

**AGREEMENT FOR PROVISION OF ELECTRIC SERVICE TO  
THE PIER 70 28-ACRE SITE PROJECT**

This Agreement for Provision of Electric Service to the Pier 70 28-Acre Site (this “**Agreement**”) is made this \_\_\_ day of \_\_\_\_\_, 2020, in the City and County of San Francisco, State of California, by and between FC Pier 70, LLC, a Delaware limited liability company, its successors and assigns, hereinafter referred to as “**Master Developer**”, and the **City and County of San Francisco**, a municipal corporation of the State of California, hereinafter referred to as “**City**” or “**San Francisco**”, acting by and through its Public Utilities Commission, hereinafter referred to as “**SFPUC**”.

**Recitals**

WHEREAS, pursuant to that certain Disposition and Development Agreement between Master Developer and the San Francisco Port Commission of the City and County of San Francisco, hereinafter referred to as “**Port**,” dated for reference purposes as of May 2, 2018 (as amended and as may be further from time to time, the “**DDA**”), Master Developer is the master developer of the development project commonly known as Pier 70 28-Acre Site Project (as more particularly described in the DDA, the “**Project**”); and

WHEREAS, in accordance with the terms of that certain Interagency Cooperation Agreement (Pier 70 Waterfront Site) between the Port and the City, dated for reference purposes as of May 2, 2018 (the “**ICA**”), the SFPUC agreed that electrical service will be reasonably available for the Project’s needs and that the projected price for electrical service would be comparable to rates in San Francisco for comparable service; and

WHEREAS, under the DDA, Master Developer will develop the Project in a series of phases as generally depicted in the Phasing Plan attached to the DDA (each a “**Development Phase**”); and

WHEREAS, the City, through the SFPUC, operates a municipally owned electric utility and desires to provide electric service to the Project; and

WHEREAS, Master Developer seeks to ensure that City provides reliable, economic electric distribution service to the Project; and

WHEREAS, the City intends to serve the Project with greenhouse gas free energy to the maximum extent feasible and endeavors to support development of additional supplies of renewable electricity for that purpose, as needed; and

WHEREAS, in the long-term, the City will provide the service using the SFPUC’s Bay Corridor Transmission and Distribution project; and

WHEREAS, in the short-term, the City may provide the temporary, construction service using, in part, wholesale distribution service obtained from PG&E under terms and conditions specified by PG&E's tariffs approved by the Federal Energy Regulatory Commission; and

WHEREAS, the Parties intend that the City, through the SFPUC, will be the exclusive provider of electric service to the Project, excepting on-site generation provided in accordance with applicable rules, on the terms and conditions more particularly set forth below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## **1. SFPUC PROVISION OF ELECTRIC SERVICE**

- A. SFPUC will be the exclusive provider of electric service to the Project, subject to the terms and conditions of this Agreement and the SFPUC Rules and Regulations.
- B. The Parties agree to use reasonable efforts to obtain the approvals required to fully implement this Agreement in conformance with the ICA.
- C. SFPUC's charge for electric service shall be in accordance with the applicable SFPUC Rates Schedules, SFPUC Electric Service Guidelines, SFPUC Rules and Regulations, and the terms hereof.
- D. SFPUC's provision of electric service to the Project: (i) will be reasonably available to meet the Project's needs and Master Developer's schedule; and (ii) will be offered at prices for both service and infrastructure that are comparable to market rates in San Francisco for comparable service.
- E. The Parties agree that SFPUC will need a Distribution Facilities Upgrade to provide electric services to the Project. SFPUC may meet its obligations to bring power to the Project under this Agreement by installing its own distribution facilities or any other feasible means. However, delivery of service by means a Distribution Facilities Upgrade that does not consist of the construction of SFPUC's own distribution Facilities shall require to provide written notice to Master Developer as soon as reasonably practicable after SFPUC determines the means of providing such service.

## **2. CONSTRUCTION ELECTRIC SERVICE**

- A. The SFPUC shall be the electric service provider for any electric service needed to meet the construction loads of Master Developer in accordance with Section XVI.B of the SFPUC Rules and Regulations, a construction schedule provided by Master Developer to SFPUC for review and concurrence solely for the purposes of this Section 2 (the

“**Construction Schedule**”), and prudent utility operating practices. To obtain construction electric service, Master Developer will submit an Application for Electric Service (as defined in the SFPUC Rules and Regulations) in accordance with Section XV of the SFPUC Rules and Regulations in the form attached as Appendix A thereto.

