

LD 2212-20-

Easement to City of Fresno

RECORDING REQUESTED BY, AND
WHEN RECORDED RETURN TO:

PACIFIC GAS AND ELECTRIC COMPANY
Land Management
650 "O" Street, Mail Bag 23
Fresno, CA 93760-0001
Attention: Bounma Moua

Location: City of Fresno
Recording Fee \$0.00 (Government Code Section 27383)
Document Transfer Tax \$0.00 (Revenue and Taxation Code Section 11922)

Signature of declarant or agent determining tax

(A portion of APN 579-220-13)

**EASEMENT AGREEMENT
(BIKE, PEDESTRIAN, TRAIL EASEMENT)**

This Easement Agreement ("**Agreement**") is made and entered into this _____ day of _____, 20____ (the "**Effective Date**") by PACIFIC GAS AND ELECTRIC COMPANY, a California corporation, hereinafter called "**PG&E**", and the CITY OF FRESNO, a Municipal Corporation of the State of California, hereinafter called "**Grantee**."

RECITALS

A. PG&E owns certain real property within the City of Fresno, County of Fresno, State of California, described in **EXHIBIT "A"**, **EXHIBIT "B"**, and **EXHIBIT "C"**, and as shown on **EXHIBIT "A-1"**, **EXHIBIT "B-1"**, and **EXHIBIT "C-1"**, all of which are attached hereto and made a part hereof (hereinafter, the "**Property**").

B. Grantee proposes to construct a pedestrian and bike path, and in connection therewith, Grantee has requested that PG&E grant an easement to construct a trail within strip of land described in EXHIBIT "A" and shown on EXHIBIT "A-1", and for the use of temporary construction as described in EXHIBIT "B" and shown on EXHIBIT "B-1", and a slope easement as describe in EXHIBIT "C" and shown on EXHIBIT "C-1", and in connection therewith, the Grantee has requested that PG&E grant easements for excavation, installation, construction, reconstruction, repair, maintenance and use of a pedestrian and bike path traversing the property.

C. PG&E is willing to grant such easement on the terms and subject to the conditions set forth herein.

Now, therefore, in consideration of Grantee's agreement to pay the sum of forty-five thousand three-hundred and sixty-five dollars (\$45,365.00), and for other good and valuable consideration, PG&E and Grantee agree as follows:

1. Grant of Easement: PG&E hereby grants to Grantee, upon the terms and conditions set forth in this Agreement, the following easement:

(a) Recreational Trail Easement. A non-exclusive easement over apportion of the Property, fifteen (15') in width (the "Easement Area") described in Exhibit A as shown on Exhibit A-1, attached hereto and made a part hereof, within which Grantee shall install, construct, reconstruct, resurface, repair and maintain a paved recreational trail, not exceeding fifteen (15') feet in width, for public use by pedestrians, bicycles and other non-motorized vehicles.

(b) Temporary Construction License; Term. A temporary non-exclusive license in, on and over the portion of the Property described in Exhibit B as shown on Exhibit B-1, attached hereto and incorporated by this reference (the "Construction Staging Area"), for a term commencing on the Effective Date and (unless terminated earlier pursuant to this Agreement) terminating thirty (30) days following the completion of construction of Grantee's Improvements (but in no event later than 2 years following the Effective Date), to enter upon and use the Construction Staging Area for the temporary storage of construction materials and equipment in connection with the construction of the Improvements. Upon termination of such license, Grantee shall remove all equipment, unused materials, rubbish and debris, and repair and restore the Construction Staging Area to its condition prior to the Effective Date.

(c) Road Improvements, Grading, and Support. A non-exclusive easement to excavate, install, construct, reconstruct, repair, replace, maintain and use road and highway improvements, other than a paved road surface, and including a right of use for grading and support of a road on Grantee's adjacent lands, on and in a portion of the Property (the "Easement Area") described in Exhibit C as shown on Exhibit C-1, attached hereto and made a part hereof.

2. Limitations on Use.

(a) The Easement Area, and the public pedestrian walkways permitted to be constructed thereon, are to be used by Grantee only for those uses permitted in Section 1 above, and for no other purpose.

(b) PG&E reserves the right to restrict access to the Easement Area or any portion or portions thereof in the event of fire, earthquake, storm, riot, civil disturbance, or other casualty or emergency, or in connection with PG&E's response thereto, or if emergency repairs or maintenance are required to PG&E facilities within or in the vicinity of the Easement Area, or otherwise when PG&E deems it advisable to do so, including in connection with events and emergencies occurring or affecting PG&E's business operations located elsewhere than in the immediate vicinity of the Easement Area or PG&E's adjacent property.

(c) Grantee shall not erect or construct any building or other structure other than the public pedestrian walkway specifically authorized by this Agreement, nor shall Grantee drill or operate any well, within five (5) feet of any of PG&E's electric or gas facilities.

3. **Condition of Easement Area.** Grantee accepts the Easement Area in its existing physical condition, without warranty by PG&E or any duty or obligation on the part of PG&E to maintain the Easement Area. Grantee acknowledges that one or more of the following (collectively, "**Potential Environmental Hazards**") may be located in, on or underlying PG&E's adjacent property and/or the Easement Area:

(a) electric fields, magnetic fields, electromagnetic fields, electromagnetic radiation, power frequency fields, and extremely low frequency fields, however designated, and whether emitted by electric transmission lines, other distribution equipment or otherwise ("**EMFs**");

(b) **Hazardous Substances** (as hereinafter defined). For purposes hereof, the term "**Hazardous Substances**" means any hazardous or toxic material or waste which is or becomes regulated by Legal Requirements (as hereinafter defined) relating to the protection of human health or safety, or regulating or relating to industrial hygiene or environmental conditions, or the protection of the environment, or pollution or contamination of the air, soil, surface water or groundwater, including, but not limited to, laws, requirements and regulations pertaining to reporting, licensing, permitting, investigating and remediating emissions, discharges, releases or threatened releases of such substances into the air, surface water, or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of such substances. Without limiting the generality of the foregoing, the term Hazardous Substances includes any material or substance:

(1) now or hereafter defined as a "hazardous substance," "hazardous waste," "hazardous material," "extremely hazardous waste," "restricted hazardous waste" or "toxic substance" or words of similar import under any applicable local, state or federal law or under the regulations adopted or promulgated pursuant thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§9601 et seq. ("CERCLA"); the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§6901 et seq.; the Clean Air Act, 42 U.S.C. §§7401 et seq.; the Clean Water Act, 33 U.S.C. §§1251 et seq.; the Toxic Substance Control Act, 15 U.S.C. §§2601 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§136 et seq.; the Atomic Energy Act of 1954, 42 U.S.C. §§2014 et seq.; the Nuclear Waste Policy Act of 1982, 42 U.S.C. §§10101 et seq.; the California Hazardous Waste Control Law, Cal. Health and Safety Code §§25100 et seq.; the Porter-Cologne Water Quality Control Act, Cal. Water Code §§13000 et seq.; the Carpenter-Presley-Tanner Hazardous Substance Account Act (Health and Safety Code §§25300 et seq.); and the Medical Waste Management Act (Health and Safety Code §§25015 et seq.); or

