

INTERCONNECTION AND SERVICE AGREEMENT

BETWEEN

THE PORT OF OAKLAND

AND

THE CITY AND COUNTY OF SAN FRANCISCO

**(RELATED TO ELECTRICAL INTERCONNECTION WITH THE ELECTRICAL SYSTEM OF
THE PORT OF OAKLAND AT THE DAVIS SUBSTATION)**

DATED: JULY 1, 2015

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(RELATED TO ELECTRICAL INTERCONNECTION WITH THE ELECTRICAL SYSTEM OF THE
PORT OF OAKLAND AT THE DAVIS SUBSTATION)

1. PREAMBLE.

This Interconnection and Service Agreement, dated as of _____, 2015 (“Agreement”) is by and between the City of Oakland, California, a municipal corporation, acting by and through its Board of Port Commissioners (hereinafter referred to as the "Port of Oakland" or the "Port") and The City and County of San Francisco, a municipal corporation, acting by and through its Public Utilities Commission and the Treasure Island Development Authority (hereinafter referred to as “San Francisco” or “CCSF”).

This Agreement replaces the Interconnection and Service Agreement dated September 15, 1998 between the Port and CCSF, ("1998 Agreement") and defines and governs the rights of San Francisco to maintain an electrical interconnection with the Port’s electrical facilities at the Davis Substation located in the Port Area of the City of Oakland, California, and the Port’s and San Francisco’s respective rights and obligations in connection therewith. The Port and San Francisco each is referred to individually as a "Party" and collectively as "the Parties".

2. RECITALS.

2.1. WHEREAS, the Electric System of Pacific Gas & Electric Company (“PG&E”) currently is connected to the Port's Electric System in the Port Area by an electrical circuit at a nominal delivery voltage of 115 kV at a facility known as the Davis Substation, which is owned by the Port of Oakland as shown by the Schematic Diagram included as Attachment 1 to this Agreement (the “Davis Substation”);

2.2. WHEREAS, the Davis Substation was previously owned by the United States Navy ("Navy") and provided a point of delivery from PG&E to serve the electric requirements of the Navy at the Fleet and Industrial Supply Center, Oakland (“FISCO”) and at the U.S. Naval Station, Treasure Island, and also has been employed by the Navy to serve the electric requirements of the Department of

the Army (“Army”) at the Oakland Army Reserve Base by arrangements previously made between the Army and the Navy;

2.3. WHEREAS, by a Quitclaim Deed recorded with the Alameda County Clerk-Recorder on June 15, 1999, the Navy conveyed its interest in the FISCO (“Transfer Document”), including the Davis Substation, to the Port, subject to the covenant, among others, that the Port will provide to CCSF an interconnection with the Davis Substation to serve the electrical requirements of Treasure Island pursuant to the 1998 Agreement;

2.4. WHEREAS, under the Transfer Document, in the event the 1998 Agreement expired prior to the Navy's conveyance of title to Treasure Island, the Port is required to provide CCSF with continued access to and interconnection with terms substantially the same as the terms of the 1998 Agreement;

2.5. WHEREAS, as of January 1, 2015, the Navy has not conveyed title to Treasure Island;

2.6. WHEREAS, the Port desires to arrange such terms of continued electrical interconnection at the Davis Substation with San Francisco which will not adversely affect the Port’s own interconnection with PG&E at the Davis Substation, and which assures that the Port receives fair and equitable compensation for the interconnection and services provided hereunder. To that end, the Port desires to define the nature and scope of the interconnection rights and obligations of San Francisco and the Port at the Davis Substation;

2.7. WHEREAS, San Francisco currently has a maximum demand for its power requirements at Treasure Island to be delivered through San Francisco’s distribution facilities of approximately 2.5 MW at a nominal voltage of 12.47 kV, and is prepared to own and maintain distribution facilities located in the Port Area at its own cost and expense necessary to interconnect its load at Treasure Island with the Davis Substation, and desires to reserve an entitlement of one-third of the present installed capacity of Davis Substation by virtue of this interconnection with the Port’s electrical system at the Davis Substation.

2.8. WHEREAS, the Port of Oakland desires to provide such agreed levels of interconnection at the Davis Substation to San Francisco in order for San Francisco to serve load at Treasure Island by a direction of power flow from PG&E’s 115 kV facility to the Davis Substation and thence to Treasure Island, to define the terms and conditions by which San Francisco may interconnect with the Davis Substation to reserve one third of the present installed capacity at the Davis Substation, and to set out the responsibilities for the operation and maintenance of the Davis Substation attributable to such interconnection;

2.9. WHEREAS, in the event during the term of this Agreement San Francisco installs or operates generating facilities on Treasure Island that operate in parallel with the Davis substation, it shall

first 1) notify the Joint Working Committee of the installation and the protective devices San Francisco will install, 2) mitigate any adverse impacts on the Port's facilities in advance of any such operation, 3) obtain any required permits, and satisfy all applicable regulatory requirements; and

2.10. WHEREAS, unless otherwise agreed by the Parties, the Parties understand that as a result of entering into this Agreement, neither Party has, nor will it have, any obligation to supply the other Party with any electric power for any reason, including emergency conditions, except as a result of maintaining this interconnection in accordance with the terms of this Interconnection Agreement and except as required by applicable law.

3. AGREEMENT.

NOW, THEREFORE, in consideration of the mutual covenants herein set forth, the Parties agree that the foregoing recitals being a part of this Agreement, further agree as follows:

4. DEFINITIONS.

The following terms, when used in this Agreement with the initial letters capitalized, whether in the singular, plural or possessive shall have the following meanings:

4.1. Agreement. This Interconnection and Service Agreement between the Port and San Francisco.

4.2. Approval of the Joint Working Committee. "Approval of the Joint Working Committee" means that the Port's Authorized Representative on the Joint Working Committee has approved the particular action or decision and San Francisco's Authorized Representative on the Joint Working Committee has done the same.

4.3. Authorized Representative. The representative appointed by a Party pursuant to Section 10.2.

4.4. Capacity. The power output rating of the Davis Substation as specifically defined in Section 8.1 herein.

4.5. Annual Capacity, Maintenance and Operation Meeting. Annual Capacity, Maintenance and Operation Meeting means the annual meeting of the Joint Working Committee provided for in Section 10.3.1.

4.6. Control Area Services. Those services necessary to support the transmission of energy from resources to loads while maintaining reliable operation of the transmission provider's transmission

system in accordance with Prudent Utility Practice. Those services include, but are not limited to, Ancillary Services under the California Independent System Operator tariff, compensation for losses, load following, AGC regulation, reserves, compensation for energy imbalances, congestion management, reactive power, voltage control, scheduling and dispatching.

4.7. **Cost.** All just and reasonable, necessary and prudent expenses or capital expenditures, actually incurred without markup or profit, including but not limited to, operation, maintenance, engineering study, costs of capital, adverse impact identification, adverse impact mitigation, contract modification, administrative and general expenses, taxes, regulatory compliance expenses, and depreciation, as determined in accordance with generally accepted accounting principles (“GAAP”). The appropriate components of Costs, as defined herein, shall be applied for the particular service or transaction performed.

4.8. **CPI.** “CPI” means the Consumer Price Index for All Urban Consumers (U.S. All Items 1982-84=100) (San Francisco, and not adjusted seasonally) which is published by the Bureau of Labor Statistics of the United States Department of Labor. If the CPI is discontinued or revised, such other governmental index or computation with which it is replaced shall be used.

4.9. **CPUC.** The California Public Utilities Commission.

4.10. **Current Fixed Charge.** The fixed annual charge paid by San Francisco, as defined in Section 14.1.

4.11. **Effective Date.** The date specified as the Effective Date in Section 5.1 hereof.

4.12. **Electric System.** All physically connected properties and other assets, now or hereafter existing, owned or controlled by a single person or entity, used for or directly pertaining to the generation, transmission, transformation, distribution or sale of electric power, including all additions, extensions, expansions, and improvements, including the properties and assets of subsidiaries or divisions of such person or entity to the extent that such subsidiary or division is created to perform functions on behalf of a Party to this Agreement. To the extent a person or entity is not the sole owner of an asset or property, only that person's or that entity's ownership interest in such asset or property shall be considered to be part of its Electric System. For purposes of this definition as it applies to San Francisco, “controlled” includes, without limitation, the 12 KV distribution system connecting the Davis Substation and the area known as “Land’s End.”

4.13. **Emergency.** An unplanned or unexpected operational event, series of operational events, or operational circumstance that causes a loss or interruption of generating, transmission or distribution capabilities, in part or in whole, and in the judgment of the affected Party's operator and consistent with Prudent Utility Practice, requires the taking of immediate action: (i) to preserve, maintain, or reestablish the safety, integrity, or operation of the facilities that have been affected; or (ii) to protect the health or

safety of employees or the public; or (iii) to prevent or minimize any significant adverse environmental effects. The inability of PG&E or a Third Party to provide or deliver to San Francisco sufficient electric power to meet its power requirements at the Davis Substation is not an Emergency under this Agreement.

