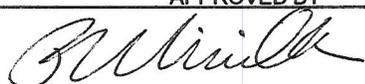


AGENDA ITEM NO.
<u>COUNCIL MEETING 3-25-08</u>
APPROVED BY

DEPARTMENT DIRECTOR
CITY MANAGER

March 25, 2008

FROM: PATRICK N. WIEMILLER, Director   
Public Works Department

BY: SCOTT L. MOZIER, PE, City Engineer / Assistant Director   
Public Works Department, Engineering Division

SUBJECT: APPROVE A CONSENT TO COMMON USE AGREEMENT BETWEEN PACIFIC GAS AND ELECTRIC AND THE CITY OF FRESNO AS IT RELATES TO PROPERTY OWNED BY PAUL AND SUSAN LUCICH (LOCATED IN DISTRICT 5)

**KEY RESULT AREA**

Customer Satisfaction

**RECOMMENDATIONS**

1. Staff recommends that the City Council approve the Consent to Common Use Agreement between Pacific Gas and Electric and the City of Fresno for the common use of a 115 kV electric transmission line easement and a street easement.
2. Authorize the Public Works Director to accept the Consent to Common Use Agreement across property owned by Paul and Susan Lucich (APN 313-091-22S & 27).

**EXECUTIVE SUMMARY**

On December 13, 2006, PG&E filed Superior Court Case No. 06CECG04126, an action in eminent domain to condemn real property owned by Paul and Susan Lucich. The City was named as a defendant in that lawsuit because the City holds an easement for public street purposes in the area of the easement sought by PG&E.

Pursuant to a prejudgment order of possession, PG&E has constructed and is currently operating a 115 kV electric transmission line within PG&E's easement. The foundations and towers for the PG&E transmission line have been constructed outside of the City's easement, but the cross arms and transmission cables overhang the City's easement.

Staff is requesting Council's authorization to record the Consent to Common Use Agreement (attached). Because of circumstances that occurred in the negotiations with PG&E the Consent to Common Use Agreement was signed by PG&E and their legal staff. The City of Fresno's Director of Public Works and City Attorney's office have also executed the Agreement.

## **KEY OBJECTIVE BALANCE**

The Key Objective of Customer Satisfaction will be accomplished with the common use of the street easement and electrical transmission easement with the additional street right of way to develop a dedicated right turn lane on Belmont so that traffic will flow. Financial Management will be realized by the City no longer having financial obligations to this lawsuit.

## **BACKGROUND**

The Department of Public Works has completed plans for the improvements along Clovis Avenue between McKinley and Kings Canyon Road. It is expected that Federal funding for the cost of the project will be available for 88.53% of the cost under Federal Project Number STPL 5060 (044). The project will add sidewalks and improve intersections with the installation of new turn lanes, handicap ramps at corners, and additional traffic signals. The City of Fresno's notice to proceed to construction was issued on March 10, 2008.

The City has negotiated with PG&E, a Consent to Common Use Agreement that will allow both the City and PG&E to use the area of the easement without interfering with the rights of the other. This agreement will end the City's obligations with respect to this lawsuit, and involves no financial obligation on the part of the City.

## **FISCAL IMPACT**

There are no anticipated current or future right of way costs to be associated with this project. Funds are available for the construction of this project in the Department of Public Works Account No. PW00003, Fed No. STPL 5060 (044), Fund No. 22048, Org. No. 189901 and the KRA are 0101001000.

PNW/SLM/PC/eam  
Apprv Consent Common Use Agr PG&E, Lucich 3-25-08

Attachment: Consent to Common Use Agreement

**RECORDING REQUESTED BY:**  
Public Works Department  
City of Fresno  
No Fee-Gov't Code Sections 6103 and 27383

**WHEN RECORDED, MAIL TO:**  
Public Works Department  
City of Fresno  
2600 Fresno Street  
Fresno, CA 93721-3623

(SPACE ABOVE FOR RECORDER'S USE ONLY)

LD#

AGREEMENT

APN 213-091-225 + 27

CONSENT TO COMMON USE

THIS AGREEMENT, entered into this 22 day of February, 2008, by and between PACIFIC GAS AND ELECTRIC COMPANY, hereinafter called "PG&E", and the CITY OF FRESNO, hereinafter called "CITY",

WITNESSETH

WHEREAS, the CITY acquired an easement and right of way from Paul G. Lucich and Susan Lucich pursuant to that certain Deed of Easement dated November 11, 2005 and recorded in the Official Records of Fresno County, California on February 8, 2006 as Document No. 2006-0027722, hereinafter referred to as the "City's Easement".

