

**PURCHASE AND SALE AGREEMENT
FOR ELECTRIC POLE LINE EASEMENT
BETWEEN THE
CITY OF SAN JOSE AND LOS ESTEROS CRITICAL ENERGY FACILITY, LLC,
A DELAWARE LIMITED LIABILITY COMPANY**

THIS PURCHASE AND SALE AGREEMENT FOR ELECTRIC POLE LINE EASEMENT ("Agreement") by and between the CITY OF SAN JOSE, a municipal corporation of the State of California ("CITY") as the administering agency for the San José/Santa Clara Water Pollution Control Plant ("Plant"), a joint powers agency of the State of California, and LOS ESTEROS CRITICAL ENERGY FACILITY, LLC ("LECEF"), a Delaware Limited Liability Company registered to do business in the State of California, a wholly-owned subsidiary of Calpine Corporation, Inc. and formerly known as "North San José Energy Center, LLC", is effective as of the date of execution by the CITY ("Effective Date"), as shown below.

RECITALS

- A. CITY holds title to certain real property as the administering agency for the Plant (the "WPCP Property"); and
- B. LECEF is the owner and operator of a 180 megawatt simple cycle power generation facility located on a 33.709 acre site located adjacent to the WPCP Property and situated on the north side of State Route 237, between Zanker Road and Coyote Creek ("LECEF Facility"); and
- C. On October 29, 2002 CITY and LECEF entered into a Master Agreement (as subsequently amended once, the "LECEF Master Agreement") for conveyance of various property interests over the WPCP Property to LECEF and to Pacific Gas and Electric Company, a California corporation ("PG&E"), including a Pole Line License Agreement which was entered between CITY and PG&E on November 22, 2002 and later amended and superseded by a separate Pole Line License Agreement entered between CITY, LECEF and PG&E on May 4, 2005 ("2005 License Agreement"); and
- D. Pursuant to the terms of the 2005 License Agreement, CITY: i) granted to PG&E a license to install and maintain certain electrical infrastructure within a license area described therein ("2005 License Area") which infrastructure interconnected the LECEF Facility and PG&E's existing transmission facilities; and ii) agreed, upon the request of LECEF and the payment of additional consideration, to grant to PG&E a permanent electric pole line easement ("Electric Pole Line Easement") over the 2005 License Area, which grant of easement would supersede the 2005 License Agreement; and

- E. Following execution of the 2005 License Agreement, questions arose over the sufficiency of the proposed size and scope of the Electric Pole Line Easement as contemplated thereby ("2005 Easement"), and the term of the 2005 License Agreement expired on October 29, 2007 without the conveyance of the 2005 Easement from CITY to PG&E. LECEF and CITY now wish to enter into an agreement for CITY's conveyance of the Electric Pole Line Easement to PG&E on the revised terms set forth below.

NOW THEREFORE, in consideration of the mutual covenants set forth in this Agreement and for valuable consideration, receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**ARTICLE I
PROPERTY INTERESTS TO BE CONVEYED**

Section 1 Electric Pole Line Easement.

CITY agrees to convey to PG&E the Electric Pole Line Easement in the form attached hereto as **EXHIBIT A** over a portion of the WPCP Property, which portion is described in **EXHIBIT A** attached hereto.

**ARTICLE II
COMPENSATION**

Section 2.1 Amount of Purchase Price.

The purchase price ("Purchase Price") for the Electric Pole Line Easement shall be One Hundred Twenty Five Thousand Three Hundred Seven and No/100 Dollars (\$125,307.00).

Section 2.2 Payment of Purchase Price.

By its execution of this Agreement, CITY acknowledges receipt of the Purchase Price, \$46,000.00 of which was received in 2007, and the remainder of which was received by CITY concurrently with duplicate counterpart copies of this Agreement duly executed and acknowledged by LECEF and a single copy of the Electric Pole Line Easement duly executed and acknowledged by PG&E.

**ARTICLE III
RECORDATION**

CITY covenants that, within ten (10) business days of the Effective Date, CITY shall duly execute a counterpart copy of this Agreement and deliver same to LECEF and duly execute and acknowledge the copy of the Electric Pole Line Easement

received from PG&E and deliver the same to the Santa Clara County Recorder's Office for recordation, together with two copies thereof to be stamped as "conformed" copies by the Recorder's Office. CITY shall promptly deliver one conformed copy of the Electric Pole Line Easement each to PG&E and LECEF. All documentary transfer taxes and recording fees, if any, shall be borne by LECEF. Concurrently with its delivery of the remainder of the Purchase Price, LECEF has delivered to CITY the sum of \$633.00, to be used by CITY toward payment of such taxes and fees; the parties shall cooperate to reconcile between themselves any shortfall/overage within thirty (30) calendar days of recordation

ARTICLE IV TITLE

Title to the Electric Pole Line Easement shall be subject to all exceptions, encumbrances, liens and restrictions affecting title, whether or not of record, existing as of the Effective Date.

ARTICLE V DISCLAIMER

LECEF SPECIFICALLY REPRESENTS AND WARRANTS THAT CITY IS CONVEYING THE ELECTRIC POLE LINE EASEMENT ON AN "AS IS, WHERE IS WITH ALL FAULTS" BASIS.

ARTICLE VI REPRESENTATIONS AND WARRANTIES

Section 6.1 LECEF Representation and Warranty.

LECEF represents and warrants that the execution and delivery of this Agreement by LECEF and LECEF's performance hereof and the transactions contemplated hereby have been duly authorized on the part of LECEF and the person or persons signatory to this Agreement on behalf of LECEF have full power and authority to execute same.

Section 6.2 CITY's Representation and Warranty.

CITY represents and warrants that execution and delivery of this Agreement by CITY and CITY's performance hereof and the transactions contemplated hereby, have been duly authorized on the part of CITY and the person or persons signatory to this Agreement on behalf of CITY have full power and authority to execute same.

**ARTICLE VII
MISCELLANEOUS PROVISIONS**

Section 7.1 Notices.

All notices or other communications required or permitted hereunder shall be in writing, addressed to the person to receive such notice at the addresses set forth below, and shall be personally delivered, sent by courier service or sent by registered or certified mail, first class postage prepaid, return receipt requested. Notice shall be effective or deemed effective on the date of delivery, if personally delivered or sent by courier service, or if mailed, three (3) days after deposit with the United States Postal Service. Any Party to this Agreement may change its address for receipt of notices by giving notice of such change to the other Party in the manner set forth in this Section. Neither the rejection of a notice by the addressee or the inability to deliver a notice because of a change of address for which no change of address notice was received, shall affect the date on which such notice is deemed received.