4.14. **Extraordinary Maintenance.** An item of maintenance, repair or replacement that (a) is the result of an Uninsured Casualty Loss, (b) is not ordinary maintenance in accordance with Prudent Utility Practice, and (c) is not caused by the Port's failure to undertake ordinary maintenance in accordance with Prudent Utility Practice.

4.15. **FERC.** The Federal Energy Regulatory Commission or its regulatory successor.

4.16. **Forced Outage.** A full or partial outage of a Party's distribution or transmission facilities that is caused by an Emergency.

4.17. **Joint Working Committee.** A joint committee of the Parties as more specifically defined in Section 10.2 of this Agreement.

4.18. **KVAR Demand.** The maximum reactive electrical demand in any month is determined for on-peak, partial peak, and off-peak time periods. KVAR Demand is measured as the average amount of kilovars (KVAR), delivered during the 15-minute on-peak, partial peak, or off-peak interval in which such delivery is greater than in any other 15-minute on-peak, partial peak or off-peak interval in the month; provided, that if the load is intermittent or subject to violent fluctuations, a five-minute interval may be used.

4.19. **KW Demand.** The maximum electrical power demand in any month is determined for on-peak, partial peak, and off-peak time periods. KW Demand is measured as the average amount of kilowatts (KW) delivered during the 15-minute on-peak, partial peak, or off-peak interval in which such delivery is greater than in any other 15-minute on-peak, partial peak, or off-peak interval in the month; provided, that if the load is intermittent or subject to violent fluctuations, a five-minute interval may be used.

4.20. **Operating Agent.** That person or entity designated by the Port to operate and maintain Davis Substation in accordance with Section 15.

4.21. **Payment Due Date.** Payment Due Date has the meaning specified in Section 14.6.

4.22. **Point of Interconnection.** The point of physical connection of the 12.47 kV conductors of the Electric System of San Francisco with the Port's 12.47 kV circuit breaker at the Davis Substation. The Point of Interconnection is specifically identified in the diagram attached as Attachment 2.

4.23. **Port Area.** The real property owned by the Port of Oakland.

4.24. **Prudent Utility Practice.** Those practices, methods, and acts, including provisions for contingencies, as modified from time to time, that are used to (a) operate an Electric System dependably, reliably, safely, efficiently, economically and in accordance with all applicable laws and government

rules, regulations and orders, (b) serve a utility's own customers, (c) prevent adverse effects on neighboring Electric Systems and Control Areas and (d) comply with the applicable rules and regulations of the FERC, CPUC, North American Electric Reliability Corporation, Western Electricity Coordinating Council and the California Independent System Operator.

4.25. **Reserved Capacity.** That capacity or capability of the Davis Substation reserved for simultaneous facility delivery at the Point of Interconnection to San Francisco as more specifically described in Section 8.1.

4.26. **Term.** Term has the meaning specified in Section 5.2.

4.27. **Third Party.** A person or entity other than the Port and San Francisco.

4.28. **Transfer Document.** Has the meaning specified in Section 2.3.

4.29. **Uncontrollable Forces.** Any cause beyond the reasonable control of a Party that could not be avoided through the exercise of Prudent Utility Practice, including but not limited to, provided that it meets the requirements of the prior clause, an act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm, flood, earthquake, explosion, any curtailment, order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities.

4.30. **Uninsured Casualty Loss.** Any loss or casualty incurred by the Port of Oakland with respect to the Davis Substation, for which, and to the extent that, the Port of Oakland's then effective fire or extended coverage insurance, if any, does not cover such loss or casualty, including the amount of any deductible or self-insured retention.

5. **SCOPE AND TERM.**

5.1. **Effective Date.** The term "Effective Date" as used in this Agreement shall mean the later of 1) June 30, 2015, and 2) the date this Agreement is executed by both Parties, following any requisite approvals.

5.2. **Term.** This Agreement shall have a term (the "Term") commencing on the Effective Date and ending on the earliest to occur of the following:

5.2.1. The twentieth annual anniversary of the Effective date.

5.2.2. Any date of termination mutually agreed to by the Parties.

5.2.3. The date that the Agreement is terminated for default pursuant to Section 23.1

below.

5.2.4. One Hundred Eighty days after San Francisco provides to the Port a notice of termination.

5.3. **Renewal.** The Agreement may be renewed for successive ten (10)-year terms if the Parties enter into a written agreement for such renewal at least one (1) year before the end of the then current term. Each of the Parties may agree to renew the Agreement at its sole discretion.

5.4. **Scope.** The Port and San Francisco specifically intend that this Agreement shall relate only to rights and obligations of the Parties by and between each other which pertain to the Port's Davis Substation, and shall not be construed as relating to any other electrical facilities owned or operated by the Port or San Francisco, or any electric transmission arrangements involving other Third Parties relating to the delivery of power to the Davis Substation, now or in the future.

5.5. **Limited Waiver.** By agreeing to enter into this Agreement, each Party waives any right to claim the illegality of this Agreement or the rights and obligations of the Parties conferred hereunder in any regulatory or judicial forum which may have jurisdiction, including the CPUC and the FERC.

6. **COORDINATION**

The Parties shall endeavor to coordinate their activities in the operation, planning and maintenance of their respective Electric Systems in order to minimize any adverse effects of those activities on each other.

7. **POWER REQUIREMENTS**

Each Party shall supply the reactive kilovolt-amperes (KVAR) requirements for its own Electric System to maintain zero reactive power flow at the Point of Interconnection. If, however, PG&E, or any Third Party, shall meter and charge the Port for reactive power at the Davis Substation, reasonably attributable to San Francisco's reactive power use at the Point of Interconnection, San Francisco shall provide to the Port its meter information and the Port shall assign to San Francisco its allocable share of such reactive power and any charges attributable thereto in accordance with Section 14.2. The Port shall not otherwise be required to provide KVAR requirements for San Francisco's load.

8. **INTERCONNECTION SERVICES**

8.1. **The Port's Interconnection Facility And Capacity Reserved for San Francisco.** The Port represents and San Francisco acknowledges that as of the Effective Date, the Davis Substation is rated at 40 mVa based upon continuous use at 65°C without sustained cooling or fans ("Capacity"). The Parties recognize that this Capacity may be reduced due to an Emergency, Forced Outage, Uncontrollable Forces, or casualty loss. The Parties agree that the Port shall reserve to San Francisco one third of the simultaneous facility delivery limit of Capacity (the "Reserved Capacity") at a nominal delivery voltage of 12.47 kV at the Point of Interconnection.

All of the representations set forth in this Agreement, as to the Capacity or capability of the Davis Substation or any portion of that Capacity or capability that the Port is able to reserve to San Francisco are true only as of the Effective Date. If changes in the loads of other PG&E customers upstream of the Davis Substation, other modifications or reinforcements to PG&E's Electric System outside the control of either Party hereto or any other Uncontrollable Force causes a reduction in the capacity or capability of the Davis Substation represented herein, the Port will reserve to San Francisco one-third of the then-available capacity or capability of Davis Substation. If the reduction in capacity or capability of the Davis Substation shall last, or is expected to last, continuously for longer than ninety (90) days, the Parties will attempt to renegotiate the terms of this Agreement if requested by either Party.

8.2. **Limited Duty to Preserve Facility Limit.** Subject to Uncontrollable Forces, and San Francisco's reimbursement to the Port for San Francisco's share of an Uninsured Casualty Loss as provided in Section 14.3 of this Agreement, the Port shall preserve the Capacity during the term of this Agreement, including undertaking maintenance in accordance Prudent Utility Practice. Each Party shall provide adequate switchgear on its own facilities so that in the event of reasonable contingencies, any available backup facilities can be brought into service, when needed, in a safe and reliable manner. The Port, however, shall have no requirement to provide reserve facilities or capabilities beyond the Davis Substation for this interconnection service.

8.3. **No Facility Preservation Obligation After Termination.** After the termination of this Agreement the Port shall have no obligation to maintain the availability of its facilities serving the Point of Interconnection.

9. **MODIFICATION OF INTERCONNECTION.**

9.1. **Modification of the Voltage Level or Ancillary Facilities.**

9.1.1. Unless otherwise agreed by the Parties, the Port shall continue to permit the delivery of electric power at the Point of Interconnection at the present distribution voltage level of 12.47 kV for the term and any extension of this Agreement. The Parties understand and agree that at some future date the Port or San Francisco may desire to change the primary delivery voltage at the Point of Interconnection to some higher voltage. In this event, the Parties agree that they will cooperate in good faith to evaluate the feasibility of such an increase in delivery voltage and will not object to such change requested by the other Party, except for good cause in accordance with Prudent Utility Practice, including sufficient lead time to accommodate the higher voltage.

9.1.2. In the event that changes in delivery voltage, relocation of facilities ancillary to the Point of Interconnection, or other changes in facilities are necessary on one Party's side of the Point of Interconnection because of changes on that Party's Electric System, such changes shall be made by that

Party at its own expense. Unless otherwise agreed by the Parties, under such circumstances corresponding changes on the other Party's side of the Point of Interconnection shall be at the other Party's expense unless those changes are made solely for the first Party's benefit and at that first Party's written request.

