



CITY OF OAKLAND

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2015 DEC -3 PM 4: 12

# AGENDA REPORT

**TO:** Sabrina B. Landreth  
City Administrator

**FROM:** Brooke Levin  
Director, Public Works

**SUBJECT:** PG&E Substation C MOU and LUC

**DATE:** November 9, 2015

City Administrator Approval

Date:

12/3/15

## RECOMMENDATION

Staff Recommends That The City Council Adopt:

**A Resolution Authorizing The City Administrator To Enter Into A Memorandum Of Understanding Negotiated Between Pacific Gas And Electric (PG&E) And The City Of Oakland And A Land Use Covenant Between The California Department Of Toxic Substances Control And The City Of Oakland Regarding Potential Contamination Beneath The Sidewalk Adjacent To PG&E's Substation C Property.**

## EXECUTIVE SUMMARY

A Memorandum of Understanding (MOU) negotiated between PG&E and the City and a Land Use Covenant (LUC) between the City and the California Department of Toxic Substances Control (DTSC) are presented for Council approval. The MOU (**Attachment A**) concerns the sidewalk adjacent to PG&E's property at 101 Jefferson Street (Substation C) and sets forth future steps and relationships between the City and PG&E if soil is removed or work is needed adjacent to this site. The MOU addresses payments by PG&E to the City for extra costs the City may incur during street repair, or other work, due to possible contaminants from PG&E's Substation C. This MOU is not a settlement agreement, but instead a jointly-sought and negotiated agreement.

Separate from, but linked to the MOU, is a LUC (**Attachment B**) between DTSC and the City of Oakland. A condition of the MOU requires the City to enter into a LUC for the sidewalk area around PG&E Substation C. Previously, PG&E performed remedial work at Substation C to DTSC's satisfaction including a cleanup that allowed specified low levels of contaminants to remain under the Substation C parcel provided PG&E placed a cap over it, met monitoring and maintenance requirements, and agreed to restrictions on future use for the site. PG&E then executed and recorded its own LUC for the Substation C parcel. However, in addition to the Substation C parcel, DTSC stated in writing that it would consider bringing an enforcement action against the City (and PG&E) if a separate LUC for the sidewalk portion is not put into place.

Item: **5**  
Public Works Committee  
December 15, 2015

## **BACKGROUND / LEGISLATIVE HISTORY**

PG&E used the Substation C parcel as an electrical substation to power a nearby manufactured gas plant between 1905 and 1930. A number of soil and groundwater investigations have been conducted at the site, going as far back as 1986. As summarized in several reports between 2011 and 2015, PG&E has removed the most heavily contaminated soil from the Substation C property. DTSC allowed PG&E to leave some contamination in place, provided that the site is capped and protective of human health and the environment. As part of its work, PG&E replaced the sidewalk with one that met DTSC criteria for a cap. PG&E is required by DTSC to continue to monitor and report on site contamination, and DTSC yearly continues to analyze and determine whether PG&E's work is protective of public health and environment.

While the City does not own this Substation C property, available land records appear to indicate the City owns the sidewalk around the Substation C parcel, and the City is likely to encounter contaminants whenever it performs work on the sidewalk, in the street or nearby. PG&E proposes execution of a MOU with the City to manage work or responsibilities for notifications, handling costs of sidewalk maintenance and repairs, reconfiguration and other changes the City may want or need to make regarding sewers or streets, which would be higher than usual due to the contaminants that remain under the area capped by the sidewalk.

## **ANALYSIS AND POLICY ALTERNATIVES**

Through the MOU, PG&E has agreed to pay certain of Oakland's increased environmental costs, including City staff and contractor costs that may be incurred due to any digging on the Substation C parcel or in the adjacent streets, installing sewer lines, or otherwise coming in contact with the remaining contaminants. PG&E has installed and will pay maintenance costs for the sidewalk, will inspect the sidewalk annually and make the requisite reports to DTSC, will install and maintain additional caps required by DTSC, will perform monitoring and pay maintenance costs for a monitoring well on the sidewalk and five other wells on its parcel, and will bear liability for any new fill or excavated materials it deposits at the site. In addition, the City must agree to enter into a Sidewalk LUC with DTSC for the sidewalk portion of the property, use its best efforts to consult with PG&E prior to any excavation or removal (including groundwater) in the project area, and waive a jury trial with respect to disputes connected with this agreement.

The proposed MOU with PG&E resolves issues for the City of Oakland. All work required by DTSC, with respect to its Substation C parcel and the sidewalk around it, will be performed by PG&E. DTSC understands that PG&E is doing the work and will be the party giving notice if something is to be excavated. Under the MOU, PG&E will pay for the "increased environmental costs" the City incurs at the parcel, in any adjacent streets, or otherwise nearby, which is more expensive because of PG&E's contamination left in place. A condition of the MOU is for the City to enter into a LUC with DTSC. By agreeing to the settlement and the Sidewalk LUC, the City avoids an enforcement action by DTSC, because DTSC requires an LUC on all of the property including the sidewalk area.

Because the MOU and LUC are linked, they are being presented for approval together. Three primary conditions that the City must accept in agreeing to the LUC and MOU are: 1).The LUC

is a permanent encumbrance on the property that will impair future development of the parcel for housing, schools, hospitals, or daycare facilities. It will not otherwise affect development of other public facilities, except that soil management plans must be approved by DTSC; 2) The MOU does not indemnify the City for third-party claims related to the contamination, and it does not release the City from any environmental cross-claims by PG&E related to the contamination; and 3) the City commits in the MOU to notifying its workers if street or sewer work is done near the PG&E parcel.

### **FISCAL IMPACT**

The MOU will not generate additional costs for the City of Oakland. In connection with the LUC, the MOU defines how PG&E will act and pay the City if work costs the City more due to contamination that was left underground with the DTSC's approval. The MOU includes PG&E paying for Oakland's past and present staff and attorneys' fees costs, which were submitted to PG&E for putting the MOU agreement in place, up to a cap of \$60,000. It includes PG&E paying for future staff costs and excavation/disposal costs that come under the parameters of "increased Environmental Costs" spelled out in the MOU. If the MOU is not approved, the City risks defending itself against legal actions by DTSC and the costs of defense could run into the hundreds of thousands of dollars.

### **PUBLIC OUTREACH / INTEREST**

The item was presented to the public through DTSC's public comment period for the Remedial Action Work Plan from PG&E.

### **COORDINATION**

Public Works Department has coordinated with the Office of the City Attorney and the Controller's Bureau in the preparation for this report.

### **SUSTAINABLE OPPORTUNITIES**

***Economic:*** Addressing this issue now instead of later benefits the community.

***Environmental:*** The MOU and LUC ensure a mechanism is in place to pay for and manage disposal of contaminated soil, if encountered.

***Social Equity:*** The cleanup of the property and public noticing of contamination provides a safer community.

### **CEQA**

This report is not a project under CEQA.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff Recommends That The City Council Adopt A Resolution Authorizing The City Administrator To Enter Into A Memorandum Of Understanding Negotiated Between Pacific Gas And Electric (PG&E) And The City Of Oakland And A Land Use Covenant Between The California Department Of Toxic Substances Control And The City Of Oakland Regarding Potential Contamination Beneath The Sidewalk Adjacent To PG&E's Substation C Property.

For questions regarding this report, please contact Mark Arniola, Environmental Program Supervisor, at (510) 238-7371.