<p><u>Notice to City:</u> City of San José Real Estate Services and Asset Management 200 E. Santa Clara St., 4th Floor Tower San José, California 95113 Attention: RESAM Division Manager Phone Number: (408) 975-7400</p>	<p><u>Notice to LECEF:</u> Los Esteros Critical Energy Facility, LLC 4160 Dublin Blvd., Suite 100 Dublin, CA 94568-3139 Phone Number: (925) 557-2224 Attention: VP, Regional Operations</p>
<p><u>Copy of Notice to:</u> City of San José Office of the City Attorney 200 East Santa Clara Street, 16th Floor Tower San José, California 95113 Phone Number: (408) 535-1936</p>	<p><u>Copy of Notice to:</u> Los Esteros Critical Energy Facility, LLC c/o Calpine Corporation 717 Texas Ave., Suite 1000 Houston, TX 77002 Phone Number: (713) 830-8667 Attention: Land Department</p>

Section 7.2 Recordation.

LECEF shall not record, or cause to be recorded in the Santa Clara County Recorder's Office, this Agreement or a short form memorandum of this Agreement.

Section 7.3 No Obligations to Third Parties.

Except as otherwise expressly provided in this Agreement, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the parties to this Agreement, to any third person or entity.

Section 7.4 Nonwaiver.

Unless otherwise expressly provided in this Agreement, no waiver by a party of any provision hereof shall be deemed to have been made unless expressed in writing and signed by such party. No delay or omission in the exercise of any right or remedy accruing to any party shall impair such right or remedy or be construed as a waiver of any such right or remedy, whether theretofore or thereafter arising or occurring. The waiver by a party of any term, covenant or condition herein stated shall not be deemed to be a waiver of any other term, covenant or condition.

Section 7.5 Applicable Law.

This Agreement shall be deemed to be made in and construed in accordance with the laws of the State of California. In the event suit is brought by either party hereunder, the parties agree that venue for such action shall be vested in the state courts of California in the County of Santa Clara or in the United States District Court in the Northern District of California.

Section 7.6 Entire Agreement.

This Agreement supersedes any prior oral or written understandings or agreements and contains the entire agreement between LECEF and CITY regarding the conveyance of the Electric Pole Line Easement to PG&E. Without limiting the generality of the foregoing, LECEF acknowledges that the 2005 Easement did not meet its objectives and relinquishes further rights with respect thereto, if any, and LECEF and CITY together acknowledge that the 2005 License Agreement has terminated. The terms of this Agreement may not be modified or amended, except as in writing, and no subsequent agreement, representation, or promise made by either party hereto, or by or to an employee, officer, agent or representative of either party hereto, or by or to an employee, officer, agent, or representative of either party shall be of any effect unless it is in writing and executed by the party to be bound thereby.

Section 7.7 Intentionally deleted.

Section 7.8 Exhibits.

All exhibits and addenda referred to herein, and any exhibits or schedules which may from time to time be referred to in any duly executed amendment to this

Agreement or any exhibits or addenda attached hereto, are by such reference incorporated into this Agreement and shall be deemed a part hereof as if fully set forth herein.

Section 7.9 Assignment by LECEF.

LECEF shall not have the right to assign or transfer all or any portion of any right or interest of LECEF under this Agreement to any third party without the written consent of CITY

Section 7.10 Binding on Successors.

Without limiting the provisions of Section 7.9 above, this Agreement inures to the benefit of and is binding on, the parties, their respective heirs, personal representatives, successors and assigns.

Section 7.11 Counterparts.

This Agreement may be executed in counterparts.

Section 7.12 Development as a Private Undertaking.

No partnership, joint venture or other association of any kind, by or among the CITY and LECEF is formed, implied or deemed to have arisen by operation of this Agreement.

Section 7.13 Construction.

The parties acknowledge that each party and its counsel have reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any amendment or exhibits hereto.

Section 7.14 Interpretation.

Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and the masculine gender shall include the feminine and neuter genders.

Section 7.15 Headings.

The headings of the several paragraphs and sections of this Agreement are inserted only as a matter of convenience and for reference; shall in no way define, limit or describe the scope or intent of any provision of this Agreement; and shall not be

construed to affect, in any manner, the terms and provisions hereof or the interpretation or constructions thereof.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the dates set forth opposite their respective signatures.

"CITY"

CITY OF SAN JOSE, CALIFORNIA, a
municipal corporation of the State of
California

APPROVED AS TO FORM:

By: 

Kenneth D. Johnson
Sr. Deputy City Attorney

By: _____

Dated: _____, 20__

"LECEF"

LOS ESTEROS CRITICAL ENERGY
FACILITY, LLC, a Delaware limited liability
company

APPROVED AS TO FORM:

By: _____
Name: _____
Title: _____

By: 
Name: Jack A. Fusco
Title: President

EXHIBIT A

RECORDING REQUESTED BY:
CITY OF SAN JOSE
WHEN RECORDED MAIL TO:

City of San Jose
General Services-Real Estate Services &
Asset Management
200 East Santa Clara Street, 16th Floor
Tower
San José, California 95113
Attn: Supervising Real Property Agent

SPACE ABOVE THIS LINE FOR RECORDER'S USE

ELECTRIC POLE LINE EASEMENT AGREEMENT

The Undersigned Declares: DOCUMENTARY TRANSFER TAX \$ 0; CITY TRANSFER TAX \$ 0;

- computed on the consideration or full value of property conveyed, OR
- computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,
- unincorporated area; City of San Jose, and
- Signature of Declarant

By: _____
Print Name: _____
Title: _____

This Electric Pole Line Easement Agreement ("Agreement") is made this ____ day of _____, 2011 ("Effective Date") by and between the City of San José, as administering agency for the San José/Santa Clara Water Pollution Control Plant, a joint powers agency of the State of California ("CITY") and Pacific Gas and Electric Company, a California corporation, ("PG&E") who agree as follows:

RECITALS

- A.** CITY holds title to certain real property as the administering agency for the San José/Santa Clara Water Pollution Control Plant ("Plant"), a joint powers agency of the State of California, which is described in EXHIBIT 1 attached hereto and incorporated by reference herein (the "WPCP Property"); and
- B.** PG&E has constructed certain transmission lines on the WPCP Property pursuant to a Transmission Line Easement Agreement recorded on July 23, 2008 as a part of Document no. 19932913 ("PG&E Transmission Lines"); and
- C.** Los Esteros Critical Energy Facility, LLC is the owner and operator of a 180 megawatt simple cycle power generation facility located on a 33.709 acre site located adjacent to the WPCP Property and situated on the north side of State Route 237, between Zanker Road and Coyote Creek, which is described and

depicted in EXHIBIT 2 attached hereto and incorporated by reference herein ("LECEF Facility"); and

- D. PG&E wishes to obtain from CITY, and CITY is willing to grant to PG&E the right to use the portion of the WPCP Property described and depicted in EXHIBIT 3 attached hereto and incorporated by reference herein ("Easement Area"), for an electrical pole line to connect the PG&E Transmission Lines and the LECEF Facility on the terms and conditions stated in this Agreement.

NOW, THEREFORE, for valuable consideration, receipt of which is hereby acknowledged, the Parties hereto agree as follows:

1. Grant of Easement. Subject to the terms and conditions set forth in this Agreement, CITY hereby grants to PG&E, the right to use the Easement Area solely for the purposes of:
 - 1.1 Erecting, constructing, reconstructing, replacing, removing, maintaining and using the pole line facilities located therein as of the Effective Date, and such modifications thereto as may be performed pursuant to Section 3 below, including wooden poles with such wires and cables as PG&E shall, from time to time, suspend therefrom for connection of the LECEF Facility with the PG&E Transmission Lines for the distribution of electric energy and service to and from the LECEF Facility, and for PG&E's internal telecommunication purposes and all necessary and proper foundations, footings, crossarms, and other appliances and fixtures for use in connection with such overhead electric pole line and internal telecommunication facilities;
 - 1.2 Ingress to and egress from said Easement Area by use of such other roads and lanes on WPCP Property, if such there be, as may be necessary for access and designated by CITY, and except for emergencies requiring immediate access at such hours and times as may be designated by CITY;
 - 1.3 Trimming and clearing away trees and brush now or hereafter on said Easement Area which now or hereafter may be a hazard to the facilities installed hereunder by reason of the danger of falling thereon; provided, however, that PG&E shall be responsible for proper removal and disposition of all material trimmed or cleared;
 - 1.4 Removing any trees now or hereafter on said Easement Area which may be a hazard to the facilities installed hereunder by reason of the danger of falling thereon, if trimming and clearing will not remove the hazard; provided, however, that PG&E must replace any tree removed with three (3) trees, fifteen (15) gallons or larger size of a species to be designated

by CITY, and PG&E shall be responsible for maintaining the trees so replaced until they reach the maturity of the trees removed; and

- 1.5 Marking the location of said Easement Area by suitable markers set in the ground; provided that said markers shall be placed in fences or other locations which will not interfere with any CITY use of said Easement Area.
2. Servient Tenements. The Easement granted by this Easement Agreement shall be in gross to PG&E. The WPCP Property described in EXHIBIT 1, shall be the Servient Tenement.
3. PG&E Construction, Repair and Modification of Improvements. In exercising the rights granted by this Easement Agreement, PG&E must use reasonable care and may not increase the burden on the Servient Tenement or CITY'S use thereof.
 - 3.1 Any expansion, alteration or modification of improvements installed by PG&E under this Easement Agreement shall be at the sole discretion of CITY and PG&E acknowledges that additional compensation to CITY may be required as a condition of any such expansion, modification or alteration. Prior to the commencement of any work, from time to time, for the construction, installation, repair, replacement, expansion, alteration, modification or removal (collectively "Work") of any improvements on or within the Easement Area, PG&E shall submit to CITY, through CITY's Director of Environmental Services, his/her designee or successor ("Director"), the plans and specifications for such Work, including the location of all improvements in relation to existing facilities and the manner and method by which any improvements are to be installed over, upon or across the Easement Area. Complete plans and specifications for any Work shall be submitted to the Director at least thirty (30) days prior to the commencement of any planned Work, except emergency Work or repair Work. Complete plans and specifications for any repair Work shall be submitted to the Director at least ten (10) days prior to the commencement of any planned repair Work, and complete plans and specifications for any emergency Work shall be submitted to the Director as soon as possible, but no later than thirty (30) days after completion of such emergency Work. The Director shall have the right, by written approval of said plans and specifications, to impose reasonable changes, conditions and requirements relating to the manner, method, design and construction of Work which shall be conditions precedent to PG&E proceeding with the construction thereof. The Director shall promptly review all plans and specifications submitted by PG&E and advise PG&E on any required conditions, requirements and changes which shall thereafter be incorporated into the revised plans, copies of which shall be

submitted to the Director within ten (10) days after Director's comments are delivered to PG&E. The revised plans shall be submitted, once again, to the Director for approval. This process shall continue until all Director's comments, changes, conditions and requirements have been incorporated into the plans and specifications for any Work. Any Director's approval of Work, as set forth in this section, including the plans and specifications therefore, shall not constitute a representation or warranty as to conformity with legal requirements, which shall remain PG&E's sole responsibility.

- 3.2 PG&E shall be responsible for the location, identification and protection of all CITY and other improvements located in the Easement Area, or which may be affected by PG&E's Work. PG&E shall fully repair or replace CITY's or other improvements damaged or destroyed by the exercise of the rights granted by this Easement Agreement. If the restoration or replacement is not so performed by PG&E as soon as practicable, CITY shall have the right (but not the obligation) to perform the necessary repair or replacement, and, upon receipt of the notice of repair or replacement costs, PG&E agrees to promptly reimburse CITY for such costs, plus an additional amount equal to ten (10%) percent thereof for administrative overhead. The demand for payment by City shall be prima facie evidence that the expense incurred was necessary and reasonable and that such expense was incurred by CITY on behalf of PG&E.
4. Maintenance. PG&E, at its sole cost and expense, shall maintain all PG&E improvements in the Easement Area in good appearance, repair, and safe condition, and shall keep and maintain the Easement Area clean and free of rubbish, trash, dirt, garbage, and other waste matter at all times and in a condition otherwise satisfactory to CITY. PG&E shall not erect any fence or other improvements which would restrict CITY's access to the Easement Area. If PG&E shall have abandoned, or vacated the Easement Area or failed to maintain continuous utilization of the PG&E Transmission Lines or the improvements maintained under this Easement Agreement for a period of more than six (6) months without the consent of City, this Easement shall terminate, and if requested by CITY, PG&E shall remove all improvements maintained under this Easement Agreement at its sole costs and expense; provided however, that if such abandonment or vacation is the result of war, strike, embargo, riot, civil commotion, acts of public enemies, flood, earthquake or other natural disasters, or any other similar cause beyond PG&E's control, and PG&E notifies Director within forty eight (48) hours from the date that the abandonment or vacation of the Easement Area began, such involuntary period of nonuse shall be excluded in computing the period set out above.
5. Term. The Easement granted by this Easement Agreement shall continue as long as both the PG&E Transmission Lines and LECEF Facility remain in

