

DRAFT MEMORANDUM OF UNDERSTANDING
BETWEEN
SAN FRANCISCO PUBLIC UTILITIES COMMISSION
AND
SAN FRANCISCO WAR MEMORIAL AND PERFORMING ARTS CENTER

THIS MEMORANDUM OF UNDERSTANDING (herein "**MOU**") dated hereof for reference purposes only as of January 20, 2010 is entered into by and between the Public Utilities Commission of the City and County of San Francisco ("**SFPUC**"), and the War Memorial Board of Trustees of the San Francisco War Memorial and Performing Arts Center ("**SFWMPAC**") hereinafter sometimes referred to individually as a "Party" and collectively as the "Parties".

RECITALS

A. The purpose of this MOU is to provide for the installation and operation of an on-site solar photovoltaic system at Davies Symphony Hall as part of the City and County of San Francisco's (the "**City**") program to increase its development of solar energy in accordance with the Mayor's Executive Directive 05-107 (Rooftops for Municipal Solar) dated October 26, 2005.

B. The SFWMPAC is the owner of a certain property located at Davies Symphony Hall, 201 Van Ness Avenue, San Francisco. On June 11, 2009, by Resolution No. 09-26, the War Memorial Board of Trustees approved the proposal of the SFPUC to install and operate, at the SFPUC's cost, a solar energy system on the roof of the Davies Symphony Hall, (the "**Premises**"), subject to the SFWMPAC and SFPUC developing and entering into a Memorandum of Understanding concerning the system's installation, operation and maintenance.

C. On May 11, 2009 the San Francisco Planning Department issued a categorical exemption for the Solar Power Project pursuant to the California Environmental Quality Act.

D. The SFPUC currently serves SFWMPAC electricity needs from various generating resources including hydroelectric power from the Hetch Hetchy system. The SFPUC and SFWMPAC desire to use an on-site photovoltaic system to serve some of the SFWMPAC load. Notwithstanding the change in generating resources used to serve SFWMPAC load, nothing in this MOU is intended to interfere with or alter the respective responsibilities of the SFPUC and SFWMPAC as to supply of electric service by the SFPUC to SFWMPAC.

NOW THEREFORE IT IS AGREED AS FOLLOWS:

AGREEMENT

1. Recitals.

The foregoing recitals are true and correct and are incorporated herein by this reference.

2. Definitions.

Whenever used herein, including all appendices hereto, the following terms, when initially capitalized, shall for the purpose of this MOU have the following respective meanings. The singular of a term shall include the plural and the plural shall include the singular.

- (a) Allowed Activities: All activities associated with the design, construction, maintenance and operation of the Solar Power Project, including but not limited to project management and administration, permitting, design, equipment procurement, construction, installation, and commissioning, and all activities associated with contracting for such, including but not limited to, project management and administration, bidding, contracting, and the development and enforcement of performance guarantees and liquidated damages clauses.
- (b) Emergency: A condition that gives rise to, or imminently could give rise to, a serious health and/or safety hazard.
- (c) Environmental Credits: Any and all energy or emission credits or any other renewable energy, emissions reduction or other environmental benefit, whether related to any renewable portfolio standard or other renewable energy purchase requirement or otherwise, whether existing as of the Effective Date or enacted thereafter.
- (d) Normal Operating Hours: The normal operating hours of 8 a.m. to 5 p.m. Monday through Friday.
- (e) Prudent Utility Practice: Those practices, methods and procedures, as modified from time to time, that are currently and commonly used by electric utilities to design, construct and operate electric power facilities dependably, reliably, safely, efficiently and economically, with due regard to the state of the art in the electric power industry, as applied in the State of California or in the Western Electricity Coordinating Council area, whichever better represents the application of the considerations above. Such practices, methods and procedures are not limited to the optimum, but rather to any within the scope of those currently and commonly used.
- (f) Solar Power Project: A photovoltaic system installed at the Premises consisting of photovoltaic panels and their mountings, any bird avoidance devices, as well as associated wiring among panels, and wiring from the panels and other associated wiring (e.g. – data instruments) to the boundary of the Premises, inverter(s), an AC disconnect switch, a DC disconnect switch, junction boxes, the Solar Power Project Meter and wiring to the PG&E main meter.
- (g) Solar Power Project Meter: A time of use revenue-grade meter which will measure the output of the Solar Power Project.

