

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

City of San Jose  
Real Estate Services & Asset  
Management  
200 E. Santa Clara Street, 4th Floor  
Tower  
San José, California 95113  
Attn: Senior Executive Analyst

SPACE ABOVE THIS LINE FOR RECORDER'S USE

## GAS LINE EASEMENT MODIFICATION AGREEMENT

**The Undersigned Declares: DOCUMENTARY TRANSFER TAX \$ \_\_; CITY TRANSFER TAX \$ \_\_;**

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 Gas Line Easement Modification Agreement ("Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 2012 ("Effective Date") by and between the City of San José ("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 ("the Property"), situate in County of Santa Clara, State of California and described as follows:

(APN 097-07-029)

LOT 2 of Tract No. 7544 as shown upon the map filed for record March 7, 1984 in Book 525 of Maps at page 45, Santa Clara County Records, as said map was amended by the Certificate of Correction dated March 4, 1985 and recorded in Book J422 of Official Records at page 1784, Santa Clara County Records.

- B.** PG&E is the owner of the following right of way and easement across the Property (referred to herein as “1944 Easement”):

The right of way and easement for the installation and replacement of gas pipe line facilities, together with ancillary access rights, as described in the deed from Clyde E. Burrell and Bessie R. Burrell to Pacific Gas and Electric Company dated June 1, 1944 and recorded in Book 1200 of Official Records at page 475, Santa Clara County Records (“1944 Easement Deed”).

- C.** PG&E desires, and CITY is willing, to modify the 1944 Easement by adding the additional terms set out herein and by increasing the width of that portion of the strip of land described in the 1944 Easement Deed lying within the Property within which pipe line facilities may be installed, from 15 feet to 50 feet by including therein the strip of land (“Easement Area”) of the uniform width of 35 feet lying contiguous to and southeasterly of the southeasterly boundary line of the Easement Area.
- D.** The 1944 Easement, as modified by this Agreement, is hereinafter referred to as the “Easement”.

**NOW, THEREFORE**, for valuable consideration, receipt of which is hereby acknowledged, the Parties hereto agree to modify the 1944 Easement as follows:

1. Modification of Easement Area; Grant of Easement. The Easement Area is hereby modified to be such portion of the Property as is described and depicted in EXHIBIT 1 attached hereto and incorporated by reference herein. 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 Excavating for, installing, replacing (of the initial or any other size), maintaining and using such pipe lines as PG&E shall from time to time elect for conveying gas, with necessary and proper valves and other appliances and fittings, and devices for controlling electrolysis for use in connection with said pipe lines, and such underground wires, cables, conduits, appliances, fixtures and appurtenances, as PG&E shall from time to time elect for communication purposes, together with adequate protection therefore. For the avoidance of doubt, all such pipe lines and appurtenances shall be below ground;
- 1.2 Ingress to and egress from said Easement Area by means of then existing roads and lanes on the Property, if such there be, and if there are no roads and lanes, then over a route as shall be most convenient to PG&E, provided that such route shall occasion the least practicable damage and inconvenience to CITY. Except for 1) emergencies requiring immediate access or 2) inspections that will not require any vehicular access or

excavation and will not significantly disrupt activities within said Easement Area, PG&E's ingress to and egress from said Easement Area will be at such hours and times as may be reasonably designated by CITY upon reasonable prior written notice to CITY, but in any event no less than five (5) business days prior to the proposed access. Access shall be subject to such conditions as CITY may reasonably require;