9.2. **Port Determination to Reinforce, Upgrade or Relocate Point of Interconnection or to Construct a New Point of Interconnection (New Substation).** The Port shall have the right to reinforce, upgrade or relocate the Davis Substation or to construct a new Point of Interconnection (a new substation) and require San Francisco to take service from that new point, if, in the sole opinion of the Port, such reinforcement, upgrade, relocation or construction is necessary or desirable for the Port's operations. In such event, however, the Port shall bear any or all expense, including acquisition of any permanent rights of way, and shall undertake such reinforcement, upgrade, relocation or construction in a manner which preserves continuity and the same or better reliability of electric service to San Francisco under this Agreement, and shall cooperate with San Francisco both with respect to providing adequate notice of such project and in implementing such project. San Francisco agrees to cooperate with the Port in coordinating any required interruption of service to facilitate such project in accordance with Prudent Utility Practice.

9.3. **San Francisco Request to Relocate Point of Interconnection or to Construct a New Point of Interconnection (New Substation).**

9.3.1. If San Francisco requests the Port to relocate the Point of Interconnection or to construct a new Point of Interconnection (a new substation), the Parties shall meet and confer as to a mutually acceptable means of addressing the issues that give rise to San Francisco's request.

9.3.2. If the Port and San Francisco agree upon a mutually acceptable plan, the Parties shall enter into an agreement, among other provisions, specifying the Costs, the sharing of such Costs among the Parties, the anticipated capacity and Reserved Capacity after the relocation or reconstruction, and necessary amendments to this Agreement or new agreements.

9.3.3. If, after good faith effort to meet, confer and negotiate, the Parties are unable to agree on the need for the proposed relocation or construction, or upon a plan, then the Port may elect not to proceed with the proposed relocation or construction and continue this Agreement.

9.4. **Necessary Reinforcement and Upgrade.**

9.4.1. If San Francisco or the Port determines that it has become necessary, in accordance with Prudent Utility Practice, to reinforce, upgrade or otherwise increase the capacity or capabilities of the facilities at Davis Substation, the Party requesting the change shall notify the other Party in writing. The Parties shall meet and confer for a period of ninety (90) days after the date of such notice as to mutually acceptable means and timing of serving the need for such reinforcement and upgrade.

9.4.2. If the Port and San Francisco agree upon a mutually acceptable plan, the Parties shall enter into an agreement, among other provisions, specifying the Costs, the sharing of such Costs among the Parties, the anticipated capacity and Reserved Capacity after the reinforcement or upgrade, and necessary amendments to this Agreement or new agreements. If, after good faith meet, confer and negotiation during the ninety (90)-day period specified in Section 9.4.1 above, the Parties are unable to agree on the need for the proposed reinforcement or upgrade or upon a plan, then either Party may elect to refer the matter to dispute resolution in accordance with Section 24.

9.5. Ownership of Additions

Unless the Parties otherwise agree, the Port shall own all additions and changes to, and replacements, reinforcements and upgrades of, the Davis Substation and the related portions of the Port's Electric System (collectively, "Upgrades"), whether the Port or San Francisco paid for such Upgrades. Unless the Parties otherwise agree, San Francisco shall own all Upgrades to its Electric System, whether or not the Port or San Francisco paid for such Upgrades.

10. OPERATING AND ADMINISTRATIVE PROVISIONS

10.1. **Power Delivery Standard.** The Port shall permit the delivery of power at the Point of Interconnection via what is commonly designated as three phase alternating current, at 60 HZ, and at a normal voltage of 12.47 kilovolts (kV), or at such other criterion at which such power is delivered by PG&E to the Port at the Davis Substation. Normal variations in voltage and frequency shall be permitted pursuant to Prudent Utility Practice.

10.2. **Joint Working Committee; Authorized Representatives.** Within sixty (60) days of the Effective Date of this Agreement, the Parties shall establish a joint working committee (the "Joint Working Committee") solely to coordinate operations and exchange operational and financial information as set forth below. The Joint Working Committee may include engineering, management, finance and legal representatives of both Parties. Each Party shall also appoint one person to be its authorized representative ("Authorized Representative"). The Authorized Representatives shall be members of the Joint Working Committee and shall have the other responsibilities assigned to them as Authorized Representatives in this Agreement. The Joint Working Committee shall meet at least annually, as provided in Section 10.3 below, or more frequently as reasonably agreed to by the Authorized Representatives.

10.3. **Annual Capacity, Operation and Maintenance Meeting.** Annually, in the month of July the Joint Working Committee shall meet and confer (the "Capacity, Operation and Maintenance Meeting"). The Parties agree to cooperate in good faith to exchange information and determine procedures regarding the activities required under this Agreement.

10.4. **Joint Working Committee Responsibilities:** At the Annual Meeting, the Joint Working Committee shall review the status of operation and maintenance activities for the Davis Substation. In addition, at the request of either Authorized Representative to the other, the Joint Working Committee shall do one or more of the following if so requested:

10.4.2. Provide forecasts of load, loss of load, and other reliability and reserve probability studies, and changes planned or authorized by a Party to its loads at the Point of Interconnection, either in preparation for the meeting of the Joint Working Committee, or when either Party believes timely revision(s) are necessary.

10.4.3. Review, as necessary, for the purpose of operating their respective Electrical Systems in an interconnected manner, the general engineering and design of a Party's planned additions or modifications to its facilities, which interconnect with or affect the other Party's facilities.

10.4.4. Discuss estimated and actual dates of initial operation and dates of firm operation of each Party's resources which interconnect with or materially affect the other Party's facilities.

10.4.5. Prepare and, from time to time, at least annually, review Operating Procedures to be followed by each of the Parties relating to the scheduling and dispatching of capacity and energy under this Agreement.

10.4.6. Review the Cost of owning, operating and maintaining the Davis substation and document that amounts paid by San Francisco pursuant to this Agreement are used or set aside by the Port for operation and maintenance of the Davis Substation, or have been set aside by the Port for preventive maintenance and replacement of the substation;

10.4.7. Any action taken, determinations or recommendations made during the Joint Working Committee shall be recorded in writing, with copies provided to each Party; provided, however, the Joint Working Committee, including the Authorized Representatives, shall have no authority to modify, change, add or eliminate any terms or conditions of the Agreement.

10.5. **Reporting Significant Events.** Each Party shall promptly report to the other Party any Emergency or other significant operating event reasonably likely to affect operation at the Point of Interconnection. For notice to the Port such notice shall be by telephone to the Port's Authorized Representative, or such other person as may be designated. For notice to San Francisco, such notice shall be by telephone to San Francisco's Authorized Representative or such other person as may be designated. A notice by telephone shall be followed by a summary in writing setting forth the date and time of the telephone conversation and a brief summary of the information provided. Each Party, upon request and on a case-by-case basis for reasonable cause related to operating conditions, shall provide to the other Party Electric System operating information, such as loading on lines and equipment and levels of

operating voltages and electric power factors. In the event of interruptions of electric service at the Point of Interconnection, the Party causing the interruption shall report to the other Party the nature of the event, actions being taken to restore electric service, and the estimated time of restoration of electric service. It is expected that any agreement with a Third Party connected to either Party's distribution or transmission system shall provide for the Third Party to report to such Party any Significant Event reasonably likely to affect operation at the Point of Interconnection.

10.6. **Prudent Utility Practice.** Prudent Utility Practice shall be the general standard for performance related to Electric System operation at the Davis Substation and the supply and receipt of electric services by the Parties under this Agreement. Each Party shall observe Prudent Utility Practice in its operations, and no Party shall operate in a manner contrary to that standard.

10.7. **Protective Devices.** San Francisco shall install, set and adjust the protective relaying equipment associated with San Francisco's facilities in a manner consistent and coordinated with the Davis Substation's protective relays and PG&E's protective relay setting that is applicable to the Port. The Port shall provide all protective relay setting information and time-current curves of the Port equipment so that San Francisco can adjust and set its protective equipment. San Francisco shall report the settings of its protective devices to the Port. The Port may require San Francisco to change its settings if these are inconsistent with Prudent Utility Practice. Each Party is responsible for the operation of its own protective devices.

10.8. **Continuity of Service.**

10.8.1. **Unscheduled Interruptions.** The Port may temporarily interrupt or reduce any service, or temporarily separate all or any part of the facilities of its Electric System from San Francisco's Electric System, if the Port determines at any time that the following conditions exist and that the described action is necessary or desirable: (i) in case of an Emergency, (ii) to prevent a hazard to life or property, or (iii) where the operation of the Port's Electric System is suspended, interrupted or interfered with as a result of Uncontrollable Force. In the event of such interruption or reduction in service, the Port shall restore full service to San Francisco on a priority basis comparable to the restoration of other key public service and safety facilities and to the restoration of the Port's own service, and, in any event, as directed by the authorized emergency response officials. Should the Parties determine that such interruption or reduction in service will be of a prolonged nature, then the Parties shall confer and determine the extent to which, and the timing with which, the Port shall restore full service to San Francisco.