operation and the Easement Area is used in a manner compatible with the terms and conditions of this Easement Agreement.

6. Successors and Assigns. The rights, restrictions and obligations contained in this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, successors and assigns, except as otherwise expressly provided in this Agreement.
7. Title; Nonexclusive Easement. Title to the Easement is subject to all exceptions, encumbrances, liens and restrictions affecting title, whether or not of record, existing as of the Effective Date of this Easement Agreement. The Easement granted by this Easement Agreement shall be non-exclusive.
 - 7.1 CITY expressly retains the right to make any use of the Easement Area, including the right to grant concurrent easements to third parties, so long as such use does not unreasonably interfere with PG&E's free use and enjoyment of the Easement Area on a non-exclusive basis, nor significantly increase PG&E's obligations with respect to the Easement Area as set forth in this Easement Agreement.
 - 7.2 CITY further reserves the right, and PG&E agrees to allow, use of the PG&E pole line by third parties ("Co- User(s)"), for placement of such other wires and cables as CITY may designate ("Co- Use"), provided that such Co-Use shall not unreasonably interfere with PG&E's use and CITY shall require Co-User(s) to enter into an agreement(s) with PG&E for equitable sharing of the costs of upkeep and maintenance of any Co-User(s).
 - 7.3 PG&E expressly agrees that CITY has the right to allow use of the Easement Area for other underground and overhead utility lines; and PG&E expressly acknowledges that to the extent any City of Santa Clara transmission line project(s) do not physically contact PG&E's lines and/or poles within the Easement Areas, and are constructed in conformity with (1) CPUC General Order 95 (Overhead Electric Line Construction); (2) Cal-OSHA Title 8; and (3) PG&E's Code of Safe Practices; PG&E acknowledges that such project(s) will not "unreasonably interfere" with PG&E's free use and enjoyment of the Easement Area.
 - 7.4 PG&E further expressly agrees that CITY shall be entitled to convey concurrent easements in the Easement Area for the benefit of other utility projects including, but not limited to, any project implemented by the City of Santa Clara, a chartered municipal corporation of the State of California, doing business as Silicon Valley Power. The grant by CITY of concurrent easements shall be deemed not to be an unreasonable

interference or a significant increase in PG&E's obligations. Without limiting the generality of the foregoing, PG&E acknowledges that CITY is contractually obligated to grant to the City of Santa Clara a non-exclusive transmission line easement over the portion the Easement Area noted on EXHIBIT 3 as "City of Santa Clara Transmission Line Easement (unrecorded)" ("Proposed Santa Clara Easement Area"), in the form of the Transmission Line Easement Agreement previously delivered to PG&E ("Proposed Santa Clara Easement Agreement"), that the City of Santa Clara has installed its facilities in the Proposed Santa Clara Easement Area in advance of the actual grant of such easement, and that PG&E has reviewed those facilities and agrees that the granting of such easement and installation and maintenance of such facilities does not constitute an unreasonable interference to PG&E or a significant increase in PG&E's obligations. Further, notwithstanding anything to the contrary in this Easement Agreement, PG&E's rights under this Easement Agreement in and to the Easement Area are subordinate to the rights of the City of Santa Clara under the Proposed Santa Clara Easement Agreement in and to the Proposed Santa Clara Easement Area.

8. Assignment. PG&E's interest in this Agreement shall not be assigned, except as set forth in Section 8.1, below. No such assignment shall operate to modify or enlarge the rights hereby granted, and each successive assignee shall be jointly and severally liable for complying with all terms and conditions of this Easement Agreement. Any purported assignment of this Agreement or any interest in this Agreement, except on the terms and conditions specified in this Section 8, shall be void and of no force or effect.

8.1 Certain Exceptions: The Parties agree that PG&E may, upon not less than ten (10) business days prior written notice to CITY, assign its rights and delegate its duties to: (A) an Affiliate of such PG&E; or (B) a successor-in-interest by merger, consolidation or reorganization. As used herein, the terms "Affiliate of" or "entity affiliated with" a specified entity or person means any other entity or person that directly, or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with the entity or person specified. For purposes of the foregoing, "control", "controlled by" and "under common control with", with respect to any entity or person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity or person, whether through the ownership of voting securities, partnership or member interests, by contract or otherwise.

8.2 Effect of Assignment: No assignment shall operate to modify or enlarge the rights hereby granted, and each successive assignment shall be jointly and severally liable for complying with all terms and conditions of this Agreement. The term "PG&E" as used herein shall include each and

every assignee of PG&E. Any purported assignment of this Agreement or any interest in this Agreement, except on the terms and conditions specified in this Section 8, shall be void and of no force or effect.

