

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL
TO:

District Clerk)
San Diego Unified Port District)
Post Office Box 120488)
San Diego, CA 92112-0488)

No Document Fee
Recordation for Benefit of District

(Space Above this Line for Recorder's Use)

The undersigned District declares that the Documentary Transfer Tax is \$-0-.

EASEMENT FOR UTILITY PURPOSES

1. **Grant of Easement:** SAN DIEGO UNIFIED PORT DISTRICT, a public corporation ("Grantor"), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, grants to SAN DIEGO GAS & ELECTRIC COMPANY, a California corporation ("Grantee"), an easement for electric vehicle charging stations and ancillary communication facilities and appurtenances ("Easement") in, on, over, under, across and through the following property located in the County of San Diego, State of California:

Approximately 1,510 square feet of tideland area located at 3165 Pacific Highway San Diego, California ("Property") designated as Project No. 850995-010 and Work Order Number 2135150 by Grantee.

The easement in the aforesaid Property shall be those strips of land, including all of the area lying between the exterior sidelines, which sidelines shall be three (3) feet, measured at right angles, on each exterior side of all Facilities installed within said property and eight (8) feet on the side of any Facilities that have a hinged door on or before December 31, 2019 ("Easement Area").

Upon the installation of said Grantee's Facilities, Grantor may survey the location of said installed Facilities as an "as-built" drawing(s) and prepare a metes and bounds or "center line" description(s) of the actual location of said facilities. Grantee shall then prepare and record in the Office of the County Recorder of the County of San Diego, an "Amendment to Easement", using said

“as-built” drawing(s) and metes and bounds description(s) as a substitute and replacement to the “blanket” easement description contained in this easement.

It is understood and agreed by Grantor, and its successors-in-interest, that its interest shall be subordinate to the substituted easement description as if the substituted easement description was fully set forth at the time of this grant.

2. **Easement Uses:** Grantee shall have the right to use the Easement Area to excavate for, lay, erect, construct, build, install, modify, improve, rebuild, reconstruct, relocate, reconfigure, repair, replace, substitute, change the size of, upgrade, maintain, patrol, inspect, test, operate, use and remove electric vehicle charging stations (“EV Stations”) and related facilities consisting of (A) underground facilities together with aboveground structures consisting of, but not limited to, pad-mounted electrical equipment, and ten (10) EV Stations, and all appurtenances for the distribution of electricity to the EV Stations, and related facilities and/or (B) communication equipment, and appurtenances related to EV Stations, which can include, Supervisory Control and Data Acquisition (“SCADA”) (collectively, “Facilities”); provided, however, that Grantee shall not grant to third parties any right to attach or install telecommunications, wireless or other communication facilities within the Easement Area.
3. **Access:** Grantee is further granted the right of ingress and egress to, from and along the Easement Area via practical routes across the Property and the adjacent lands of Grantor; provided that Grantee shall exercise such ingress and egress rights in a reasonable manner designed to minimize interference with Grantor’s and/or any lessee’s activities within such adjacent lands and Grantee shall provide use commercially reasonable efforts to notify Grantor and/or any lessee in accordance with Section 6, herein.
4. **Parking Spaces:** Grantor shall provide at all times, a delineated space surrounding each EV Station, so that each EV Station may be accessed and used by an electric vehicle for charging. One (1) spaces shall be marked for electric vehicles only; and shall be used only while such vehicles are being charged. The remaining nine (9) shall be marked for electric vehicles only, however, such vehicles do not have to be actively charging. Grantor and Grantee shall meet yearly to determine past usage of electric vehicle parking spaces and how such spaces should be used in the future based on past usage.
5. **Term:** The term of this Easement (“Term”) shall be for a period of ten (10) years commencing on September 15, 2018 (“Commencement Date”) and ending on, September 14, 2028 (“Expiration Date”), unless sooner terminated as herein provided. Grantor shall use good faith efforts to deliver written notice of the pending expiration of the Easement to Grantee not less than six (6) months prior to the Expiration Date. In addition, Grantor may, in its sole and absolute discretion of its Executive Director, by written notice to Grantee, agree to extend the Term beyond the initial ten (10) year term in one or more increments, which shall be terminable on sixty (60) days’ notice to Grantee in District’s sole

and absolute discretion, with or without cause, however, the total Term shall not continue past December 31, 2068.

