

**Electric Service Agreement  
Between  
The Transbay Joint Powers Authority  
And the City and County of San Francisco**

This Electric Service Agreement (“ESA”), dated as of \_\_\_\_\_, 2013, is by and between the Transbay Joint Powers Authority, a joint powers authority created under California Government Code Sections 6500 *et seq.* (“TJPA”), and the City and County of San Francisco, a municipal corporation (“City”), acting by and through its Public Utilities Commission (“SFPUC”). The TJPA and the City, by and through SFPUC, are sometimes referred to as a “Party” and are collectively referred to as the “Parties.”

**RECITALS**

This ESA is made with reference to the following facts and circumstances:

A. The TJPA is constructing a new multi-modal regional transportation center, including an underground train box (“Transit Center”), Downtown Rail Extension (“DTX”), bus ramps and bus storage facility at Stillman Street (“Bus Facilities”), and related facilities in San Francisco (collectively, “Transbay Project”).

B. The Transbay Project will benefit the City and the public by providing 125,000 construction and other jobs, adding approximately \$87 billion in gross regional product, increasing property values in the vicinity of the Transit Center by \$3.7 billion, and adding new open space to the area, while making the Bay Area more transit friendly on an energy efficient basis.

C. The TJPA wishes to procure reliable, economic, and clean electric service to the Transbay Project and the City wishes to provide such electric service.

D. The City’s provision of electric service to the TJPA benefits the City and its residents and is consistent with the specific requirements and the legislative intentions of the Raker Act.

E. Pursuant to City Charter Article 8B, Section 16.101 and Administrative Code Article 99, the City has the authority and has adopted a policy to supply electricity through SFPUC where feasible to all new City developments.

F. The City is a member agency of the TJPA and holds three seats on the TJPA Board of Directors. The City provides certain services to the TJPA, including legal counsel, right of way and other real property acquisition, surveys and mapping, and construction drawing review. The TJPA Board regularly meets in San Francisco City Hall and its meetings are televised on SFGOVTV.

G. Under this ESA the City, through SFPUC, shall be the primary provider of electric power service to portions of the Transbay Project as specified below.

any failure of the TJPA to attend or respond to a meeting request shall not waive this requirement for any future meetings or discussions. The TJPA shall have the right, but not the obligation, to exercise any available review of the design, construction, or installation of the PG&E Equipment available to SFPUC, including any audit rights. The TJPA agrees to exercise its rights in this Section 2(a)(i) in a timely manner consistent with industry practices and to bear responsibility for delays caused by the exercise of the TJPA's rights.

- ii. SFPUC shall be responsible for the design, construction, installation, and maintenance of the SFPUC Equipment and any other required infrastructure in accordance with **Good Utility Practices** and in a manner consistent with the phased timetable, plans, and milestones for the Transbay Project. As used in this ESA, **Good Utility Practices** means the practices and methods that should reasonably be expected to accomplish the desired result in a manner consistent with law, regulation, permits, codes, standards, equipment manufacturer's recommendations, reliability, safety, environmental protection, economy, and expedition.
- iii. SFPUC's responsibilities with regard to the design, construction, and installation of the SFPUC Equipment shall include obtaining any necessary permits and performing any necessary trenching.
- iv. SFPUC will own, operate, and maintain all SFPUC Equipment to be installed up to the **TJPA Delivery Point**. The SFPUC Equipment shall be designed, installed, and operated to provide the Transbay Project with sufficient dedicated capacity and line carrying capability to supply the Transbay Project's projected maximum electric load at full build-out of the Transbay Project, or with the TJPA's written consent and approval, equivalent facilities. The specifications and standards for all SFPUC Equipment shall be consistent with Good Utility Practices and subject to the review and approval of the TJPA, which shall not be unreasonably withheld. As used in this ESA, **TJPA Delivery Point** means the bus duct termination fittings at the transformer vault wall.
- v. SFPUC shall timely provide the TJPA with information on the design and installation of the SFPUC Equipment. In particular, SFPUC shall provide the TJPA with design specifications and construction drawings for the SFPUC Equipment in advance of the preparation of 100% Construction Drawings to permit the TJPA a reasonable time to comment on the Construction Drawings. The TJPA agrees to exercise its rights in this Section 2(a)(v) in a timely manner consistent with industry practices and to bear responsibility for delays caused by the exercise of the TJPA's rights.