9. Assumption of Liability/Indemnity. PG&E ACKNOWLEDGES THAT CITY GRANTS, AND PG&E ACCEPTS THE GRANT OF, ALL RIGHTS UNDER THIS AGREEMENT ON AN AS-IS WHERE-IS WITH ALL FAULTS BASIS AS TO ALL MATTERS CONCERNING THE EASEMENT AREA. PG&E hereby expressly assumes liability for, and agrees to defend, indemnify and hold harmless CITY and each successive owner of the Servient Tenement or portion thereof, their respective employees, agents, servants and representatives from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any and every kind, and all costs and expenses incurred therewith, including without limitation, reasonable attorney's fees and costs of defense, arising directly or indirectly, in whole or in part, from conditions existing on or under the Easement Area or any use of the Easement Area by PG&E, its employees, agents, servants, representatives, PG&E's contractors, tenants or invitees, or from PG&E's activities or facilities, or in connection with PG&E's exercise of rights under this Agreement, except to the extent arising from or caused by the sole active negligence or willful misconduct of CITY or successive owner of the Servient Tenement or portion thereof, their respective employees, agents, servants, representatives or contractors.
10. Insurance. PG&E agrees to have and maintain the policies set forth in EXHIBIT 4, entitled "INSURANCE", which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by the Risk Manager of the City of San José as to form and content.
11. Books and Records. PG&E shall maintain records evidencing PG&E's compliance with the use restrictions contained in this Easement Agreement for a minimum of four (4) years from the date of each payment or use. PG&E shall maintain any and all records or documents evidencing or relating to construction of Improvements on the Easement Area for a minimum of ten (10) years, or for any longer period required by law, from the date of completion on each Improvement. Any records or documents required to be maintained pursuant to this Easement Agreement shall be made available for inspection or audit, at any time during regular business hours, at no cost to CITY, upon the written request by any designated representative of CITY. Copies of such documents shall be provided for inspection at a location designated by CITY when it is practical to do so. Unless an alternative location is mutually agreed upon, the records shall be available at CITY's address indicated for receipt of notices in this Easement Agreement. Where CITY has reasons to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of PG&E's business, CITY may, by written request, by any of the above-named officers, require that custody of records be given to CITY and that

the records and documents be maintained at a location designated by any representative of CITY.

12. Notices. All notices, statements, demands, approvals or other communications (“Notice(s)”) of a Party given under this Agreement, shall be in writing and delivered in person, by air courier messenger service, by first-class certified or registered mail, postage prepaid, return receipt requested, or by telecopy, addressed to the Parties as follows:

CITY: San José/Santa Clara Water Pollution Control Plant
700 Los Esteros Road
San José, California 95134
Attn: Director of Environmental Services

With a copies to:

City of San José
City Attorney’s Office
200 East Santa Clara Street, 16th Floor Tower
San José, California 95113
Attn: City Attorney

and

City of San José
Real Estate Services & Asset Management
200 East Santa Clara Street, 4th Floor Tower
San José, California 95113
Attn: Supervising Real Property Agent

PG&E: Tom Marki
Project Management
1919 Webster Street, First Floor
Oakland, CA 94612-2997

And

Thomas J. Zlatunich, Land Agent
San Jose Land Rights Office
111 Almaden Blvd., Room 814
San Jose, CA 99115

If personally delivered, sent by air courier, messenger service or telecopied, a Notice shall be effective upon the date delivered, sent or telecopied. If mailed, a Notice shall be effective three (3) days after posting.

13. Waiver of Breach. No assent or waiver, expressed or implied, of any breach of any provision of this Agreement shall be deemed to be a waiver of any other provision hereof or a waiver of any subsequent breach of the same provision.
14. Recordation. This Agreement shall be recorded in the Official Records of the Recorder of Santa Clara County, California.
15. 2005 License Agreement. The Parties acknowledge that the Pole Line License Agreement entered between CITY, PG&E and Los Esteros Critical Energy Facility, LLC on May 4, 2005 has terminated.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

APPROVED AS TO FORM

CITY OF SAN JOSE
a municipal corporation of the State of
California

By: _____
Senior Deputy City Attorney

By: _____
Its: _____

PACIFIC GAS and ELECTRIC
COMPANY, a California corporation

By: _____
Its: _____

EXHIBIT 1
WPCP PROPERTY

LEGAL DESCRIPTION

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, described as follows:

PARCEL ONE:

Beginning at a 1/2 inch iron pipe set at the point of intersection of the centerline of the Milpitas-Aviso Road (66.00 feet in width) with the centerline of Zanker Road (40.00 feet in width) thence North 7° 15' West along said centerline of Zanker Road 33.40 feet to a one inch iron bolt set at the point of intersection of the Northwestern line of said Milpitas-Aviso Road with the said centerline of Zanker Road thence North 73° 53' East 20.25 feet to the point of intersection of the Easterly line of Zanker Road with the Northwestern line of the Milpitas-Aviso Road, thence North 7° 15' West along the said Easterly line of Zanker Road 2356.69 feet to a point; thence South 82° 45' West 20.00 feet to a point on the centerline of Zanker Road; thence North 7° 15' West along the centerline of Zanker Road 345.06 feet to a point; thence North 73° 43' East 1808.01 feet to a point on the Easterly line of that certain parcel shown upon the Record of Survey Map entitled, "Map of the property of Lawrence Lombardo and Angelina Lombardo", which said Map was recorded on July 22, 1955 in Book 60 of Maps, page 42, Santa Clara County Records, thence South 15° 30' 20" East 2707.33 feet to a 1/2 inch iron pipe set where this course intersects the centerline of the said Milpitas-Aviso Road; thence South 73° 53' West along said centerline of Milpitas-Aviso Road 1998.05 feet to the point of beginning and the terminus of the herein described parcel of land.

EXCEPTING THEREFROM a portion of each of those parcels of land described in the Deeds to Harold E. Casteel, et al, recorded April 12, 1966 in Book 7344, page 395 and recorded January 18, 1968 in Book 7998, page 362, both of Official Records of Santa Clara County, said portions being more particularly described as a whole as follows:

Commencing at the Southeastern corner of said parcel of land is described in said Deed (7344 OR 395); thence along the Southerly line of last said parcel South 74° 49' 08" West 1998.05 feet to the centerline of Zanker Road (40.00 feet in width) as said road is described in last said Deed (7344 OR 395); thence along last said line North 06° 25' 52" West, 30.35 feet to the Northerly line of the existing state highway, road 04-SC1-237; thence along last said line North 74° 49' 08" East, 20.24 feet to the Easterly line of said Zanker Road; thence along last said line North 06° 25' 52" West 300.81 feet to a point of cusp; thence from a tangent that bears South 07° 43' 17" East along a curve to the left, with a radius of 675.00 feet, through an angle of 14° 27' 35", an arc length of 170.35 feet; thence South 22° 10' 52" East 81.16 feet; thence along a tangent curve to the left, with a radius of 50.00 feet, through an angle of 77° 51' 26", an arc length of 67.94 feet; thence North 79° 57' 42" East, 35.22 feet to a point on said Northerly line of the existing state highway, distant thereon North 74° 49' 08" East, 135.20 feet from said Easterly line of Zanker Road; thence along last said Northerly line North 74° 49' 08" East 1838.35 feet to the Easterly line of last said parcel; thence along last said line South 14° 31' 10" East 30.00 feet to the point of commencement, being that portion of land conveyed to the State of California by instrument recorded January 29, 1969 in Book 8417 of Official Records at page 618.