3. Effective Date. The effective date of this MOU (the “**Effective Date**”) shall be the date that this MOU is executed by both Parties conditioned upon the subsequent approval by the SFPUC, in its sole discretion.

4. Term. The term of this MOU shall commence on the Effective Date and shall expire 25 years after the commencement of commercial operation of the Solar Power Project, hereafter (the “**Expiration Date**”). If, with the permission of SFWMPAC, the Solar Power Project remains on the Premises after the

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Expiration Date, such Premises shall continue to be used for the Solar Power Project on all the terms and conditions stated herein, terminable by either Party on ninety (90) days written notice to the other.

5. **Termination.** This MOU may be terminated by the SFPUC or the SFWMPAC upon thirty (30) days prior written notice, for any reason, including but not limited to, a failure to obtain reasonably priced bids for the design and construction of the Solar Power Project.

6. **Access To and Use of the Premises.**

- (a) Permitted Uses. Subject to the provisions of this MOU, SFWMPAC will make the Premises available to the SFPUC for the Allowed Activities. Any amendments or alterations to the Allowed Activities must be pre-approved in writing by SFWMPAC. SFWMPAC approval will not be unreasonably withheld, and in any event, notification by SFWMPAC of its decision will be given within two (2) weeks.
- (b) Access to the Premises. The SFPUC and its agents shall have the non-exclusive right of ingress and egress to and from the Premises over roads, ramps, walkways, and other areas of the Premises designated by the Buildings and Grounds Superintendent of the SFWMPAC (the "Superintendent") and at times designated by the Superintendent. Without limiting the foregoing, the Superintendent shall have the right to alter or amend access routes or access times at any time, and to impose reasonable restrictions on such access; provided SFWMPAC gives the SFPUC reasonable notice of any such alteration or amendment or imposition of any such restrictions. All such access shall be subject to SFWMPAC rules and regulations as amended from time to time, including those pertaining to badge, permitting, and other security requirements, and the requirements of this MOU. The SFPUC acknowledges that a wide variety of rehearsals and public performances are scheduled in the Premises and will use reasonable efforts to ensure that in undertaking the Allowed Activities, SFPUC will not interfere with, disrupt, or interrupt rehearsal and performance activities in the Premises.
- (c) Rights-of-Way for the Benefit of the SFPUC. The SFPUC shall have the use and enjoyment of suitable rights-of-way over lands at or near the Premises in a manner first to be approved by the Superintendent in writing. Such rights-of-way shall be for the purpose of enabling the SFPUC to install and maintain conduits, connections, ducts, pipes, wires, telephone, and incidental accessories, equipment and devices which are necessary or convenient in connection with the Allowed Activities, including any installations necessary to provide connectivity to the SFWMPAC electricity grid and the statewide interconnected electricity grid (collectively, the "**Infrastructure**"), and shall not interfere with the SFWMPAC facilities. All costs relative to the installation, maintenance, repair and replacement of the Infrastructure shall be paid for by the SFPUC, provided, the SFPUC shall not be required to pay for the use of the land or related facilities in which the Infrastructure is placed.
- (d) Rights-of-Way for the Benefit of the SFWMPAC. SFWMPAC shall have the right, at all times and for any purpose, to enter upon the Premises without unreasonably or unduly interfering with the Allowed Activities.
- (e) Changes to SFWMPAC Premises. The SFPUC acknowledges and agrees that (a) the SFWMPAC shall have the right at all times to reasonably change, alter, expand, and contract the Premises or

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any portion thereof, and (b) SFWMPAC has made no representations, warranties, or covenants to the SFPUC regarding the design, construction, pedestrian traffic, SFWMPAC schedules, or views of or relating to SFWMPAC or the Premises. Without limiting the generality of the foregoing, the SFPUC acknowledges and agrees that the SFWMPAC may from time to time adopt rules and regulations relating to security and other operational concerns that may affect the SFPUC's business and its use of the Premises. The SFWMPAC will use reasonable efforts to minimize the effect of SFWMPAC changes on the SFPUC's business.