b. **TJPA Responsibilities.**

- i. The TJPA shall provide SFPUC with any access agreements, licenses, and permits within the TJPA's control that are necessary for SFPUC to enter

c. **Electric Service Billing.**

- i. On a monthly basis, SFPUC shall bill the TJPA for the cost of the Electric Service provided directly to the TJPA, which bill shall be due and owing within 30 days after receipt. The bill shall show metered energy received by the TJPA, all billing parameters, rates and factors, and any other data reasonably necessary to calculate monthly payments due to SFPUC.
- ii. SFPUC shall separately bill each of the TJPA's non-transit tenants ("TJPA Tenants") for the cost of the Electric Service provided to them, and SFPUC will be solely responsible for collecting any amounts due and owing SFPUC from the TJPA Tenants. The TJPA shall have no liability for electric service to the TJPA Tenants, but the TJPA shall be obligated to include in tenant leases provisions for electric service connection, billing and payment, and shall provide to SFPUC information necessary for SFPUC to provide service to and collect amounts owing from the TJPA Tenants.
- iii. The Parties will resolve any billing disputes related to SFPUC's provision of Electric Service to the TJPA pursuant to the billing dispute procedure set forth in Exhibit C.
- iv. The TJPA may dispute invoiced amounts, but shall pay to SFPUC at least the undisputed portions of invoiced amounts on or before the due date. When the billing dispute is resolved, the Party owing shall pay the amount owed within 15 business days after the date of such resolution.

**Section 4. DELIVERY OF ELECTRICITY**

- a. SFPUC shall provide Electric Service to the Transbay Project at the TJPA Delivery Point and at the delivery points for the Bus Facilities, starting on January 1, 2017 for equipment commissioning and testing, and on October 1, 2017 for commercial operations. These dates may be amended by agreement of the Parties without further approvals.
- b. SFPUC shall provide Electric Service in accordance with Good Utility Practices.
- c. SFPUC shall ensure that staff capable of responding to any interruption in service or operations is available to respond to the TJPA on a 24 hours per day, 7 days per week, and 365 days per year basis.

**Section 5. ENERGY EFFICIENCY INCENTIVES**

SFPUC shall pay the TJPA up to \$2,000,000 in Energy Efficiency Incentives in the following increments:

- a. Within 60 days after SFPUC provides the TJPA with a statement detailing the final cost for providing the dual 12-kV option from PG&E, SFPUC shall pay the TJPA fifty percent of the identified Design Team Incentives, up to \$750,000.

the Parties may develop a different, substantially equivalent, rate stabilization mechanism. The obligation to pay the amount of any accumulated increases or decreases in excess of 5% shall survive any default under this ESA.

- ii. If SFPUC has not yet adopted an applicable tariff, and applicable PG&E rates increase 5% or more in each of two successive years, the TJPA (not including the TJPA Tenants) will have the option to require SFPUC to adopt and apply a tariff based on SFPUC's cost of service no later than the next scheduled cost of service review, as required by Charter section 8B.125.2. If the TJPA elects to take service under this subsection (d)(ii), the annual review provided for in subsections (a) and (c) above shall occur at the time of each SFPUC cost of service review rather than annually.

## **Section 7. ALTERNATIVE ENERGY SOURCES**

- a. The TJPA is expressly permitted to purchase energy from third-party suppliers ("**Alternative Energy Sources**") and/or utilize energy sources installed behind SFPUC's meter ("**On-Site Energy Sources**"), at the times and in the amounts provided below, provided that (i) the TJPA offers SFPUC the right to partner with the TJPA to develop or otherwise participate in utilizing the Alternative Energy Source; (ii) the TJPA pays all of the costs necessary for or caused by use of the Alternative Energy Source, including costs incurred by SFPUC; and (iii) such provision of electricity is permitted by applicable law and SFPUC contracts, and consistent with Good Utility Practice.
- b. **Alternative Energy Sources.** Beginning ten years after the Commercial Operation Date, the TJPA can obtain energy from Alternate Energy Sources for up to 10 percent of its annual energy use (based on TJPA usage (not including TJPA Tenant usage) during the twelve months prior to December 31 of the previous year).
- c. **On-Site Energy Sources.**
  - i. Beginning ten years after the Commercial Operation Date, the TJPA can obtain energy from On-Site Energy Sources for up to 10 percent of its annual energy use, as described in subsection (b).
  - ii. Beginning twenty years after the Commercial Operation Date, the TJPA can obtain energy from On-Site Energy Sources for up to 20 percent of its annual energy use, as described in subsection (b).
  - iii. Beginning thirty years after the Commercial Operation Date, the TJPA can obtain energy from On-Site Energy Sources for up to 30 percent of its annual energy use, as described in subsection (b).