ALSO EXCEPTING THEREFROM that certain parcel conveyed to State of California by Deed recorded March 17, 1997 under Series No. 13641288 of Official Records, being more particularly described as follows:

(LEGAL DESCRIPTION CONTINUED NEXT PAGE)

LEGAL DESCRIPTION: (Continued)

(Parcel One continued)

Beginning at the Southeast corner of Parcel 1, as conveyed in that certain instrument entitled, "Relinquishment of Highway Right of Way in the City of San Jose, Road No. 04, SCL-237-7.9 Request No. 40266," which instrument was recorded in Book B016 of Official Records, at page 72, Santa Clara County Records, as said parcel was monumented by the State of California Department of Transportation; thence from said point of beginning, along the Northerly line of said Parcel 1, S. 80° 04' 16" W. 17.29 feet to a point in the Northerly line of that certain parcel of land conveyed in the Deed from Harold E. Casteel, et al, to the State of California, recorded January 29, 1969 in Book 8417 of Official Records, at page 618, Santa Clara County Records, said line also being in the Northerly line of the Alviso-Milpitas Road (66 feet wide), said point being the true point of beginning for this description; thence from said true point of beginning, along said Northerly line N. 74° 52' 48" E. 1855.95 feet to the intersection therein with the Easterly line of that certain 39.62 acre parcel as shown on the Record of Survey filed for record in Book 60 of Maps, at page 42, Santa Clara County Records; thence leaving said Northerly line along said Easterly line N. 14° 31' 22" W. 24.02 feet; thence leaving said Easterly line S. 74° 49' 08" W. 500.85 feet; thence S. 79° 41' 16" W. 814.69 feet; thence along a tangent curve to the right with a radius of 300.00 feet, through a central angle of 66° 17' 53" for an arc length of 347.14 feet; thence N. 34° 00' 51" W. 41.50 feet; thence along a tangent curve to the left, with a radius of 300.00 feet, through a central angle of 54° 32' 55" for an arc length of 287.38 feet; thence N. 88° 53' 46" W. 108.06 feet to a point in the Easterly line of Zanker Road, as shown on that certain Record of Survey filed for record in Book 629 of Maps, at pages 27 and 28, Santa Clara County Records; thence along said Easterly line the following courses: S. 6° 13' 49" E. 261.61 feet from a tangent bearing of S. 7° 44' 09" E. along a curve to the left, with a radius of 675.00 feet, through a central angle of 14° 26' 20" for an arc length of 170.10 feet; S. 22° 10' 01" E. 81.19 feet; from a tangent bearing of S. 22° 15' 17" E. along a curve to the left, with a radius of 50.00 feet, through a central angle of 77° 47' 25" for an arc length of 67.88 feet and N. 80° 04' 16" E. 18.01 feet to the true point of beginning.

EXHIBIT 2
LECEF FACILITY

LEGAL DESCRIPTION
LANDS OF LOS ESTEROS CRITICAL ENERGY FACILITY (LECEF)

ALL THAT REAL PROPERTY SITUATE IN THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

ALL THAT CERTAIN 12.943 ACRE PARCEL OF LAND SHOWN AND SO DESIGNATED AS "UNOCCUPIED LANDS OF LECEF" ON THAT CERTAIN RECORD OF SURVEY FILED FOR RECORD IN THE OFFICE OF THE COUNTY RECORDER OF SANTA CLARA COUNTY IN BOOK 760 OF MAPS AT PAGE 50, TOGETHER WITH A PORTION OF THAT 20.830 ACRE PARCEL OF LAND SHOWN AND SO DESIGNATED AS "LOS ESTEROS CRITICAL ENERGY FACILITY (LECEF)" ON SAID RECORD OF SURVEY (780 M 50), ALL OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWESTERN CORNER OF SAID 12.943 ACRE LECEF PARCEL; THENCE, FROM SAID POINT OF BEGINNING, NORTHERLY ALONG THE WESTERN LINE THEREOF AND ALONG THE WESTERN LINE OF SAID 20.830 ACRE LECEF PARCEL NORTH 14°30'59" WEST 1443.99 FEET; THENCE, LEAVING SAID WESTERN LINE NORTH 75°29'01" EAST 1020.52 FEET TO A POINT ON THE EASTERN LINE OF SAID 20.830 ACRE LECEF PARCEL; THENCE, SOUTHERLY ALONG SAID EASTERN LINE AND ALONG THE EASTERN LINE OF SAID 12.943 ACRE LECEF PARCEL SOUTH 14°31'34" EAST 1433.32 FEET TO A POINT WHICH BEARS NORTH 74°53'04" EAST FROM THE HEREINABOVE DESCRIBED POINT OF BEGINNING; THENCE, SOUTH 74°53'04" WEST 1020.67 FEET TO THE POINT OF BEGINNING AND CONTAINING 33.709 ACRES OF LAND, MORE OR LESS.

THE DISTANCES GIVEN IN THIS DESCRIPTION ARE GROUND DISTANCES; TO CONVERT TO GRID DISTANCES MULTIPLY DISTANCES GIVEN BY 0.999945623.

ALL AS SHOWN ON EXHIBIT "A" ATTACHED HERETO AND MADE APART HERE OF.