- (f) Notice of Scheduled Work. Unless otherwise agreed by the Parties, at least two weeks before any scheduled work by the SFPUC, the SFPUC shall provide notice to the Superintendent.
- (g) Compliance with Laws/Permits and Approvals. The SFPUC, at its expense, shall comply with all laws, regulations and requirements of the Federal, State, County and Municipal authorities, now in force or which may hereafter be in force relative to the SFPUC's use of the Premises.
- (h) Roof Leak Test. As part of any eventual contract to install the Solar Power Project, the SFPUC may require the contractor to perform a roof leak test prior to the start of any construction. The SFPUC shall provide SFWMPAC at least five (5) business days advance written notice of any such roof leak test and shall afford SFWMPAC a reasonable opportunity to have a representative present upon such test.
- (i) Roof Repairs. The SFPUC will be responsible, at the SFPUC's sole cost and expense prior to the installation of the Solar Power Project, to perform any roof repair or maintenance necessitated by or required to enable or support the Solar Power Project. In the event that the SFPUC determines, in its sole discretion, that the cost associated with said roof repair or maintenance are prohibitive, the SFPUC may elect to terminate this MOU and not to proceed with the Solar Power Project on the Premises.
- (j) Removal. The SFPUC, at its sole cost and expense, shall remove the Solar Power Project upon the termination of this MOU within 180 days of such termination. The SFPUC shall surrender the Premises in the same condition as received, free from hazards and clear of all debris. Subject to any applicable building permits, the SFPUC shall remove all of its property and improvements from the Premises. The SFPUC shall provide at least thirty (30) days written notice to the SFWMPAC of its intention to remove the Solar Power Project and shall complete removal of the Solar Power Project within one hundred and eighty (180) days of such notice.
- (k) Repairs After the Installation of the Solar Power Project. The SFWMPAC shall provide the SFPUC Power Enterprise Energy Generation Projects Manager with written notice at least one hundred and eighty (180) days prior to any planned roof repair, rehabilitation projects or other projects that could affect a Solar Power Project. Subject to any applicable building permits, if a Solar Power Project must be moved or removed to accommodate such SFWMPAC projects, the SFPUC shall move or remove the Solar Power Project within one hundred and eighty (180) days, unless the Parties agree otherwise. Thereafter, the SFPUC, at its sole option, may reinstall the Solar Power Project on the Premises subject to the conditions of this MOU.
- (l) "As Is" Condition. Subject only to the requirements of subparagraph 6(n) below, the SFPUC accepts the Premises in its "As Is" condition, without representation, warranty or covenant of any

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kind by the SFWMPAC, including without limitation, the suitability of the Premises for the SFPUC's proposed use. The SFPUC waives any and all rights to seek reimbursement or indemnity from SFWMPAC for any loss or cost relating to the condition of the Premises.

- (m) Maintenance: SFPUC's Responsibilities. Except as set forth in subparagraph 6(n) below, the SFPUC shall at all times during the term of this MOU, at its sole expense and cost, maintain in good working order, condition and repair all improvements placed in or on the Premises pursuant to this MOU and shall promptly maintain and repair such improvements. The SFWMPAC shall not be obligated to make any repairs, replacement or renewals of any kind to the Solar Power Project. The SFPUC shall utilize best efforts to repair damage to the Premises caused by the SFPUC or its agents within ninety (90) days from receipt of written notice from the SFWMPAC.
- (n) Maintenance: SFWMPAC's Responsibilities. The SFWMPAC shall, at its sole cost and expense, maintain the structural and physical integrity of the Premises in the "As Is" condition in which it was made available for the installation of the Solar Power Project.
- (o) Charges. There shall be no charge for the use of the Premises for the Allowed Activities in accordance with this MOU. Any utilities or services provided by the SFWMPAC to the SFPUC in connection with the Allowed Activities shall be at the SFWMPAC's standard rates, as applied to other SFWMPAC tenants. If any possessory interest taxes are due as a result of the SFPUC's use of the Premises, then such taxes shall be the SFPUC's responsibility.
- (p) Limitations on Use. The SFPUC shall not
 - (i) create a nuisance or commit or permit any waste on the Premises;
 - (ii) permit the dumping or other disposal of landfill, refuse, hazardous material or any other material that could pose a hazard to health or safety or the environment, on the Premises;
 - (iii) create or permit any liens, including mechanic's, materialmen's or tax liens, to be placed on the Premises as a result of the SFPUC's activities without promptly discharging the same; and
 - (iv) do anything in, on, under or about the Premises that could cause damage or interference to any of SFWMPAC's facilities, or the programs, performances, or activities therein.
- (q) Antennae and Telecommunications Dishes. No antennae, telecommunications dish, wireless telecommunications system, or other similar facilities other than solar monitoring, metering, and meteorological equipment may be installed on the Premises without prior written approval of the Superintendent.
- (r) Exercise of Due Care. The SFPUC shall use, and shall cause its agents to use, due care at all times to avoid any damage or harm to SFWMPAC facilities and the Premises.