Respectfully submitted,



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Brooke A. Levin  
Director, Oakland Public Works

Reviewed by:  
Susan Kattchee, Assistant Director

Reviewed by:  
Becky Dowdakin, Env. Svcs. Manager

Prepared by:  
Mark Arniola, Env. Prog. Supervisor  
Environmental Services Division

*Attachments (2):*

*A: MOU between PG&E and the City*

*B: LUC between the City and DTSC*

**MEMORANDUM OF UNDERSTANDING AND AGREEMENT**

This Memorandum of Understanding and Agreement (AGREEMENT) is made and entered into by PACIFIC GAS AND ELECTRIC COMPANY, a California corporation (PG&E), and the CITY OF OAKLAND, a municipal corporation (CITY), on April \_\_, 2015 (the EFFECTIVE DATE). At times PG&E and the CITY are collectively referred to as the PARTIES or individually as a PARTY in this AGREEMENT.

**I. RECITALS**

A. PG&E is the owner of a certain parcel of improved property located at 101 Jefferson Street in the City of Oakland, County of Alameda, State of California, commonly known as Sub-Station C, also APN Parcel 1-125-5, and more particularly described in Exhibit A. Such real property, together with the buildings and other improvements located thereon, all easements rights and privileges appurtenant thereto, and all of PG&E's right, title, and interest, if any, to any warranties, leases, agreements or personal property are referred to collectively as the PROPERTY.

B. PG&E and the CITY have agreed to work cooperatively to further the excavation, construction, remediation and installation of certain improvements by PG&E on the PROPERTY and within portions of the sidewalk and street areas adjoining the PROPERTY as set forth in the Remedial Action Work Plan dated January 2011 (RAW) on file with the California Department of Toxic Substances Control (DTSC). This work has been completed.

C. PG&E has installed a capping mechanism and undertaken other work as part of its remediation of the PROPERTY and the sidewalk areas immediately adjacent to the PROPERTY (collectively the PROJECT), as set forth in the RAW.

D. The PROPERTY is the location of a former Manufactured Gas Plant (MGP) and related facilities. The PROPERTY may contain RESIDUES (defined in Section II.1 of this AGREEMENT) from MGP operations, which RESIDUES may extend outside of the PROPERTY boundaries onto and under the sidewalk and street areas adjacent to the PROPERTY within the PROJECT AREA (as defined in Section II.2 of this AGREEMENT).

E. PG&E and the CITY agree that upon completion of the actions set forth in the RAW (which have been completed), RESIDUES or OTHER CONSTITUENTS (as defined in Section II.3 of this AGREEMENT) may remain within the PROJECT AREA.

F. PG&E and the CITY acknowledge that if RESIDUES or OTHER CONSTITUENTS within the PROJECT AREA remain after completion of the PROJECT, the cost of future operations undertaken by the CITY within the PROJECT AREA, including but not limited to infrastructure repairs such as street re-grading, re-paving, or sewer line repairs, may increase over and above the cost of those operations if the RESIDUES or OTHER CONSTITUENTS were not present.

G. The PARTIES, without admitting any issue of fact, causation, liability or fault with regard to RESIDUES or OTHER CONSTITUENTS within the PROJECT AREA, desire to enter into this AGREEMENT. The PARTIES agree that no other entities or persons are intended to be beneficiaries of this AGREEMENT nor should others take actions in reliance on this AGREEMENT. In the event of any inconsistency between Recital G and any other provision or Recital in this AGREEMENT, the PARTIES agree that Recital G shall prevail and control.

H. The CITY and PG&E agree these Recitals are material terms of this AGREEMENT which the PARTIES have relied upon in entering this AGREEMENT.

## II. DEFINITIONS

1. RESIDUE(S). RESIDUE or RESIDUES shall only include: lead; arsenic; cyanide; volatile organic compounds, excluding chlorinated solvents; benzene, toluene, ethylbenzene and xylenes (BTEX); total petroleum hydrocarbons (TPH); phenols; and polycyclic aromatic hydrocarbons. All other chemicals, metals, compounds or constituents of any type shall be excluded.
2. PROJECT AREA. The term PROJECT AREA shall mean that area identified on Exhibit B and no other.
3. OTHER CONSTITUENTS. Shall mean and include only chromium, nickel and mercury.
4. ENVIRONMENTAL COST INCREASE. The term ENVIRONMENTAL COST INCREASE shall mean the increased cost to the CITY, if any, proximately caused by the presence of RESIDUES or OTHER CONSTITUENTS within the PROJECT AREA. (By way of illustration, but not limited to the following: (a) if the cost to excavate one cubic yard of soil is \$100 and the cost to excavate one cubic yard of soil impacted by RESIDUES or OTHER CONSTITUENTS is \$120, the ENVIRONMENTAL COST INCREASE is \$20; or (b) if the cost to design, plan, implement or oversee work within the PROJECT AREA is \$1000 and as a result of the RESIDUES or OTHER CONSTITUENTS the cost to design, plan, implement or oversee the work is \$1,100, the ENVIRONMENTAL COST INCREASE is \$100). ENVIRONMENTAL COST INCREASE includes the City's reasonable internal staff costs (as fully burdened staff time) as well as contractor costs. For any one project or effort, PG&E's financial responsibility for internal staff costs that are not actual removal or design, or implementation or supervision thereof, by staff shall be capped at 8 hours.
5. STAFFING COSTS. The term STAFFING COSTS shall mean those reasonable costs incurred by CITY staff and for CITY in-house and external counsel, to review and enter into this AGREEMENT. The CITY agrees that PG&E's maximum responsibility for any STAFFING COST shall be limited to sixty thousand dollars (\$60,000) in United States currency. The PARTIES acknowledge that \$20,000 of that amount has already been paid by PG&E to the CITY.
6. PROJECT. The term PROJECT shall have the meaning as stated in Recital C.

7. PROJECT COMPLETION. PROJECT COMPLETION or COMPLETION of the PROJECT shall mean the cessation of excavation, remediation, disposal, and construction of the capping mechanism(s) as set forth in the RAW. Operation and maintenance activities associated with the PROJECT shall not be considered in determining when the PROJECT has been completed for purposes of this AGREEMENT. As of the EFFECTIVE DATE of this AGREEMENT the PROJECT has been completed as defined in this section of the AGREEMENT.

### III. AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, PG&E and the CITY (individually a PARTY and collectively, the PARTIES) agree as follows:

1. DISCLOSURE. PG&E has used the PROPERTY as part of historic MGP operations and later as a natural gas monitoring and control center. During these past and present uses of the PROPERTY, PG&E may have handled, treated, stored and/or disposed of RESIDUES on the PROPERTY. The PROJECT AREA is located in an area in which a variety of industries have operated each of which may have generated and released RESIDUES, OTHER CONSTITUENTS, other chemicals or other contaminants of concern within the PROJECT AREA. RESIDUES, OTHER CONSTITUENTS, other chemicals or contaminants of concern may exist outside of the PROPERTY within the PROJECT AREA. RESIDUES, OTHER CONSTITUENTS or other chemicals or contaminants of concern may contain chemicals known to the State of California to cause cancer or reproductive toxicity or other adverse health effects.