## **Section 8. COORDINATION WITH PG&E**

- a. SFPUC shall be solely responsible for securing the necessary services from PG&E or other providers, including any costs and charges associated therewith, to

- iii. SFPUC shall at all times take steps necessary to avoid causing delay to the schedule for construction of the Transbay Project. If SFPUC is unable to provide test energy and sufficient time for commissioning to provide Electric Service to the Transbay Project on or before the Commercial Operation Date or Electric Service to the Transbay Project is interrupted, then it shall arrange for alternate Electric Service to the Transbay Project at the cost the TJPA would otherwise be required to pay for electric service under this ESA for the duration of any such delay or interruption, except to the extent the delay or interruption was caused in whole or in part by the TJPA or its contractors. Where the delay or interruption was caused in part by the TJPA or its contractors, the TJPA shall pay the costs to provide alternate Electric Service to the Transbay Project in proportion to the fault by the TJPA or its contractors.
- iv. If SFPUC fails to perform under this ESA for any reason other than Uncontrollable Forces, SFPUC shall indemnify the TJPA from any costs, reasonable attorneys' fees or damages arising from such failure, except to the extent that the failure is caused in whole or in part by the TJPA or its contractors. Where SFPUC's failure to perform was caused in part by the TJPA or its contractors, SFPUC shall indemnify the TJPA in proportion to SFPUC's degree of fault for the failure. The TJPA shall notify SFPUC in writing if it determines that SFPUC's failure to perform will cause material damage in excess of \$1 million to the TJPA. SFPUC shall notify the TJPA in writing whether SFPUC will continue to indemnify the TJPA. SFPUC shall use best efforts to provide the notice within 30 days after receipt of notice from the TJPA, or sooner if possible, and shall in any event provide the notice within 60 days.
- 1) If SFPUC does not agree to continue to indemnify the TJPA or fails to respond within the 60 day period, then the TJPA (A) may terminate the ESA by giving written notice to SFPUC within 30 days after receipt of SFPUC's notice or failure to respond, (B) seek service from an alternative energy supplier, and (C) will no longer have any obligations under the ESA.
  - 2) If the TJPA terminates the ESA under this Section 10(b)(iv), SFPUC will be liable for up to \$3 million for (A) the TJPA's actual and incidental damages incurred from changing service providers and obtaining replacement Electric Service, and (B) the TJPA's consequential damages caused by SFPUC's default resulting from delays in obtaining or disruptions in electric service associated with changing service providers or obtaining replacement energy. Under no circumstance, however, shall the TJPA's actual, incidental, or consequential damages include lost energy efficiency incentives or costs resulting from increased rates or charges from a new provider, including costs charged to the TJPA by a provider to cover the income tax consequences of equipment constructed for TJPA service. In addition, SFPUC will refund to the TJPA within 30 days after the TJPA's notice of

- e. **As-Is Condition.** If any SFPUC Equipment is transferred to the TJPA as a result of a default by either Party, the equipment shall be transferred without warranty in as-is condition and SFPUC shall bear no responsibility for the subsequent ownership, operation, or use of the equipment, except that SFPUC shall continue to bear liability for any negligent design or construction of the equipment.
- f. **Force Majeure.** The section does not apply to any default caused by Uncontrollable Forces, as addressed in Section 13 below.

**Section 11. INDEMNIFICATION**

- a. SFPUC shall defend the TJPA against any claims or lawsuits, whether in court or before regulatory agencies, initiated by PG&E, any public agency that has a contract to purchase power from the City, or any other party related to SFPUC's legal authority to provide Electric Service to the TJPA as required by this ESA. SFPUC shall also indemnify the TJPA from any costs, including attorneys' fees, expert fees, court costs, compensation, and damages arising from such claims or lawsuits, provided that SFPUC shall not be required to indemnify or defend against any claims or lawsuits caused by the TJPA's active negligence or willful misconduct. SFPUC shall take any action necessary, including initiating and diligently pursuing administrative or legal proceedings, to secure all necessary connections for the provision of electricity under this ESA. This provision shall remain in force for the term of the ESA.
- b. Consistent with California Civil Code section 2782, the TJPA shall defend, indemnify, and hold harmless the City, its boards and commissions, and all of its officers, directors, agents, members, employees, authorized representatives, or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, from all claims, suits actions, losses and liability of every kind, nature, and description, including but not limited to reasonable attorney's fees, directly arising out of, connected with, or resulting from the performance of the TJPA's construction activities related to this ESA. This indemnification shall not be valid in the instance where the loss is caused by the sole negligence or intentional tort of any person indemnified in this section.
- c. Consistent with California Civil Code section 2782, the City shall defend, indemnify, and hold harmless the TJPA, its boards, and all of its officers, directors, agents, members, employees, authorized representatives, or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, from all claims, suits actions, losses and liability of every kind, nature, and description, including but not limited to reasonable attorney's fees, directly arising out of, connected with, or resulting from the performance of SFPUC's construction activities related to this ESA. This indemnification shall not be valid in the instance where the loss is caused by the sole negligence or intentional tort of any person indemnified in this section.
- d. Each Party acknowledges that any claims, demands, losses, damages, costs, expenses, and legal liability that arise out of, result from, or are in any way connected with the release or spill of any legally designated hazardous material,