WHEREAS, PG&E has filed an action in the Fresno County Superior Court, Case No. 06CECG4126MWS, to acquire an easement and right of way over and across the

property of Paul G. Lucich and Susan Lucich, which easement and right of way are more particularly described in Exhibit "A" hereto, hereinafter referred to as "PG&E's Easement".

WHEREAS, pursuant to a prejudgment order of possession, PG&E has constructed and is currently operating a 115 kV electric transmission line within PG&E's Easement.

WHEREAS, the foundations and towers for the PG&E transmission line have been constructed outside of the City's Easement, but the crossarms and transmission cables overhang the City's Easement and, therefore, that portion of the real property affected by the City's Easement is herein referred to as the "Area of Common Use" and is depicted in Exhibit "A-1" attached hereto.

NOW, THEREFORE, PG&E and CITY hereby mutually agree as follows:

1. CITY hereby acknowledges that as constructed, PG&E's foundations, towers and other structures situated on the real property belonging to Paul G. Lucich and Susan Lucich do not affect the CITY'S intended use of the City's Easement as a turn lane for northbound traffic off of Clovis Avenue, turning east on Belmont Avenue.

2. PG&E hereby agrees that its construction, reconstruction, maintenance and use of the transmission lines and crossarms that overhang the Area of Common Use shall be subject to PG&E's Franchise Agreement with the CITY, as the same may be from time to time amended by the mutual agreement of the parties.

3. Upon execution of this Agreement by all parties and delivery of same to the CITY, PG&E shall dismiss the CITY as a party to Fresno County Superior Court, Case No. 06CECG4126MWS, each side to bear their own costs and expenses, including attorney's fees.

4. Except as expressly set forth herein, this agreement shall not in any way alter, modify or terminate any provision of the City's Easement or PG&E's Easement or the priority of title of the CITY in said Area of Common Use. Both CITY and PG&E shall use said area of common use in such manner as not to interfere unreasonably with the rights of the other. Nothing herein contained shall be construed as a release or waiver of any claim for

compensation or damages which PG&E or City may now have or may hereafter acquire resulting from the construction of additional facilities or the alteration of existing facilities by either CITY or PG&E in such a manner as to cause an unreasonable interference with the use of said Area of Common use by the other party.

5. This agreement shall inure to the benefit of and be binding upon the successors and assigns of both parties.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in duplicate by their respective officials thereunto duly authorized.

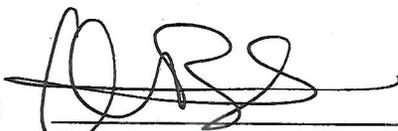
**CITY:**

CITY OF FRESNO,  
a municipal corporation

By:   
Patrick N. ~~Wiemiller~~ Wiemiller  
Public Works Director

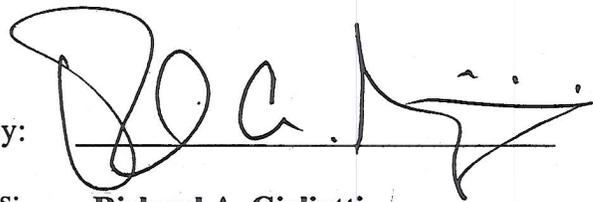
**APPROVED AS TO FORM:**

JAMES C. SANCHEZ,  
City Attorney

By:   
Katherine E. Bradley  
Deputy City Attorney

**PG&E:**

PACIFIC GAS AND ELECTRIC COMPANY,  
a California corporation

By:   
Its: Richard A. Gigliotti  
Manager, Land Energy Delivery  
Technical & Land Services

**APPROVED AS TO FORM:**

GILMORE, WOOD, VINNARD &  
MAGNESS, P.C.

By:   
Marcus D. Magness, Attorneys for  
Pacific Gas and Electric Company

1 3013-0975 12 06 1 Airways Sub 115kV P/L  
2 PAUL G. LUCICH and SUSAN LUCICH, husband and wife.

3 EXHIBIT "A"

4 Situate in the City of Fresno, County of Fresno, State of California.

5 (APN 313-091-22S & -27)

6 PARCEL 1:

7 A strip of land of two different widths, being initially of the uniform width of 80 feet  
8 lying 40 feet on each side of the first course of the line described as follows:

9 Commencing at the found 1-inch iron pipe tagged Caltrans LS 6335 accepted as  
10 marking the north quarter corner of Section 4, Township 14 South, Range 21 East,  
11 M.D.B.&M., and running

12 (a) south 75°44'46" west 2,664.56 feet

13 to a point within the boundary lines of the parcel of land described in the quitclaim deed from  
14 Paul G. Lucich and Susan Lucich to Paul G. Lucich and Susan Lucich, husband and wife,  
15 dated February 22, 2000 and recorded as Recorder's Serial Number 2000-0021583 in the  
16 Official Records of Fresno County, being the TRUE POINT OF BEGINNING of said line;  
17 thence

18 (1) north 0°15'56" east 303.00 feet;

19 thence continuing and changing from the uniform width of 80 feet to the uniform width of 50  
20 feet lying 25 feet on each side of the remaining course of said line

21 (2) north 0°15'56" east approximately 335 feet

22 to a point in the southerly boundary line of Belmont Avenue; the side lines of said strip of land  
23 shall be lengthened or shortened at the northerly terminus thereof so as to terminate in said  
southerly boundary line; EXCEPTING THEREFROM the portion thereof lying within the  
boundary lines of Clovis Avenue; containing 0.733 of an acre, more or less.