(2) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous, and is now or hereafter regulated as a Hazardous Substance by the United States, the State of California, any local governmental authority or any political subdivision thereof, or which cause, or are listed by the State of California as being known to the State of California to cause, cancer or reproductive toxicity; or

(3) the presence of which on the Easement Area or PG&E's adjacent property poses or threatens to pose a hazard to the health or safety of persons on or about the Easement Area or PG&E's adjacent property or to the environment; or

(4) which contains gasoline, diesel fuel or other petroleum hydrocarbons; or

(5) which contains lead-based paint or other lead contamination, polychlorinated biphenyls ("PCBs") or asbestos or asbestos-containing materials or urea formaldehyde foam insulation; or

(6) which contains radon gas;

(c) fuel or chemical storage tanks, energized electrical conductors or equipment, or natural gas transmission or distribution pipelines; and

(d) other potentially hazardous substances, materials, products or conditions.

Grantee shall be solely responsible for the health and safety of, and shall take all necessary precautions to protect, its employees, contractors, consultants, agents and invitees, including, without limitation, the general public ("**Grantee's Representatives**") from risks of harm from the condition of the Easement Area.

4. Grantee's Covenants. Grantee hereby covenants and agrees:

(a) Construction of Improvements. Grantee agrees to construct and install, at no cost to PG&E, such public pedestrian walkways and improvements ("**Improvements**") as may be necessary and appropriate for Grantee's permitted use, as specified in Section 1. All such construction shall be performed in accordance with detailed plans and specifications ("**Plans**") previously approved by PG&E, and shall comply with all Legal Requirements, as defined below in Section 4(b). Before commencing construction of any Improvements, Grantee shall obtain all permits, authorizations or other approvals, at Grantee's sole cost and expense as may be necessary for such construction. Without limiting the generality of the foregoing, Grantee shall be responsible for complying with any and all applicable requirements of the National Environmental Policy Act ("**NEPA**") and the California Environmental Quality Act ("**CEQA**") and satisfying, at Grantee's sole expense, any and all mitigation measures under CEQA that may apply to Grantee's proposed occupancy and use of the Easement Area, and to the construction, maintenance and use of Grantee's proposed Improvements. Grantee shall promptly notify PG&E of any and all proposed mitigation measures that may affect PG&E, the Easement Area or PG&E's adjacent property. If PG&E determines in good faith that any such mitigation measures may adversely affect PG&E, the Easement Area or PG&E's adjacent property, or impose limitations on PG&E's ability to use PG&E's adjacent property as specified in Section 8, then PG&E shall have the right, without liability to Grantee, to give notice of termination of this Agreement to Grantee, whereupon this Agreement and the rights granted to Grantee shall terminate and revert in PG&E, unless within ten (10) days following delivery of such notice, Grantee gives notice to PG&E by which Grantee agrees to modify its proposed Project (as that term is defined under CEQA) so as to eliminate the necessity for such mitigation measures. In the event of such termination, PG&E and Grantee shall each be released from all obligations under this Agreement, except those which expressly survive

termination. Grantee acknowledges and agrees that PG&E's review of Grantee's Plans is solely for the purpose of protecting PG&E's interests, and shall not be deemed to create any liability of any kind on the part of PG&E, or to constitute a representation on the part of PG&E or any person consulted by PG&E in connection with such review that the Plans or the Improvements contemplated by such Plans are adequate or appropriate for any purpose, or comply with applicable Legal Requirements. Grantee shall not commence construction or installation of any Improvements without the prior written consent of PG&E, which consent shall not be unreasonably withheld, conditioned or delayed, and the prior consent, to the extent required by applicable law or regulation, of the California Public Utilities Commission (hereinafter, "CPUC");

(b) Compliance with Laws. Grantee shall, at its sole cost and expense, promptly comply with (a) all laws, statutes, ordinances, rules, regulations, requirements or orders of municipal, state, and federal authorities now in force or that may later be in force, including, but not limited to, those relating to the generation, use, storage, handling, treatment, transportation or disposal of Hazardous Substances, as defined herein, or to health, safety, noise, environmental protection, air quality or water quality; (b) the conditions of any permit, occupancy certificate, license or other approval issued by public officers relating to Grantee's use or occupancy of the Easement Area; and (c) with any liens, encumbrances, easements, covenants, conditions, restrictions and servitudes (if any) of record, or of which Grantee has notice, which may be applicable to the Easement Area (collectively, "**Legal Requirements**"), regardless of when they become effective, insofar as they relate to the use or occupancy of the Easement Area by Grantee. Grantee shall furnish satisfactory evidence of such compliance upon request by PG&E. The judgment of any court of competent jurisdiction, or the admission of Grantee in any action or proceeding against Grantee, whether or not PG&E is a party in such action or proceeding, that Grantee has violated any Legal Requirement relating to the use or occupancy of the Easement Area, shall be conclusive of that fact as between PG&E and Grantee.

(c) Notice of Enforcement Proceedings. Grantee agrees to notify PG&E in writing within three (3) business days of any investigation, order or enforcement proceeding which in any way relates to the Easement Area or PG&E's adjacent property, or to any contamination or suspected contamination on, within or underlying the Easement Area or PG&E's adjacent property. Such notice shall include a complete copy of any order, complaint, agreement, or other document which may have been issued, executed or proposed, whether draft or final;

(d) Non-Interference. Grantee agrees not to interfere in any way or permit any interference with the use of PG&E's adjacent property by PG&E and other entitled persons. Interference shall include, but not be limited to, any activity by Grantee that places any of PG&E's gas or electric facilities in violation of any of the provisions of General Order Nos. 95 (Overhead Electric), 112E (Gas), and 128 (Underground Electric) of the CPUC or to any other Legal Requirements under which the operations of utility facilities are controlled or regulated. Grantee shall not erect, handle, or operate any tools, machinery, apparatus, equipment, or materials closer to any of PG&E's high-voltage electric conductors than the minimum clearances set forth in the High-Voltage Electrical Safety Orders of the California Division of Industrial Safety; which minimum clearances are incorporated herein by reference; but in no event closer than ten (10) feet to any energized electric conductors or appliances. Grantee shall not drill, bore, or excavate within thirty (30) feet of any of PG&E's underground facilities, including, but not limited to, gas pipelines, valves, regulators, electric conduits, tower footings or foundations. Grantee shall

provide notice to Underground Service Alert at 1-800-227-2600 at least two (2) business days prior to commencing any drilling, boring or excavating permitted hereunder to assist Grantee with locating any and all underground facilities, including, but not limited to, gas pipelines, valves, regulators or electric conduits;