7. **Procurement and Installation of Solar Power Project by the SFPUC.**

- (a) Installation of Solar Power Project by the SFPUC. The SFPUC may install a Solar Power Project at the Premises in accordance with the requirements of this MOU. Before beginning any such work, the SFPUC shall obtain any and all permits and other approvals, including without limitation, building permits and other federal, state, county and municipal permits or approvals, necessary for the installation of the Solar Power Project on the Premises and shall maintain such approvals as necessary throughout the Term of this MOU. Upon request, the SFPUC shall provide to the SFWMPAC copies of all such permits and approvals.
- (b) Schedule and Conditions. Before issuance of the request for proposals for the design and construction of the Solar Power Project, the SFWMPAC and the SFPUC shall agree on conditions and a schedule for the work that minimize the likelihood of disruption of the SFWMPAC's operations. The SFPUC shall incorporate such conditions and schedule shall be incorporated into any third party agreements for the design and construction of the Solar Power Project.
- (c) Cost Responsibility for the Procurement and Installation of the Solar Power Project by the SFPUC. The SFPUC will be responsible for all the costs of the purchase and installation of the Solar Power Project, including but not limited to all utility services provided to the Premises for such purpose, and all of the construction management costs. In addition, subject to the receipt of adequate documentation of staff time expended, the SFPUC shall reimburse the SFWMPAC for its reasonable staff time devoted to providing access to the Premises and reviewing and commenting on the Solar Power Project design, in accordance with the schedule of fees attached as Appendix A, up to a total amount not to exceed five thousand dollars (\$5,000.00).
- (d) Warranty for the Photovoltaic System. Irrespective of the entity named in any warranty for a photovoltaic system component that comprises the Solar Power Project, all benefits from any such warranty shall accrue to the SFPUC.
- (e) Performance Guarantees and Liquidated Damages. Irrespective of the entity named in any performance guarantee or liquidated damages clause from a third party contractor for the installation of the Solar Power Project, all benefits from any such performance guarantee or liquidated damages clause shall accrue to the SFPUC except for Special SFWMPAC Liquidated Damages. The SFWMPAC shall promptly provide to the SFPUC any amounts collected pursuant to a performance guarantee and any liquidated damages it receives from a third party contractor associated with the installation of a Solar Power Project except for Special SFWMPAC Liquidated Damages.
- (f) Special SFWMPAC Liquidated Damages. The SFPUC will insert the following language regarding special liquidated damages into the contract with the Design Builder and SFPUC

Special SFWMPAC (Davies Symphony Hall) Liquidated Damages.

Design-Builder acknowledges that during performance of the Work under this Contract, regularly scheduled rehearsals and performances will continue at Davies Symphony Hall. As set forth in

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the Contract Documents, Design-Builder must coordinate its Work to avoid the disruption, delay and cancellation of such rehearsals and performances. It is understood and agreed by and between Design-Builder and the City that the City will suffer financial loss if rehearsals or performances are cancelled resulting from, arising out of, or connected with Design-Builder's performance of the Work. Design-Builder and City further understand and agree that the actual cost to the City which would result from rehearsal or performance cancellations caused by Design-Builder's performance of the Work is extremely difficult, if not impossible, to determine. Accordingly, Design-Builder and the City agree that as liquidated damages (but not as a penalty), Design-Builder shall pay the City the following amounts:

1. For each rehearsal at Davies Symphony Hall cancelled resulting from, arising out of or connected with Design-Builder's performance of the Work -- \$20,000
2. For each performance at Davies Symphony Hall cancelled resulting from, arising out of or connected with Design-Builder's performance of the Work -- \$100,000

The total amount of Special SFWMPAC Liquidated Damages payable to City under this paragraph shall not exceed \$500,000.

