



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kim Walesh

SUBJECT: SEE BELOW

DATE: August 22, 2011

Approved

Date

8/31/11

COUNCIL DISTRICT: #4
SNI: None

SUBJECT: APPROVAL OF AN ELECTRIC POLE LINE EASEMENT PURCHASE AND SALE AGREEMENT BETWEEN THE CITY OF SAN JOSE AND LOS ESTEROS CRITICAL ENERGY FACILITY LLC, ("LECEF") AND ADOPTION OF RESOLUTION DIRECTING AND AUTHORIZING THE CITY MANAGER OR DESIGNEE TO EXECUTE SAID AGREEMENT TOGETHER WITH AN ELECTRIC POLE LINE EASEMENT AGREEMENT WITH PACIFIC GAS AND ELECTRIC COMPANY ("PG&E") CONVEYING SUBJECT EASEMENT ON WATER POLLUTION CONTROL BUFFER LANDS

RECOMMENDATION

It is recommended that the Council adopt a resolution approving the agreements set forth below and authorizing and directing the City Manager or designee to execute subject agreements together with all other documents needed to conclude the transaction.

- a. A Purchase and Sale Agreement for Electric Pole Line Easement with Los Esteros Critical Energy Facility, LLC ("LECEF") setting forth terms and conditions of City's conveyance of the easement to Pacific Gas and Electric Company ("PG&E") on a 16,575 square foot portion of City's Water Pollution Control ("WPCP") buffer lands, and
- b. An Electric Pole Line Easement Agreement with PG&E allowing it the non-exclusive use of a portion of City's WPCP buffer lands for an electrical pole line to connect existing PG&E Transmission Lines with the adjacent LECEF Facility.

OUTCOME

This Electric Pole Line Easement Agreement together with the Purchase and Sale Agreement will now provide PG&E with the rights necessary to maintain its existing electrical facilities and LECEF with a reliable source of energy for its adjacent facility. The easement will also enable

LECEF to obtain final lender approval on \$300,000,000 of financing for the construction of improvements to its facility which will increase efficiency and generating capacity. The City has received the agreed upon compensation in the amount of \$125,307 from LECEF as specified in the Purchase and Sale Agreement.

BACKGROUND

In 2002, in conjunction with the development of the Los Esteros Critical Energy Facility, the City and LECEF/Calpine Corporation entered into a Master Agreement followed by a First Amendment to Master Agreement in 2003, by which the City agreed to convey various easements and licenses on different portions of the City's WPCP buffer lands to LECEF and to PG&E. One of the agreements entered into pursuant to the amended Master Agreement was an electric pole line license agreement in 2005 under which PG&E installed electrical infrastructure in a designated area which infrastructure interconnected to the adjacent LECEF Facility and PG&E's existing transmission facilities.

This agreement further provided that at the request of LECEF and upon payment of additional consideration the City would grant to PG&E a permanent electric pole line easement which would supersede the 2005 license agreement effectively converting a temporary license into a permanent easement. The license agreement expired on October 29, 2007, without the easement conveyance having been made because of questions over the sufficiency of the proposed size and scope of the proposed easement. Conveyance of this easement will enable LECEF to obtain final lender approval on \$300,000,000 of financing for the construction of improvements to its facility which will increase efficiency and generating capacity.

The portion of the subject WPCP buffer lands encompassed within the electric pole line easement is shown on the plat map attached hereto as Exhibit "A".

ANALYSIS

The City and LECEF had previously jointly commissioned appraisals of various property interests and options under the 2002 Master Agreement as amended in 2003 and under the various property transfer agreements which followed. City staff and LECEF have established the easement price of \$7.56 per square foot based upon the appraisal performed by Enright & Company Inc. on March 30, 2007, for a different portion of the same WPCP buffer land parcel.

City staff is of the opinion that the aforementioned amount of \$7.56 per square foot continues to represent fair market value for the subject 16,575 square foot non-exclusive easement. The City will retain the right to utilize the easement area, and allow third parties to utilize it so long as such use does not unreasonably interfere with PG&E's free use and enjoyment of the subject easement area.