2. CITY OBLIGATIONS.

a) Worker Training and Instruction. The CITY agrees that it shall use best efforts to provide all CITY employees, workers, contractors, subcontractors or agents of the CITY who work with moving or removing soil within the PROJECT AREA with written notice (including but not limited to (a) giving information for inclusion in any Health and Safety Plan for work being done, and (b) insertion of this area noting the contaminants or potential contaminants into any existing or future Oakland permit tracking system of the presence or potential presence of RESIDUES, OTHER CONSTITUENTS, other chemicals or contaminants of concern within the PROJECT AREA), and that the CITY also shall use best efforts to require all CITY employees, workers, contractors, subcontractors or agents to comply with all applicable health and safety regulations during any activities related to moving or removing soil undertaken within the PROJECT AREA. The CITY's failure to give such notice or use best efforts shall not void the rest of this AGREEMENT.

b) Design and Implementation. The CITY agrees that as between the CITY and PG&E, the CITY shall be solely responsible for the design, planning, construction, and implementation of any CITY operations or projects within the PROJECT AREA.

c) Risks and Liabilities. The CITY agrees that as between PG&E and the CITY, the CITY shall bear all risks and liability that arise out of or are related to the CITY's negligence or any errors of omission or commission, in the engineering design, planning, implementation, construction, or maintenance of any work performed within the PROJECT AREA by the CITY or its agents.

d) Cooperation. The CITY agrees that it shall cooperate with and respond to all requests by PG&E for permits or approvals necessary to complete the PROJECT in a timely manner.

e) Generator Status. The CITY agrees that it shall be identified as the generator, as specified in Section III.19.a of this AGREEMENT, on all waste manifests and related documents necessary to excavate, transport or dispose of excess soil, groundwater, or other materials impacted by RESIDUES, OTHER CONSTITUENTS and all other chemicals or contaminants of concern which are generated during any future work by the CITY or its agents within the PROJECT AREA, after COMPLETION of the PROJECT.

f) Fill Material. The CITY shall be solely responsible for and bear all future costs, including all ENVIRONMENTAL COSTS, and liability associated with all new material, including fill material placed by the CITY or its agents within the PROJECT AREA after COMPLETION of the PROJECT. If soil is excavated within the PROJECT AREA, temporarily stockpiled, and put back into place in the PROJECT AREA -- whether before or after the COMPLETION of the PROJECT -- that soil and any RESIDUES OR OTHER CONSTITUENTS which were present in the soil when it was excavated remain the responsibility of PG&E as provided for within this AGREEMENT.

g) Land Use Covenant. The CITY is taking steps to enter into a Land Use Covenant (LUC) with the DTSC in a form acceptable to the DTSC and within a time frame acceptable to the DTSC for the sidewalk portion within the PROJECT AREA that is not subject to the LUC that PG&E has entered into with the DTSC for the PROPERTY and recorded.

### 3. PG&E OBLIGATIONS

a) Sidewalks and Capping Mechanism. PG&E has installed and will maintain the sidewalks immediately adjacent to the PROPERTY as specified in the RAW and in accordance with all now existing applicable laws and specifications. PG&E shall also install and maintain any other capping mechanism in the PROJECT AREA as provided for in the RAW or required by DTSC. For planned work, PG&E will give written notice (which for this paragraph can be electronic mail) to the City to the Director of Public Works at least 24 hours before beginning work regarding the sidewalks or regarding any capping mechanism in the PROJECT AREA. For emergency repairs by PG&E, PG&E may begin work but shall give such written notice as soon as possible during or immediately after its emergency work.

b) Compliance with Specifications. The sidewalks and capping mechanisms installed by PG&E shall comply with standard CITY specifications for sidewalks and DTSC specifications as set forth in the RAW. If standard CITY specifications change in the future due



to amendments to existing law and regulations, PG&E shall, within nine (9) months of receiving Notice from the CITY, as set forth in Section III.13 of this AGREEMENT, comply with the new specifications as required by law.

c) Risks and Liabilities. PG&E agrees that as between PG&E and the CITY, PG&E shall bear all risks and liability that arise out of or are related to the PG&E's negligence or any errors of omission or commission, in the engineering design, planning, implementation, construction, or maintenance of any work performed within the PROJECT AREA by PG&E or its agents.

d) Generator Status. PG&E agrees that it shall be identified as the generator, as specified in Section III.19.b of this AGREEMENT, on all waste manifests and related documents necessary to excavate, transport or dispose of excess soil, groundwater, or other materials impacted by RESIDUES or OTHER CONSTITUENTS and all other chemicals or contaminants of concern generated during the PROJECT.

e) Fill or Excavated Material. PG&E shall be solely responsible for and bear all future costs and liability associated with any new fill or excavated materials PG&E or its contractors placed within the PROJECT AREA during the PROJECT.

4. RESPONSIBILITY FOR ENVIRONMENTAL COST INCREASE. PG&E agrees that it shall be responsible for payment of any ENVIRONMENTAL COST INCREASE, incurred by the CITY for operations undertaken within the PROJECT AREA after COMPLETION of the PROJECT that are the proximate result of the presence of RESIDUES or OTHER CONSTITUENTS within the PROJECT AREA, except as provided for in Section III.2.f of this AGREEMENT.

5. CLAIMS ACCOUNTING. The CITY shall present PG&E a written accounting of any ENVIRONMENTAL COST INCREASES or STAFFING COSTS which the CITY claims to have incurred and which the CITY asserts are the subject of this AGREEMENT. All claims for ENVIRONMENTAL COST INCREASES or STAFFING COSTS shall be supported by documentation sufficient for PG&E to make a determination of the amount and validity of the ENVIRONMENTAL COST INCREASE or STAFFING COSTS claimed by the CITY. All claims for ENVIRONMENTAL COST INCREASES shall be presented to PG&E no later than one-hundred and eighty days (180) after work by the CITY or its agents within the PROJECT AREA has been completed, which for purposes of this provision shall be either: (a) the date of payment by the CITY of the final invoice to the contractor performing work in the PROJECT AREA on behalf of the CITY; or (b) in the case of work performed by the CITY itself one-hundred and eighty days (180) from the date City enters or records its internal charges relating to the work undertaken by the CITY within the PROJECT AREA. Any claim presented for work within the PROJECT AREA, after the time(s) set forth in (a) or (b) of this provision, shall be null and void, and PG&E shall not have any obligation to pay that claim.

6. PAYMENT. PG&E shall, within sixty (60) business days from the date PG&E receives a claim and supporting documentation, as required by Section III.5, pay the CITY the amount of the ENVIRONMENTAL COST INCREASE or STAFFING COSTS claimed, unless PG&E

disputes all or a portion of the amount claimed. In the event PG&E disputes all or a portion of a claim, the amount in dispute may be withheld from payment until the PARTIES resolve the dispute according to Section III.15 of this AGREEMENT. PG&E shall give written notice to the CITY, including a description of the disputed amount, before the end of the 60 day period described above. Notice of such dispute shall be provided as set forth in Section III.13 of this AGREEMENT. PG&E shall pay the CITY all undisputed amounts claimed within sixty (60) business days as set forth in this section.

7. REMOVAL OPTION: For all future work by the CITY or its agents within the PROJECT AREA after COMPLETION of the PROJECT that requires the excavation, removal, or disposal of RESIDUES, OTHER CONSTITUENTS or any soil, groundwater or materials impacted by those RESIDUES or OTHER CONSTITUENTS that may exceed \$50,000 in initial costs to the CITY, the CITY will use best efforts to consult with PG&E prior to or as the CITY begins such work. However, the failure of the CITY to consult with PG&E will not affect or impair the CITY's ability to claim costs and PG&E's obligation to pay the costs under Sections III.5 and III.6 above.

8. FURTHER ASSURANCES. The PARTIES agree to execute and deliver to each other such further documents or instruments as may be necessary or appropriate to carry out the intentions of the PARTIES as contained in this AGREEMENT.

9. BINDING EFFECT. This AGREEMENT shall be binding upon and shall inure to the benefit of the heirs, successors, and assigns of the PARTIES. Notwithstanding the foregoing, the CITY shall not have the right to assign its rights, obligations or benefits under this AGREEMENT unless the CITY has obtained the prior written consent of PG&E to such an assignment.

10. GOVERNING LAW. The AGREEMENT shall be governed by and construed and enforced in accordance with the laws of the State of California.

11. COUNTERPARTS. This AGREEMENT may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

12. PRIOR AGREEMENTS. This AGREEMENT and the attached Exhibits constitute the entire understanding of the PARTIES relating to the subject matter of this AGREEMENT and shall supersede any prior oral or written agreements or communications between the PARTIES pertaining to the subject matter addressed in this AGREEMENT.