(e) Avoiding Dangerous Activities. Grantee agrees to conduct its activities and operations within and on the Easement Area in such a manner so as not to endanger the Easement Area or PG&E's adjacent property, PG&E's utility facilities, the environment and human health and safety. Grantee shall not cause or permit any Hazardous Substances, as defined herein, to be brought upon, produced, stored, used, discharged or disposed of on, or in the vicinity of the Easement Area, except in compliance with all applicable Legal Requirements. Grantee shall be responsible for the cost of remediating any discharge or release of Hazardous Substances resulting from or arising in connection with Grantee's use of the Easement Area, and shall immediately notify PG&E and the appropriate regulatory authorities where required by law, of any such release. If PG&E determines that Grantee's activities in any way endanger the Easement Area or PG&E's adjacent property, PG&E's utility facilities, the environment, or human health and safety, PG&E may, in PG&E's sole and absolute discretion, require that Grantee halt such activities until appropriate protective measures are taken to PG&E's satisfaction. Grantee shall hold PG&E harmless from any claims resulting from any delay under this paragraph. PG&E's right to halt activities under this paragraph shall not in any way affect or alter Grantee's insurance or indemnity obligations under this Agreement, nor shall it relieve Grantee from any of its obligations hereunder that pertain to health, safety, or the protection of the environment;

(f) Maintenance. Grantee agrees to maintain its Improvements in good condition and repair, and be responsible for the security of, the Improvements installed hereunder;

(g) Repairing Damage. Grantee agrees to repair any damage it may cause to PG&E's facilities and improvements in or around said Easement Area;

(h) Coordination. Grantee agrees to coordinate all activities regarding the easements granted herein to reasonably minimize any interference and inconvenience with the use by PG&E of the Easement Area and PG&E's adjacent property, and;

(i) PG&E Right to Cure. Grantee agrees that if Grantee fails to perform any act or other obligation on its part to be performed hereunder, and such failure is not remedied within fifteen (15) days following notice from PG&E (or in the case of an emergency, following such notice, if any, as may be reasonably practicable under the existing circumstances), PG&E may (but without obligation to do so, and without waiving or releasing Grantee from any of its obligations) perform any such act or satisfy such obligation, or otherwise remedy such emergency or such failure on the part of Grantee. All costs incurred by PG&E in responding to or remedying such failure by Grantee shall be payable by Grantee to PG&E on demand.

5. Indemnification; Release.

(a) Grantee shall, to the maximum extent permitted by law, indemnify, protect, defend and hold harmless PG&E, its parent corporation, subsidiaries and affiliates, and their respective officers, managers, directors, representatives, agents, employees, transferees, successors

and assigns (each, an “**Indemnitee**” and collectively, “**Indemnites**”) from and against all claims, losses (including, but not limited to, diminution in value), actions, demands, damages, costs, expenses (including, but not limited to, experts fees and reasonable attorneys’ fees and costs) and liabilities of whatever kind or nature (collectively, “**Claims**”), including Claims arising from the passive or active negligence of the Indemnites, which arise from or are in any way connected with the occupancy or use of the Easement Area by Grantee or Grantee’s Representatives, or the exercise by Grantee of its rights hereunder, or the performance of, or failure to perform, Grantee’s duties under this Agreement, including, but not limited to, Claims arising out of: (1) injury to or death of persons, including but not limited to employees of PG&E or Grantee; (2) injury to property or other interest of PG&E, Grantee or any third party; (3) violation of any applicable federal, state, or local laws, statutes, regulations, or ordinances, including all Legal Requirements relating to human health or the environment, and including any liability which may be imposed by law or regulation without regard to fault; excepting only with respect to any Indemnitee, to the extent of any Claim arising from the gross negligence or willful misconduct of such Indemnitee. Without limiting the generality of the foregoing, Grantee shall, to the maximum extent permitted by law, indemnify, protect, defend and hold Indemnites harmless from and against Claims arising out of or in connection with any work of improvement constructed or installed at or on, labor performed on, or materials delivered to, or incorporated in any improvements constructed on, the Easement Area by, or at the request or for the benefit of, Grantee. In the event any action or proceeding is brought against any Indemnitee for any Claim against which Grantee is obligated to indemnify or provide a defense hereunder, Grantee upon written notice from PG&E shall defend such action or proceeding at Grantee’s sole expense by counsel approved by PG&E, which approval shall not be unreasonably withheld, conditioned or delayed.

(b) Grantee acknowledges that all Claims arising out of or in any way connected with releases or discharges of any Hazardous Substance, or the exacerbation of a Potential Environmental Hazard, occurring as a result of or in connection with Grantee’s use or occupancy of the Easement Area, or any of the activities of Grantee and Grantee’s Representatives, and all costs, expenses and liabilities for environmental investigations, monitoring, containment, abatement, removal, repair, cleanup, restoration, remediation and other response costs, including reasonable attorneys’ fees and disbursements and any fines and penalties imposed for the violation of Legal Requirements relating to the environment or human health, are expressly within the scope of the indemnity set forth above.

(c) Grantee’s use of the Property shall be at its sole risk and expense. Grantee accepts all risk relating to its occupancy and use of the Easement Area. PG&E shall not be liable to Grantee for, and Grantee hereby waives and releases PG&E and the other Indemnites from, any and all liability, whether in contract, tort or on any other basis, for any injury, damage, or loss resulting from or attributable to any occurrence on or about the Easement Area, the condition of Easement Area, or the use or occupancy of the Easement Area, unless, and to the extent, the injury, damage, or loss results from or is caused by the gross negligence or willful misconduct of Indemnites.

(d) Grantee shall, to the maximum extent permitted by law, indemnify, protect, defend and hold Indemnites harmless against claims, losses, costs (including, but not limited to, attorneys’ fees and costs), liabilities and damages resulting from the failure of Grantee, or any of its contractors or subcontractors, to comply with the insurance requirements set forth in **Exhibit C**,

attached hereto and made a part hereof. If Grantee fails to so indemnify, protect, defend or hold harmless any Indemnatee, then at PG&E's option, this Agreement shall terminate, and the estate and interest herein granted to Grantee shall revert to and revest in PG&E, if such failure continues for five (5) days following the giving of written notice of termination to Grantee, unless within such time such failure is cured to the reasonable satisfaction of PG&E.