- B. The SFPUC will charge for construction electric service installation in accordance with the SFPUC Rates Schedules, Section XVI.B of the SFPUC Rules and Regulations and the terms hereof. Where feasible, the SFPUC shall use commercially reasonable efforts to minimize the duplication of construction service facilities with the permanent facilities.
- C. Notwithstanding anything herein to the contrary, nothing in this Agreement shall prohibit Master Developer from obtaining construction service from another provider on the open market if SFPUC is unable to provide service needed to meet any construction loads of Master Developer in accordance with the Construction Schedule or fails to concur with the Construction Schedule in a timely manner.
- D. SFPUC will provide construction electric service through available capacity from an existing Wholesale Distribution Tariff service point within Pier 70 located inside Building 102 in accordance with a separate Memorandum of Understanding between the Port of San Francisco and the SFPUC.

### **3. PLANNING, APPLICATION, DESIGN, AND CONSTRUCTION TIMING**

- A. Master Developer provided SFPUC with an overall Master Electrical Infrastructure Plan (“**MEIP**”) in accordance with Section XIV of the SFPUC Rules and Regulations. The “**MEIP**” was approved on May 18, 2018.
- B. SFPUC may use the MEIP to plan for the electric service that is required for each Development Phase. Master Developer shall provide addenda to the MEIP, including revised exhibits or references, as necessary to reflect changed conditions relevant to SFPUC’s planning purposes. The Parties shall work together to exchange the necessary information on schedules and needs to allow SFPUC to utilize the MEIP to plan for its delivery of electric service.
- C. Master Developer will prepare and submit Improvement Plans, as described in San Francisco Subdivision Code (“**Subdivision Code**”) Section 1346 for each Phase (as defined in the DDA), describing the proposed electrical infrastructure. The Improvement Plans will be subject to review by SFPUC as an affected City agency under the Subdivision Code or Article 2.4 of the Public Works Code, as applicable, and in accordance with the ICA. Upon Public Works’ approval of the Improvement Plans and issuance of any permit required for construction (“**Construction Permit**”), Master

Developer shall be authorized to construct all related Substructures (as defined in the SFPUC Rules and Regulations) included within the Improvement Plans without the need for further documentation or approval. Master Developer has approved Street Improvement Permit #19IE-00245 for Phase 1.

- D. In accordance with the ICA, Master Developer will be responsible for the construction of any Substructures contained in its Improvement Plans (as defined in the Subdivision Code).
- E. In accordance with the ICA, SFPUC shall inspect all Substructures installed by Master Developer and shall provide Master Developer either with a notice that the Substructures are acceptable (“**Notice of Approval**”) or if items need to be corrected, this process shall be repeated until the SFPUC issues a Notice of Approval.

#### **4. INSTALLATION OF DISTRIBUTION LINE EXTENSIONS AND SERVICE LINE EXTENSIONS**

- A. Based on the Improvement Plans, Master Developer will submit an Application for each Development Phase to SFPUC in accordance with Section XV of the SFPUC Rules and Regulations and in the form attached as Appendix A thereto. Master Developer will submit such Application sufficiently in advance of the date Master Developer requires electric service to the Development Phase to allow SFPUC adequate time to complete engineering, gain access to right-of-ways where necessary, procure materials, obtain access to Master Developer’s property, and construct, inspect and authorize service from new facilities before Master Developer requires service. Applications submitted at least three hundred sixty-five (365) days in advance shall be considered timely for purposes of this Section 4.A; provided, however, that SFPUC will diligently process Applications submitted less than 365 days in advance, but Applicant shall be solely responsible for any reasonable costs incurred by Applicant or SFPUC due to untimely notice, so long as such costs are approved in advance by Master Developer. Master Developer agrees that any material changes to an Application will restart the review the process.
- B. Within fifteen (15) days after its receipt of an Application, SFPUC will notify Master Developer whether such Application is complete. If such Application is incomplete, then such notice will include a list of the information necessary to complete such Application.
- C. Within thirty (30) days after the SFPUC delivers to Master Developer notice that the Application is complete, the SFPUC will deliver to Master Developer a Distribution and Service Line Extension Agreement (as defined in the SFPUC Rules and Regulations) for

execution by Master Developer, prepared in accordance with Section XV of the SFPUC Rules and Regulations and in the form attached as Exhibit D thereto.

- D. Installation of Distribution Line Extensions and Service Line Extensions (as defined in the SFPUC Rules and Regulations) within the Project site will be governed by Section XV of the SFPUC Rules and Regulations.