END OF DESCRIPTION



Michael E. Milani
FOR MILANI & ASSOCIATES
MICHAEL E. MILANI
L.S. 5311
EXPIRES: 12/31/03

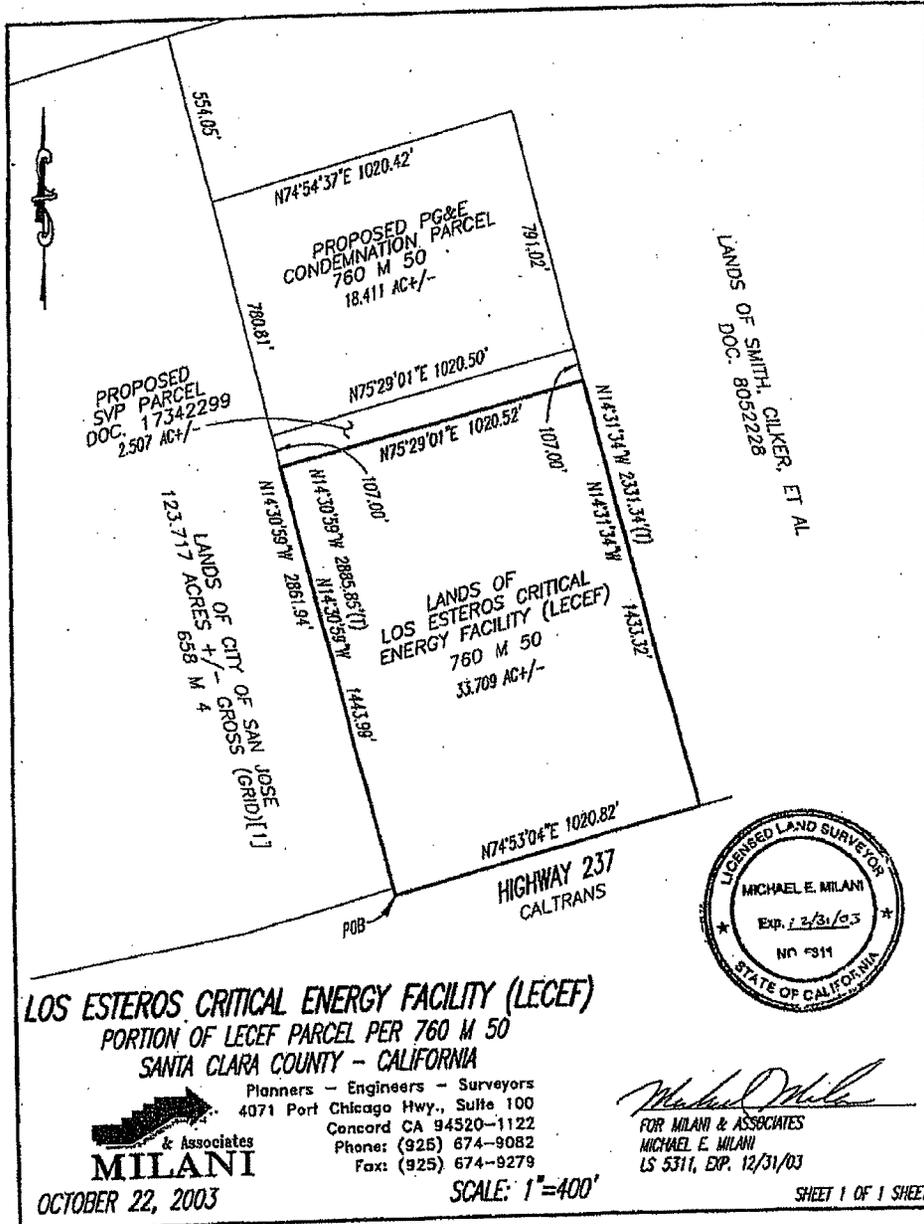


EXHIBIT 3
EASEMENT AREA

November 5, 2010
JOB NO. 210043-54
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EXHIBIT "A"
LEGAL DESCRIPTION
POLE LINE EASEMENT

ALL THAT REAL PROPERTY SITUATE IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, BEING A PORTION OF THAT CERTAIN PARCEL OF LAND SHOWN AND SO DESIGNATED AS "LANDS OF THE CITY OF SAN JOSE, 123.717 ACRES +/- CROSS (GRID)" ON THE RECORD OF SURVEY ENTITLED "RECORD OF SURVEY, CONSISTING OF THREE (3) SHEETS, BEING THE LANDS OF THE CITY OF SAN JOSE, BEING A PORTION OF THE RANCHO RINCON LOS ESCUDEROS" DATED MAY 1994 AND FILED FOR RECORD IN THE OFFICE OF THE COUNTY RECORDER OF SANTA CLARA COUNTY IN BOOK 638 OF MAPS AT PAGE 4, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

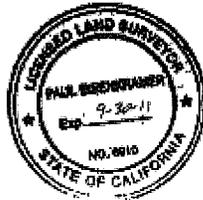
COMMENCING AT THE SOUTHEASTERN CORNER OF SAID CITY OF SAN JOSE PARCEL AND RUNNING THENCE NORTHERLY ALONG THE EASTERN LINE THEREOF NORTH 14°30'59" WEST 1243.90 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL OF LAND; THENCE FROM SAID POINT OF BEGINNING, CONTINUING NORTHERLY ALONG SAID EASTERN LINE NORTH 14°30'59" WEST 75.00 FEET; THENCE LEAVING SAID EASTERN LINE SOUTH 75°29'01" WEST 221.00 FEET; THENCE SOUTH 14°30'59" EAST 75.00 FEET; THENCE NORTH 75°29'01" EAST 221.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 16,575 SQUARE FEET OR 0.38 ACRES, MORE OR LESS.

THE DISTANCES GIVEN IN THIS DESCRIPTION ARE GROUND DISTANCES. TO CONVERT TO GRID DISTANCES, MULTIPLY DISTANCES GIVEN BY 0.999945623.