- 1.3 Within the Easement Area, trimming and cutting down any and all trees and brush now or hereafter within ten feet (10') of the centerline(s) of the pipe line(s) as actually installed within said Easement Area, and the further right, from time to time, to trim and cut down trees and brush within said Easement Area which now or hereafter in the opinion of PG&E may interfere with or be a hazard to the facilities installed hereunder, or as PG&E deems necessary to comply with applicable local, state or federal laws and regulations ("Applicable Law"); provided, however, that PG&E shall be responsible for proper removal and disposition of all material trimmed or cut down; and
  - 1.4 Marking the location of said Easement Area and pipe lines by suitable markers set in the ground; provided that said markers shall be placed in locations which will not interfere with any CITY use of said Easement Area.
  - 1.5 CITY hereby further grants to PG&E a temporary, non-exclusive access easement ("Temporary Construction Easement") over and across such portion of the Property as is described and depicted in EXHIBIT 2 attached hereto and incorporated by reference herein the Property ("Temporary Construction Easement Area"), for the purposes of a construction staging and lay-down location for Grantee and its contractors, including without limitation the right to park vehicles and place equipment, machinery, tools and construction materials thereon, all as is required in connection with the Line 132 pipe line replacement project. At all times while using the Temporary Construction Easement Area, PG&E shall maintain the Temporary Construction Easement Area in a safe, clean and orderly condition, and shall comply with all Applicable Laws relating to such use. Prior to the expiration of the term of the Temporary Construction Easement, PG&E shall remove all of its equipment, materials and other personal property from the Temporary Construction Easement Area, and restore the Temporary Construction Easement Area to substantially the same condition that existed prior to PG&E's use.
2. Servient Tenement. The Easement shall be in gross to PG&E. The Property shall be the Servient Tenement.
  3. PG&E Construction, Repair and Modification of Improvements. In exercising its Easement rights, PG&E must comply with all Applicable Law, use reasonable

care and may not increase the burden on the Servient Tenement or CITY'S use thereof. PG&E shall be responsible for the location, identification and protection of all CITY and other improvements (including, without limitation, landscaping) located in the Easement Area, or which may be affected by PG&E's activities. PG&E shall fully repair or replace CITY's or other improvements damaged or destroyed by the exercise of its Easement rights. 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. For the avoidance of doubt, it is agreed that except for the ancillary rights set forth in Section 1.2, and temporary rights set forth in Section 1.5, above, CITY's use and enjoyment of all areas of the Servient Tenement outside of the Easement Area for any and all purposes shall be superior to PG&E's Easement rights.

4. Maintenance. PG&E, at its sole cost and expense, shall maintain all PG&E improvements in the Easement Area in good repair and safe condition. 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 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 Agreement at its sole cost 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 CITY 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. Except as provided in the immediately following sentence, the Easement shall continue as long as PG&E's gas pipe lines installed hereunder remain in operation and the Easement Area and Temporary Construction Easement Area are used in a manner compatible with the terms and conditions of this Agreement. The Temporary Construction Easement shall commence on the Effective Date and continue until the earlier to occur of: i) December 31, 2012; or ii) PG&E's written notice to CITY that the Temporary Construction Easement is no longer required, whereupon the Temporary Construction Easement shall expire without further action of the Parties.
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. The Easement shall be non-exclusive.

CITY expressly retains the right to make any use of the Easement Area, including the right to grant concurrent easements to third parties for utilities and other purposes, 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 Agreement. Notwithstanding the generality of the foregoing, CITY specifically reserves the right to use the Easement Area for public park purposes, including, without limitation, the installation, maintenance and use of related facilities such as benches, tables, barbeque pits (provided that such pits are located a minimum of ten feet from the centerline(s) of the pipeline(s)), irrigation, pathways, hardscape, sports fields (including artificial turf) and playgrounds; provided, however, that within the Easement Area CITY shall not erect or construct any building or other permanent structure (except as specifically enumerated above),, drill or operate any well, or construct any reservoir, or plant any deep rooted trees or vines, or construct tree or vine-associated supporting structures, within ten feet of the centerline(s) of the pipeline(s), or diminish or add to the ground cover over PG&E's improvements if doing so would threaten the integrity thereof, or construct any fences that will interfere with the maintenance and operation of PG&E's improvements.

8. Assignment. PG&E's interest in this Agreement shall not be assigned, except as set forth in Section 8.1, below.

- 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 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 assignee (together with PG&E) 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/Release/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 AND TEMPORARY CONSTRUCTION EASEMENT AREA. PG&E hereby expressly assumes liability for, and agrees to release, 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, whether known or unknown, arising directly or indirectly, in whole or in part, from any use of the Easement Area or Temporary Construction Easement Area by PG&E or its employees, agents, servants, representatives, contractors or invitees or in connection with PG&E's exercise of its Easement rights, including without limitation generating, releasing or disturbing any hazardous or toxic substances (including, without limitation, petroleum or natural gas products), except to the extent arising from or caused by the gross 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 3, 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 Agreement for a minimum of four (4) years from the date of each 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 Applicable Law, from the date of completion on each improvement. Any records or documents required to be maintained pursuant to this 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 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: City of San José  
Office of Economic Development  
San José, California 95113  
Attn: Director of Economic Development  
Chief Strategist

