

RECORD WITHOUT FEE PURSUANT TO
GOVERNMENT CODE SECTION 6103

RECORDING REQUESTED BY:

Office of the City Attorney
City of Santa Clara, California
1500 Warburton Avenue
Santa Clara, CA 95050

**WHEN RECORDED, MAIL TO AND
MAIL TAX STATEMENT TO:**

Office of the City Clerk
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

APN's:

230-03-101; and
230-02-026; and
230-02-007

Form Per Gov't Code Section 27361.6

[SPACE ABOVE THIS LINE FOR RECORDER'S USE]

**UNDERGROUND UTILITIES EASEMENTS AGREEMENT
BY AND BETWEEN
THE CITY OF SAN JOSE AND THE CITY OF SANTA CLARA**

THIS UNDERGROUND UTILITIES EASEMENTS AGREEMENT (the "**Agreement**") is made by and between the City of San José, a municipal corporation of the State of California ("**Grantor**"), hereby grants to the City of Santa Clara, California, a chartered municipal corporation of the State of California ("**Grantee**"), effective upon execution by Grantor (the "**Effective Date**").

RECITALS

- A.** Grantor is the owner of property at the Norman Y. Mineta San José International Airport ("**Airport**") commonly known as 301, 303, 313, 323, 333, 343, 353, 363 and 373 Martin Avenue, Santa Clara, California (APN's 230-03-101; 230-02-026; and 230-02-007), as further described in **Exhibit B** attached hereto and incorporated herein ("**Grantor Property**"); and
- B.** Grantee desires to enter upon two (2) portions of the Grantor Property as described in **Exhibit A** attached hereto and incorporated herein (collectively, the "**Easement Areas**"), for sole purposes of constructing and reconstructing, installing, operating, maintaining, repairing, removing and/or replacing underground electrical utilities and distribution and/or communication systems, and appurtenances thereto (herein, the "**Underground Utilities**"), all at the Grantee's sole cost and expense, including a reasonable right of ingress and egress

over adjoining lands of Grantor; and

- C. Grantor is amenable to permitting a right to enter the Easement Areas to Grantee for the Underground Utilities purposes.

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

1. Grant of Easements. Grantor hereby grants to Grantee two (2) permanent, non-exclusive easements (referred to as “**Easement A**” and “**Easement B**” on **Exhibit A** and **Exhibit B**, and collectively referred to herein as “**Easements**”) on, under and through the Easement Areas for the Underground Utilities purposes herein described, subject to all licenses, easements, leases, encumbrances and claims of title affecting the Grantor Property.
2. Purpose. Subject to the limits herein stated, the Easements granted herein are for the Underground Utilities purposes stated above. The Underground Utilities located within the Easement Areas consist of conduits, cables, vaults and splice boxes installed flush with or below grade and other necessary and desired appurtenances and transformers and switches that are mounted and installed above grade on concrete pads.
3. Term. The term of the Easements shall be perpetual.
4. Terms and Conditions. The Easements are 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 Areas pursuant to this Agreement.
 - 4.3 As-Is Condition and Assumption of Risk. Grantee accepts the condition of the Easement Areas as-is and acknowledges that: i) Grantor is under no obligation to provide any additional preparations or improvements to the Easement Areas prior to use by Grantee, and ii) its use of the Easement Areas 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 Areas 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 Areas.
 - 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 Areas (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 Areas.