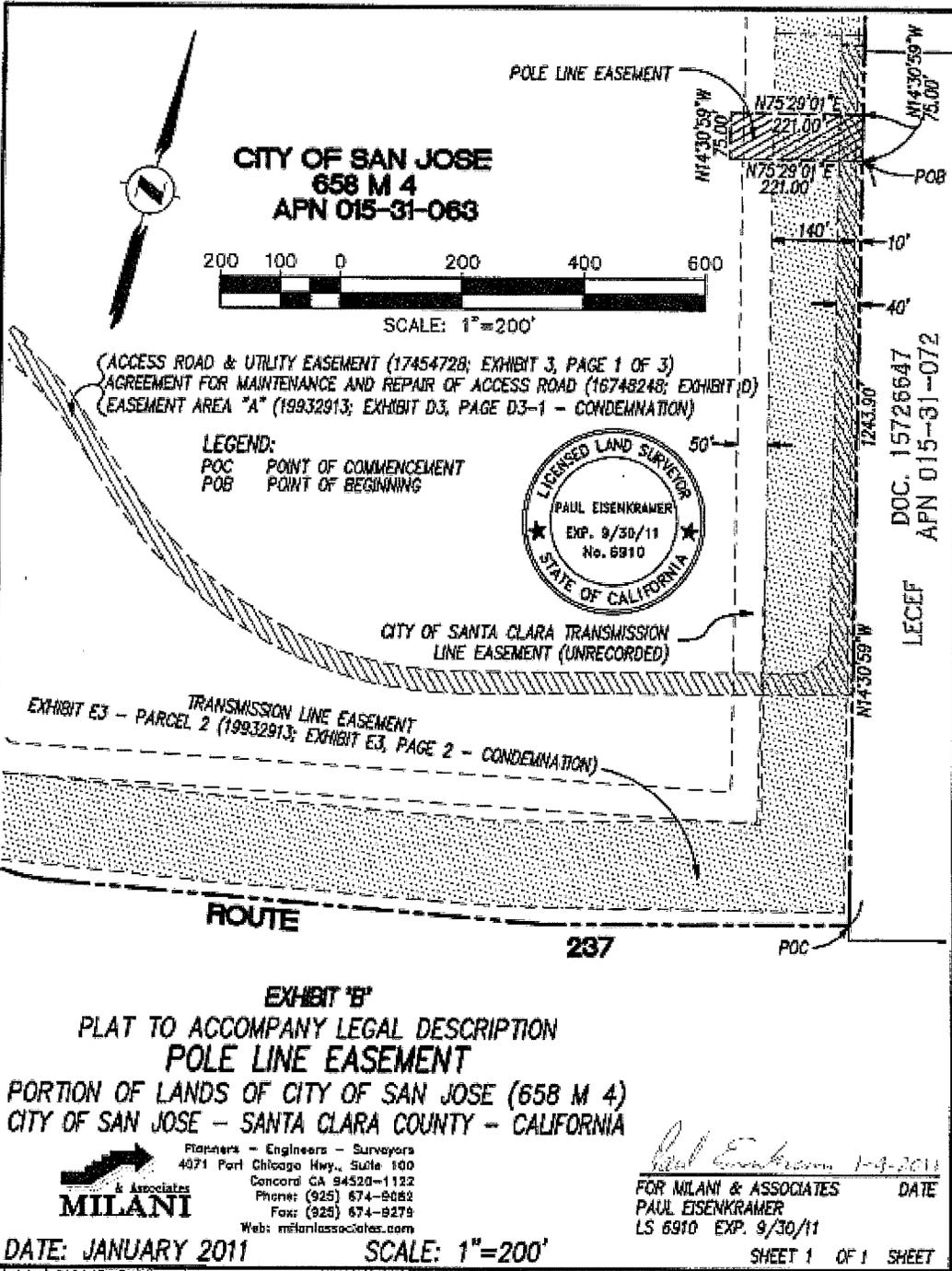
ALL AS SHOWN ON EXHIBIT "B" ATTACHED HERETO AND MADE A PART HEREOF.

END OF DESCRIPTION



Paul Eisenkramer 11-05-2010
FOR MILANI & ASSOCIATES
PAUL EISENKRAMER
L.S. 6910
EXPIRES: 09/30/11

Z:\Legn\2001\21004354\PoleLineEasement.doc



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EXHIBIT 4

INSURANCE

PG&E, at PG&E's sole cost and expense, shall procure and maintain, for the duration of this Agreement, insurance against claims which may arise from, or in connection with, operation of the Los Esteros Substation by PG&E, its agents, representatives, employees or subcontractors, including use of the Easement Area by PG&E, its employees, agents, servants, representatives, contractors, tenants or invitees, or from PG&E's activities or facilities, or in connection with PG&E's exercise of rights or failure to perform its obligations under this Agreement.

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 including XCU (Explosion, Collapse and Underground); 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; and
4. Environmental Impairment/Pollution Liability insurance.

B. Minimum Limits of Insurance

Limits shall be no less than:

1. Commercial General Liability: \$10,000,000 per occurrence for bodily injury, personal injury and property damage;
2. Automobile Liability: \$5,000,000 combined single limit per accident for bodily injury and property damage;
3. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor and Employers Liability limits of \$1,000,000 per accident or disease or any one employee; and

4. Environmental Impairment/Pollution Liability. \$5,000,000 per claim and in the Aggregate Limit, and shall not contain any exclusions for asbestos or lead abatement.

C. **Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to, and approved by CITY's Risk Manager. At the option of CITY, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officer, employees, agents and contractors or PG&E shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the CITY's Risk Manager.

D. **Other Insurance Provisions**

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

1. Commercial General Liability, Automobile Liability and Environmental Impairment/Pollution Liability.

- a. CITY, 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 PG&E; products and completed operations of PG&E; premises owned, leased or used by PG&E; and automobiles owned, leased, hired or borrowed by PG&E. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.

- b. PG&E's insurance coverage shall be the primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be excess of PG&E's insurance and shall not contribute with it.

- c. Any failure to comply with reporting provisions of the policies by PG&E shall not affect coverage provided CITY, its officers, employees, agents, or contractors.

- d. Coverage shall state that PG&E'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 CITY, its officers, employees, agents and contractors

2. Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of CITY, 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 CITY.

E. **Acceptability of Insurers**

Insurance is to be placed with insurers which hold a current policyholder's alphabetic and financial size category rating not less than A-V according to the current Best's Key Rating Guide or a company acceptable to CITY's Risk Manager.

F. **Verification of Coverage**

PG&E shall furnish CITY with certificates of insurance and with original endorsements, if applicable, affecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

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

City of San Jose - Human Resources
Risk Management
200 East Santa Clara St., 2nd Floor - Wing
San Jose, CA 95113-1905

G. **Contractors and Sub-Contractors**

PG&E shall include all contractors as insured under its policies or shall obtain separate certificates and endorsements for each contractor. PG&E shall be responsible for insuring the compliance with the requirements of Section F above ("Verification of Coverage") of each contractor furnishing insurance pursuant to this section.

H. **Authority to Self-Insure.**

The obligation to purchase insurance, as provided above, as it applies to Pacific Gas & Electric Company, may be satisfied by self-insurance; provided, however, that any such self-insurance programs shall be acceptable to CITY's Risk Manager, whose approval shall not be unreasonably withheld, conditioned or delayed .