(e) The provisions of this Section 5 shall survive the termination of this Agreement.

6. Additional Facilities. Grantee shall not install any additional facilities or improvements in, on, under or over the Easement Area without the prior written consent of PG&E, which consent may be granted or withheld in PG&E's sole and absolute discretion, and the prior consent, to the extent required by applicable law or regulation, of the CPUC. Grantee shall submit plans for installation of any proposed additional facilities within the Easement Area to PG&E for its written approval at the address specified in Section 12.

7. Abandonment; Termination. In the event Grantee abandons the Improvements installed hereunder, this Agreement shall terminate and all of the easements and other rights of Grantee hereunder shall revert to PG&E. The non-use of such Improvements for a continuous period of two (2) years, unless such nonuse is due to factors outside Grantee's reasonable control, in which case such period is extended to four (4) years, shall be conclusive evidence of such abandonment. Upon any termination of this Agreement, Grantee shall remove, at no cost to PG&E, such of Grantee's Improvements installed pursuant to this Agreement as PG&E may specify. Upon any termination of this Agreement, Grantee shall execute, acknowledge and deliver to PG&E a quitclaim deed or such other documents or instruments, in a form reasonably acceptable to PG&E, as may be reasonably necessary to eliminate this Agreement as an encumbrance on the title to the Easement Area or any larger parcel of property containing the Easement Area.

8. Reserved Rights. PG&E reserves the right to use the Easement Area for any and all purposes which will not unreasonably interfere with Grantee's Improvements. Without limiting the generality of the foregoing:

(a) PG&E reserves the right to make use of the Easement Area for such purposes as it may deem necessary or appropriate if, and whenever, in the interest of its service to its patrons or consumers or the public, it shall appear necessary or desirable to do so.

(b) Grantee acknowledges that PG&E may have previously granted, and may in the future grant, certain rights in and across the Easement Area to others, and the use of the word "grant" in this Agreement shall not be construed as a warranty or covenant by PG&E that there are no such other rights.

(c) Grantee shall not make use of the Easement Area in any way which will endanger human health or the environment, create a nuisance or otherwise be incompatible with the use of the Easement Area or PG&E's adjacent property, by PG&E or others entitled to use such property.

(d) This grant is made subject to all applicable provisions of General Order No. 95 (Overhead Electric), General Order 112E (Gas) and General Order No. 128 (Underground Electric) of the CPUC, in like manner as though said provisions were set forth herein.

9. Governmental Approvals. This Agreement shall not become effective, notwithstanding that it may have been executed and delivered by the parties, and Grantee shall not commence construction or other activities hereunder, unless and until the CPUC approves this Agreement and the easements granted and other transactions contemplated hereby (including the adequacy of the compensation to be paid by Grantee), by an order which is final, unconditional and unappealable (including exhaustion of all administrative appeals or remedies before the CPUC). Grantee further acknowledges and agrees that PG&E makes no representation or warranty regarding the prospects for CPUC approval, and Grantee hereby waives all Claims against PG&E which may arise out of the need for such CPUC approval or the failure of the CPUC to grant such approval. This Agreement is made subject to all the provisions of such approval, as more particularly set forth in CPUC Decision D-_____ (Application No. _____), in like manner as though said provisions were set forth in full herein.

10. Compliance; Insurance. PG&E shall have a right to access and inspect the Easement Area at any time to confirm Grantee's compliance with Legal Requirements and the provisions of this Agreement. Prior to the Effective Date of this Agreement, Grantee shall procure, and thereafter Grantee shall carry and maintain in effect at all times during the term of the Agreement, with respect to the Easement Area and the use, occupancy and activities of Grantee and Grantee's Representatives on or about the Easement Area, the insurance specified in **Exhibit C**, attached hereto and made a part hereof by this reference, provided that PG&E reserves the right to review and modify from time to time the coverages and limits of coverage required hereunder, as well as the deductibles and/or self-insurance retentions in effect from time to time (but PG&E agrees that it will not increase required coverage limits more often than once in any five-year period). All insurance required under this Agreement shall be effected under valid, enforceable policies issued by insurers of recognized responsibility, as reasonably determined by PG&E, and shall be written on forms and with insurance carriers acceptable to PG&E. For so long as Grantee is an agency or instrumentality of the United States of America, the State of California or any political subdivision thereof, then Grantee may elect to self-insure for any or all of the required coverage. In addition, Grantee shall act with the same promptness and subject to the same standards of good faith as would apply to a third party insurance company. Grantee is also responsible for causing its agents, contractors and subcontractors to comply with the insurance requirements of this Agreement at all relevant times (provided, however, that Grantee, in the exercise of its reasonable judgment, may permit contractors and subcontractors to maintain coverages and limits lower than those required of Grantee, provided the coverages and limits required by Grantee are commercially reasonable in light of applicable circumstances). Any policy of liability insurance required to be maintained hereunder by Grantee may be maintained under a so-called "blanket policy" insuring other locations and/or other persons, and the coverages and amounts of insurance required to be provided hereunder are not thereby impaired or diminished. In addition, liability insurance coverages may be provided under single policies for the full limits, or by a combination of underlying policies with the balance provided by excess or umbrella liability insurance policies.

11. Mechanics' Liens. Grantee shall keep the Easement Area free and clear of all mechanics', material suppliers' or similar liens, or claims thereof, arising or alleged to arise in connection with any work performed, labor or materials supplied or delivered, or similar activities performed by Grantee or at its request or for its benefit. If any mechanics' liens are placed on the Easement Area or PG&E's adjacent property in connection with the activities or Improvements set forth in this Agreement, Grantee shall promptly cause such liens to be released and removed from title, either by payment or by recording a lien release bond in the manner specified in California Civil Code Section 3143 or any successor statute.

12. Notice. Any notices or communications hereunder shall be in writing and shall be personally delivered or sent by first class mail, certified or registered, postage prepaid, or sent by national overnight courier, with charges prepaid for next business day delivery, addressed to the addressee party at its address or addresses listed below, or to such other address or addresses for a party as such party may from time to time designate by notice given to the other party. Notices shall be deemed received upon actual receipt by the party being sent the notice, or on the following business day if sent by overnight courier, or on the expiration of three (3) business days after the date of mailing.

If to PG&E:

Pacific Gas and Electric Company
Attention: Land Agent
650 O Street, Mail Bag 23
Fresno, CA 93760-0001

With a copy to:

Pacific Gas and Electric Company
P.O. Box 7442, Mail Code B30A
San Francisco, California 94120
Attention: Wendy T. Coleman

If to Grantee:

City of Fresno
Attention: Public Works Director
2600 Fresno Street, Room 4016
Fresno, CA 93721-3623

With a copy to:

City of Fresno
Attention: City Attorney
2600 Fresno Street
Fresno, CA 93721-3600

13. Governing Law. This Agreement shall in all respects be interpreted, enforced, and governed by and under the laws of the State of California.