EVALUATION AND FOLLOW-UP

No additional follow up actions with the Council are expected at this time.

PUBLIC OUTREACH

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This action does not meet any of the above listed criteria; however it will be posted on the City's website for the September 13, 2011, Council agenda.

COORDINATION

This project has been coordinated with the Department of Environmental Services, City Manager's Budget Office and the City Attorney's Office. This item is scheduled to be heard at the September 8, 2011, Treatment Plan Advisory Committee meeting.

COST SUMMARY/IMPLICATIONS

The City has received compensation of \$125,307 from LECEF. In addition LECEF will pay estimated costs of recordation and documentary transfer taxes in the amount of \$633. Compensation received will be distributed to the City of San Jose, City of Santa Clara and the tributary agencies. Costs of transfer taxes and recordation fee will be paid by LECEF.

Upon City's recordation of the Electric Pole Line Easement Agreement with PG&E conveying said property interest, PG&E will be responsible to maintain the easement area, provide insurance and insure and indemnify the City from potential liabilities that may arise from the grant of the proposed easement.

HONORABLE MAYOR AND CITY COUNCIL

08-22-11

Subject: Approval of Easement Agreements With Los Esteros Critical Energy Facility and PG&E

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BUDGET REFERENCE

The compensation paid to City was deposited into the Treatment Plant Income Fund.

CEQA

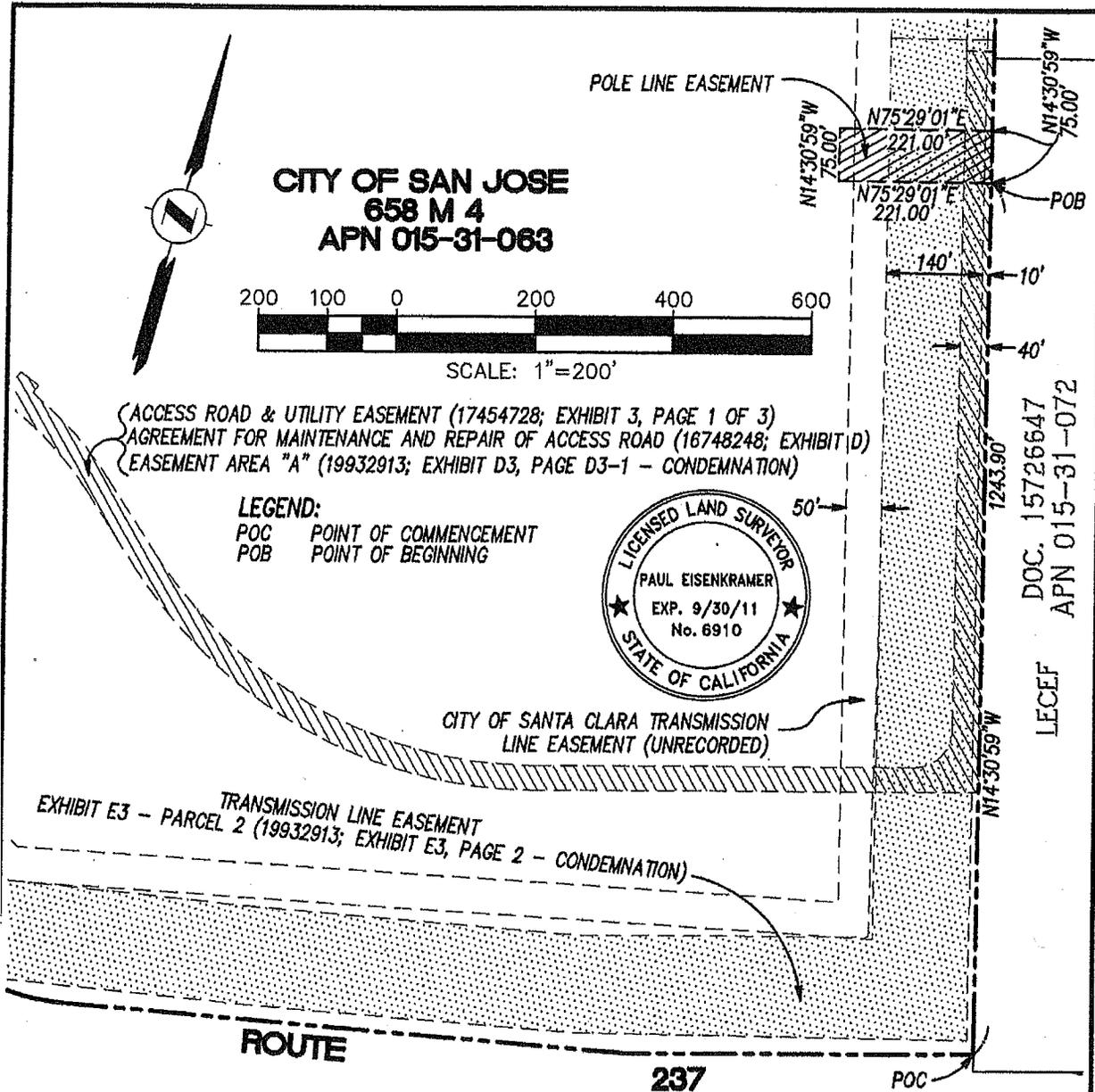
Exempt PP10-135 July 16, 2010.