With a copies to:

City of San José  
City Attorney's Office  
200 East Santa Clara Street, 16<sup>th</sup> Floor Tower  
San José, California 95113  
Attn: City Attorney

and

City of San José  
Real Estate Services & Asset Management  
200 East Santa Clara Street, 4<sup>th</sup> Floor Tower  
San José, California 95113  
Attn: Senior Executive Analyst

PG&E: 245 Market Street, N10A, Room 1015  
P.O. Box 770000  
San Francisco, CA 94177

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, by CITY within fifteen (15) days of CITY's execution hereof. All documentary transfer taxes and recording fees shall be the sole responsibility of PG&E.
- 15. Relation to 1944 Easement Deed. In the event of any conflict or inconsistency between the provisions of the 1944 Easement Deed and the provisions of this Agreement, the provisions of this Agreement shall control.

**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**

**Description and Depiction of Easement Area**

**LD 2306-01-2207**  
2011136 (22-11-015) 8 11 3  
Gas Line 132 MP 0.93-1.87 Replacement

**EXHIBIT 1**

(APN 097-07-029)

The parcel of land situate in the City of San Jose, County of Santa Clara, State of California, described as follows:

PARCEL 1

Commencing at the found standard city monument shown upon the map of Tract No. 7544 filed for record March 7, 1984 in Book 525 of Maps at page 45, Santa Clara County Records, as marking the northeasterly terminus of a course shown upon said map of Tract No. 7544, which course, located in the centerline of Baypointe Parkway, has a bearing of N 36°23'34" E and a distance of 1347.55 feet, and running

(a) north 76°42'23" west 328.32 feet

to the northerly corner of LOT 2, as said LOT 2 is shown upon said map of Tract No. 7544, also being the TRUE POINT OF BEGINNING of this description; thence along the northwesterly boundary line of said LOT 2

(1) south 36°23'34" west 381.00 feet

to the westerly corner of said LOT 2; thence along the southwesterly boundary line of said LOT 2

(2) south 53°36'26" east 50.00 feet;