6. **Grantee's Improvements and Repairs:** The initial construction of the Facilities shall not commence without the prior written approval of the plans and specifications by Grantor, which shall not be unreasonably withheld, delayed and/or conditioned. Subsequent reconstruction, reconfiguring, replacement, substitutions, changes, upgrades and/or repairs of the Facilities do not require Grantor's approval; provided that Grantee shall use commercially reasonable efforts to notify Grantor and/or any lessee of such work to minimize interference with the Grantor's and/or such lessee's activities within the Easement Area. In the case of emergency repairs, Grantee shall immediately commence repairs and give Grantor written notification within ten (10) days of the commencement of said emergency repair so that the Grantor can inspect the Easement Area solely for compliance with the terms and conditions of this Easement. Facilities installed pursuant to this Easement shall be constructed in a good and workmanlike manner and shall conform to all applicable laws and regulations. Non-material violations of applicable laws and regulations shall not constitute a default under this Easement, provided that Grantee cures or commences to cure such violation within thirty (30) calendar days after receiving actual notice of such violation and diligently prosecutes such cure to completion.
7. **Excavations:**
 - A. **By Grantee:** In making any excavations within the Easement Area, Grantee shall make the excavation in a manner designed to cause the least injury to the surface of the ground around such excavation, and shall replace the earth so removed by it and restore the surface of the ground and any improvement thereof to as near the same condition as existed immediately prior to such excavation to the extent it is practicable to do.
 - B. **By Grantor:** Conduits carry high voltage electrical conductors, and pipelines may carry volatile materials; therefore, Grantor shall not make any excavation or penetrate the ground in any manner within the Easement Area without first obtaining Grantee's prior written permission, which permission shall not be unreasonably withheld, delayed or conditioned. Prior to making any excavation or penetrating the ground in any manner within the Easement Area, Grantor shall contact Dig Alert at 811 to mark out the locations of all underground Facilities.
8. **Protective Barriers:** Subject to Grantor's written approval, which shall not be unreasonably withheld, delayed or conditioned, Grantee shall have the right to erect, build, construct, install and maintain within the Easement Area, such equipment, traffic barriers and minor earth retaining structures as Grantee deems

necessary for the erection, building, construction, installation, maintenance, operation, use and protection of Grantee's Facilities.

9. **Grantor's Improvements:** From and after the date that this Easement is fully executed by Grantor and Grantee (the "Execution Date"), Grantor shall not, without the prior written consent of Grantee, which consent shall not be unreasonably withheld, delayed or conditioned, (A) erect, build, install, place or construct any building or structure within the Easement Area, (B) plant any tree or other deep-rooted growth within the Easement Area, or (C) drill or dig any well, pond or lake within the Easement Area, or (D) store or place any explosive, toxic, or hazardous materials within the Easement Area. Except as otherwise provided herein, and subject to the prior review and written approval by Grantee of Grantor's improvement plans and specifications, which approval shall not be unreasonably withheld, delayed or conditioned (but which shall consider Grantee's need to provide adequate protection for the Facilities in accordance with pertinent General Orders of the Public Utilities Commission of the State of California), Grantor retains the right to construct, reconstruct and maintain aboveground improvements that shall not interfere with or cause damage to Grantee's Facilities, including, but not limited to, fences, landscaping with shallow roots (e.g., grass) sidewalks, curbs, gutters, and street and parking lot surfaces or other surfaces; provided that such aboveground improvements do not require excavation and/or grading to a depth of more than eighteen (18) inches within the Easement Area (the "Permitted Improvements").
10. **Ground Surface Elevations:** Grantor shall not increase or decrease the ground surface elevations within this Easement Area after installation of the Facilities, without prior written consent of Grantee, which consent shall not be unreasonably withheld, delayed or conditioned.
11. **Grantee's Rights:** Grantee shall have all rights and powers, but is not hereby obligated to: (A) keep the Easement free and clear from (i) buildings and structures, (ii) trees and/or other deep-rooted growths, (iii) wells, ponds and/or lakes, and/or (iv) explosive, toxic and/or hazardous materials; and (B) trim, prune, cut, maintain and/or remove trees, deep-rooted growths, foliage and/or brush within, along or adjacent to the Easement Area and remove roots from within the Easement Area whenever Grantee deems it necessary, provided that Grantee shall use commercially reasonable efforts to notify Grantor and/or any lessee of such work if such notice is necessary, as determined by Grantee, to minimize interference with Grantor's and/or any lessee's activities within the Easement Area. Said right shall not relieve Grantor of any obligation it may have as the fee owner to trim or remove trees and brush to prevent danger or hazard to property or persons.
12. **Facilities Relocation:**