13. NOTICE. Any notice or other communication required or permitted under this AGREEMENT, unless otherwise permitted herein, shall be in writing and shall be either personally delivered or transferred by registered or certified U.S. Mail, return receipt requested, postage prepaid or by a nationally recognized overnight courier such as Federal Express or Airborne Express, addressed to the PARTIES as follows:

If to PACIFIC GAS AND ELECTRIC COMPANY,

Thomas C. Wilson  
Director, Remediation  
77 Beale Street, B28P  
San Francisco, CA 94177

415-973-5543  
TCW1@pge.com

with copies to:

Pacific Gas and Electric Company  
3401 Crow Canyon Road, Rm 176B  
San Ramon, CA 94583

Attn: Loren Loo, Senior Manager,  
Remediation

If to the CITY OF OAKLAND,

City Administrator's Office  
Sabrina Landreth  
City Administrator  
1 Frank H. Ogawa Plaza  
3rd Floor  
Oakland, CA 94612  
510-238-3301  
cityadministrator@oaklandnet.com

with copies to:

Director of Public Works  
Brooke A. Levin  
250 Frank H. Ogawa Plaza, Suite 4314  
Oakland, CA 94612  
510-238-3961  
blevin@oaklandnet.com

and

Oakland City Attorney's Office  
Celso Ortiz, Deputy City Attorney  
1 Frank H. Ogawa Plaza  
6th Floor  
Oakland, CA 94612  
510-238-6236  
cortiz@oaklandcityattorney.org

The date of any notice or communication shall be deemed to be the date of receipt if delivered personally or the date of receipt or refusal of delivery if transmitted by mail or overnight courier. Any PARTY may change the address for notice by giving notice to the other PARTY in accordance with this AGREEMENT.

14. HEADINGS. All headings in this AGREEMENT are for reference purposes only.

15. DISPUTE RESOLUTION. In the event of any dispute concerning any aspect of this AGREEMENT, the CITY and PG&E agree to enter into negotiations to resolve the dispute within ten (10) calendar days of a PARTY providing notice to the other PARTY that a dispute exists. If negotiations are unsuccessful within thirty (30) calendar days of the conclusion of

those negotiations the PARTIES shall select a third-party independent neutral to assist the PARTIES in resolving the dispute.

16. WAIVER OF JURY TRIAL. The PARTIES agree to and shall waive the right to a jury trial. To the extent permitted by applicable law, the CITY and PG&E waive trial by jury and any action, proceeding or counterclaim brought by either PARTY against the other on any matter whatsoever arising out of or in any way connected to this AGREEMENT. PG&E and the CITY also agree that the venue of any such action, proceeding or counterclaim if filed by either PARTY shall be in the City and County of San Francisco. PARTY Initials: PG&E \_\_\_\_\_, CITY \_\_\_\_\_.

17. SURVIVAL. The duties and obligations set forth in this AGREEMENT shall survive the COMPLETION of the PROJECT unless otherwise agreed to in writing by the PARTIES.

18. RETENTION OF RIGHTS. Nothing in this AGREEMENT shall be construed to limit either the CITY's or PG&E's rights to seek compensation from each other or from third parties for costs incurred as a result of RESIDUES, OTHER CONSTITUENTS, chemicals or other constituents of concern located outside of the PROJECT AREA, or the PARTIES' rights to seek compensation for costs incurred within the PROJECT AREA from third parties who are not signatories to this AGREEMENT. Nothing in this AGREEMENT shall be construed to limit either the CITY's or PG&E's rights to seek compensation from each other or from third parties for costs incurred as a result of materials that are not RESIDUES or OTHER CONSTITUENTS, or for negligence in work as specified in this AGREEMENT. Nothing in this AGREEMENT shall be construed to limit either the CITY's or PG&E's defenses to any action. This AGREEMENT shall only apply as between the CITY and PG&E and shall not be applicable to any person or entity that is not a signatory to this AGREEMENT.

19. GENERATOR STATUS.

a) The CITY shall be identified as the generator on all manifests, including Hazardous Waste Manifests, required under California or Federal laws for all RESIDUES, OTHER CONSTITUENTS, chemicals or other constituents of concern, and soil, groundwater or other materials, excavated, removed, handled or disposed of, which originate from the PROJECT AREA, **after** COMPLETION of the PROJECT. The CITY shall be solely responsible for the completion and retention of all manifests, including Hazardous Waste Manifests, required under California or Federal laws for all RESIDUES, OTHER CONSTITUENTS and soil, groundwater or other materials excavated, removed, handled or disposed of which originated from within the PROJECT AREA **after** COMPLETION of the PROJECT.

b) PG&E shall be identified as the generator on all manifests, including Hazardous Waste Manifests, required under California or Federal laws for all RESIDUES, OTHER CONSTITUENTS, chemicals or other constituents of concern, and soil, groundwater or other materials, excavated, removed, handled or disposed of, which originated from the PROJECT AREA **during** the PROJECT. PG&E shall be solely responsible for the completion and retention of all manifests, including Hazardous Waste Manifests, required under California or Federal laws for all RESIDUES, OTHER CONSTITUENTS and soil, groundwater or other

materials excavated, removed, handled or disposed of which originated from the PROJECT AREA **during** the PROJECT.

20. FUTURE USE OF AGREEMENT. The PARTIES agree that the terms and conditions agreed to by the PARTIES in this AGREEMENT are the result of unique circumstances and that neither PARTY shall rely upon or use, in any manner, these terms and conditions in any future agreements or MOU between the PARTIES or their respective departments, divisions, or boards. Use of this AGREEMENT for any purposes other than to prove the contents of this AGREEMENT shall render this AGREEMENT null and void.

IN WITNESS WHEREOF, the PARTIES have caused this AGREEMENT to be executed. The EFFECTIVE DATE of this AGREEMENT shall be the date that this AGREEMENT becomes binding upon the PARTIES, irrespective of the date or dates the PARTIES sign this AGREEMENT. In addition, the PARTIES acknowledge that payments already have been made by PG&E to the CITY for undertakings performed in 2011 and 2012 which are agreed to be covered by this AGREEMENT. The undersigned warrant that they are authorized to execute this AGREEMENT on behalf of the PARTY for whom she or he signs.

SO AGREED:

PACIFIC GAS AND ELECTRIC COMPANY

Name: Thomas C. Wilson  
Title: Director, Remediation  
Date: \_\_\_\_\_  
Signature: \_\_\_\_\_

THE CITY OF OAKLAND, a Municipal Corporation

Name: Sabrina Landreth  
Title: City Administrator  
Date: \_\_\_\_\_  
Signature: \_\_\_\_\_

APPROVED AS TO FORM

Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
Signature: \_\_\_\_\_

For: Pacific Gas and Electric Company

APPROVED AS TO FORM

Name: Celso Dolores Ortiz  
Title: Deputy City Attorney, City of Oakland  
Date: \_\_\_\_\_  
Signature: \_\_\_\_\_

The City of Oakland, a Municipal Corporation

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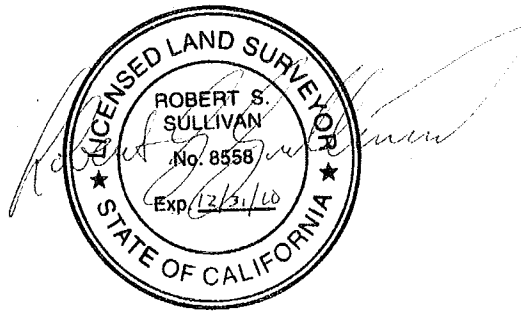
**LD 2301-04-1279**  
2010327 (22-08-074) 10 10 1  
Oakland Station C Land Use Covenant

EXHIBIT "A"

The parcel of land situate in the city of Oakland, county of Alameda, state of California, more particularly described as follows:

(APN 001-0125-005)

BLOCK 3, as shown upon Record of Survey No. 704 filed for record April 19, 1985 in Book 12 of Record of Surveys at Page 54, Alameda County Records.