thence leaving said southwesterly boundary line

(3) north 36°23'34" east 381.00 feet

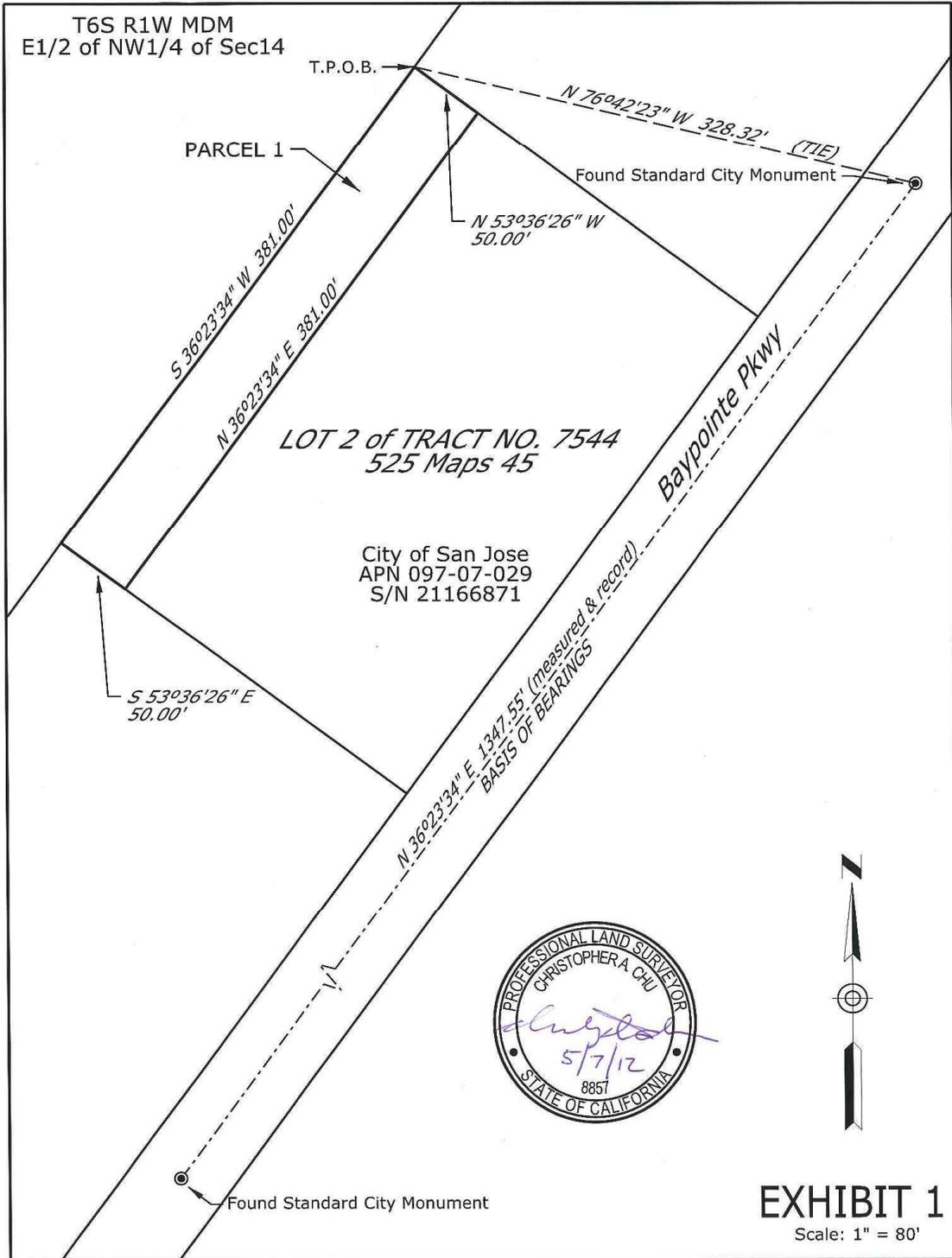
to a point in the northeasterly boundary line of said LOT 2; thence along said northeasterly boundary line

(4) north 53°36'26" west 50.00 feet

to the True Point of Beginning; being a portion of said LOT 2.

The foregoing description is based on a survey made by Pacific Gas and Electric Company in March 2011. The bearings used are based on a course shown upon said map of Tract No. 7544, which has a bearing of N 36°23'34" E and a distance of 1347.55 feet. The termini of said course are marked by the found standard city monuments.





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**EXHIBIT 2**

**Description and Depiction of Temporary Construction Easement Area**

LD 2306-01-2207  
2011136 (22-11-015) 8 11 3  
Gas Line 132 MP 0.93-1.87 Replacement

**EXHIBIT 2**

(APN 097-07-029)