14. Entire Agreement. This Agreement supersedes all previous oral and written agreements between and representations by or on behalf of the parties and constitutes the entire agreement of the parties with respect to the subject matter hereof. This Agreement may not be amended except by a written agreement executed by both parties.

15. Binding Effect. This Agreement and the covenants and agreements contained herein shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, successors and assigns (subject to the provisions of Section 16). No assignment or delegation by Grantee, whether by operation of law or otherwise, shall relieve Grantee of any of its duties, obligations or liabilities hereunder, in whole or in part. The covenants of PG&E hereunder shall run with the land.

16. Assignment. Grantee shall not assign, convey, encumber (other than as may be specifically permitted by the terms of this Agreement), or otherwise transfer the easements and other rights herein conveyed, or any portion thereof or interest herein, without the prior written consent of PG&E. Such consent may be given or withheld by PG&E for any reason or for no reason, provided, however, that notwithstanding the foregoing, PG&E agrees that its consent will not be unreasonably withheld, delayed or conditioned in the case of a proposed transfer or dedication to a governmental agency. Grantee acknowledges and agrees that in any instance where PG&E is required not to unreasonably withhold its consent, it shall be reasonable for PG&E to withhold its consent if any regulatory agency having or asserting jurisdiction over PG&E or the Easement Area, or having or claiming a right to review and/or approve the proposed transfer, fails to grant approval thereof (or imposes conditions on such approval which are not acceptable to PG&E, in its reasonable discretion). Grantee further acknowledges and agrees that in any instance where PG&E is required not to unreasonably delay giving or withholding its consent, it shall be reasonable for PG&E to make application for approval to any regulatory agency having or asserting jurisdiction, and to defer the giving or withholding of consent, without liability hereunder for delay, during the pendency and for a reasonable time following the conclusion of any such regulatory proceedings.

17. Attorneys' Fees. Should either party bring an action against the other party, by reason of or alleging the failure of the other party with respect to any or all of its obligations hereunder, whether for declaratory or other relief, then the party which prevails in such action shall be entitled to its reasonable attorneys' fees (of both in-house and outside counsel) and expenses related to such action, in addition to all other recovery or relief. A party shall be deemed to have prevailed in any such action (without limiting the generality of the foregoing) if such action is dismissed upon the payment by the other party of the sums allegedly due or the performance of obligations allegedly not complied with, or if such party obtains substantially the relief sought by it in the action, irrespective of whether such action is prosecuted to judgment. Attorneys' fees shall include, without limitation, fees incurred in discovery, contempt proceedings and bankruptcy litigation, and in any appellate proceeding. The non-prevailing party shall also pay the attorney's fees and costs incurred by the prevailing party in any post-judgment proceedings to collect and enforce the judgment. The covenant in the preceding sentence is separate and several and shall survive the merger of this provision into any judgment on this Agreement. For purposes hereof,

the reasonable fees of PG&E's in-house attorneys who perform services in connection with any such action shall be recoverable, and shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the relevant subject matter area of the law, in law firms in the City of San Francisco with approximately the same number of attorneys as are employed by PG&E's Law Department.

18. No Waiver. No waiver with respect to any provision of this Agreement shall be effective unless in writing and signed by the party against whom it is asserted. No waiver of any provision of this Agreement by a party shall be construed as a waiver of any subsequent breach or failure of the same term or condition, or as a waiver of any other provision of this Agreement.

19. No Offsets. Grantee acknowledges that PG&E is executing this Agreement in its capacity as the owner of the Easement Area, and not in its capacity as a public utility company or provider of electricity and natural gas. Notwithstanding anything to the contrary contained herein, no act or omission of Pacific Gas and Electric Company or its employees, agents or contractors as a provider of electricity and natural gas shall abrogate, diminish, or otherwise affect the respective rights, obligations and liabilities of PG&E and Grantee under this Agreement. Further, Grantee covenants not to raise as a defense to its obligations under this Agreement, or assert as a counterclaim or cross-claim in any litigation or arbitration between PG&E and Grantee relating to this Agreement, any claim, loss, damage, cause of action, liability, cost or expense (including, but not limited to, attorneys' fees) arising from or in connection with Pacific Gas and Electric Company's provision of (or failure to provide) electricity and natural gas.

20. No Dedication. Nothing contained in this Agreement shall be deemed to be a gift or dedication of land or rights to the general public. The right of the public or any person, including Grantee, to make any use whatsoever of the Easement Area or any portion thereof, other than as expressly permitted herein or as expressly allowed by a recorded map, agreement, deed or dedication, is by permission and is subject to the control of PG&E in its sole discretion.

21. No Third Party Beneficiary. This Agreement is solely for the benefit of the parties hereto and their respective successors and permitted assigns, and, except as expressly provided herein, does not confer any rights or remedies on any other person or entity.

22. Captions. The captions in this Agreement are for reference only and shall in no way define or interpret any provision hereof.

23. Time. Except as otherwise expressly provided herein, the parties agree that as to any obligation or action to be performed hereunder, time is of the essence.

24. Severability. If any provision of this Agreement shall be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the full extent permitted by law, provided the material provisions of this Agreement can be determined and effectuated.

25. Counterparts. This Agreement may be executed in identical counterpart copies, each of which shall be an original, but all of which taken together shall constitute one and the same agreement.

26. Other Documents. Each party agrees to sign any additional documents or permit applications which may be reasonably required to effectuate the purpose of this Agreement. Provided, however, that PG&E will not be required to take any action or execute any document that would result in any cost, expense or liability to PG&E.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first set forth above.

