

**AGREEMENT FOR PURCHASE AND SALE OF A PACIFIC GAS AND ELECTRIC UTILITY
EASEMENT ON BEHALF OF THE CITY OF FRESNO
AND ESCROW INSTRUCTIONS
Bus Rapid Transit Project
Station 18 PG&E Easement from Tulare Avenue
City Project No.: RC00070**

COUNTY OF FRESNO, a political subdivision of the State of California ("County") agrees to sell to the CITY OF FRESNO, a municipal corporation ("City"), the hereinafter described utility easement to be conveyed to Pacific Gas and Electric Company, on the following terms and conditions:

1. The real property which is the subject of this Agreement is situated in the City of Fresno, County of Fresno, State of California is approximately 3,172 square feet in size, located on Tulare Avenue and Van Ness Avenue in the County of Fresno Courthouse Park, and contained within Assessor's Parcel Number 466-160-01T (the "Utility Easement"). Such Utility Easement is more particularly described in the Easement Deed attached hereto as Exhibit "1" and incorporated herein by reference.

2. The total purchase price for the Utility Easement shall be the sum of NINETEEN THOUSAND, FOUR HUNDRED THIRTY-ONE AND 00/100 DOLLARS (\$19,431).

3. It is understood and agreed by and between the parties hereto that the Utility Easement is a permanent utility easement necessary for the City to reconstruct the existing bus shelters located at Fresno Courthouse Park.

4. County represents and warrants that it holds fee title to the real property from which said Utility Easement shall issue and can convey said Utility Easement.

5. City shall indemnify, hold harmless and defend County and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by County, City or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly from the negligent or intentional acts or omissions, or willful misconduct of City or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement; provided nothing herein shall constitute a waiver by City of governmental immunities including California Government Code section 810 et seq.

County shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by the City, County or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly from the negligent or intentional acts or omissions, or willful misconduct of County or

any of its officers, officials, employees, agents or volunteers in the performance of this Agreement; provided nothing herein shall constitute a waiver by County of governmental immunities including California Government Code section 810 et seq.

In the event of concurrent negligence on the part of City or any of its officers, officials, employees, agents or volunteers, and County or any of its officers, officials, employees, agents or volunteers, the liability for any and all such claims, demands and actions in law or equity for such losses, fines, penalties, forfeitures, costs and damages shall be apportioned under the State of California's theory of comparative negligence as presently established or as may be modified hereafter.

This section shall survive termination or expiration of this Agreement.

6. The sale shall be completed through an escrow to be opened at Fidelity National Title Company, 7485 North Palm Avenue, Suite 106, Fresno, California 93711 ("Escrow Holder") under Escrow Number 2011603225-BW. Said escrow shall be opened upon the following terms and conditions, and the County and City by executing this Agreement make this paragraph their escrow instructions:

- a. City shall deposit the sum specified in Paragraph 2 of this Agreement and all closing costs in escrow upon receipt of a demand and statement from Escrow Holder therefor.
- b. Payment of said sum will be made to County only when Escrow Holder possesses and is in a position to deliver to the City a fully executed and acknowledged and recorded Easement Deed conveying the Utility Easement to Pacific Gas and Electric Company, in the form of Exhibit "1".
- c. The escrow fee, recording fees (if any), and all other closing costs shall be paid 100% by the City.

7. Miscellaneous Provisions:

- a. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provision of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.
- b. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be in the County of Fresno, California.
- c. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.
- d. Severability. The provisions of this Agreement are severable. The invalidity or unenforceability of any one provision in this Agreement shall not affect the other provisions.

- e. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against any party, but rather by construing the terms in accordance with their generally accepted meaning.
- f. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.
- g. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment.
- h. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.
- i. Exhibits and Attachments. Each Exhibit and Attachment referenced herein is by such reference incorporated into and made a part of this Agreement for all purposes.
- j. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument executed by duly authorized representatives of both the City and the County.

8. Time is of the essence of each and every term, condition, and covenant hereof.

9. It is understood and agreed that as a condition precedent hereto, this Agreement shall have no force and effect until approved by the Council for the City of Fresno and the Fresno County Board of Supervisors. This Agreement shall first be executed by County and upon its duly authorized execution by the City, this Agreement shall become a contract for the purchase and sale of the said Utility Easement, binding upon County and City, their heirs, executors, administrators, successors in interest, and assigns.

