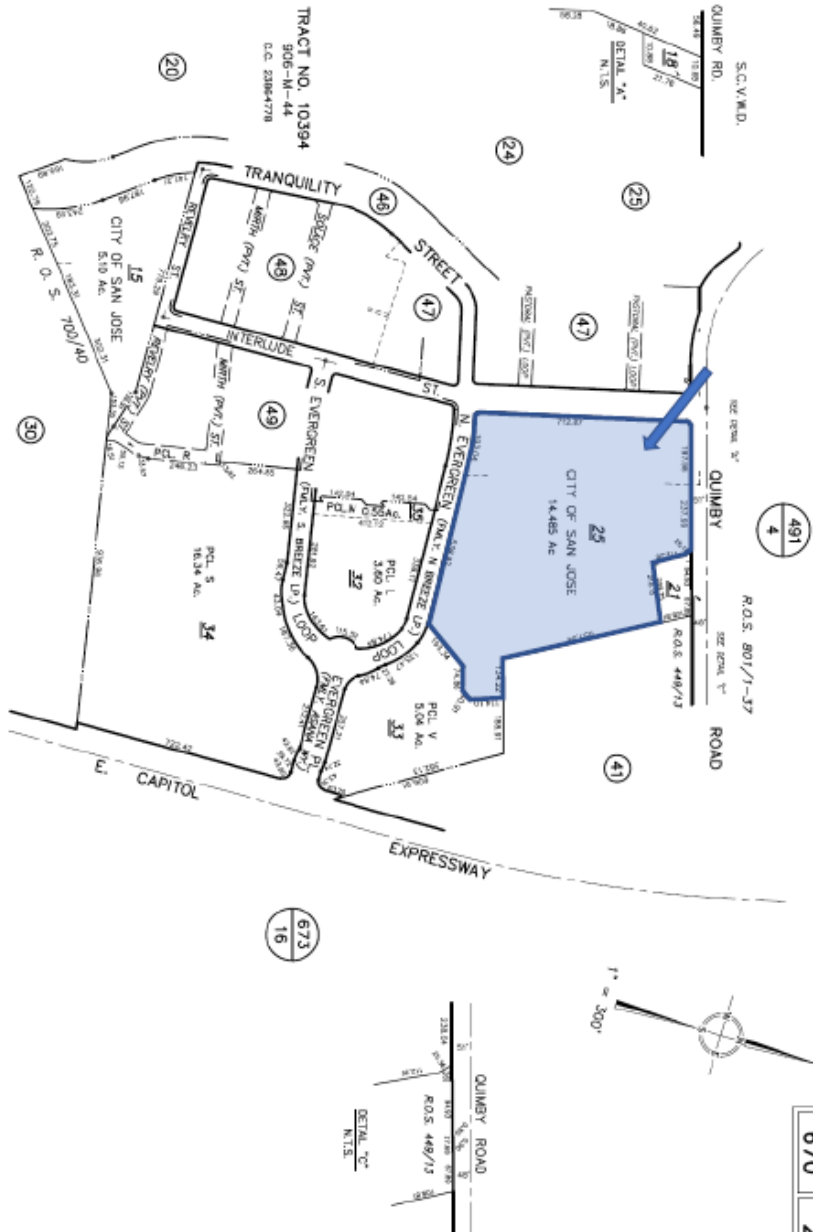
Attachment B (Continued)

Easement Agreement

EXHIBIT A
Description of Grantor Property

OFFICE OF COUNTY ASSESSOR — SANTA CLARA COUNTY, CALIFORNIA

BOOK PAGE
670 29



Attachment B (Continued)

Easement Agreement

EXHIBIT B

Description of Easement Area

**LEGAL DESCRIPTION
PG&E UTILITY EASEMENT**

Being a portion of that certain real property described in that Grant Deed from Arcadia Development Co., a California corporation, to the City of San Jose, a municipal corporation of the State of California, recorded December 16, 2016 as Document 23535196, Santa Clara County Records, being more particularly described as follows:

BEGINNING at a City of San Jose standard street monument in Quimby Road, a public street with a half width of 51 feet, said monument being shown as a Found Brass Disc in Well Stamped LS 5418 at the westerly end of the line labeled Basis of Bearings on that certain Map of Tract 10394, Evergreen Circle Phase 1, said map being recorded September 8, 2017 in Book 906 of Maps at Pages 44 through 61, Santa Clara County Records;

Thence South $16^{\circ}41'30''$ East 51.00 feet to a point on the southerly line of Quimby Road, said point being a point on the northerly line of said City of San Jose property and the TRUE POINT OF BEGINNING, said TRUE POINT OF BEGINNING bears North $73^{\circ}18'30''$ East 75.56 feet from the most northeasterly point of Interlude Street, a public street, as said Interlude Street is shown on said Map of Tract 10394;

Thence continuing along said southerly line North $73^{\circ}18'30''$ East 36.00 feet; Thence leaving said southerly line at right angles South $16^{\circ}41'30''$ East 6.00 feet; Thence parallel with said southerly line of Quimby Road South $73^{\circ}18'30''$ West 49.50 feet; Thence North $16^{\circ}41'30''$ West 6.00 feet to a point on said southerly line; Thence along said southerly line North $73^{\circ}18'30''$ East 13.50 feet to the TRUE POINT OF BEGINNING.

Said Easement contains 297.0 Square Feet, more or less.

As shown on Exhibit "B" attached hereto and made a part hereof.

APN 670-29-025

This legal description was prepared by me or under my direction in accordance with the Professional Land Surveyors Act.

Prepared By:
Ruth and Going, Inc.
PO Box 26460
San Jose, CA 95159
R+G Job # 12-784-C