PACIFIC GAS AND ELECTRIC COMPANY,
a California corporation

CITY OF FRESNO,
a Municipal Corporation of the State of
California

By: _____

By: _____

Its: _____

Its: _____

APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE
BY: 

EXHIBIT "A"

APN 579-220-13SU (portion)
Pedestrian Walkway & Bicycle Path Easement

That real property located in the City of Fresno, County of Fresno, State of California, said real property being situated in the Southeast Quarter of Section 11, Township 12 South, Range 20 East, Mount Diablo Base and Meridian, according to the Official United States Government Township Plat thereof, said real property being more particularly described as follows:

COMMENCING at the south quarter corner of said Section; thence South $89^{\circ} 25' 01''$ East, along the south line of the southeast quarter of said Section, a distance of 1352.71 feet to the southerly prolongation of the west line of that parcel of land described in a Corporate Quitclaim Deed recorded February 7, 1989 as Document No. 89013894, Official Records of Fresno County; thence North $01^{\circ} 05' 32''$ East, along said southerly prolongation, a distance of 20.00 feet to the southwest corner of said parcel of land described in said Document No. 89013894; thence continuing North $01^{\circ} 05' 32''$ East, along said west line, a distance of 10.00 feet to the North line of a 10 foot public road easement recorded August 15, 1989 as Document No. 89086581 and the TRUE POINT OF BEGINNING; thence continuing

- 1) North $01^{\circ} 05' 32''$ East, along said west line, a distance of 15.00 feet; thence
- 2) South $89^{\circ} 25' 01''$ East, parallel with and 15.00 feet north of the north line of said easement described in Document No. 89086581, a distance of 540.00 feet to the shared boundary line between said parcel described in said Document No. 89013894 and Parcel B of Lot Line Adjustment No. 2005-37, as described in that deed recorded March 30, 2006 as Document No. 2006-0066876, Official Records of Fresno County; thence.
- 3) South $01^{\circ} 05' 32''$ West, along said shared boundary line, a distance of 15.00 feet to the North line of said easement described in Document No. 89086581; thence
- 4) North $89^{\circ} 25' 01''$ West, along the North line of said easement described in Document No. 89086581, a distance of 540.00 feet to the TRUE POINT OF BEGINNING.

Containing an area of 8,100 square feet, more or less.

The Basis of Bearings for this description is the south line of the southeast quarter of Section 11, Township 12 South, Range 20 East, Mount Diablo Base and Meridian, taken to be South $89^{\circ} 25' 01''$ East as shown on the Amended Map of Tract No. 5205 recorded in Book 76 of Plats, at pages 46 through 70, of Fresno County Records.

END OF DESCRIPTION

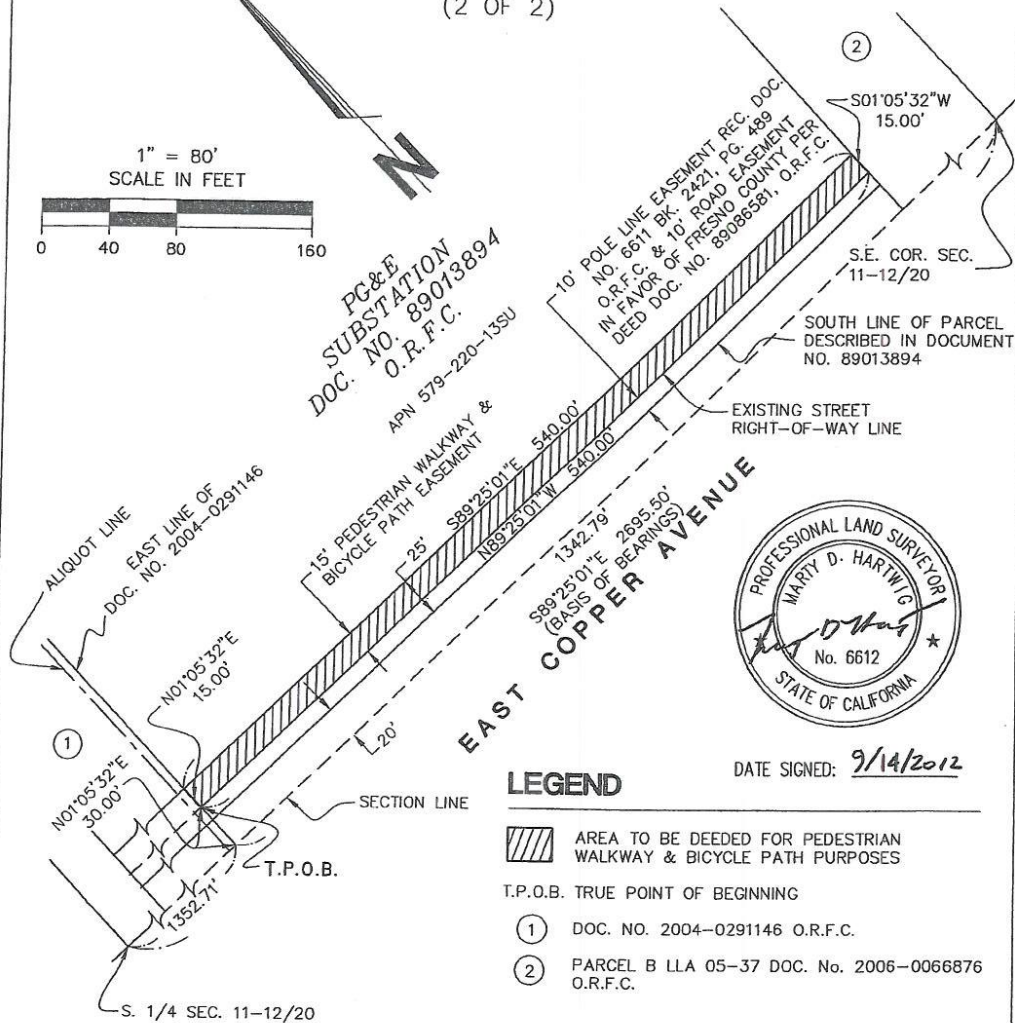
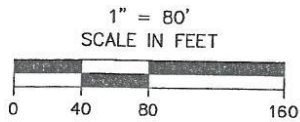
T-5205
2007-149
15-A-8592



Date 9/14/2012
Signed

EXHIBIT "A-1"

(2 OF 2)



LEGEND



AREA TO BE DEEDED FOR PEDESTRIAN WALKWAY & BICYCLE PATH PURPOSES

T.P.O.B. TRUE POINT OF BEGINNING

①

DOC. NO. 2004-0291146 O.R.F.C.

②

PARCEL B LLA 05-37 DOC. No. 2006-0066876 O.R.F.C.