- A. Grantor-Requested Relocations: If, during the Term of this Easement, Grantor desires Grantee to relocate all or part of its Facilities, then Grantor shall provide another easement in a location satisfactory to Grantee for the placement of its Facilities upon the same terms and conditions of this Easement, except for property location, and shall pay Grantee for the actual cost and expense of Grantee to relocate its Facilities, and Grantee shall reconvey the portion of the Easement previously required for such relocated Facilities within ninety (90) days after receipt of Grantor's written request. Upon the expiration of the Term or earlier termination of the Easement, Grantee shall inform Grantor regarding Grantee's proposed course of action with respect to the removal and/or abandonment of the Facilities within the Easement Area, and Grantor shall approve or disapprove such course of action within thirty (30) calendar days, provided that Grantor's approval shall not be unreasonably withheld, conditioned or delayed, and provided, further, that if Grantor fails to approve or disapprove such course of action within said thirty (30) calendar day period, then Grantor shall be conclusively deemed to have approved such course of action. So long as Grantor has approved the course of action proposed by Grantee in accordance with the preceding sentence, Grantor shall release Grantee from any and all liability arising from any Facilities abandoned in place within the Easement Area. If Grantee abandons any Facilities in place upon the expiration of the Term or termination or extinguishment of this Easement, and thereafter Grantor or its lessee desires Grantee to remove all or part of such Facilities because Grantor or its lessee has determined that all or part of the Facilities interfere with future development of Grantor's property, Grantee shall, within one hundred eighty (180) days after receipt of Grantor's written notice and demand for removal of all or part of such Facilities, remove such Facilities, at Grantor's or such lessee's sole cost.
- B. Grantee Relocations: If Grantee desires to relocate its Facilities, Grantee shall obtain the written approval of Grantor for the new route on Grantor's property and Grantee shall be solely responsible to pay the cost of any such relocation. Grantor agrees that such approval shall not be unreasonably withheld, delayed or conditioned.
13. Non-exclusivity: Grantor shall not grant, transfer, dedicate or convey any additional easements, servitudes or rights-of-way, upon, over and across the Easement Area without Grantee's prior written consent, which shall not be unreasonably withheld, delayed or conditioned. The Easement granted herein shall be subject to all existing rights of leases (and renewals thereof) and encumbrances, recorded and unrecorded, affecting said land. Prior to the Execution Date, Grantor shall give Grantee a reasonable opportunity to review

Grantor's records regarding any existing leases and/or encumbrances affecting the Easement Area. Grantor may grant or convey any short-term permits, licenses, Tideland Use and Occupancy Permits, leases, or interests in real property at its full discretion so long as said transfer or grants do not conflict with Grantee's rights, access, and maintenance granted herein.