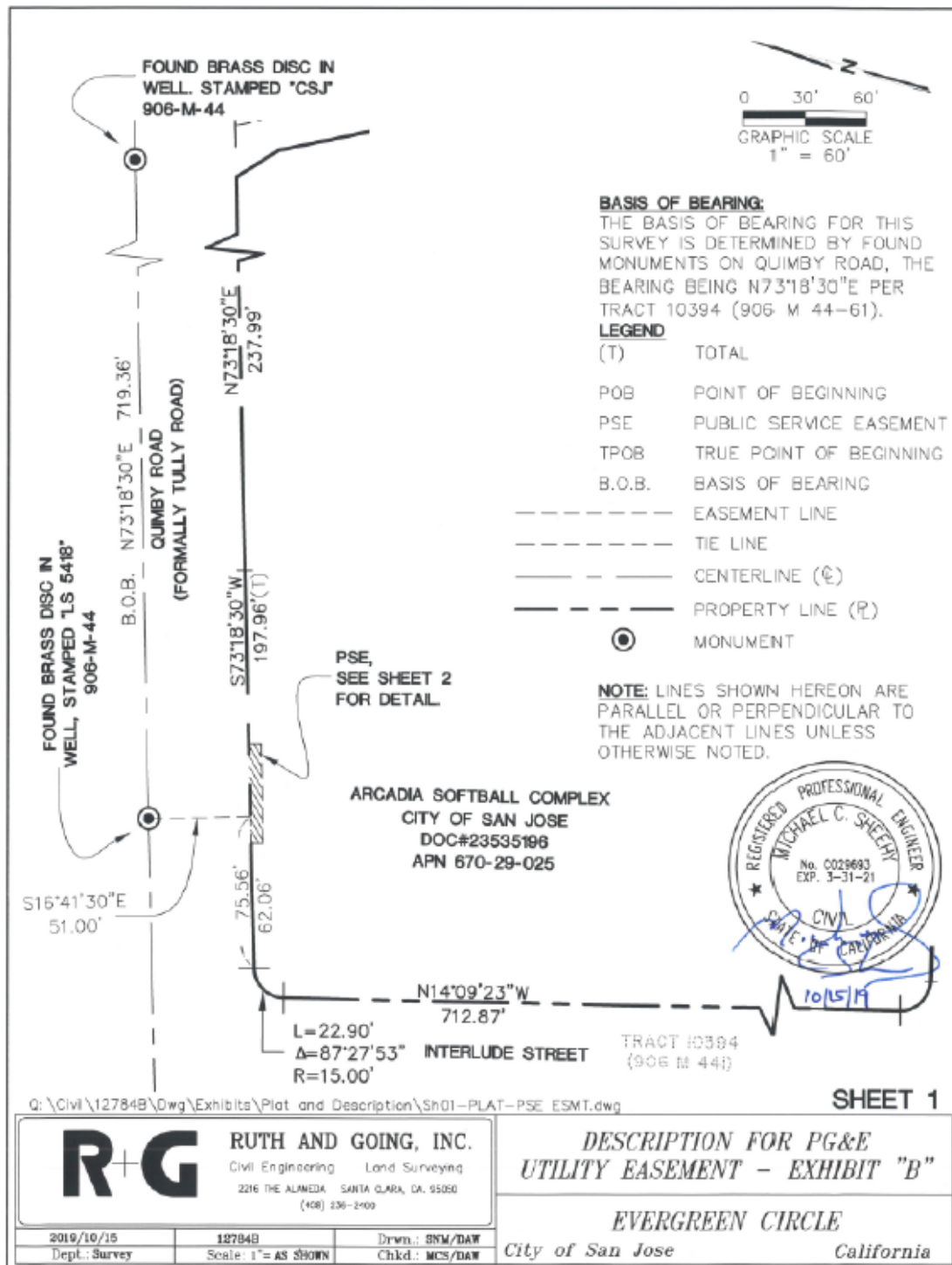


Attachment B (Continued)

Easement Agreement

EXHIBIT B (Continued)