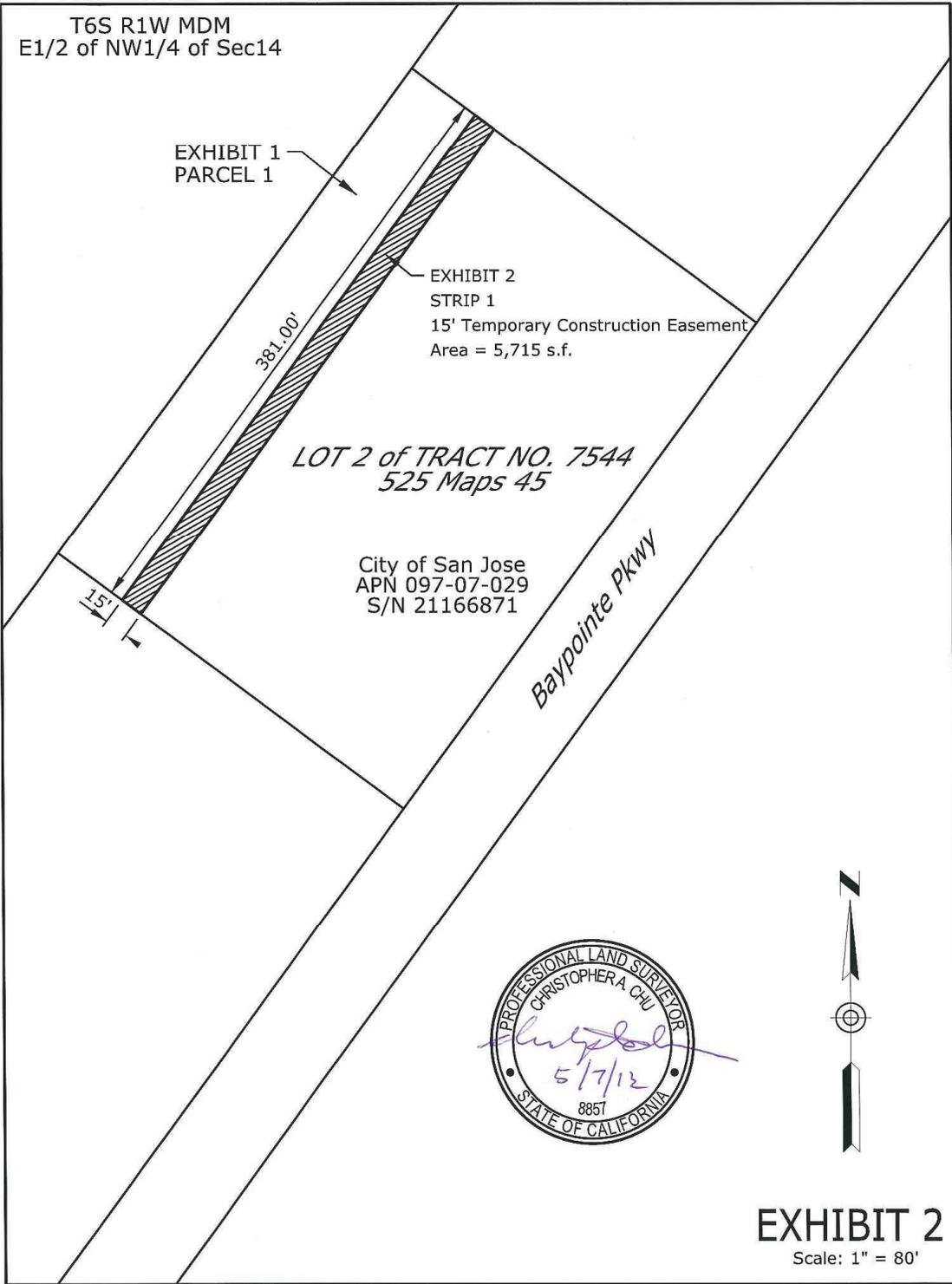
The strip of land situate in the City of San Jose, County of Santa Clara, State of California, described as follows:

STRIP 1

A strip of land of the uniform width of 15 feet lying contiguous to and southeasterly of the southeasterly boundary line of the parcel of land described and designated PARCEL 1 in EXHIBIT 1 attached hereto and made a part hereof and extending from the northeasterly boundary line of LOT 2, as said LOT 2 is shown upon the map of Tract No. 7544 filed for record March 7, 1984 in Book 525 of Maps at page 45, Santa Clara County Records, southwesterly 381.00 feet, more or less, to the southwesterly boundary line of said LOT 2.

The foregoing description is based on a survey made by Pacific Gas and Electric Company in March 2011.





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## EXHIBIT 3

### Insurance Requirements

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 Line 132 by PG&E, its agents, representatives, employees or contractors, including use of the Easement Area or Temporary Construction Easement Area by PG&E, its employees, agents, servants, representatives, contractors 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 – Finance  
Risk Management  
200 East Santa Clara St., 13th Floor - Tower  
San Jose, CA 95113-1905

G. **Contractors and Sub-Contractors**

PG&E shall include all contractors and other parties with whom it is contracting as insured under its policies or shall obtain separate certificates and endorsements for each third party. PG&E shall be responsible for insuring the compliance with the requirements of Section F above ("Verification of Coverage") of each third party 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 only (and not its assignees or third party contractors), 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 .

I. **Authority of Risk Manager.**

CITY reserves the right to require complete copies of all required insurance policies at any time. These insurance requirements are subject to amendment or waiver if so approved in writing by the CITY's Risk Manager. CITY reserves the right to review these insurance requirements from time to time and at anytime during the term of this Agreement and to make reasonable adjustments thereto when deemed necessary and prudent by the CITY's Risk Manager based upon (by way of example only) changes in law, principles of sound risk management practice, or inflation.