- 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 Areas. At all times during the term of the Easement, Grantee shall maintain the Easement Areas in a safe, clean and orderly condition.
 - 4.8 Grantor Access to Easement Areas. The Easements are non-exclusive. Grantor shall continue to have the right to use and access the Easement Areas in their 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 Areas on a non-exclusive basis.
 - 4.9 Reversion. In the event of abandonment of the said Underground Utilities, and non-use thereof for a continuous period of one (1) 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 Areas, and shall have the further right, from time to time, to trim and cut down trees and brush along each side of said Easement Areas 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 Areas, 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, 12 th floor
	San José, CA 95113-1905
	Attn: Real Estate Manager

with a copy to

Office of the City Attorney
City of San José
200 East Santa Clara Street, 16th Floor
San José, CA 95113-1905
Attn: Real Estate Attorney

Grantee:

City of Santa Clara
Office of the City Attorney
1500 Warburton Avenue
Santa Clara, CA 95050
Attn: Real Estate Attorney

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 Agreement 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.
9. Title VI Clauses for Transfer of Real Property Acquired or Improved Under the Activity, Facility, or Program

The Grantee for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

In the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Grantee will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

With respect to this Agreement, in the event of breach of any of the above Nondiscrimination covenants, the City will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the City and its assigns.

10. Title VI Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program

The Grantee for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Grantee will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.

With respect to this Agreement, in the event of breach of any of the above nondiscrimination covenants, City will there upon revert to and vest in and become the absolute property of City and its assigns.

11. Grantor Execution Authority. The San José City Council has authorized the City Clerk to execute this Agreement.

12. Right of Way. Portions of the Easements are located within an existing Right-of-Way held by the Grantor (as shown on **Exhibit B** hereto) and may be used by Grantor and its successors and assigns for all existing purposes and for driveway(s), landscaping (excluding trees), and parking, as well as for other purposes that will not unduly interfere with the use, maintenance or repair of the Easements or the Underground Utilities located therein.

13. Exhibits. The following exhibits are hereby attached and incorporated herein:

EXHIBIT A: Easement Areas
EXHIBIT B: Grantor Property
EXHIBIT C: Hazardous Materials
EXHIBIT D: Insurance Requirements
EXHIBIT E: Certificate of Acceptance

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, said Grantor has hereunto set its hand this _____ day of _____, 2020.

“GRANTOR”

The City of San José,
a municipal corporation of the State of California

APPROVED AS TO FORM:

By: _____
Toni Taber, CMC
City Clerk

By: _____
Kevin Fisher
Chief Deputy City Attorney

Date: _____, 2020

Date: _____, 2020

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.

ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

On_____, 20__, before me,_____, Notary Public, personally appeared **TONI TABER**, 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 capacities, 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.

Notary Public

**EXHIBIT A
LEGAL DESCRIPTIONS OF EASEMENT AREAS
FOR EASEMENT A AND EASEMENT B**



July 27, 2020
HMH 3680.52.271
Page 1 of 3

**EXHIBIT "A"
UNDERGROUND ELECTRIC EASEMENT**

EASEMENT A

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, being a portion of the property shown on that certain Record of Survey filed for record on May 11, 1979 in Book 441 of Maps, pages 20-27, Santa Clara County Records, described as follows:

COMMENCING at the brass pin monument at the intersection of the centerline of Martin Avenue with the centerline of Brokaw Road as shown on said Record of Survey, from which point a brass pin monument at the intersection of the centerline of Martin Avenue with the centerline of Reed Street bears North 40°50'43" West, 1579.71 feet;

Thence along said centerline of Martin Avenue, North 40°50'43" West, 277.53 feet, to the TRUE POINT OF BEGINNING;

Thence continuing along said centerline, North 40°50'43" West, 10.00 feet;

Thence North 48°53'50" East, 25.00 feet;

Thence North 40°50'43" West, 239.02 feet, to Point "A" designated hereon;

Thence North 49°09'16" East, 78.50 feet;

Thence North 40°50'44" West, 5.00 feet;

Thence North 49°09'16" East, 17.00 feet;

Thence South 40°50'44" East, 25.00 feet;

Thence South 49°09'16" West, 17.00 feet;

Thence North 40°50'44" West, 10.00 feet;

Thence South 49°09'16" West, 68.50 feet;

Thence South 40°50'43" East, 238.98 feet;

Thence South 48°53'50" West, 35.00 feet, to the TRUE POINT OF BEGINNING.

Containing 3,850 square feet or 0.09 acres, more or less.