Description of Easement Area

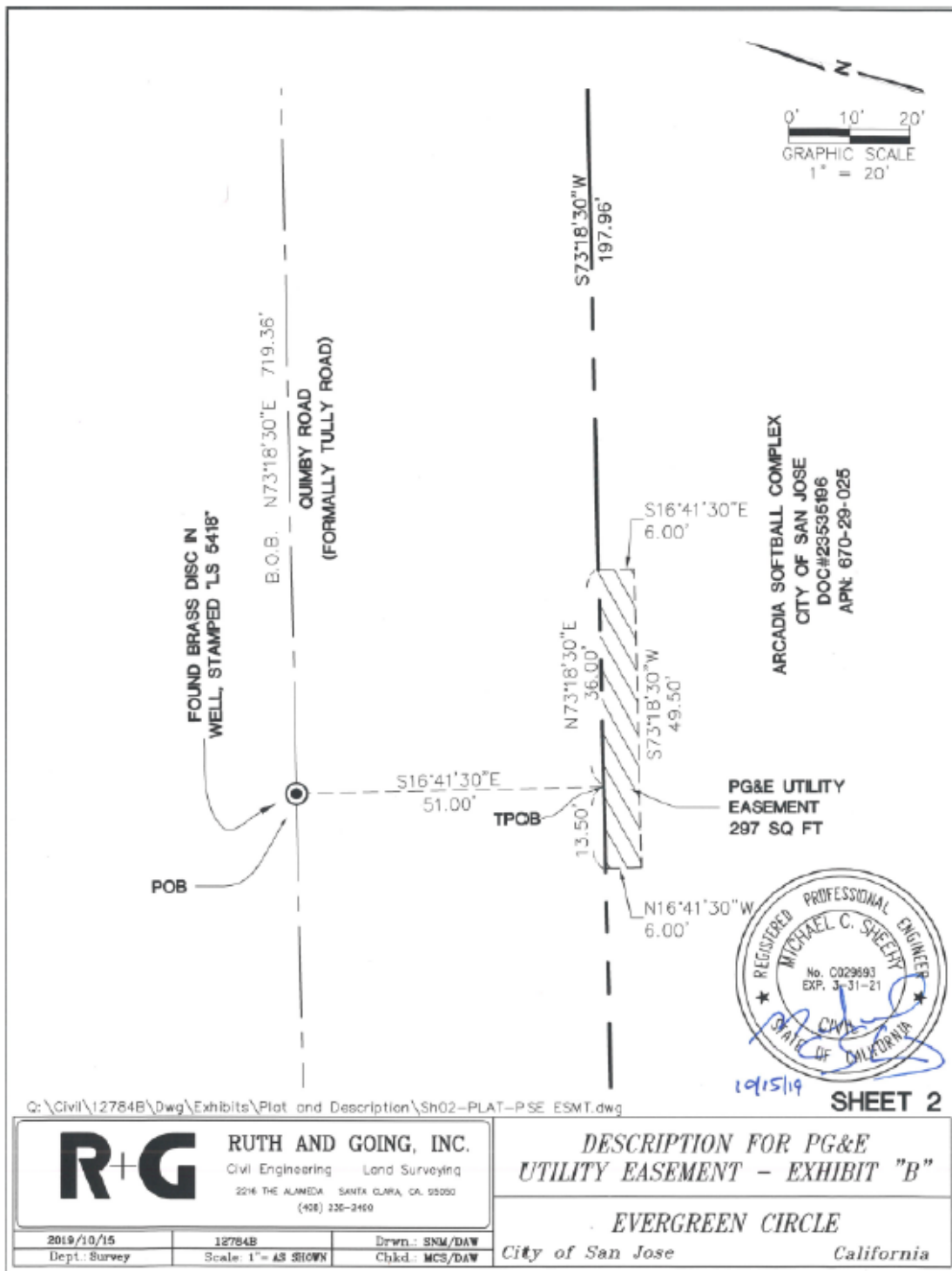


Attachment B (Continued)

Easement Agreement

EXHIBIT B (Continued)

Description of Easement Area



Attachment B (Continued)

Easement Agreement

EXHIBIT C

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.

Attachment B (Continued)

Easement Agreement

EXHIBIT D

Insurance Requirements

Grantee, at Grantee's sole cost and expense, shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from, or are in connection with, entries onto the Property hereunder by Grantee, its officers, employees, agents or contractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance.
4. Pollution Liability Insurance, including coverage for all operations, completed operations and professional services.

There shall be no endorsement reducing the scope of coverage required above unless approved by the Grantor's Risk Manager.

B. Minimum Limits of Insurance

Grantee shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident.

Attachment B (Continued)

Easement Agreement

4. Pollution Liability: \$1,000,000 each occurrence/aggregate limit.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions in excess of \$50,000 must be declared to the Grantor's Risk Manager.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages
 - a. Grantor, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, Grantee; products and completed operations of Grantee; premises owned, leased or used by Grantee; and automobiles owned, leased, hired or borrowed by Grantee. The coverage shall contain no special limitations on the scope of protection afforded to Grantor, its officers, employees, agents and contractors.
 - b. Grantee's insurance coverage shall be primary insurance as respects Grantor, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by Grantor, its officers, employees, agents or contractors shall be excess of Grantee's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policies by Grantee shall not affect coverage provided Grantor, its officers, employees, agents, or contractors.
 - d. Coverage shall state that Grantee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - e. Coverage shall contain waiver of subrogation in favor of Grantor, its officers, employees, agents and contractors.

2. Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of Grantor, its officers, employees, agents and contractors.

3. All Coverages

Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after

Attachment B (Continued)

Easement Agreement

thirty (30) days' prior written notice has been given to Grantor, except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

E. Acceptability of Insurers

Insurance is to be placed with insurers acceptable to Grantor's Risk Manager.

F. Verification of Coverage

Grantee shall furnish Grantor with certificates of insurance and with original endorsements affecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be either emailed in pdf format to: Riskmgmt@sanjoseca.gov, or mailed to the following postal address (or any subsequent email or postal address as may be directed in writing by the Risk Manager):

City of San Jose – Finance Department
Risk & Insurance Program
200 East Santa Clara St., 13th Floor
San Jose, CA 95113-1905

G. Contractors

Grantee shall include all contractors as insured under its policies or shall obtain separate certificates and endorsements for each contractor.

H. Authority to Self-Insure

The requirements of this Exhibit C may be satisfied by the provision of similar coverage through a self-insurance program acceptable to Grantor's Risk Manager and such self-insurance shall be certified in writing with an "Affidavit of Insurance" in form and content acceptable to Grantor's Risk Manager. Grantor's acceptance of any such self-insurance program shall not otherwise limit Grantee's obligations under this Agreement.