8. Ownership of the Solar Power Project. The Solar Power Project shall be and shall remain the property of the SFPUC. Any and all of the Environmental Credits associated with the Solar Power Project shall be and shall remain the property of the SFPUC. The SFPUC will be solely responsible for the payment of federal, state, local and other taxes, fees or other assessments as may be applicable to the SFPUC by reason of its installation and ownership of the Solar Power Project. Fixed and unmovable parts of the Solar Power Project (including conduit and replacement roofing material) will become the property of the SFWMPAC upon final removal of the Solar Power Project by the SFPUC upon expiration or termination of this MOU.

9. Operation of the Solar Power Project.

- (a) Operation of the Solar Power Project. The SFPUC will be responsible for all the Allowed Activities, including operation, associated with the Solar Power Project that are not made the responsibility of the SFWMPAC pursuant to this MOU or an executed written agreement between the Parties. The SFPUC shall undertake the Allowed Activities in accordance with the terms of this MOU and Prudent Utility Practice; and in compliance with all permits and applicable laws and regulations.
- (b) Planned Service Interruptions. The SFPUC will work with the SFWMPAC to minimize the number and extent of any interruptions in electric service related to the Allowed Activities. All planned electric service interruptions related to the Allowed Activities shall be subject to approval by the SFWMPAC, which approval shall not be unreasonably withheld. In the event of a planned electric service interruption, the SFPUC shall submit a written request to the Superintendent at least ten (10) business days before the interruption date. A failure on the part of the SFWMPAC to respond within five (5) business days shall be deemed an approval of the service interruption. The SFPUC will not be responsible for any of the SFWMPAC's direct or indirect expenses caused by or related to an electric service interruption or its cancellation.

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- (c) Planned and Emergency Shut Downs by SFWMPAC. In the event that SFWMPAC needs to shut down all or a portion of the electrical system at the Premises, the SFWMPAC shall provide as much advance notice to the SFPUC Power Enterprise Energy Generation Projects Manager as possible. For planned shutdowns, the SFWMPAC shall provide at least ten (10) business days written notice to the SFPUC. In the event of an emergency shutdown, the SFWMPAC shall provide the SFPUC as much prior notice as possible.
- (d) Operation of the Solar Power Project during Emergencies. In an Emergency, if necessary to protect the health or safety of the public or the SFWMPAC employees, the SFWMPAC may shut down the Solar Power Project, provided that it notifies and seeks approval for these actions from the Manger of Energy Generation Projects of the SFPUC. The SFWMPAC shall make all reasonable attempts to notify the SFPUC and to obtain approval for such actions prior to taking them. If prior notice and approval are impossible, the SFWMPAC shall notify the SFPUC and obtain approval as soon as possible thereafter. The SFWMPAC shall work with the SFPUC to reconnect the Solar Power Project as soon as possible. The parties shall establish mutually agreeable emergency protocols for implementation during Emergencies.

10. Use of the Output from the Solar Power Project.

- (a) Use of the Output. The output from the Solar Power Project shall be used to serve the SFWMPAC's electric needs.
- (b) Metering. The SFPUC shall meter the output of the Solar Power Project using the Solar Power Project Meter owned, operated, maintained and read by the SFPUC. The SFPUC shall be solely responsible for all costs and charges associated with such metering. The SFWMPAC shall provide, at no expense to the SFPUC, a suitable location for all meters and associated equipment. The Solar Power Project Meter shall be sealed and the seals shall be broken only upon occasions when the meter is to be inspected, tested or adjusted, and representatives of the SFWMPAC shall be afforded reasonable opportunity to be present upon such occasions. The meters shall be tested at any reasonable time upon request therefore by either Party. Any metering equipment found to be defective or inaccurate shall be repaired and re-adjusted or replaced. If a meter fails to register or if the measurement made by a meter during a test varies by more than two (2) percent from the measurement made by the standard meter used in the test, an adjustment to correct all meter records of measurements made by the inaccurate meter shall be made for:(i) the period since the last meter test, or (ii) the actual period during which inaccurate measurements were made if the SFPUC determines this period can be established, provided that the period covered by the correction shall not exceed six (6) months or half the time since the previous test. If necessary, the corrections may be estimated from the best information available for the period of defect or inaccuracy.
- (c) Payment for Electricity from the Solar Power Project. The SFWMPAC shall pay the SFPUC for the output from the Solar Power Project used to serve the SFWMPAC's loads, as measured by the Solar Power Project Meter, at the otherwise applicable rates for the provision of electric service by the SFPUC to the SFWMPAC as set by the SFPUC and approved by the Board of Supervisors from time to time.