## **5. MASTER DEVELOPER OBLIGATIONS**

- A. Master Developer will be responsible for the design and construction of SFPUC Distribution and Service Extension substructures.
- B. Master Developer will comply with all applicable obligations of an Applicant, Customer, and Developer pursuant to the SFPUC Rules and Regulations.
- C. Master Developer will protect electrical equipment with surface improvements prior to the energization of such equipment by SFPUC. Master Developer will be responsible for all costs associated with repair and replacement of electrical equipment and/or infrastructure that is damaged before it is accepted by SFPUC.
- D. Master Developer will provide SFPUC with continuous access to property in the Project under Master Developer's control, and any Substructures on the property owned or controlled by Master Developer, for maintenance and operation of all Distribution and Service Line Extensions, subject to such reasonable requirements as may be agreed to by the Parties in writing.
- E. Master Developer will secure all needed permits and obtain all required electrical inspections and approvals for the Substructures for any Distribution Line Extensions or Service Line Extensions installed by Master Developer, including any facilities used to provide construction electric service.
- F. Master Developer will provide to SFPUC any required development data or information needed to support the supply of electric service. At a minimum, this includes site maps, number of units and configuration, and gross unit area, preliminary estimates and periodic updates of the projected Demand.
- G. Master Developer will provide SFPUC with accurate information regarding its projected development and construction schedules as needed or as requested by the SFPUC. In addition, Master Developer will provide the SFPUC with its updated projected development and construction schedules as such schedules become available.

H. Subject to a possible future agreement concerning Utility Facility Acceptance, all Substructures on new public right-of-ways or within the Project will be the property and responsibility of the Master Developer until the Board of Supervisors has accepted those public right-of-ways.

**6. SFPUC PAYMENT TO MASTER DEVELOPER FOR SFPUC WORK**

- A. In accordance with Section XV of the SFPUC Rules and Regulations, SFPUC may authorize Master Developer to use qualified contractors to perform certain work on Distribution and Service Line Extensions that SFPUC would otherwise perform consisting of the installation of the SFPUC's electric equipment in substructures installed by Master Developer at Master Developer's costs.
- B. Subject to approval by the Board of Supervisors ("Board") by ordinance, and approval by the Civil Service Commission under S.F. Charter section 10.104, SFPUC and Master Developer will enter into a separate agreement authorizing SFPUC to pay Master Developer for the reasonable cost of such work, as determined in SFPUC's sole discretion. In such separate agreement, Master Developer will agree to comply with all City contracting requirements except those that the Board: (i) waives in the proposed ordinance; or (ii) previously waived by Ordinance No. 224-17 in approving the Development Agreement. Under no circumstances, however, will the SFPUC's payments to Master Developer work on a Distribution or Service Line Extension exceed the amounts that would otherwise be Refundable to Master Developer under the SFPUC Rules and Regulations.
- C. Costs to perform work by Master Developer on behalf of SFPUC shall be approved by SFPUC prior to commencing the work. Any unknown conditions encountered after start of construction resulting in additional costs and required to complete the work shall be reimbursed by SFPUC without the Master Developer requiring additional SFPUC approval as long as cost of the change is less than 15% of the total approved work. If the unknown conditions result in additional costs exceeding 15%, the Master Developer shall stop any non-emergency work to request additional authorization from the SFPUC.
- D. SFPUC will pay Master Developer for the reasonable cost of all such work subject to final approval of pay applications or invoices within 60 days of receiving Master Developer invoice.
- E. All work performed by Master Developer of SFPUC pursuant to this Section 6 must meet the requirements of Section XV.1.8 of the SFPUC Rules and Regulations. SFPUC reserves the right to reject any work performed by Master Developer on any Distribution

Facilities Upgrade and/or Distribution and Service Line Extensions that do not comply with Section XV.1.8, and to refuse to reimburse Master Developer for the costs of that work.

- F. Except as set forth in Section 6.A through 6.D, under no circumstances will SFPUC pay Master Developer for any costs not approved by SFPUC in advance. Following the completion of any approved work, SFPUC may require Master Developer to provide a true-up of the costs. Under no circumstance will SFPUC be responsible for any costs that exceed the true-up costs.
- G. Any disputes concerning the costs of any work performed by Master Developer for SFPUC under this Section 6 shall be subject to mediation under Section 12 of this Agreement.