10.8.2. **Scheduled Interruptions.** All scheduled interruptions of service shall be made as mutually agreed by the Parties. Except in the case of Emergency or Uncontrollable Force, the Parties

shall endeavor to give seventy-two hours advance notice of any such interruption, reduction or separation, and its probable duration.

10.8.3. **Interruption by Protective Devices.** The Port may install and utilize automatic protective devices in order to assist in maintaining the integrity and reliability of its Electric System and to protect its customers from damage, injury or prolonged outages. Service under the Agreement is subject to interruption in the event of operation of such devices.

10.8.4. **Underfrequency Load Shedding.** The Parties recognize that Prudent Utility Practice requires that automatic load shedding by underfrequency relays be provided in the event load requirements of the California Independent System Operator Control Area exceed power supplies instantaneously available to meet those requirements. If required by the Control Area Operator, each Party represents that it shall install and shall operate and maintain in service high speed digital underfrequency load shedding equipment in accordance with the Control Area Operator's requirements and Prudent Utility Practice. Such load shedding equipment shall be designed to operate at levels compatible and coordinated with PG&E's load shedding arrangements.

10.8.5. **Load Shedding.** Should PG&E or California Independent System Operator notify the Port that voluntary or mandatory load reduction is requested or required, the Port shall reduce its load by the specified percentage and upon notification to San Francisco, San Francisco shall reduce its load at the Davis Substation by the same percentage requested or required of the Port.

11. **CONDITIONS REQUIRING A NEW INTERCONNECTION AGREEMENT**

11.1. **Acts by San Francisco.** The occurrence of the events described in Sections 11.1.1 or 11.1.2 shall give the Port the right, but not the obligation, to require a new interconnection agreement satisfactory to the Port. If at any time during the term of this Agreement, San Francisco anticipates the occurrence of any of the following conditions or circumstances then San Francisco shall notify the Port in writing promptly and in no event less than twelve (12) months before such anticipated event, and shall provide all relevant information including expected time schedules. Within sixty (60) days of such notice, the Port will notify San Francisco whether the Port believes a new interconnection agreement is needed. The failure by the Parties to execute a new interconnection agreement satisfactory to the Port shall permit the Port to terminate this Interconnection Agreement.

11.1.1. San Francisco interconnects to a Third Party other than the Port and such interconnection will be operated electrically and simultaneously in parallel by San Francisco with the Electric System of the Port through the Point of Interconnection; provided however this Section 11.1.1 shall not apply if the interconnection 1) takes place in response to an Emergency, or 2) is to generating facilities installed or operated by San Francisco in parallel on Treasure Island if San Francisco first i)

notifies the Joint Working Committee of the installation and the protective devices San Francisco will install, ii) mitigates any adverse impacts on the Port's facilities in advance of any such operation, and iii) obtains any required permits and satisfies all applicable regulatory requirements. Moreover, any meters or recording devices owned or installed at the Point of Interconnection shall not be considered an interconnection with a Third Party for purposes of this Agreement.

11.1.2. San Francisco's interconnects with the Port's distribution facilities in the Port Area at a point of interconnection other than at the Davis Substation.

11.2. **Change in the Port's Interconnection Agreement with PG&E.** If at any time during the term of this Agreement, the Port is required to modify or enter into any interconnection agreement between PG&E and the Port with respect to the electrical interconnection at the Davis Substation, and if such modification of such interconnection agreement would impose requirements upon the Port under such agreement, which are not reflected as corresponding requirements of San Francisco under this Agreement, then the Port and San Francisco shall meet and confer and modify this Agreement to incorporate such additional or changed provisions in such interconnection agreement, in a manner that maintains the balance of burdens and benefits set forth in this Agreement, including compensation by San Francisco to the Port or the Port to San Francisco for a third of the increased or decreased costs to the Port of any modified requirement imposed by PG&E.

12. **AUTHORITY OF THE PORT TO MODIFY CERTAIN FACILITIES OWNED OR CONTROLLED BY SAN FRANCISCO**

Where the Port's development of its Electrical System or the Port's plans for the development of the Port's facilities renders it necessary, in the Port's sole discretion, to move or realign distribution facilities owned by San Francisco, the Port shall have the authority, with notice to and in cooperation with and by San Francisco, to move or realign the existing facilities of San Francisco to another location. In such event, the Port shall bear the entire cost of such relocation, and shall be responsible for maintaining a continuous and the same or better reliable interconnection of electric power for San Francisco during the period of any such relocation. San Francisco shall fully cooperate with any such relocation consistent with Prudent Utility Practice. In order to effectuate any such relocation, San Francisco hereby grants to the Port the right to make such installation along the shortest practicable route that provides the same or better reliability thereon (subject to the Port's right to protect its operations) of sufficient width to provide full legal clearance from all structures now or hereafter erected on such property for any facilities of the Port required to make delivery of electricity. The Port shall not be entitled to install or relocate such facilities unless and until all necessary licenses, permits, certificates, or other governmental authorizations or approvals that may be necessary are obtained, and any necessary permanent rights-of-way and

easements are granted without cost to San Francisco at locations satisfactory to the Port (subject to the approval of San Francisco, which approval shall not be unreasonably withheld) on and over the Port's property, or the property of others, for the installation or relocation of such facilities.

The Port in the event of such relocation shall, at its expense, provide any required site improvement, including environmental mitigations and acceptable enclosure for the Port's and San Francisco's metering transformers, foundations or pads, fencing or walls around same, and a metering house or cubicle in accordance with Prudent Utility Practice and consistent with the Port's requirements.

13. **METERING**

13.1. **115 kV Meters.** The Port will cooperate with PG&E to provide access to existing PG&E-owned 115kV meters, as necessary to read, inspect, maintain or replace said meters in accordance with separate agreements among or between the Port, PG&E and any third parties.

13.2. **Revenue 12kV Meters.** Unless otherwise agreed to by the Parties, or as required by PG&E or a Third Party power supplier, power and reactive power delivered to Davis Substation shall be measured and adjusted for transformer losses by suitable electric revenue meters installed in accordance with separate agreements between a Third Party power supplier (including the Western Area Power Administration ("Western")), the Port and San Francisco. Each Party shall bear the responsibility to certify and maintain its own meter at Davis Substation to meet the regulation standards.

13.3. **Meter Access.** The Port and San Francisco shall have access to read all meters at the Point of Interconnection.

14. **BILLING AND PAYMENT**

14.1. **Annual Costs.** In payment for the use of the Port's Davis Substation and the services provided by the Port under this Agreement, San Francisco shall pay the Port One Hundred Twenty-Five Thousand Dollars (\$125,000), increased each year by the percentage increase in the CPI over the prior year ("Current Fixed Charge"), provided that the Port shall use all such amounts for the operation and maintenance of the Davis Substation, or shall set aside any excess for preventive maintenance and replacement of the substation.

14.1.1. The Current Fixed Charge for each year shall be paid on or before June 30 of such year.

14.1.2. If the Agreement becomes effective after June 30, 2015 but before June 30, 2016, upon execution of this Agreement, San Francisco shall pay Port a total of One Hundred Twenty Five Thousand Dollars (\$125,000) for the period between the Effective Date and June 30, 2016.

14.1.3. If the Agreement is terminated for any reason, the Port shall prorate the Current Fixed Charge most recently paid by San Francisco on a monthly basis, and shall reimburse San Francisco for that portion of the payment applicable for the remaining months of the year, and shall make such payment within thirty days after the termination date.

14.1.4. The Port's actual apportioned expenses of operating the Davis Substation exceeded the payments made by the City under the 1998 Agreement resulting in an accrued operating deficit of \$567,792. San Francisco shall reimburse the Port \$567,792 for these accrued under payments in four equal annual installments ("True-Up Payments") of \$141,948. The initial True-Up Payment will be due within thirty (30) days of the Effective Date of the Agreement. The three subsequent True-Up Payments shall be made concurrent with the Current Fixed Charge payments beginning on June 30, 2016 and concluding on June 30, 2018.

14.2. **Third Party Charges.** In addition to the payment pursuant to Section 14.1, the Port may allocate to San Francisco reactive power at the Davis Substation, and any related charges, that are reasonably attributable to San Francisco's reactive power use at the Point of Interconnection. San Francisco shall pay such charges pursuant to Section 14.5.

14.3. **Uninsured Casualty Loss or Extraordinary Maintenance Costs.** In the event that the Port incurs an Uninsured Casualty Loss or any Extraordinary Maintenance cost at the Davis Substation, then San Francisco shall pay to the Port one third of the actual resulting Costs of repair, replacement or maintenance for such Uninsured Casualty Loss or Extraordinary Maintenance costs, as an addition to the payment otherwise due under Section 14.1. Within thirty (30) days after the date upon which the Port becomes aware of an Uninsured Casualty Loss or a need for Extraordinary Maintenance at the Davis Substation, the Port shall give written notice thereof to San Francisco, and shall include in the written notice the Port's best estimate of the Cost to repair, replace, or maintain, along with the total replacements costs of, the Davis Substation. The Port shall promptly commence and thereafter diligently complete the required repair, replacement or maintenance; provided, however, that, within thirty (30) days after San Francisco receives the initial written notice of the Port's best estimate of the Cost to repair, replace, or maintain the Davis Substation, San Francisco pays to the Port one third of the Port's best estimate of the Cost to repair, replace, or maintain. After such repair, replacement, or maintenance is completed, the actual Cost of repair, replacement, or maintenance shall be finally determined by the Port, and San Francisco promptly shall pay to the Port any shortfall between San Francisco's payment and one third of said Costs, or, as appropriate, the Port shall promptly pay to San Francisco any excess of such payment over a third of said Costs. Any disputes shall be resolved pursuant to the dispute resolution procedures in Section 24.