11. Insurance. The SFPUC shall require that its vendors, contractors, and agents obtain and

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maintain insurance coverage for the Solar Power Project in the types and amounts approved by the City's Risk Manager. All insurance policies shall name as additional insured the City and County of San Francisco, the SFWMPAC, the SFPUC, and their officers, directors, employees, and agents.

12. Security. The SFWMPAC shall provide the same level of security at the Premises as it otherwise provides at its other facilities.

13. Damages/Indemnity.

- (a) It is the understanding of the parties that the SFWMPAC shall not expend any funds due to or in connection with the SFPUC's construction and installation or maintenance of the Solar Power Project, or use of the Premises, except as otherwise set forth herein. Therefore, the SFPUC agrees to indemnify the SFWMPAC and to be responsible for all costs associated with all claims, damages, liabilities or losses which arise out of the SFPUC's use of the Premises, including but not limited to the release or handling of hazardous materials on or about the Premises by the SFPUC, its agents or contractors, but excluding pre-existing hazardous materials (which are the responsibility of the SFWMPAC or its tenants) and any injury or death of any person or damage of any property caused solely by the negligence or willful misconduct of the SFWMPAC. In no event shall the SFPUC be liable, regardless of whether any claim is based on contractor or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits, arising out of or in connection with this MOU or the services performed in connection with this MOU.

The foregoing obligation of the SFPUC shall survive the expiration or termination of this MOU. As used herein, "hazardous materials" shall mean any substance, water or material which has been determined by any state, federal or local government authority to be capable of posing a risk of injury to health, safety or property.

- (b) The SFPUC will ensure that the SFWMPAC is indemnified to the same extent that the SFPUC is indemnified by any of the SFPUC's vendors, contractors or agents for the Solar Power Project.

14. No Assignment. The SFPUC shall not assign, sublet, encumber, or otherwise transfer, whether voluntarily or involuntarily or by operation of law, the Premises or any part thereof, or any interest herein, without the SFWMPAC's prior written consent.

15. Cooperation. Subject to the terms and conditions of this MOU, the SFWMPAC and SFPUC agree to use reasonable efforts to do, or cause to be done, all things reasonably necessary or advisable to carry out the purposes of this MOU and SFPUC's use of the Premises contemplated hereby as expeditiously as practicable, including, without limitation, performance of further acts and the execution and delivery of any additional documents in form and content reasonably satisfactory to both Parties. Notwithstanding anything to the contrary in this MOU, neither the SFWMPAC nor the SFPUC are in any way limiting their discretion or the discretion of any department, board or commission with jurisdiction over the Solar Power Project from exercising any discretion available to such department, board or commission with respect to the Solar Power Project, including but not limited to the discretion to

- (i) make such modifications deemed necessary to mitigate significant environmental impacts,
- (ii) select other feasible alternatives to avoid such impacts,
- (iii) balance the benefits against unavoidable significant impacts prior to taking final action if such

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significant impacts cannot otherwise be avoided, or

(iv) determine not to proceed with the proposed Solar Power Project.

In addition to any conditions described in this MOU, the obligations of the SFWMPAC and the SFPUC are expressly subject to the receipt of all legally required approvals following environmental review.

16. Dispute Resolution. The SFWMPAC and the SFPUC will cooperate to attempt to resolve issues that arise under this MOU informally, promptly and fairly. If staff involved in accomplishing the tasks set forth in this MOU are unable to resolve an issue after good faith attempts to do so, either Party may request a meeting of the appropriate managers of each department to address the issue. If such a meeting is requested, it shall be held within two (2) weeks unless the Parties agree to a later date.