# ASSESSOR'S MAP 1

Code Area Nos 17-022

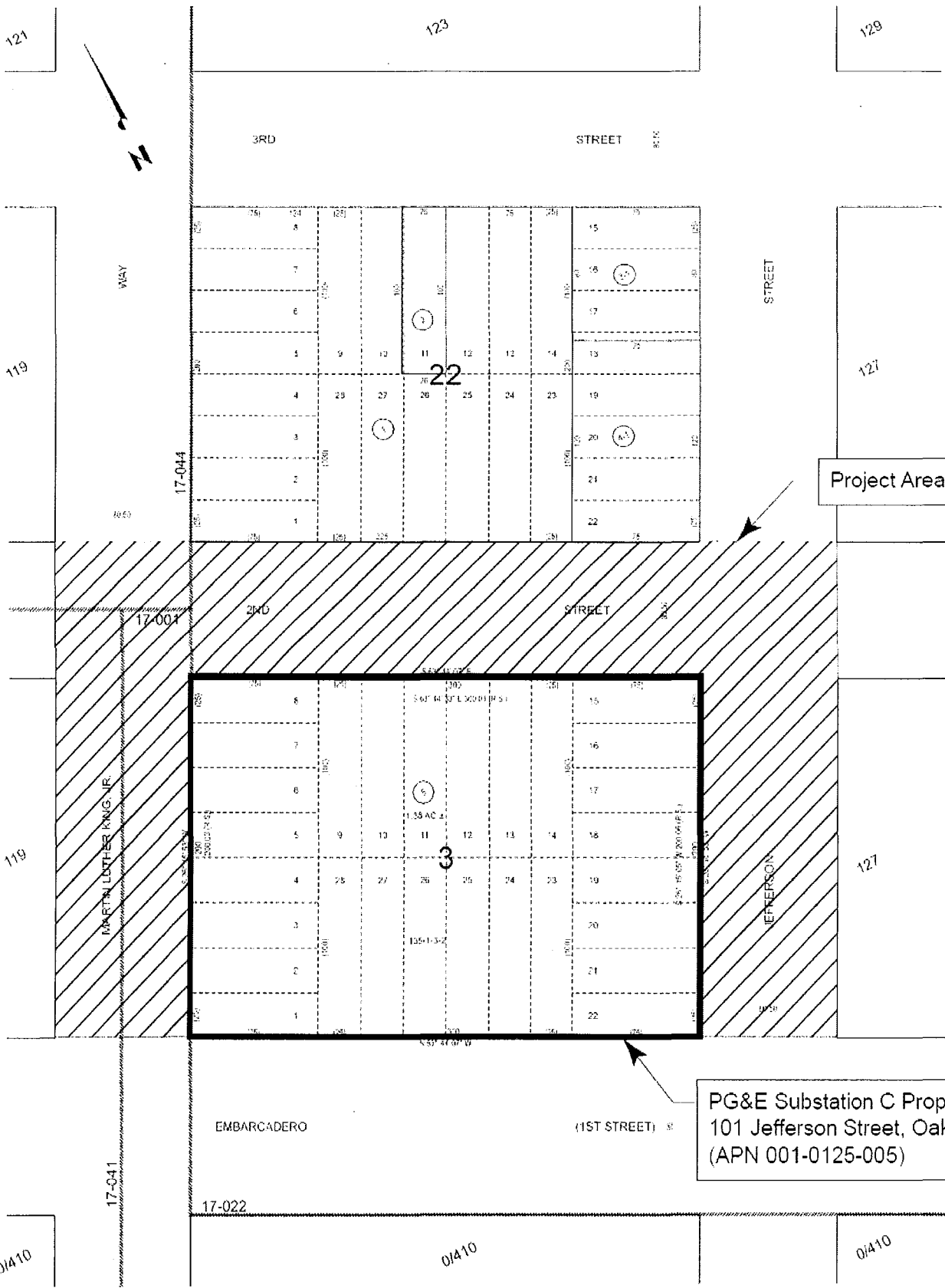
(4) OAKLAND (KELLERSBERGER'S) 7%

Exhibit B: Project Area

(Source: Alameda County Assessor's Map 1)

125

SCALE 1" = 80'



REVISION 24-20-19-20

FORMERLY: BLK 3 & 12 10-67

RECORDING REQUESTED BY:  
City of Oakland  
1 Frank H. Ogawa Plaza  
Oakland, California 94612  
Attention: Celso Ortiz, Deputy City  
Attorney

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control  
700 Heinz Ave.  
Berkeley, California 94710  
Attention: Thomas Price – Project  
Manager, Brownfields and Environmental  
Restoration Program

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

Re: County of Alameda, Sidewalk Bordering APN 1-125-5, North, East and West Lot Lines in the Public Right of Way, Former Oakland-1 Manufactured Gas Plant, Substation C, DTSC Site Code 200260.

This Covenant and Agreement (Covenant) is made by and between the City of Oakland (Covenantor), the current owner of the sidewalk property situated in Oakland, County of Alameda, State of California (the "Sidewalk Property"), described in Exhibit "A" and depicted in Exhibit "B," attached, and the Department of Toxic Substances Control (the "Department"). Ownership of the Sidewalk Property is acknowledged by the City of Oakland only for the purposes of this Covenant. Pursuant to Civil Code section 1471, the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code section 25260. Pacific Gas & Electric ("PG&E") recorded a Land Use Covenant governing APN 1-125-5 on or about September 7, 2012. The Covenantor and Department, collectively referred to as the "Parties," hereby agree, pursuant to Civil Code section 1471, and Health and Safety Code section 25355.5 that the use of the Sidewalk Property be restricted as set forth in this Covenant; and the Parties further agree that the Covenant shall conform with the requirements of California Code of Regulations, title 22, Section



ARTICLE I  
STATEMENT OF FACTS

1.01. Property Location. The Sidewalk Property that is subject to this covenant, totaling approximately 0.26 acres, is more particularly described and depicted in the attached Exhibits "A" and "B." The Sidewalk Property is the public right-of-way (sidewalk) around three sides of Alameda County Assessor's Parcel Number (APN) 1-125-5, with Jefferson Street to the east, Second Street to the north, and Martin Luther King Junior Way to the west of the parcel. The Sidewalk Property is located west of downtown Oakland.

The Sidewalk Property is more particularly described in Exhibit "A", and referred to as the "Sidewalk". The Sidewalk is capped with 4 to 6 inches of concrete and underlain by 4 to 6 inches of compacted aggregate base. Groundwater monitoring well MW-OAK-6 is located in the Sidewalk Property near the corner of Martin Luther King Jr. Way and 2<sup>nd</sup> Street, but the monitoring well belongs to PG&E, and is shown on Exhibit "C" hereto.

1.02. Remediation of Property. The Sidewalk Property, along with APN 1-125-5 have been investigated and/or remediated by PG&E under the Department's oversight. The Department approved a Removal Action Workplan ("RAW") prepared and submitted by PG&E to comply with Hazardous Substance Site Clean-up Agreement Docket No. HSA 96/97-029 between PG&E and the Department. The RAW requires a Covenant by PG&E on (APN) 1-125-5 (already completed and recorded) as well as this Covenant on the Sidewalk, as a part of the site remediation in accordance with Health and Safety Code, division 20, chapter 6.8. Hazardous substances, including total petroleum hydrocarbons as gasoline (TPHg); total petroleum hydrocarbons as diesel (TPHd); polynuclear aromatic hydrocarbons (PAHs) including acenaphthene, fluoranthene, naphthalene, phenanthrene; volatile organic compounds (VOCs) including benzene, toluene, ethylbenzene; cyanide, beryllium, and cadmium, which are hazardous materials as defined in HSC section 25260, remain in soils and groundwater in and under APN 1-125-5 and the Sidewalk Property. The remediation activities conducted by PG&E at APN 1-125-5 and the Sidewalk Property include capping and groundwater monitoring,

and require maintenance of the cap and monitoring well(s) by PG&E or its successors on both APN 1-125-5 and the Sidewalk Property.