14.3.1 If the cost to repair, replace, or maintain an Uninsured Casualty Loss or Extraordinary Maintenance would exceed \$3,000,000.00, (i.e., San Francisco's share would exceed \$1,000,000.00), then sixty (60) days after the Port's initial notice, either Party may (1) notify the other Party that it is not willing to pay for its share the costs that exceed \$3,000,000, or (2) present to the other Party an alternative proposal to address the problem and allocate the costs that exceed \$3,000,000.00. Unless either Party so notifies or presents an alternative to the other Party, the Port shall within ninety days of the Port's initial notice promptly commence and thereafter diligently complete the required repair, replacement or maintenance in accordance with Section 14.3 above, and San Francisco shall pay its one third share of the costs in accordance with Section 14.3 above. If either Party notifies the other Party that it is not willing to pay or presents an alternative to the other Party, then the Parties shall meet and confer. If the Port and San Francisco agree upon a mutually acceptable plan, the Parties shall enter into an agreement, among other provisions, specifying the Costs, the sharing of such Costs among the Parties, the anticipated capacity and Reserved Capacity after the repair, and necessary amendments to this Agreement or new agreements. If after sixty days following a Party's notice that it is unwilling to pay, or presenting an alternative, the Parties are unable to agree upon a mutually acceptable plan, then either Party may refer the matter to dispute resolution in accordance with Section 24.

14.4. **Guaranteed Maximum Cost.** San Francisco's authorized guaranteed maximum cost for this Agreement is eight million dollars (\$8,000,000.00), unless this amount is modified by written instrument executed and approved in the same manner as this Agreement.

14.5 **Place of Payment.** San Francisco shall pay the Port for services hereunder at:

Port of Oakland
P.O. Box 12545
Oakland, CA 94604-2545

14.6. **Billing.** The Port shall prepare and submit by mail hard copies of original bills to San Francisco on or after the first day of each calendar month or quarter for services or other performance provided under the Agreement during the preceding month or quarter. Bill shall be addressed to:

SFPUC Power Enterprise
525 Golden Gate, 7th Floor
San Francisco CA 94102

The Payment of any such bill shall be due and must be received by the Port not later than the 30th calendar day following the invoice date. Such date shall be referred to as the Payment Due Date. A bill shall be deemed delivered on the third business day after the postmarked date. If San Francisco has a question concerning a bill, it may review the back up data used in preparation of the bill. The Port agrees to hold and maintain the subject data for a minimum of five (5) years.

14.7. **Estimates.** If charges under this Agreement cannot be determined accurately for preparing a bill, the Port may use its best estimates in preparing the bill and such estimated bill shall be paid by San Francisco. Any estimated charges shall be labeled as such and the Port shall, upon request, document the basis for the estimate used. Estimated bills shall be prepared and paid in the same manner as other bills under this Agreement.

14.8. **Disputes.** If San Francisco disputes all or any portion of a bill submitted by the Port to San Francisco, it nevertheless shall, not later than the Payment Due Date of that bill, pay the bill in full pending resolution of the dispute. A dispute between either the Port or San Francisco and any Third Party shall not be a proper basis for contesting a billing. Payments to the Port by San Francisco under this Agreement are not subject to any reduction, whether by offset, payments into escrow, or otherwise, except for routine adjustments or corrections as may be agreed to by the Parties or as expressly provided in this Agreement.

14.9. **Adjusted Billing.** When final and complete billing information becomes available and a charge is determined accurately or billing errors are identified and corrected, the Port shall promptly prepare and submit an adjusted bill to San Francisco, and any additional payments by San Francisco shall be made in accordance with the provisions of this Section 14. Refunds by the Port shall be paid to San Francisco not later than thirty (30) calendar days after the date of the adjusted bill. All adjustments or corrections of bills under this Agreement shall be subject to the interest provisions of Sections 14.10 and 14.11.

14.10. **Accrual of Interest.** Interest on an additional payment shall accrue from the Payment Due Date of the applicable bill and interest on a refund shall accrue from the date payment of the applicable bill was received by the Port.

14.11. **Amount of Interest.** Any amount due under this Agreement which is not paid within thirty (30) days of the invoice date shall accrue interest from the payment date prescribed in Section 14, until the date payment. The interest rate shall be the lower of the interest rate calculated using the methodology for refunds in Section 35.19(a) of FERC's regulations, 18 CFR § 35.19a or the maximum interest rate permitted under California law. Interest shall be calculated for the period during which the payment is overdue or the period during which the refund is accruing interest.

14.12. **Refunds and Additional Payments.** If, after San Francisco has paid the full amount of a disputed bill directly to the Port, the results of dispute resolution or arbitration include a determination that the amount due was different than the amount paid by San Francisco, a refund by the Port to San Francisco shall include interest for the period from the date San Francisco's overpayment was received by the Port to the date the refund is paid by the Port, or an additional payment by San Francisco to the Port shall include interest for the period from the original Payment Due Date to the date San Francisco's

additional payment is received by the Port. Interest paid pursuant to this Section 14.12 shall be at the rate specified in Section 14.11.

14.13. **Material Breach.** A Party's failure to make any payment to the other Party on or before the applicable Payment Due Date shall constitute a material breach if that failure is not corrected within seven (7) business days after it receives written notice from the Party that was not timely paid to cure that failure. In such event, the Party that was not timely paid shall be entitled to pursue any legal, equitable and regulatory rights and remedies it may have.

15. **APPOINTMENT BY PORT OF AN OPERATING AGENT**

15.1. **Operating Agent.** The Port, as owner of the Davis Substation, may contract with a person or entity to serve as the Port's Operating Agent to perform certain operation and maintenance tasks associated with the Davis Substation which relate to the Port's performance under this Agreement. The Port acknowledges San Francisco's interest in the proper performance of these operating and maintenance tasks by such Operating Agent, and San Francisco agrees with the Port's ability to select such an Operating Agent, at the Port's sole discretion, subject to the following conditions:

15.1.1. San Francisco will have an opportunity to bid to become such Operating Agent.

15.1.2. The Port shall consult with San Francisco regarding the scope of work of such Operating Agent, and San Francisco shall have the opportunity to approve the initial scope of work for such Operating Agent, or any modifications thereto. If San Francisco does not submit a bid to become such Operating Agent as provided in Section 15.1.1, San Francisco may participate on the selection committee for such Agent; provided that the Port shall make the final decision concerning selection of the Operating Agent.

15.1.3. The agreed scope of work shall be memorialized in writing and a copy provided by the Port to San Francisco.

15.1.4. San Francisco agrees that, as the Port's agent, the Operating Agent shall have full power to act on behalf of the Port within such scope of work, provided however no confidential or proprietary information shall be disclosed to the Operating Agent without first obtaining San Francisco's prior written consent, which consent may be reasonably withheld.

15.1.5. The Operating Agent shall enter into an Operation and Maintenance agreement with the Port, the terms of which, to the extent not inconsistent with these conditions, shall be in the Port's sole discretion. The Port shall provide a copy of such agreement to San Francisco upon San Francisco's request.

15.1.6. San Francisco shall take all necessary and reasonable steps to cooperate, in good faith, with the Port and the Port's Operating Agent in the operation and maintenance of the Davis Substation.

16. **ADVERSE DETERMINATION OR EXPANSION OF OBLIGATIONS**

16.1. **Adverse Determination.** If FERC, the CPUC, or any other regulatory body, agency or court of competent jurisdiction determines that all or any part of this Agreement, its operation or effect is unjust, unreasonable, unlawful, imprudent or otherwise not in the public interest, each Party shall be relieved of any obligations hereunder to the extent necessary to comply with or eliminate such adverse determination. The Parties promptly shall attempt to renegotiate the terms and conditions of the Agreement to restore the original balance of benefits and burdens contemplated by the Parties at the time this Agreement was made, consistent with complying with or eliminating the adverse determination.

16.2. **Expansion of Obligations.** If the FERC or the CPUC or any other regulatory body or agency or any court of competent jurisdiction orders or decides that this Agreement be interpreted, modified, or extended in such a manner that the Port or San Francisco may be required to extend its obligations under this Agreement to a Third Party, or to incur new or different obligations to the other Party or to Third Parties not contemplated by this Agreement, then the Parties shall be relieved of their obligations to the extent lawful and necessary to eliminate the effect of that order or decision, and the Parties shall attempt to renegotiate in good faith the terms and conditions of the Agreement to restore the original balance of benefits and burdens contemplated by the Parties at the time this Agreement was made.