/S/
KIM WALESH
Director of Economic Development
Chief Strategist

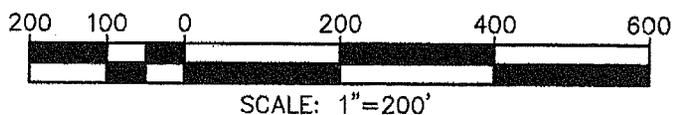
For questions please contact NANJI KLEIN, DEPUTY DIRECTOR, OFFICE OF ECONOMIC DEVELOPMENT, at 535-8181.

Exhibit: Plat of Easement Area At Northeast Corner of Rt. 237 and Zanker Road

EXHIBIT

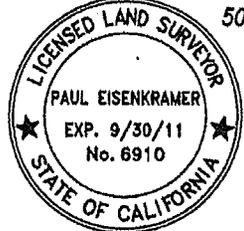


CITY OF SAN JOSE
658 M 4
APN 015-31-063



ACCESS ROAD & UTILITY EASEMENT (17454728; EXHIBIT 3, PAGE 1 OF 3)
 AGREEMENT FOR MAINTENANCE AND REPAIR OF ACCESS ROAD (16748248; EXHIBIT D)
 EASEMENT AREA "A" (19932913; EXHIBIT D3, PAGE D3-1 - CONDEMNATION)

LEGEND:
 POC POINT OF COMMENCEMENT
 POB POINT OF BEGINNING



CITY OF SANTA CLARA TRANSMISSION
 LINE EASEMENT (UNRECORDED)

TRANSMISSION LINE EASEMENT
 EXHIBIT E3 - PARCEL 2 (19932913; EXHIBIT E3, PAGE 2 - CONDEMNATION)

ROUTE

237

POC

DOC. 15726647
 APN 015-31-072

LECEF

EXHIBIT 'B'
PLAT TO ACCOMPANY LEGAL DESCRIPTION
POLE LINE EASEMENT
 PORTION OF LANDS OF CITY OF SAN JOSE (658 M 4)
 CITY OF SAN JOSE - SANTA CLARA COUNTY - CALIFORNIA



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Paul Eisenkramer 1-4-2011
 FOR MILANI & ASSOCIATES DATE
 PAUL EISENKRAMER
 LS 6910 EXP. 9/30/11

DATE: JANUARY 2011

SCALE: 1"=200'

SHEET 1 OF 1 SHEET