PROVOST & PRITCHARD
SURVEYING CORP.
An Equal Opportunity Employer
100 WEST UNIVERSITY AVENUE
FRESNO, CALIFORNIA 93701-0112
202/410-7700 Fax 202/410-0700
www.provostandpritchard.com

DATE: 03/16/08
JOB NO. 16320203
DSC. NO. 0000

REF. & REV. T-5205 PW FILE NO. 10782 PLAT NO. 0460 2007-149 15-C-11663	CITY OF FRESNO DEPARTMENT OF PUBLIC WORKS PORTION of SOUTHEAST ONE QUARTER of Section 11, T.12 S., R.20E., M.D.B. & M. To be Deeded for PEDESTRIAN WALKWAY & BICYCLE PATH PURPOSES	PROJ. ID. FUND NO. ORG. NO. DR. BY MDH CH. BY DATE 09/14/12 SCALE 1" = 80'	SHEET NO. 2 OF 2 SHEETS 15-A-8592
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EXHIBIT "B"

APN 579-220-13SU (portion)
Temporary construction easement

A portion of that parcel of land described in that Corporate Quitclaim Deed recorded February 7, 1989, as Document No. 89013894, Official Records of Fresno County, situated in the Southeast Quarter of Section 11, Township 12 South, Range 20 East, Mount Diablo Base and Meridian, according to the Official United States Government Township Plat thereof; said real property being more particularly described as follows:

COMMENCING at the south quarter corner of said Section 11; thence South $89^{\circ}25'01''$ East, along the south line of the southeast quarter of said Section 11, a distance of 1352.71 feet to the southerly prolongation of the west line of said parcel of land described in Document No. 89013894; thence North $01^{\circ}05'32''$ East, along said southerly prolongation and along said west line, a distance of 45.00 feet to the TRUE POINT OF BEGINNING of this description; thence continuing North $01^{\circ}05'32''$ East, along said west line, a distance of 10.00 feet; thence South $89^{\circ}25'01''$ East, parallel with and 55.00 feet north of said south line, a distance of 392.22 feet; thence North $0^{\circ}34'59''$ East, a distance of 10.00 feet; thence South $89^{\circ}25'01''$ East, parallel with and 65.00 feet north of said south line, a distance of 147.87 feet to the shared boundary line between said parcel described in said Document No. 89013894 and Parcel B of Lot Line Adjustment No. 2005-37, as described in that deed recorded March 30, 2006, as Document No. 2006-0066876, Official Records of Fresno County; thence South $01^{\circ}05'32''$ West, along said shared boundary line, a distance of 10.00 feet; thence North $89^{\circ}25'01''$ West, parallel with and 55.00 feet north of said south line, a distance of 113.57 feet; thence South $0^{\circ}34'59''$ West, a distance of 10.00 feet; thence North $89^{\circ}25'01''$ West, parallel with and 45.00 feet north of said south line, a distance of 426.51 feet to the TRUE POINT OF BEGINNING.

Contains an area of 5,743 square feet, more or less.



6/11/14

2007-149T
15-A-8592T
PWF 11681

EXHIBIT "B- 1"

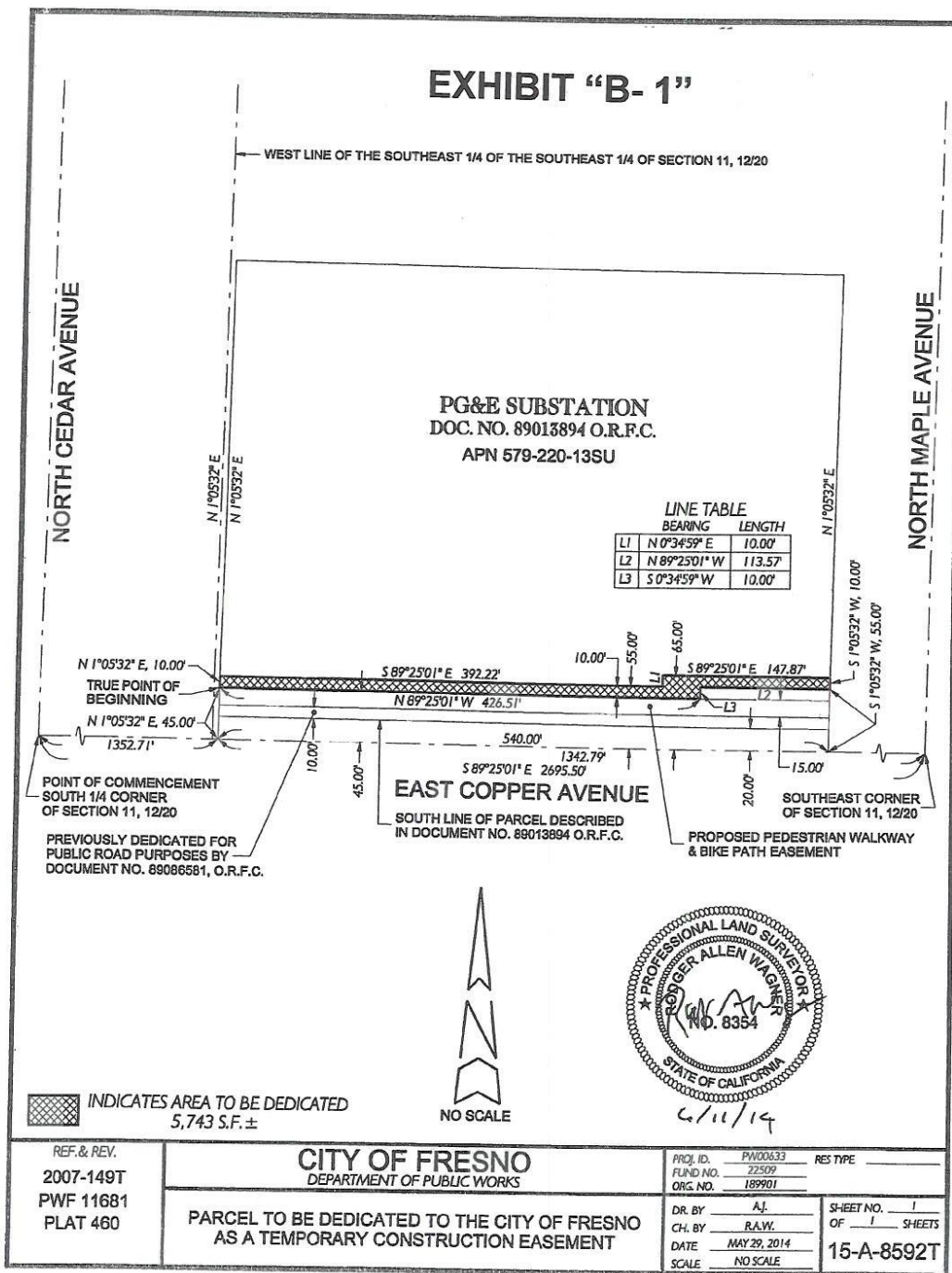


EXHIBIT "C"

APN 579-220-13SU (portion)
Slope easement

A portion of that parcel of land described in that Corporate Quitclaim Deed recorded February 7, 1989 as Document No. 89013894, Official Records of Fresno County, situated in the Southeast Quarter of Section 11, Township 12 South, Range 20 East, Mount Diablo Base and Meridian, according to the Official United States Government Township Plat thereof; said real property being more particularly described as follows:

COMMENCING at the south quarter corner of said Section 11; thence South 89°25'01" East, along the south line of the southeast quarter of said Section, a distance of 1352.71 feet to the southerly prolongation of the west line of said parcel of land described in Document No. 89013894; thence North 01°05'32" East, along said southerly prolongation and along said west line, a distance of 45.00 feet; thence South 89°25'01" East, parallel with and 45.00 feet north of said south line, a distance of 426.51 feet to the TRUE POINT OF BEGINNING of this description; thence continuing South 89°25'01" East, parallel with and 45.00 feet north of said south line, a distance of 113.49 feet to the shared boundary line between said parcel described in said Document No. 89013894 and Parcel B of Lot Line Adjustment No. 2005-37, as described in that deed recorded March 30, 2006 as Document No. 2006-0066876, Official Records of Fresno County; thence North 1°05'32" East, along said shared boundary line, a distance of 10.00 feet; thence North 89°25'01" West, parallel with and 55.00 feet north of said south line, a distance of 113.57 feet; thence South 0°34'59" West, a distance of 10.00 feet to the TRUE POINT OF BEGINNING.