14. **Indemnification:** Grantee shall at all times indemnify and save harmless Grantor and the San Diego County Regional Airport Authority from and against and pay in full any and all loss, damage or expense (collectively "Claims") that Grantor sustains, incurs or is liable for including any and all claims, loss, damage or expense arising out of (A) Grantee's (including its contractors and subcontractors) equipment, construction or maintenance of its Facilities within the Easement Area, excepting any Claims resulting from the negligence or intentional acts of Grantor, its contractors, subcontractors, officers, agents, representatives, invitees, licensees and/or employees; and/or (B) including injury to or death of persons resulting in any manner from Grantee's (including its contractors and subcontractors) actions with respect to this Easement, excepting any Claims resulting from the negligence or intentional acts of Grantor, its contractors, subcontractors, officers, agents, representatives, invitees, licensees and/or employees.
15. **Compliance with Prevailing Wage Laws:** Grantee acknowledges and agrees that: (1) it is the sole and exclusive responsibility of the Grantee, and not Grantor, to ensure that all persons and/or entities who provide any labor, services and/or equipment in connection with any construction or work of improvement on any land or water areas occupied by Grantee, shall comply with the requirements of California's prevailing wages laws (the "PWL"); and (2) it is the sole and exclusive responsibility of Grantee, and not Grantor, to determine whether such construction or work of improvement is subject to the PWL by obtaining a determination by means that do not involve Grantor. If such construction or work of improvement is determined to be subject to the PWL, Grantee shall comply with all applicable provisions of the PWL, and shall ensure that all persons and/or entities who provide any labor, services, equipment and/or materials in connection with such construction or work of improvement shall likewise comply with all applicable provisions of the PWL.
16. **Property Taxes:** This Easement may result in a taxable possessory interest subject to the payment of property taxes. Grantee agrees to and shall pay before delinquency all taxes and assessments of any kind assessed or levied upon Grantee for franchises, licenses or permits for any use or activities of Grantee upon the Easement.
17. **Abandonment of Easement:** If Grantee, in its sole discretion, determines that this Easement is no longer required for the conduct of its business or if this

Easement is abandoned by Grantee, upon receipt of written request from Grantor, Grantee shall furnish Grantor a good and sufficient Quitclaim Deed to Grantor of all of Grantee's right, title and interest in and to this Easement. Notwithstanding the foregoing, if Grantee does not use or abandons the Facilities for a period of five (5) years, Grantor shall have the right to terminate this Easement, and upon receipt of written request from Grantor, Grantee shall provide Grantor a Quitclaim Deed as described above.

18. **Removal of Improvements:** Upon the expiration of the Term or earlier termination of the Easement, Grantee shall inform Grantor regarding Grantee's proposed course of action with respect to the removal and/or abandonment of the Facilities within the Easement Area, and Grantor shall approve or disapprove such course of action within thirty (30) calendar days, provided that Grantor's approval shall not be unreasonably withheld, conditioned or delayed, and provided, further, that if Grantor fails to approve or disapprove such course of action within said thirty (30) calendar day period, then Grantor shall be conclusively deemed to have approved such course of action. So long as Grantor has approved the course of action proposed by Grantee in accordance with the preceding sentence, Grantor shall release Grantee from any and all liability arising from any Facilities abandoned in place within the Easement Area.
19. **Holdover:** Any holding over by Grantee after either expiration or termination shall not constitute a renewal or extension, or give Grantee any rights in or to the Easement, and if Grantee, with Grantor's consent, remains in possession of the Easement Area after Easement expiration or termination, such possession shall be deemed a month-to-month extension terminable upon thirty (30) days' written notice furnished at any time by either party to the other.
20. **Notices:** All notices provided for by this Easement or by law to be given or served upon Grantor or Grantee shall be in writing and: (A) personally served upon Grantor or Grantee, or any person hereafter authorized by either party in writing to receive such notice, or (B) served by certified letter or reputable overnight courier addressed to the appropriate address hereinafter set forth, or to such other address designated in writing by the respective party.

To Grantor

Director, Real Estate
San Diego Unified Port District
Post Office Box 120488
San Diego, CA 92112-0488

To Grantee

Land Services Manager
San Diego Gas & Electric Company
8335 Century Park Court, CP 12A CP
San Diego, CA 92123

Any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the parties so served; provided, however, if served by certified mail, service will be considered completed and binding on the party

served two (2) business days after deposit in the U.S. Mail and if by overnight courier, service will be considered completed and binding on the party served one (1) business day after deposit with such overnight courier.