16.3. **Renegotiation.** In the event that the Parties cannot agree to amend or supersede this Agreement within three months after that order or decision, then either Party may refer the matter to dispute resolution pursuant to Section 24.

16.4. **Scope of Renegotiation.** Any new interconnection agreement to be renegotiated pursuant to this Section 16 shall contain terms and conditions substantially similar to this Agreement and other interconnection agreements of comparable scope, including provisions for operations, interconnection, modification, reinforcement, new interconnection, reactive power, conditions for a new agreement, and may include provisions for power, transmission, distribution and Control Area Services if needed to remedy the adverse determination.

17. **ASSIGNMENT**

17.1. **Consent Required.** No transfer or assignment of all or any part of either Party's rights, benefits or duties under this Agreement shall be effective without the prior written consent of the other Party, such consent not to be unreasonably withheld.

17.2. **Assignor's Continuing Obligation.** The transferor or assignor of all or any part of any right, benefit or duty under this Agreement shall continue to be obligated by its terms and conditions in the event its successor, transferee or assignee fails to perform as required by the Agreement.

17.3. **Assignee's Continuing Obligation.** Any successor to or transferee or assignee of the rights or obligations of a Party, whether by voluntary transfer, judicial sale, foreclosure sale or otherwise, shall be subject to all terms and conditions of this Agreement to the same extent as though such successor, transferee, or assignee were an original Party.

18. **CAPTIONS**

All indexes, titles, subject headings, section titles and similar items are provided for the purpose of reference and convenience and are not intended to affect the meaning of the contents or scope of the Agreement.

19. **CONSTRUCTION OF THE AGREEMENT**

Ambiguities or uncertainties in the wording of the Agreement shall not be construed for or against either Party, but shall be construed in accordance with the intent of the Parties at the time this Agreement was made.

20. **CONTROL AND OWNERSHIP OF FACILITIES**

Nothing in the Agreement shall be construed to give San Francisco or any Third Party any right of ownership, possession or control of the Davis Substation. San Francisco shall not make any additions or modifications to the Davis Substation or the Point of Interconnection except with the Port's prior written consent and subject to the terms and conditions of said consent, and, except as the Parties may otherwise mutually agree in writing, any meters, metering cabinets or other facilities or devices added or attached to the Davis Substation or the Point of Interconnection upon such addition or attachment shall become the property of the Port and shall not be removed by San Francisco.

21. **COOPERATION AND RIGHTS OF ACCESS**

Each Party shall give to the other all necessary permission to enable it to perform its obligations under the Agreement. Each Party shall give the other Party the right to have each Party's agents, employees and representatives, enter the other Party's premises at reasonable times and in accordance

with reasonable rules and regulations for the purpose of inspecting the property and equipment of the other Party, and for reading the other Party's meters and obtaining its recording tapes, all in a manner which is reasonable for assuring performance of the Parties under the Agreement.

Either Party, upon request by the other Party and to the extent that its rights permit, shall give to the other Party access to construct, install, operate, maintain, inspect, test, read, check, replace and repair, upon the property of said Party, such facilities as are necessary for the performance of its obligations under this Agreement or for performing any other work incident to rendering the service provided under this Agreement.

22. INSPECTION OF RECORDS AND AUDITS

The Parties agree to maintain and make available to each other, during regular business hours, accurate books and accounting records relating to its work under this Agreement. The Parties will permit each other to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. The Parties shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. Upon the request of San Francisco or the Port, a Party shall provide the State of California or any federal agency, to the extent either has a direct interest in the services provided under this Agreement, the same rights of a Party under this Section 22.

23. DEFAULT

23.1. **Termination for Default.** If either Party breaches its obligations under this Agreement and does not cure such breach within the period expressly specified, if any, such breach shall constitute an event of default (an "Event of Default"). Subject to Section 14.8 above, if an Event of Default occurs, the non-defaulting Party may terminate this Agreement if the defaulting Party fails to cure the default after receiving written notice from the non-defaulting Party stating: 1) the Party's intent to terminate; 2) the date of such intended termination; 3) the specific grounds for termination; 4) specific actions which the defaulting Party must take to cure the default; and 5) a reasonable period of time, which shall not be less than sixty (60) days, within which the defaulting Party may take action to cure the default and avoid termination; provided that if the breach is not reasonably susceptible to cure within sixty (60) days, the defaulting Party may avoid termination if it diligently and continuously prosecutes a cure.

23.2. **Dispute Resolution.** The right to terminate this Agreement under Section 23.1 is not exclusive. Either party may pursue whatever additional legal and equitable rights it may have with

respect to any dispute arising under this Agreement and any such dispute shall be resolved in accordance with the provisions of Section 24 below.

23.3. **Survival of Provisions.** The following provisions shall survive any termination or expiration of this Agreement with respect to obligations arising or actions taken prior to termination:

Section 14, Billing and Payment ;
Section 18, Captions;
Section 19, Construction;
Section 21, Cooperation and Rights of Access;
Section 22, Inspections of Records and Audits;
Section 24, Settlement of Disputes and Arbitration;
Section 25, Governing Law;
Section 26, Indemnity;
Section 27, Judgments and Determinations
Section 28, Liability;
Section 32, Proprietary or Confidential Information;
Section 33, Notices;
Section 34, Regulatory Authority;
Section 36, Severability;
Section 37, Uncontrollable Forces;
Section 38, Entire Agreement; Amendments;
Appendix A, Section 6, Guaranteed Maximum Costs;
Appendix A, Section 8, Submitting False Claims;
Appendix A, Section 14, Independent Contractor; Payment of Taxes and Other Expenses;
and
Appendix A, Section 57, Protection of Private Information.

24. **SETTLEMENT OF DISPUTES AND ARBITRATION**

24.1. **Good Faith Efforts by the Parties and Informal Dispute Resolution Procedures.** In the normal course of business, the Parties shall attempt in good faith and using best efforts to resolve any dispute arising out of or relating to this Agreement through the informal dispute resolution procedures specified herein. Informal dispute resolution procedures shall include discussion and negotiation between managers who have authority to settle the dispute and who are at a higher level of management than the persons with direct responsibility for administration and management of the Agreement. To clarify the

nature and scope of the dispute before involving higher-level management, the Party raising a dispute shall provide to the other Party a written description of all issues regarding the dispute, the approximate amount of money or other burden involved and the Party's proposed resolution of the dispute. The receiving Party shall provide in response a written explanation of its position and proposed resolution within fifteen (15) days. Within ten (10) days after the receiving Party provides its response, managers of the Parties shall meet to try to resolve the dispute. The Parties may agree to additional meetings after this initial meeting, or either Party may initiate the formal dispute resolution procedures in Section 24.2.

24.2. Initiation of Formal Dispute and Negotiation Between Executives. If the Parties are unable to resolve the dispute through the informal dispute resolution procedures in Section 24.1, either Party may initiate a formal dispute by submitting written notice to the other Party stating: (1) the nature of the dispute, a statement of the Party's position and a summary of the arguments supporting its position, and (2) the name and title of the executive who will be the designated representative of that Party and any other person(s) who will accompany the executive. Within twenty-one (21) days of receipt of the formal notice, the receiving Party shall respond with: (1) a statement of that Party's position and a summary of arguments supporting that position, and (2) the name and title of the executive who will be the designated representative of that Party and any other person(s) who will accompany the executive. For the Port, the designated executive shall be at least at the level of Manager of Utilities; for San Francisco, the designated executive shall be at least at the level of the Assistant General Manager. Within forty (40) days after delivery of the formal notice, the designated representatives of both Parties shall meet at a mutually acceptable time and place and thereafter as often as they deem reasonably necessary to attempt to resolve the dispute. All reasonable requests for information made by one Party to the other will be honored.

24.3. Mediation. If the executives for both Parties are unable to resolve the dispute within sixty (60) days of the initiating Party's formal notice of dispute or the Parties fail to meet within forty (40) days after delivery of the formal notice of dispute, either Party may submit the dispute to non-binding mediation by providing written notice to the other Party. The Parties agree to meet and confer and select a mediator within thirty (30) days of the written notice of submission to mediation. The mediator and the designated representative of each Party with authority to settle the dispute shall meet within twenty-one (21) days after appointment of the mediator. The Parties shall attempt in good faith to resolve their dispute in accordance with the procedures and timetable established by the mediator. If either Party concludes that the mediation efforts have reached an impasse, it may provide a written declaration so stating to the other Party. Such written declaration of impasse shall set forth the date forty-five (45) days hence by which arbitration must be commenced to avoid waiver of claims.

24.4. **Binding Arbitration.** After a written declaration of impasse in mediation is provided pursuant to Section 24.3, either Party may commence binding arbitration by serving a written demand for arbitration upon the other Party. The written demand for arbitration shall set forth in reasonable detail the nature of the dispute, the claims for which arbitration is demanded, the Party's position, the grounds supporting its position and the remedy being sought.

Within twenty-one (21) days of the receipt of the written demand for arbitration, the other Party shall serve a written response upon the initiating Party stating its understanding of the issues in dispute, its position, the grounds supporting its position and its proposed remedy.