elsewhere, or to transmit such electricity, but do not prevent SFPUC from purchasing and providing other electricity supplies from the California ISO or other sources. In such circumstances, SFPUC shall be required to continue service under the terms of this ESA.

#### **Section 14. GENERAL PROVISIONS**


- a. This ESA may be amended or modified only in writing, subject to the same approval process required for this ESA. The General Manager of SFPUC and the Executive Director of the TJPA may authorize, without additional approvals, amendments or modifications that do not materially alter the rights and/or obligations of the Parties.
- b. No waiver by any party of any of the provisions of this ESA shall be effective unless in writing and signed by the SFPUC General Manager or the TJPA Executive Director, and only to the extent expressly provided in such written waiver.
- c. This ESA (including the Exhibit(s) hereto) contains the entire agreement between the Parties and all prior written or oral negotiations, discussions, understandings, and agreements are merged herein.
- d. The section and other headings of this ESA are for convenience of reference only and shall be disregarded in the interpretation of this ESA.
- e. This ESA has been drafted through a cooperative effort of both Parties, and both Parties have had an opportunity to have this ESA reviewed and revised by legal counsel. No Party shall be considered the drafter of this ESA, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this ESA.
- f. This ESA may be executed in two or more counterparts, each of which shall be deemed an original agreement, but all of which taken together shall constitute one and the same instrument.
- g. The formation, interpretation, and performance of this ESA shall be governed by the laws of the State of California. Venue for all litigation relating to the formation, interpretation, and performance of this ESA shall be in San Francisco.
- h. Should the application of any provision of this ESA to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (1) the validity of this ESA shall not be affected or impaired thereby, and (2) such provisions shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.
- i. This ESA and the TJPA's rights, duties, and obligations hereunder may be assigned or delegated by the TJPA, with the approval of SFPUC, which shall not unreasonably be withheld. The services SFPUC provides under this ESA are

IN WITNESS WHEREOF, the TJPA and City have executed this ESA as of the date of the last signature below.

**THE TRANSBAY JOINT POWERS  
AUTHORITY**

**THE CITY AND COUNTY OF SAN  
FRANCISCO, acting by and through  
THE SAN FRANCISCO PUBLIC  
UTILITIES COMMISSION**

By:   
MARIA AYERDI-KAPLAN  
Executive Director

By:   
HARLAN L. KELLY, Jr.  
General Manager

Date: 11/26/13

Date: 2/14/14

**APPROVED AS TO FORM**  
SHUTE, MIHALY & WEINBERGER,  
LLP

By:   
ANDREW SCHWARTZ

Date: November 20, 2013

**APPROVED AS TO FORM**  
DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
(NAME)  
Deputy City Attorney

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



## EXHIBIT B

### INTERCONNECTION COSTS

The Interconnection Cost is set forth in the following table:

Description	Cost or Deduction
TJPA Capital Cost for Network Service (based on PG&E 2009 Network Option)	\$4,575,000
Less Up-Front Allowance	(\$150,780)
Less Up-Front Refundable Amount Using 50% Discount Option	(\$1,419,110)
Less PG&E's 22% ITCC Fee	(\$661,124)
<b>Net TJPA Cost</b>	<b>\$2,343,986</b>

The Net TJPA Cost shall be adjusted to reflect changes in costs for the network option that have occurred between 2009 and 2013. The Net TJPA Cost shall be adjusted by the percent change between \$6,194,454 (the estimated cost of providing the 12-kV option in 2009) and the actual costs charged by PG&E and/or incurred by SFPUC for providing the dual 12-kV option.

The Interconnection Cost is based on Table A of the March 20, 2012 Letter from SFPUC to the TJPA, attached as Exhibit F to this ESA. While the March 20, 2012 Letter provides context for this table, to the extent the ESA and the March 20, 2012 Letter conflict, the ESA controls.