21. **Assignment – Subagreements**: Grantee shall not assign or transfer the Easement, enter into subagreements, or permit the occupancy of all or any part of the Easement Area without the prior written consent of the Grantor. Notwithstanding the foregoing sentence, Grantee may assign the Easement to (a) any entity controlling, controlled by or under common control with Grantee in connection with any corporate reorganization or restructuring, (b) the surviving entity in the event of any merger with or by Grantee, and/or (c) the acquiring entity in the event of any sale of a majority of Grantee's shares or all or substantially all of Grantee's assets.
22. **Binding Covenants**: This Easement and any covenants, conditions, and restrictions contained herein, shall run with the land, and be binding upon and inure to the benefit of the successors, heirs, executors, administrators, permittees, licensees, agents and assigns of Grantor and Grantee.
23. **Attorneys' Fees**: If either party files any action or brings any proceeding against the other arising from or related to this Easement, the prevailing party shall be entitled to recover from the other party as an element of its costs of suit and not as damages, reasonable attorneys' fees (including fees for in-house counsel), costs and expenses incurred in the action or proceeding, including any appeal thereof. The "prevailing party" within the meaning of this Paragraph 23 shall be the party to the action or proceeding who is entitled to recover its costs of suit for the proceeding, whether or not the same proceeds to final judgment. A party not entitled to recover its costs shall not recover attorneys' fees.
24. **Amendment**: This Easement may be amended or modified only by an instrument duly executed by the Grantor and consented to in writing by Grantee.
25. **Severability**: If any term or provision of this Easement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Easement or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Easement shall be valid and be enforced to the fullest extent permitted by law.
26. **Applicable Laws**: This Easement shall be construed, interpreted and determined in accordance with the laws of the State of California without reference to its choice of law provisions.
27. **Time is of the Essence**: Grantor and Grantee hereby agree that time is of the

essence with respect to this Easement.

28. **District Tenant Lease:** Grantee hereby acknowledges that all or part of its easement with the District is on property leased by Grantor from the San Diego County Regional Airport Authority; such Lease is on file with the District Clerk as Document No. 45267, dated December 17, 2002, as amended. Grantee agrees that its access, maintenance, repairs and rights as granted herein are subject to and subordinate to the aforementioned Lease document and any amendments.
29. **Effectiveness:** It is an express condition of this Easement that the Easement shall not be complete or effective until signed by Grantor and Grantee.

Counterparts: This Easement may be executed in counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute one and the same instrument.

Dated: _____, 20____.

APPROVED AS TO FORM AND LEGALITY
GENERAL COUNSEL

SAN DIEGO UNIFIED PORT DISTRICT

By: _____
Assistant/Deputy

By: _____
Shaun D. Sumner
Assistant Vice President, Real Estate

**SAN DIEGO GAS & ELECTRIC
COMPANY, a California Corporation**

By: _____
Signature

PRINT NAME: _____

PRINT TITLE: _____

Site No. WP160016
Site Name: Port of San Diego
Pacific Highway

SDUPD Docs No. _____

(FOR USE BY SAN DIEGO UNIFIED PORT DISTRICT)

STATE OF CALIFORNIA)

COUNTY OF SAN DIEGO)

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.

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is 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 _____ (Seal)

----- **OPTIONAL** -----

Though the information below is not required by law, it may prove valuable to person relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name _____

- ☐ Individual
☐ Corporate Officer -- Title(s): _____
☐ Partner -- ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

Signer's Name _____

- ☐ Individual
☐ Corporate Officer -- Title(s): _____
☐ Partner -- ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

STATE OF CALIFORNIA)

COUNTY OF SAN DIEGO)

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.

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is 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 _____ (Seal)

OPTIONAL

Though the information below is not required by law, it may prove valuable to person relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name _____

- ☐ Individual
- ☐ Corporate Officer -- Title(s): _____
- ☐ Partner -- ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

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Signer's Name _____

- ☐ Individual
- ☐ Corporate Officer -- Title(s): _____
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- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

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