1.03. Basis for Environmental Restrictions. A Human Health Risk Assessment was prepared by PG&E and approved by the Department on January 26, 2011, and it described that all or a portion of the subsurface soils within both APN 1-125-5 and the Sidewalk Property contain hazardous substances. As a result of the presence of hazardous substances, which are also hazardous materials as defined in Health and Safety Code section 25260, at the Sidewalk Property, the Department has concluded that it is reasonably necessary to restrict the use of the Sidewalk Property in order to protect present or future human health or safety or the environment, and that this Covenant is required as part of the Department-approved remedy for APN 1-125-5 and the Sidewalk Property. The Department has also concluded that the Sidewalk Property, as remediated and when used in compliance with the Environmental Restrictions of this Covenant, does not present an unacceptable risk to present and future human health or safety or the environment.

## ARTICLE II DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. Environmental Restrictions. "Environmental Restrictions" means all protective provisions, covenants, restrictions, prohibitions, and terms and conditions as set forth in any section of this Covenant.

2.03. Improvements. "Improvements" includes, but is not limited to: buildings, structures, roads, sidewalks, driveways, improved parking areas, wells, pipelines, or other utilities.

2.04. Lease. "Lease" means lease, rental agreement, or any other document that creates a right to use or occupy any portion of the Sidewalk Property. 2.05. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Sidewalk Property

2.06. Owner. "Owner" means the Covenantor, and all successors in interest including heirs and assigns, who at any time hold title to all or any portion of the Sidewalk Property.

### ARTICLE III

#### GENERAL PROVISIONS

3.01. Runs with the Land. This Covenant sets forth Environmental Restrictions that apply to and encumber the Sidewalk Property and every portion thereof no matter how it is improved, held, used, occupied, leased, sold, hypothecated, encumbered, or conveyed. This Covenant: (a) runs with the land pursuant to Health and Safety Code section(s) 25222.1 and 25355.5 and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Sidewalk Property, (c) is for the benefit of, and is enforceable by the Department, and (d) is imposed upon the entire Sidewalk Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to the Health and Safety Code, this Covenant binds all owners of the Sidewalk Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471, all successive owners of the Sidewalk Property are expressly bound hereby for the benefit of the Department.

3.03. Incorporation into Deeds and Leases. This Covenant shall be incorporated by reference in each and every deed and Lease for any portion of the Sidewalk Property.

3.04. Conveyance of Property. The Owner shall provide written notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Sidewalk Property (excluding Leases, and mortgages, liens, and other non-possessory encumbrances). The written notice shall include the name and mailing address of the new owner of the Sidewalk Property and shall reference the site name and site code as listed on page one of this Covenant. As the Sidewalk Property consists of sidewalks adjacent to Parcel (APN) 1-125-5, they would appear on the APN maps as portions of Jefferson Street to the east, Second Street to the north, and Martin Luther King Junior Way to the west of the parcel. However for ease of reference, APN-1-125-5 shall be mentioned on page 1 as the adjacent property encumbered by an LUC. If the new owner's property has been assigned a different APN, each such APN that covers the Sidewalk Property must be provided. The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law or by administrative order.

3.05. Costs of Administering the Covenant to be paid by Owner. The Department has already incurred and will in the future incur costs associated with the administration of this Covenant. Therefore, the Covenantor hereby covenants for the Covenantor and for all subsequent Owners that, pursuant to California Code of Regulations, title 22, section 67391.1(h), Owner agrees to the Department's costs in administering the Covenant. The Department will accept payment for its costs from a third party.

#### ARTICLE IV

#### RESTRICTIONS AND REQUIREMENTS

4.01. Prohibited Uses. The Sidewalk Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.

4.02. Soil Management.

- (a) No activities that will disturb the sidewalk or soil at or below grade (e.g., excavation, grading, removal, trenching, filling, earth movement, mining, or drilling) shall be allowed on the Sidewalk Property without a Soil Management Plan approved by the Department in advance.
- (b) Any contaminated soils brought to the surface by grading, excavation, drilling, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law.

4.03. Prohibited Activities. The following activities shall not be conducted at the Sidewalk Property:

- (a) Drilling for drinking water, oil, or gas without prior written approval by the Department.
- (b) Extraction of groundwater except as approved by the Department in a Groundwater Management Plan.

4.04. Non-Interference with Concrete Sidewalk and Groundwater Monitoring Well(s).

- (a) Activities that may disturb the concrete sidewalk and groundwater monitoring well(s) (e.g. excavation, grading, removal, trenching, filling, earth movement, drilling or mining) shall not be permitted on the concrete sidewalk and groundwater monitoring well(s) without prior written approval by the Department.
- (b) All uses, development, and maintenance of the concrete sidewalk and groundwater monitoring well(s) shall preserve the integrity or effectiveness of the concrete sidewalk and groundwater monitoring well(s).
- (c) All uses shall preserve the physical accessibility to the concrete sidewalk and groundwater monitoring well(s).
- (d) The concrete sidewalk and ground water monitoring well(s) shall

not be altered without prior written approval by the Department.

- (e) Emergency Response Action/Notification: Subsections (a) through (d) of this Section 4.04 shall not apply in the event of any emergency response or time-sensitive action or occurrence (such as a fire, earthquake, equipment or utility failure or malfunction) which requires breaching the Cap and/or altering the groundwater monitoring wells (hereinafter referred to as "Emergency Event"). However, the Covenantor shall immediately take all appropriate action to prevent, abate, or minimize any release associated with such Emergency Event and shall notify the Department. Within seven (7) days of the onset of such Emergency Event, the party doing work shall submit a report to the Department, signed by the party doing work's Project Engineer/Geologist, describing the Emergency Event and the subsequent measures taken to return to compliance with the Covenant. Nothing in this section shall be deemed to limit any other notification requirement to which the Owner may be subject under the Covenant.

4.05. Access for Department. The Department shall have reasonable right of entry and access to the Sidewalk Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

4.06. Access for Implementing Operation and Maintenance. The entity responsible for implementing the Operation and Maintenance Agreement shall have reasonable right of entry and access to the Sidewalk Property for the purpose of implementing the Operation and Maintenance Agreement until the Department determines that no further Operation and Maintenance is required.

4.07. Inspection and Reporting Requirements. The Owner shall conduct an annual inspection of the Sidewalk Property verifying compliance with this Covenant, and shall submit an annual inspection report to the Department for its approval by January 30<sup>th</sup> of

each year. The Department will accept performance of the inspection and the submittal from a third party performing these tasks at the Owner's request if performance is deemed adequate by the Department. The annual inspection report must include the dates, times, and names of those who conducted the inspection and reviewed the annual inspection report. It also shall describe how the observations were performed that were the basis for the statements and conclusions in the annual inspection report (e.g., drive by, fly over, walk in, etc.). If violations are noted, the annual inspection report must detail the steps taken to return to compliance. If the Owner or the third party performing this duty at Owner's request identifies any violations of this Covenant during the annual inspections or at any other time, the Owner must within 10 days of identifying the violation: determine the identity of the party in violation, send a letter advising the party of the violation of the Covenant, and demand that the violation cease immediately. Additionally, copies of any correspondence related to the violation of this Covenant shall be sent to the Department within 10 days of its original transmission.