17. Miscellaneous.

- (a) This MOU may be amended or modified only by a written agreement signed by the SFWMPAC and the SFPUC.
- (b) No waiver by any Party of any of the provisions of this MOU shall be effective unless in writing and signed by an authorized representative, and only to the extent expressly provided in such written waiver.
- (c) This MOU (including the Attachments) contains the entire understanding between the Parties as of the date of this MOU, and all prior written or oral negotiations, discussions, understandings and agreements are merged herein.
- (d) Notwithstanding anything to the contrary set forth herein, no officer, director or employee of the SFPUC has the authority to bind the SFPUC hereto unless and until the San Francisco Public Utilities Commission approves this MOU.
- (e) All transactions described herein are subject to and must be conducted in accordance with the applicable requirements of the City's Charter and codes and applicable state and/or federal laws.

18. Notices. All notices, demand, consents or approvals which are or may be required to be given by either Party to the other under this MOU shall be in writing and shall be deemed to have been fully given when delivered in person to such representatives of the SFWMPAC and the SFPUC as shall from time to time be designated by the Parties for the receipt of notices, or when deposited in the United States mail, postage prepaid, and addressed, if to the SFPUC to:

San Francisco Public Utilities Commission
Attn: Barbara Hale
Assistant General Manager, SFPUC Power Enterprise
1155 Market Street, 4th Floor
San Francisco CA, 94103

Tel No. (415) 934- 5751
Fax No. (415) 554-2465

and if to the SFWMPAC to:

Kevin Kelly, Buildings and Grounds Superintendent
San Francisco War Memorial and Performing Arts Center
401 Van Ness Avenue, Suite 110

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Fax No. (415) 621-5091

Tel No. (415) 554-6353

or such other address with respect to either Party as that Party may from time to time designate by notice to the other given pursuant to the provisions of this Paragraph.

IN WITNESS WHEREOF, the Parties have caused this agreement to be executed as of the date first written above.

AGREED TO AS WRITTEN ABOVE:

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation operating by and through its WAR MEMORIAL BOARD OF TRUSTEES

By: : 
Elizabeth Murray, Managing Director

Date: 1/20/10

AGREED TO AS WRITTEN ABOVE:

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation operating by and through its PUBLIC UTILITIES COMMISSION

By: 
Ed Harrington, General Manager

Date: 01/20/2010

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SCHEDULE OF FEES

Subject to the receipt of adequate documentation of staff time expended, the SFPUC shall reimburse the SFWMPAC for its reasonable staff time devoted to providing access to the Premises and reviewing and commenting on the Solar Power Project design, in accordance with the following schedule of fees:

<u>Employee Classification</u>	<u>7/1/09 – 6/30/10</u>	<u>7/1/10 – 6/30/11</u>
7120 Building & Grounds Superintendent		
Per Hour – Straight Time	\$56.60	*
Per Hour – Overtime	82.92	*
7205 Chief Engineer		
Per Hour – Straight Time	\$49.33	*
Per Hour – Overtime	72.27	*
7335 Senior Stationary Engineer		
Per Hour – Straight Time	\$44.06	*
Per Hour – Overtime	64.56	*
Hours worked between 5pm-12am	+8.5%	+8.5%
Hours worked between 12am-7am	+10%	+10%
7334 Stationary Engineer		
Per Hour – Straight Time	\$38.87	*
Per Hour – Overtime	56.96	*
Hours worked between 5pm-12am	+8.5%	+8.5%
Hours worked between 12am-7am	+10%	+10%
7377 Stage Electrician		
Per Hour – Straight Time	\$41.83	*
Per Hour – Overtime	62.74	*
8207 Building & Grounds Patrol Officer		
Per Hour – Straight Time	\$27.11	*
Per Hour – Overtime	40.52	*
Hours worked between 5pm-12am	+8%	+8%
Hours worked between 12am-7am	+10%	+10%

* Hourly rates for 7/1/10-6/30/11 to be confirmed following San Francisco Board of Supervisors' approval of Annual Salary Ordinance for Fiscal Year 2010-11.