The foregoing description is based on a survey made by Pacific Gas and Electric  
Company in March 2005. Bearings are based on the northerly boundary line of the northwest  
quarter of Section 4, Township 14 South, Range 21 East, M.D.B.&M. which has a bearing of  
north 89°18'56" west.



APPROVED AS TO DESCRIPTION

JEFFREY D. LITTLE

L.S. 6372 - Expires 12/31/06

Proposed  
P.G. & E. Co. P/L

County of Fresno  
Book 5267 of Official Records at  
page 701, Fresno County Records

32  
5

33  
4

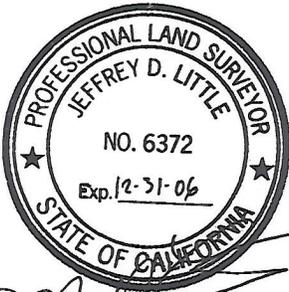
Belmont Ave.

T.13 S., R.21 E., M.D.B. & M.  
T.14 S., R.21 E., M.D.B. & M.

C/L Ease to Pacific Gas and Electric Company  
Book 7550 of Official Records at page 834,  
Fresno County Records

C/L 6' Ease to Pacific Telephone and Telegraph Company  
Book 7565 of Official Records at page 232,  
Fresno Co. Rec.

Public Street Ease to City of Fresno  
Doc. 2006-0027722, Official Records of Fresno County



*DM*

Clovis Avenue

PAUL G. LUCICH AND  
SUSAN LUCICH,  
HUSBAND AND WIFE  
BOOK 4713 OF OFFICIAL RECORDS  
AT PAGE 597,  
FRESNO COUNTY RECORDS  
APN 313-091-27

PARCEL 1  
Proposed P.G. & E. Co. R/W  
Area = 0.733 of an Acre +/-

PAUL G. LUCICH AND  
SUSAN LUCICH,  
HUSBAND AND WIFE  
RECORDER'S  
SERIAL NUMBER 2000-0021583,  
FRESNO COUNTY RECORDS  
APN 313-091-226

County of Fresno  
Book 5267 of Official Records  
at page 701, Fresno County Records

N0° 15'56" E - 335' +/-

N0° 15'56" E - 303.00'

25'  
40'

Tie: S75° 44'46" W  
2664.56' Fd 1 Inch Iron Pipe tagged  
Caltrans LS 6335,  
accepted as marking  
N 1/4 cor of Sec 4,  
T 14 S, R 21 E, MDB&M!

Approximate Centerline of  
Sewer Easement to City of Fresno  
Book 5489 of Official Records  
at page 658, Fresno County Records

Assignment and Assumption  
Agree. Doc. No. 2002-0032525,  
Official Records of Fresno County

This map is based on a survey made by Pacific Gas and Electric Company in March 2005. The bearings used are based on the northerly boundary line of the northwest quarter of Section 4, Township 14 South, Range 21 East, M.D.B. & M., which has a bearing of north 89° 18'56" west.

Scale: 1" = 100'

Final Order of Condemnation  
Book 3982 of Official Records  
at page 624, Fresno Co. Rec.

EXHIBIT "A-1"

**ACKNOWLEDGMENT**

State of California  
County of San Francisco

On February 22, 2008 before me, Jennifer Ann LesCallett, Notary Public  
(insert name and title of the officer)

personally appeared Richard A. Gigliotti,  
who 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.



Signature Jennifer Ann LesCallett (Seal)

**ACKNOWLEDGMENT**

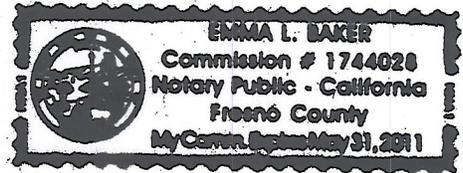
State of California  
County of FRESNO )

On February 27, 2008 before me, Emma L. Baker, Notary Public  
(insert name and title of the officer)

personally appeared Patrick N. Wiemiller,  
who 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.



Signature Emma L Baker (Seal)