## ARTICLE V ENFORCEMENT

5.01. Enforcement. Failure of the Owner or Occupant to comply with this Covenant shall be grounds for the Department to require modification or removal of any Improvements constructed or placed upon any portion of the Sidewalk Property in violation of this Covenant. Violation of this Covenant, including but not limited to, failure to submit, or the submission of any false statement, record or report to the Department, shall be grounds for the Department to pursue administrative, civil, or criminal actions, as provided by law.

## ARTICLE VI VARIANCE, TERMINATION, AND TERM

6.01. Variance from Environmental Restrictions. Any person may apply to the Department for a written variance from any of the Environmental Restrictions imposed

by this Covenant. Such application shall be made in accordance with Health and Safety Code section 25223.

6.02 Removal of Environmental Restrictions. Any person may apply to the Department to remove any of the Environmental Restrictions imposed by this Covenant or terminate the Covenant in its entirety. Such application shall be made in accordance with Health and Safety Code section 25224.

6.03 Term. Unless ended in accordance with paragraph 6.02, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

## ARTICLE VII MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Sidewalk Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Alameda within ten (10) days of the Covenantor's receipt of a fully executed original.

7.03. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner:                      City Administrator  
   City of Oakland  
   1 Frank H. Ogawa Plaza  
   Oakland, CA 94612



With a copy to: City Attorney  
City of Oakland  
1 Frank H. Ogawa Plaza  
Oakland, CA 94612

To Department: Thomas Price – Project Manager  
Department of Toxic Substances Control  
Brownfields and Environmental  
Restoration Program  
700 Heinz Ave.  
Berkeley, CA 94710

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.04. Partial Invalidity. If this Covenant or any of its terms are determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.05. Statutory References. All statutory references include successor provisions.

7.06. Incorporation of Attachments. All attachments and exhibits to this Covenant are incorporated herein by reference.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: City of Oakland

By: \_\_\_\_\_

Sabrina Landreth

Title: City Administrator

Date: \_\_\_\_\_

Department of Toxic Substances Control:

By: \_\_\_\_\_

Karen M. Toth

Title: Unit Chief, Brownfields and Environmental Restoration Program

Date: \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_ a Notary Public, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_ a Notary Public, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

EXHIBIT "A"

The parcel of land situate in the city of Oakland, county of Alameda, state of California, more particularly described as follows:

BEGINNING at the most westerly corner of the parcel of land conveyed in the deed from James Daly and Michael Hawkins to the Oakland Gas Light Company dated January 15, 1875 and recorded in Liber 103 of Deeds at page 259, Alameda County Records, and running thence:

- (1) north  $63^{\circ}44'07''$  west 13.0 feet; thence
- (2) north  $26^{\circ}15'53''$  east 218.02 feet; thence
- (3) south  $63^{\circ}44'33''$  east 331.02 feet; thence
- (4) south  $26^{\circ}16'05''$  east 218.07 feet; thence
- (5) north  $63^{\circ}44'07''$  west 18.0 feet

to the most southerly corner of said parcel, thence northeasterly along the southeasterly boundary line of said parcel

- (6) north  $26^{\circ}16'05''$  east 200.06 feet

to the most easterly corner of said parcel, thence northwesterly along the northeasterly boundary line of said parcel

- (7) north  $63^{\circ}44'33''$  west 300.01 feet

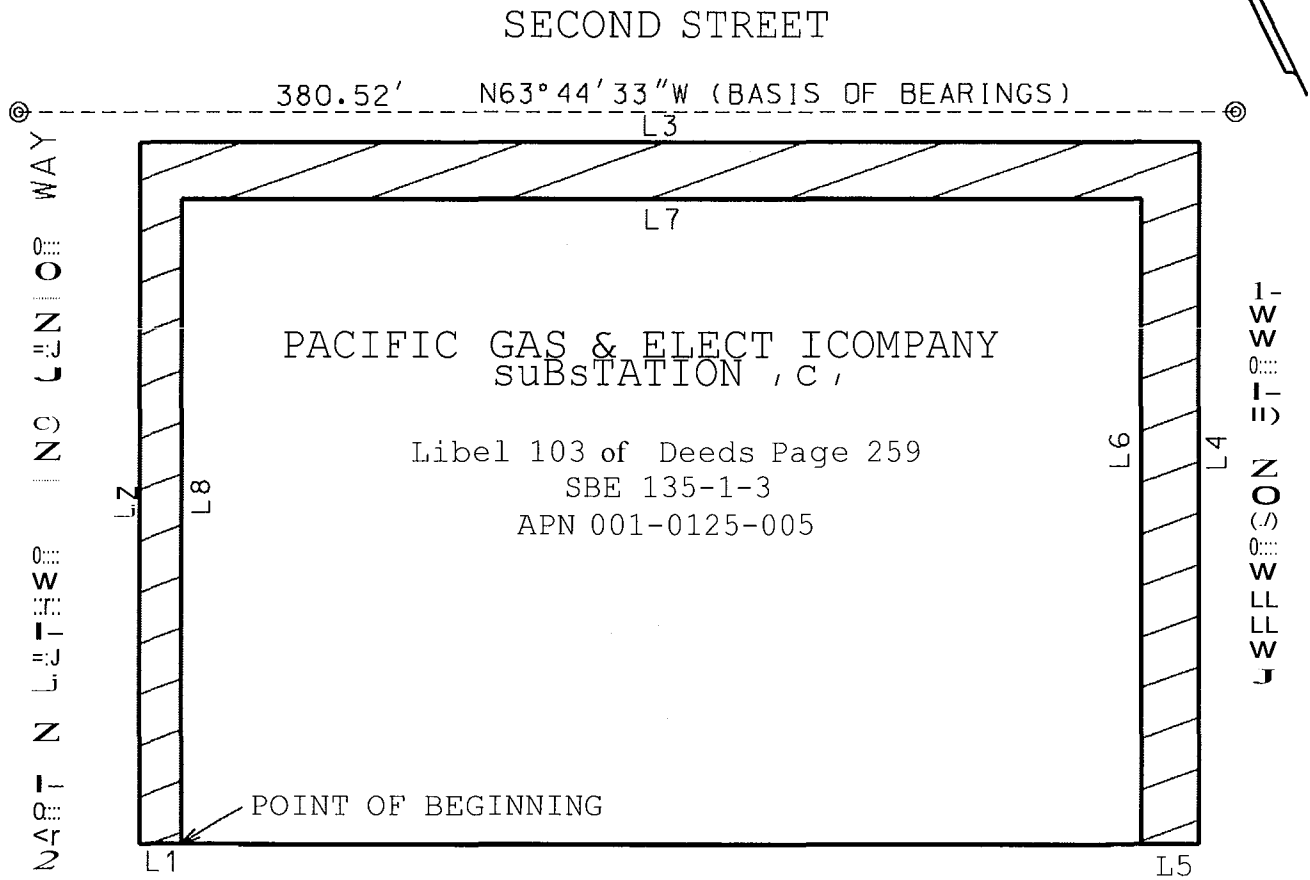
to the most northerly corner of said parcel, thence southwesterly along the northwesterly boundary line of said parcel

- (8) south  $26^{\circ}15'53''$  west 200.03 feet

to said POINT OF BEGINNING, and containing .28 acres, more or less.

The bearings used in this description are based on Record of Survey No. 74, filed April 19, 1985 in Book 12 of Record of Surveys at page 54, Alameda County Records..