Contains an area of 1,135 square feet, more or less.



6/11/14

2007-149S
15-A-8592S
PWF 11681

EXHIBIT "C- 1"

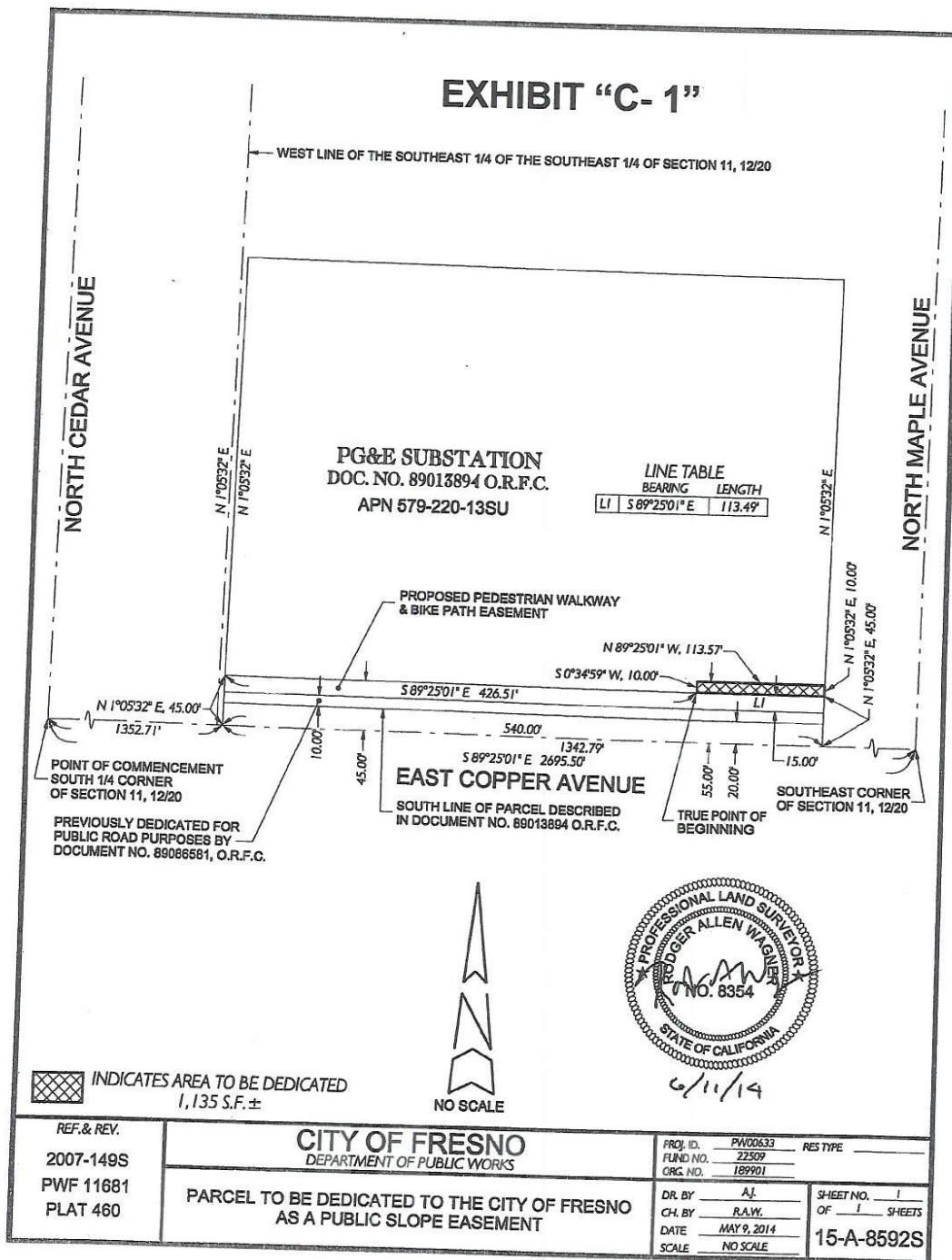


EXHIBIT D

INSURANCE REQUIREMENTS

Grantee shall procure, carry and maintain in effect throughout the term of this Agreement the following insurance coverage. Grantee is also responsible for its subcontractors maintaining sufficient limits of the appropriate insurance coverages.

A. Workers' Compensation and Employers' Liability

1. Workers' Compensation insurance indicating compliance with any and all applicable labor codes, acts, laws or statutes, state or federal.
2. Employer's Liability insurance shall not be less than One Million Dollars (\$1,000,000) for injury or death, each accident.

B. Commercial General Liability

1. Coverage shall be at least as broad as the Insurance Services Office (ISO) Commercial General Liability insurance "occurrence" form with no additional coverage alterations.
2. The limits shall not be less than Two Million Dollars (\$2,000,000) per occurrence for bodily injury, property damage and products and completed operations. Defense costs are to be provided outside the policy limits.

C. Business Auto

1. Coverage shall be at least as broad as the Insurance Services Office (ISO) Business Auto Coverage form covering Automobile Liability, code 1 "any auto."
2. The limit shall not be less than One Million Dollars (\$1,000,000) each accident for bodily injury and property damage.

D. Additional Insurance Provisions

1. Upon the Effective Date of the Easement Agreement Grantee shall furnish PG&E with two (2) sets of certificates of insurance.
2. Documentation shall state that coverage shall not be canceled except after thirty (30) days prior written notice has been given to PG&E.
3. The documents must be signed by a person authorized by Grantee to bind coverage on its behalf and submitted to:

Pacific Gas and Electric Company
Insurance Department - B24H
Post Office Box 770000
San Francisco, California 94177

Pacific Gas and Electric Company
650 O Street, Mail Bag 23
Fresno, CA 93760-0001
Attention: Land Agent