368010LD27 UGEE.docx

Exhibit A-1

Underground Utilities Easements Agreement

City of Santa Clara

T-25747-016 / City of Santa Clara - 11/11/2020

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

EASEMENT B

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, being a portion of the property shown on that certain Record of Survey filed for record on May 11, 1979 in Book 441 of Maps, pages 20-27, Santa Clara County Records, described as follows:

COMMENCING at that point described as "Point A" in the hereinabove description;

Thence North 40°40'07" West, 302.32 feet, to the TRUE POINT OF BEGINNING;

Thence North 41°05'20" West, 712.43 feet;

Thence North 40°54'08" West, 689.79 feet;

Thence North 40°50'22" West, 146.70 feet;

Thence North 49°09'38" East, 10.00 feet;

Thence South 40°50'22" East, 144.60 feet;

Thence North 49°09'17" East, 28.49 feet;

Thence South 40°50'43" East, 16.50 feet;

Thence South 49°09'17" West, 28.47 feet;

Thence South 40°54'08" East, 674.72 feet;

Thence North 48°38'58" East, 70.60 feet;

Thence North 41°21'02" West, 3.30 feet;

Thence North 48°38'58" East, 22.90 feet;

Thence South 41°21'02" East, 17.00 feet;

Thence South 48°38'58" West, 23.02 feet;

Thence North 41°21'02" West, 3.70 feet;

Thence South 48°38'58" West, 70.53 feet;

Thence South 41°05'20" East, 693.00 feet;

Thence North 48°37'46" East, 67.41 feet;

Thence North 41°22'14" West, 2.80 feet;

368010LD27 UGEE.docx



Exhibit A-2

Underground Utilities Easements Agreement

City of Santa Clara

T-25747-016 (City of Santa Clara) 1-10-1-2020

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

EXHIBIT C

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.

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: \$5,000,000 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.

4. Pollution Liability: \$2,000,000 each occurrence/aggregate limit.

C. Deductibles and Self-Insured Retentions

D. Any deductibles or self-insured retentions must be declared to, and approved by, the City's Risk Manager. **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 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 emailed in pdf format
to: Riskmgmt@sanjoseca.gov

Certificate Holder
City of San Jose – Finance Department
Risk & Insurance Program
200 East Santa Clara St., 14th 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 in whole or in part 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.

EXHIBIT E

**CERTIFICATE OF ACCEPTANCE OF
UNDERGROUND UTILITIES EASEMENTS BY
CITY OF SANTA CLARA**

This is to certify that the interest in the real property conveyed by that certain Underground Utilities Easements Agreement, dated_____, 2020, from the City of San Jose, a municipal corporation of the State of California, as Grantor, to the City of Santa Clara, a chartered municipal corporation of the State of California, as Grantee, is hereby accepted by the undersigned City Manager on behalf of the Grantee pursuant to the authority conferred by Resolution No.____ of the City Council of the City of Santa Clara adopted on the____ day of_____, 20__; and further, the Grantee hereby consents to the recordation of said Underground Utilities Easements Agreement and authorizes its duly authorized officer, the City Clerk of the City of Santa Clara, to record said Easements.

Locations: 301, 303, 313, 323, 333, 343, 353, 363 and 373 Martin Avenue,
San Jose, California

Mailing Addresses: 301, 303, 313, 323, 333, 343, 353, 363 and 373 Martin Avenue,
San Clara, California 95050

APN's: 230-03-101; 230-02-026 and 230-02-007

CITY OF SANTA CLARA

By:_____

Name: Deanna J. Santana

Title: City Manager

Dated:_____, 2020

APPROVED AS TO FORM:

By:_____

Name: Brian Doyle

Title: City Attorney

Dated:_____, 2020

ATTEST: _____

Norma Pimentel, MMC
Assistant City Clerk
City of Santa Clara

Exhibit E

Underground Utilities Easements Agreement
City of Santa Clara
T-25747.016 / Clean KF Approved 10.1.2020