# EXHIBIT "B"



LINE TABLE

EMBARCADERO

LINE	DIST.	BEARING
L1	13.0'	N63°44'07"W
L2	218.02'	N26°15'53"E
L3	331.02'	S63°44'33"E
L4	218.07'	S26°16'05"W
L5	18.0'	N63°44'07"W
L6	200.06'	N26°16'05"E
L7	300.01'	N63°44'33"W
LB	200.03'	S26°15'53"W

@ FOUND CITY MONUMENT

SCALE 1" = 60'

BEARINGS SHOWN ARE BASED ON RECORD OF SURVEY NO. 74, FILED APRIL 19, 1985 IN BOOK 12 OF RECORD OF SURVEYS AT PAGE 54

AUTHORIZATION  
8042536

BY J. MINC  
DR R. SULLIVAN  
CH J. MING  
O.K. R. SULLIVAN  
DATE OCTOBER 2010

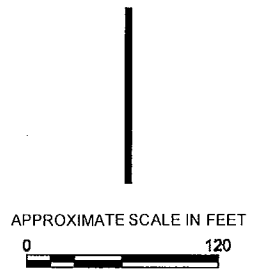
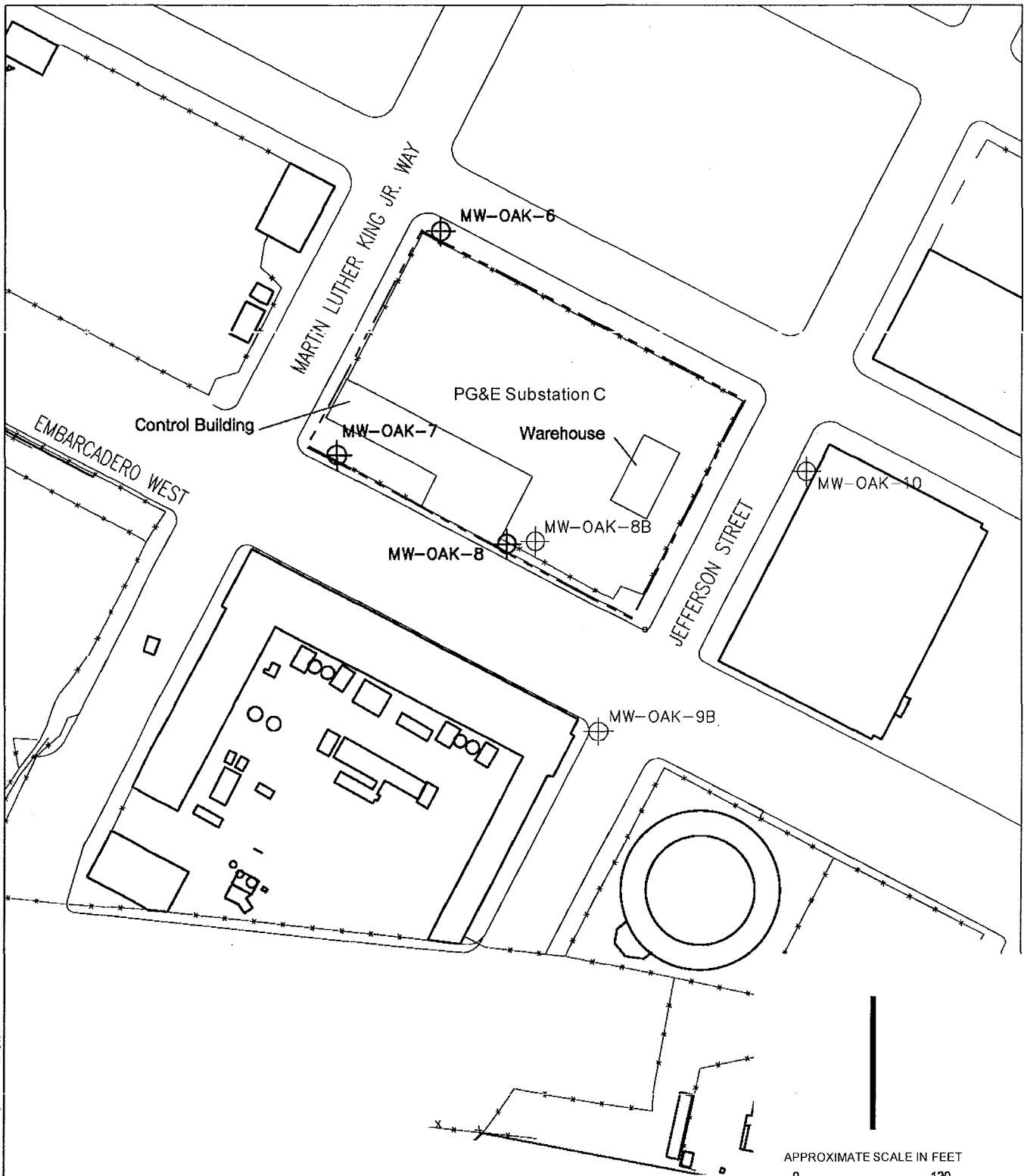
## EXHIBIT "B" LAND USE COVENANT

PACIFIC GAS AND ELECTRIC COMPANY  
San Francisco California



JCN 22-06-074  
A NORTH COAST  
COUNTY ALAMEDA  
SCALE 1:60'

SHEET NO. OF  
DRAWING NUMBER CHANGE  
EXHIBIT "B"



**EXPLANATION:**

- Property boundary
- Fence
- Structures (existing)
- ⊕- PG&E monitoring well

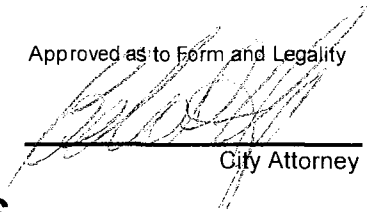
Basemap source: ENV America, 2.002.

<p><b>LOCATIONS OF GROUNDWATER MONITORING WELLS</b>                  Former Oakland-1 Manufactured Gas Plant                  Substation C                  Oakland, California</p>		
By: VCE	Date: 02/21/12	Project No. 0010160142
		Figure 3-1

Plot Date: 02/21/12 - 12:49pm. Plotted by: irena.ikolnik  
 Drawing Path: S:\0D10160142\task\_0312\_0220\_subst.dwg Drawing Name: \_fig\_C-01.DWG

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

# OAKLAND CITY COUNCIL

  
\_\_\_\_\_  
City Attorney

2015 DEC -4 RESOLUTION No. \_\_\_\_\_ C.M.S.

**RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO ENTER INTO A MEMORANDUM OF UNDERSTANDING NEGOTIATED BETWEEN PACIFIC GAS AND ELECTRIC (PG&E) AND THE CITY OF OAKLAND AND A LAND USE COVENANT BETWEEN THE CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL AND THE CITY OF OAKLAND REGARDING POTENTIAL CONTAMINATION BENEATH THE SIDEWALK ADJACENT TO PG&E'S SUBSTATION C PROPERTY**

**WHEREAS**, PG&E has agreed to enter into a Memorandum of Understanding (MOU) agreement with the City to address potential contamination under City property adjacent to PG&E's Substation C property located at 101 Jefferson Street; and

**WHEREAS**, PG&E has agreed in the MOU to perform all remediation and reporting work for City property affected by PG&E Substation C; and

**WHEREAS**, associated with the MOU agreement is a Land Use Covenant (LUC) agreement between the City and the California Department of Toxic Substances Control (DTSC); and

**WHEREAS**, DTSC has issued a requirement for the City to enter into a LUC with DTSC for the sidewalk area around PG&E Substation C; and

**WHEREAS**, the City Council finds that these agreements shall not result in economic loss or increased liability to the City, therefore be it

**RESOLVED**, That the City Administrator is hereby authorized to enter into a MOU agreement with PG&E and a LUC with DTSC for the sidewalk area around PG&E Substation C, subject to the review and approval of the City Attorney; and be it

**FURTHER RESOLVED**: That a copy of this resolution shall be filed with the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID, and PRESIDENT GIBSON MCELHANEY

NOES -

ABSENT -

ABSTENTION -

  
**PUBLIC WORKS CMTE.**  
DEC 15 2015

ATTEST: \_\_\_\_\_  
LaTonda Simmons  
City Clerk and Clerk of the Council  
of the City of Oakland, California