Within forty-five (45) days after delivery of the initiating Party's written demand for arbitration, the Parties shall agree on a single arbitrator who must be knowledgeable about electricity markets in California. If the Parties cannot agree on an arbitrator within forty-five (45) days after delivery of the initiating Party's written demand for arbitration, the Parties will request the American Arbitration Association ("AAA") to provide the names of three qualified arbitrators, and the arbitrator will be selected from among those three arbitrators. Each Party shall within ten (10) days from receipt of the names from AAA strike one of the three names from the list provided by AAA. If only one name remains, the remaining arbitrator shall be the person who hears the arbitration, otherwise the Parties shall request the AAA to choose an arbitrator from the two remaining arbitrators. All arbitrators whose names are provided by AAA must be knowledgeable about electricity markets in California and experts in the subject matter of the dispute and shall have no official, financial, or personal conflict of interest with respect to the Parties or the issues involved in the dispute, unless such interest is fully disclosed in writing to both Parties and both Parties waive in writing any objection to the interest. Within five (5) days after selection, the Parties shall submit to the arbitrator the written notice and submittal statements prepared pursuant to this Section 24.4.

Within ten (10) days after selection of the arbitrator, the Parties shall meet with the arbitrator to establish the arbitration schedule, including deadlines for discovery, the hearing date(s), the post hearing briefing schedule and the time for the arbitrator to issue a decision. Subject to the Parties' overriding objective that fairness and due process be achieved, the schedule shall seek to result in a decision by the arbitrator being issued within six (6) months of the Parties' initial meeting with the arbitrator.

Except as otherwise provided in this Section 24.4, the Commercial Arbitration Rules of the AAA shall govern the arbitration, as they may be in effect as of the date of the demand for arbitration. The nature and extent of permissible discovery shall be determined by the arbitrator, taking into account: (a) the complexity of the dispute, (b) the extent to which facts are disputed, and (c) the amount of money in controversy.

The decision of the arbitrator shall be in writing and shall include findings with respect to each issue involved in the dispute. The arbitrator shall issue his or her decision within thirty (30) days of receipt of the final written briefs or oral argument. The arbitrator shall specify the time within which the Parties shall comply with the decision.

The decision of the arbitrator may be enforced by any court or agency having jurisdiction over the Party against whom the decision is rendered.

The arbitrator shall have no authority, power or jurisdiction to alter, amend, change or modify any provision of this Agreement, including this Section 24.4. The decision of the arbitrator shall be final, binding and not appealable, except as provided in CALIFORNIA CODE OF CIVIL PROCEDURE sections 1286.2 and 1286.6. The Parties shall take whatever action is required to comply with the arbitrator's decision. All costs of the arbitration shall be paid equally by the Parties. Each Party shall be responsible for its own costs and expenses, including attorneys' fees.

24.5. **Agreement to Extend Deadlines.** All time limits and deadlines established for dispute resolution procedures under Section 24 may be extended by written agreement of the Parties. Time periods expressed in days in the dispute resolution procedures refer to calendar days, not business days. If a deadline falls on a Saturday, Sunday or holiday, the actual deadline shall be the next business day.

25. **GOVERNING LAW**

This Agreement shall be interpreted, governed by and construed under the laws of the State of California, as if executed and to be performed wholly within the State of California.

26. **INDEMNITY**

26.1. **The Port.** The Port agrees to defend, indemnify and hold harmless San Francisco, and San Francisco's commissioners, officers, employees and agents, (its "Indemnitees") from any and all acts, claims, omissions, liabilities and losses by whomever asserted arising out of acts or omissions of the Port in its obligations under this Agreement except those arising by reason of the sole negligence of San Francisco, and/or its Indemnitees.

26.2. **San Francisco.** San Francisco agrees to defend, indemnify and hold harmless the Port, and its Indemnitees, from any and all acts, claims, liabilities and losses by whomever asserted arising out of acts or omissions of San Francisco in its obligations under this Agreement except those arising by reason of the sole negligence of the Port, and/or its Indemnitees.

26.3. **Concurrent Negligence.** In the event of concurrent negligence of San Francisco, and/or its Indemnitees, and the Port and/or its Indemnitees, the liability for any and all claims for injuries or

damages to persons and/or property shall be apportioned under the California theory of comparative negligence as presently established or as may hereafter be modified.

26.4. **Authority to Settle.** An indemnifying Party shall have no authority to settle an action against the indemnified Party or its Indemnitee without the advance written consent of the indemnified Party, which consent shall not be unreasonably withheld.

26.5. **Payment of Fees and Expenses.** If a Party successfully enforces this indemnity, the Party against which enforcement is required shall pay all costs, including reasonable attorneys' fees and other litigation expenses, incurred in such enforcement.

26.6. **Limitation.** Neither Party shall be obligated to defend, hold harmless or indemnify the other Party or its Indemnitees for any acts, claims, liabilities and losses resulting from the other Party's gross negligence or willful misconduct and/or the gross negligence or willful misconduct of the other Party's Indemnitees.

26.7. **Waiver of Subrogation.** The Port and San Francisco each waive their right of recovery to the extent each party has third party insurance to respond to an indemnified loss and shall require such third party insurers providing commercial general liability, business automobile liability, fire/all risk or extended perils coverage, workers' compensation and employers liability insurance, if any, providing insurance supporting the indemnification in this Section 26 to waive any rights of subrogation or recovery in favor of the other Party and the other Party's Indemnitees.

26.8. **Additional Insureds.** The Port and San Francisco shall require their third party insurers, if any, providing commercial general liability, business automobile liability and fire/all risk or extended perils coverage supporting the indemnification in this Section 26 to include the other Party and the other Party's Indemnitees as additional insureds.

27. **JUDGMENTS AND DETERMINATIONS**

When the terms of this Agreement provide that an action may or must be taken or that the existence of a condition may be established based on a judgment or determination of a Party, such judgment shall be exercised or such determination shall be made reasonably and in good faith, and where applicable in accordance with Prudent Utility Practice, and shall not be arbitrary or capricious.

28. **LIABILITY**

28.1. **To Third Parties.** Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any Third Party.

28.2. **Between Parties.** Except for its willful misconduct or gross negligence, or with respect to breach of this Agreement or with respect to the indemnity duty under Section 26, neither Party, nor its

directors or members of its governing board, officers, employees or agents shall be liable to the other Party for any loss, damage, claim, cost, charge or expense arising from or related to this Agreement. In the event of breach of this Agreement, neither Party, nor its directors or members of its governing board, officers, employees or agents shall be liable to the other Party for any consequential, special or indirect damages.

28.3. **Protection of a Party's Own Facilities.** Each Party shall be responsible for protecting its facilities from possible damage by reason of electrical disturbances or faults caused by the operation, faulty operation, or non-operation of another Party's facilities, and such other Party shall not be liable for any such damages so caused.

28.4. **Liability for Interruptions.** Neither Party shall be liable to the other, and each Party hereby releases the other and its directors, officers, employees and agents from and indemnifies them, to the fullest extent permitted by law, for any claim, demand, liability, loss or damage, whether direct, indirect or consequential, incurred by either Party, which results from the interruption or curtailment of electric service made available by the Port under this Agreement.

29. **NO DEDICATION OF FACILITIES**

Any undertaking by the Port to San Francisco under any provision of this Agreement is rendered strictly as an accommodation and shall not constitute the dedication by the Port of any part or all of its Electric System to the public or to San Francisco or any Third Party. Any such undertaking under a provision of, or resulting from, this Agreement by the Port shall cease upon the termination of the Port's obligations under this Agreement.

30. **NO OBLIGATION TO OFFER SAME SERVICE TO OTHERS**

By entering into this Agreement, the Port does not hold itself out to furnish like or similar service to any other person or entity.

31. **NO PRECEDENT**

This Agreement establishes no precedent with regard to any other entity or agreement. Nothing contained in this Agreement shall establish any precedent for other arrangements as may exist, now or in future, between the Port and San Francisco for the provision of any electric service.

32. **PROPRIETARY OR CONFIDENTIAL INFORMATION.**

32.1. Both Parties understand and agree that, in the performance of the work or services under this Agreement or in contemplation thereof, a Party (a "Recipient") may have access to private or

confidential information which may be owned or controlled by the other Party (a “Discloser”) and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the Discloser. Both Parties agree that all confidential information disclosed by a Discloser to a Recipient shall be held in confidence by the Recipient and used only in performance of the Agreement, except to the extent such information is required to be disclosed by local, State or Federal laws and regulations or by court or public agency order. A Recipient shall exercise the same standard of care to protect a Discloser’s confidential information as a reasonably prudent contractor would use to protect its own proprietary data. A Discloser must label confidential information as such. A Party may only designate as confidential those materials which customarily are treated by that Party as confidential or proprietary and which are not available to the public.

32.2. In the event that disclosure of confidential information is required by local, State or Federal laws and regulations or by court or public agency order, the Recipient shall give prior written notice to the Discloser as far in advance as reasonably possible. The Recipient shall cooperate with the Discloser in the event the Discloser seeks a protective order or other appropriate remedy to prevent such disclosure and, if such a protective order or other remedy cannot be obtained by such Discloser, the Recipient shall disclose only that portion of the confidential information that is legally required to be disclosed.