Signature Page

This Agreement is executed by the City of Fresno by and through its Public Works Director or his designee, pursuant to authority granted by the Council of the City of Fresno on

COUNTY OF FRESNO

BY: _____
Ernest Buddy Mendes, Chairman
Board of Supervisors

Date _____

REVIEWED AND RECOMMENDED
FOR APPROVAL

BY: _____
STEVEN E. WHITE, Director
Department of Public Works and Planning

ATTEST:
Bernice E. Seidel, Clerk
Board of Supervisors

BY: _____
Deputy

APPROVED AS TO LEGAL FORM
Daniel C. Cederborg, County Counsel

BY: _____
Deputy

APPROVED AS TO ACCOUNTING FORM
Oscar J. Garcia C.P.A., Auditor-Controller/
Treasurer-Tax Collector

BY: _____
Deputy

FOR ACCOUNTING USE ONLY

Fund: 0001
Subclass: 10000
Org. No.: 7910
Account: 5039

CITY OF FRESNO

RECOMMENDED FOR APPROVAL

BY: _____
J. A. "Pete" Caldwell
Senior Real Estate Agent

APPROVED AS TO FORM
Douglas T. Sloan
City Attorney

BY: _____
Deputy City Attorney

FOR APPROVAL

BY: _____
Andrew J. Benelli, Assistant Director
Public Works Department

ATTEST:
Yvonne Spence, CMC
City Clerk

BY: _____
Deputy City Clerk

RECORDING REQUESTED BY AND RETURN TO:

PACIFIC GAS AND ELECTRIC COMPANY
Fresno Land Management
650 "O" Street, Mail Bag #23
Fresno, California 93760-0001

Location: City of Fresno
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

Signature of declarant or agent determining tax

Exhibit "1"

(SPACE ABOVE FOR RECORDER'S USE ONLY)

LD# 2214-20-

EASEMENT DEED

COUNTY OF FRESNO, a political subdivision of the State of California,

hereinafter called Grantor, hereby grants to PACIFIC GAS AND ELECTRIC COMPANY, a California corporation, hereinafter called Grantee, the right from time to time to construct, reconstruct, install, inspect, maintain, replace, remove, and use facilities of the type hereinafter specified, together with a right of way therefor, within the easement area as hereinafter set forth, and also ingress thereto and egress therefrom, over and across the lands of Grantor situate in the City of Fresno, County of Fresno, State of California, described as follows:

(APN 466-160-01)

The parcel of land conveyed by Contract and Finance Company, a corporation to Grantor by deed dated March 18, 1874 and recorded in Book "K" of Official Records at page 9, Fresno County Records.

Said facilities and easement area are described as follows:

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 strip of land described as follows:

A strip of land of varying widths extending from the southeasterly boundary line of said parcel in a general northwesterly direction, and being the initial width of 8 feet lying 8 feet northeasterly of the line described as follows:

Commencing at the most southerly corner of said parcel and running northeasterly along the southeasterly boundary line

- a) N 49°00'04" E 53.00 to the TRUE POINT OF BEGINNING; thence leaving said boundary line and running along a line which is parallel to and 53 feet northeasterly (measured at right angles) to the southwesterly boundary line of said parcel;

- 1) N 40°59'46" W 172.00 feet; thence
- 2) N 00°00'00" E 5.00 feet; thence along a line which is parallel to and 56 feet northeasterly (measured at right angles) to the southwesterly boundary line
- 3) N 40°59'46" W 171.00 feet; thence
- 4) N 90°00'00" W 4.00 feet; thence along a line which is parallel to and 54 feet northeasterly (measured at right angles) to the southwesterly boundary line
- 5) N 40°59'46" W 6.00 feet; thence changing from the uniform width of 8 feet to the uniform width of 15 feet lying northeasterly of said line, and continuing
- 6) N 40°59'46" W 20.00 feet to a point within the boundary lines of said parcel.

End of Description

Grantor further grants to Grantee 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.

Grantor shall not erect or construct any building or other structure or drill or operate any well within said easement area.

Grantor further grants to Grantee the right to assign to another public utility as defined in Section 216 of the California Public Utilities Code the right to install, inspect, maintain, replace, remove and use communications facilities within said easement area (including ingress thereto and egress therefrom).

Grantor acknowledges that they have read the "Grant of Easement Disclosure Statement", Exhibit "A", attached hereto and made a part hereof.

The legal description herein, or the map attached hereto, defining the location of this utility distribution easement, was prepared by Grantee pursuant to Section 8730 (c) of the Business and Professions Code.

The provisions hereof shall inure to the benefit of and bind the successors and assigns of the respective parties hereto.

Dated: _____, _____.

COUNTY OF FRESNO, a political
subdivision of the State of California

By _____
Ernest Buddy Mendes, Chairman
Board of Supervisors

By _____

I hereby certify that a resolution was adopted
on the ____ day of _____, 20____, by the

authorizing the foregoing grant of easement.
By _____

Attach to LD 2214-20-

The Area and Division: Area 4, Fresno Divison

Land Service Office: Fresno

Operating Department: Electric Distribution

USGS location: MDM, T. 14 S., R. 20 E., NW ¼ of the NW¼ of Section 10

FERC License Number(s): N/A

PG&E Drawing Number(s): 31144523

PLAT NO.: 1420102B

LD of any affected documents: N/A

LD of any Cross-referenced documents: N/A

TYPE OF INTEREST: 4, 6, 43

SBE Parcel Number: N/A

PM #: 31144523 OP 0070

JCN: N/A

County: Fresno

Utility Notice Numbers: N/A

851 Approval Application No. N/A Decision N/A

Prepared By: ADGa, M5CF

Checked By: LEHr

Revision: 1

Pacific Gas and Electric Company



EXHIBIT "A"

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. 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.