33. NOTICES

Any notice, request, declaration, demand, information, report, or item otherwise required, authorized or provided for in this Agreement shall be given in writing, except as otherwise provided in this Agreement and shall be deemed properly given if delivered personally, or sent by first class United States Mail or overnight or express mail service, postage or fees prepaid, to each of the persons specified below:

(1) To Port:

Chris Chan
Director of Engineering
Port of Oakland
530 Water Street
Oakland, CA 94607
Email: cchan@portoakland.com

And Nicolas Procos
Manager of Utility Administration
Port of Oakland
530 Water Street
Oakland, CA 94607
Email: nprocos@portoakland.com

(2) To City and County of San Francisco: Barbara Hale
Assistant General Manager for Power
Power Enterprise, Public Utilities Commission
City and County of San Francisco
525 Golden Gate Avenue, 13th Floor
San Francisco, CA 94102
Email: bhale@sfgwater.org

And Samuel Larano
Manager, Interconnection Services and Redevelopment
Power Enterprise, Public Utilities Commission
City and County of San Francisco
525 Golden Gate Avenue, 7th floor
San Francisco, CA 94102
Email: slarano@sfgwater.org

And Robert Beck
Treasure Island Director
Treasure Island Development Authority
City and County of San Francisco
One Avenue of the Palms, Suite 241
San Francisco, CA 94130
Email: bob.beck@sfgov.org

As a courtesy, Parties shall also send a copy of any notice electronically to the electronic addresses listed above but delivery of such electronic copy shall not constitute adequate notice.

33.1. Changes of Notice Recipient. Either Party may change its designation of the person who is to receive notices on its behalf by giving the other Party notice thereof in the manner provided in this Section 33. No more than three persons shall be designated by a Party to receive notices.

33.2. Routine Notices. Any notice of a routine character in connection with service under this Agreement or in connection with the operation of facilities shall be given in such a manner as the Parties may determine is appropriate from time to time, unless otherwise provided in this Agreement.

34. **REGULATORY AUTHORITY**

The Agreement is subject to the jurisdiction of those regulatory and other authorities having jurisdiction over the Parties and the Agreement, if any.

35. **RULES AND REGULATIONS**

The Port and San Francisco may each establish, and, from time to time, change such procedure, rule, or regulation as they shall determine are necessary in order to establish the methods of operation to be followed in the performance of this Agreement; provided that any such procedure, rule, or regulation is not inconsistent with the provisions of this Agreement. If a Party objects to a procedure, rule, or regulation established by the other Party it will notify the other Party and the Parties will endeavor to modify the procedure, rule, or regulation in order to resolve the objection.

36. SEVERABILITY

If any term, covenant or condition of this Agreement or its application is held to be invalid as to any person, entity or circumstance, by FERC or any other regulatory body or agency or court of competent jurisdiction, then such term, covenant or condition shall cease to have force and effect to the extent of that holding; in that event, however, all other terms, covenants and conditions of this Agreement and their application shall not be affected thereby but shall remain in full force and effect unless and to the extent that a regulatory agency or court of competent jurisdiction finds that a provision is not separable from the invalid provision(s) of this Agreement.

37. UNCONTROLLABLE FORCES

A Party shall not be considered to be in default in the performance of any obligation under the Agreement (other than an obligation to make payments for bills rendered pursuant to the Agreement) when a failure of performance is the result of Uncontrollable Forces.

38. ENTIRE AGREEMENT; AMENDMENTS

38.1. Appendix A contains additional provisions that are incorporated herein.

38.2. The Parties agree that the provisions of this Agreement with Appendix A, and Attachments 1 and 2, constitute the entire agreement between them regarding the subject matter of the Agreement and the Parties' rights and obligations with respect thereto. This Agreement is intended to be the complete and exclusive statement of the terms of the Parties' agreement which supersedes all prior and contemporaneous offers, promises, representations, negotiations, discussions, communications and contracts that may have been made in connection with the subject matter of this Agreement. No representation, covenant, or other matter, oral or written, which is not expressly set forth, incorporated, or referenced in this Agreement (except for applicable laws and regulations) shall be a part of, modify, or affect this Agreement. This Agreement may be modified by written instrument executed and approved in the same manner as this Agreement.

39. **EXECUTION**

Executed on the dates set forth below but effective as set forth in Section 5.1 above.

CITY OF OAKLAND, a municipal corporation, acting by and through its Board of Port Commissioners

By: _____
Title: Executive Director

Date: _____

By _____

Date: _____

THIS AGREEMENT SHALL NOT BE VALID OR EFFECTIVE FOR ANY PURPOSE UNLESS AND UNTIL IT IS SIGNED BY THE PORT ATTORNEY.

Approved as to form and legality this _____ day of _____ 200_.

Port Attorney

Port Resolution No. _____

CITY AND COUNTY OF SAN FRANCISCO

By: _____
General Manager Public Utilities Commission

Authorized by
Public Utilities Commission

Resolution No. _____

Adopted _____

By: _____
Secretary, Public Utilities
Commission

By: _____
Title, Treasure Island Development
Authority

Authorized by
Treasure Island Development Authority Board

Resolution No. _____

Adopted _____

Authorized by
Board of Supervisors

Resolution No. _____

Adopted _____

By: _____
Clerk, Board of Supervisors

Approved as to form and legality:

By: _____
Deputy City Attorney

ATTACHMENT 1
SCHEMATIC DIAGRAM

ATTACHMENT 2

Diagram of Point of Interconnection

APPENDIX A

Additional provisions. In this Appendix A, the Port is referred to as the Port or Contractor and San Francisco is referred to as the City or San Francisco. The paragraph numbers are from San Francisco's P-500 agreement and are included for reference only.

6. **Guaranteed Maximum Costs:**

a. San Francisco's and the Port's obligation hereunder shall not at any time exceed the amount certified, respectively, by the Controller of the City and County of San Francisco and the Port's Director of Finance for the purpose and period stated in such certification. The Parties agree that by entry into this Agreement, any obligations of San Francisco or the Port shall not exceed this certification. In the event that any obligation stated hereunder is not so certified by the Controller of the City and County of San Francisco or the Port's Director of Finance, as the case may be, San Francisco or the Port shall promptly give written notice thereof to the other Party, and the Party receiving said notice may terminate this Agreement within sixty (60) days after receipt of said notice, and said terminating Party shall thereafter be relieved of any obligation under this Agreement to the other Party, including obligations incurred prior to said termination. In the event that either Party shall fail to perform any obligation stated in this Agreement because it contends that the obligation exceeds the certification of the Controller of the City and County of San Francisco, or the Port's Director of Finance, as the case may be, the other Party may terminate this Agreement at any time and said terminating Party shall thereafter be relieved of any obligation under this Agreement to the other Party, including obligations incurred prior to said termination.

b. Except as may be provided by San Francisco ordinances governing emergency procedures, San Francisco and its employees and officers are not authorized to request the Port to perform services or to provide materials, equipment and supplies that would result in the Port performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies agreed upon in this Agreement unless this Agreement is amended in writing and approved as required by law to authorize the additional services, materials, equipment or supplies. San Francisco is not required to reimburse the Port for services, materials, equipment or supplies that are provided by the Port which are beyond the scope of the services, materials, equipment and supplies agreed upon in this Agreement and which were not approved by a written amendment to this Agreement having been lawfully executed by San Francisco.

c. San Francisco and its employees and officers are not authorized to offer or promise to the Port additional funding for this Agreement which would exceed the maximum amount of funding provided for in this Agreement for the Port's performance under this Agreement. Additional funding for this Agreement in excess of the maximum provided in this Agreement shall require lawful approval and certification by the Controller of the City and County of San Francisco. San Francisco is not required to honor any offered or promised additional funding for a contract which exceeds the maximum provided in the contract which requires lawful approval and certification of the Controller of the City and County of San Francisco when the lawful approval and certification by the Controller of the City and County of San Francisco has not been obtained.

d. Neither the Controller of the City and County of San Francisco nor the Port's Director of Finance is authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

e. Each year during the Term, the SFPUC will include the estimated funding needed under this Agreement in that fiscal year's annual Treasure Island Operating Project budget. The SFPUC will include the funding for the annual payments due under this Agreement in the biennial budget submitted to

the Board of Supervisors for its approval during the Term, and will include those payments as an operating expense of the Electric System in accordance with San Francisco Charter Section 16.103(a)(1).

8. Submitting False Claims; Monetary Penalties. Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

14. Independent Contractor; Payment of Taxes and Other Expenses

a. **Independent Contractor.** Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

b. **Payment of Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit

against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorney's fees, arising from this section.

23. Conflict of Interest.

Each Party will comply with all applicable conflict of interest laws.

34. Nondiscrimination; Penalties. In the performance of this Agreement, each Party agrees not to discriminate against any employee, employee of the other Party, applicant for employment with such Party, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

35. MacBride Principles—Northern Ireland. Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

46. Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

57. Protection of Private Information. Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.