## **7. INTERCONNECTION WITH PG&E**

- A. SFPUC has submitted an application for service to PG&E under the WDSA in the event SFPUC's Distribution Facilities Upgrade requires SFPUC to interconnect with PG&E for Phase 1. In accordance with Section XV.E of the SFPUC Rules and Regulations, Master Developer will be responsible for any Service Initiation Fee required by PG&E in connection with the WDSA application.
- B. PG&E has prepared a System Impact Study for Phase 1, which SFPUC has provided to Master Developer. PG&E is also preparing a Facilities Study for Phase 1. Within ten (10) business days of receipt of a the Facilities Study from PG&E, the Parties will meet and confer to discuss the impact Facilities Study will have on SFPUC's timely provision of electric service to Phase 1.
  - i. If, within thirty (30) days of SFPUC's delivery of the Facilities Study for Phase 1, SFPUC determines that will be unable to deliver construction or permanent power for Phase 1 pursuant to the terms of Section 1.C, SFPUC shall provide notice of same to Master Developer as required by Section 13.
  - ii. In the event SFPUC provides the notice described in Section 6.B.i, either with respect to construction power or permanent power for Phase 1, Master Developer shall be authorized to obtain construction or permanent power (as applicable) for Phase 1 from an alternative source, and neither party shall have any obligation to the other with respect to construction or permanent power (as applicable) for Phase 1 under this Agreement.

- C. In the event that the Distribution Facilities Upgrade is accomplished by SFPUC entering into a WDSA with PG&E for Phase I, SFPUC will be solely responsible for any advance payment required by PG&E for the Distribution Upgrade Cost, which advance payment is subject to reimbursement pursuant to Section 8.

## 8. DISTRIBUTION FACILITIES UPGRADE COST AGREEMENT

- A. The Parties agree that entering into a separate agreement (“**Distribution Facilities Upgrade Cost Agreement**”) setting forth the obligations of each Party pertaining to the Distribution Facilities Upgrade Cost for each Development Phase is a material part of the consideration for the City entering into this Agreement and accepting the obligation to advance any Distribution Facilities Upgrade Costs. The Parties will use best efforts to enter into the Distribution Facilities Upgrade Cost Agreement prior to SFPUC making any payment to PG&E for the Distribution Facilities Upgrade Cost, or incurring any other Distribution Facilities Upgrade Cost, or as soon as possible thereafter.
- B. The Parties agree that the Distribution Facilities Upgrade Cost Agreement will address, among other things:
  - i. Allocation of the risk that the loads do not materialize as projected by the development schedule set forth in the Distribution Facilities Cost Upgrade Agreement (the “**Occupancy Risk**”) between Master Developer and SFPUC.
  - ii. An obligation for Master Developer to reimburse SFPUC for a portion of SFPUC’s Distribution Facilities Upgrade Costs consistent with the allocation of Occupancy Risk.
  - iii. A requirement for Master Developer to provide Adequate Security relating to its obligation to reimburse SFPUC as described in Section 8.b.ii of this Agreement. The Distribution Facilities Upgrade Cost Agreement will include terms for the periodic release of Adequate Security in proportion to the materialization of loads consistent with the schedule specified in the Distribution Facilities Upgrade Cost Agreement.

## 9. COMMENCEMENT OF SERVICE

Electric service to the Project will commence when the following actions, if required, have occurred. SFPUC shall provide Master Developer with written notice promptly after such occurrence, which notice shall specify the start date of electric service.

- A. SFPUC has completed installation of the Distribution Facilities Upgrade and provided formal notification to the Developer.



- B. SFPUC and Master Developer have entered into any required Distribution and Service Line Extension Agreements that are necessary for City to provide electric service to the Project.
- C. SFPUC and Master Developer have installed any required Distribution or Service Line Extensions, subject to the use of Interim Conforming Electrical Infrastructure to provide Interim Permanent Power as hereinafter described.
- D. If required to provide electric service to the Project, PG&E has filed with the Federal Energy Regulatory Commission one or more Specifications for Distribution Service under the WDSA to interconnect the Project to its distribution system, and PG&E has constructed any facilities PG&E is required to construct.
- E. If required to provide reliable service to Master Developer's load, SFPUC, and/or PG&E has installed any necessary improvements to the City's distribution system.

**10. ALLOCATION OF COSTS, PAYMENTS, REIMBURSEMENTS AND ALLOWANCES**

- A. SFPUC will bill Master Developer for SFPUC's inspection of any Distribution Facilities, Substructures and Distribution or Service Line Extensions on a time and materials basis using pre-established SFPUC billing accounts. SFPUC will issue a bill to Master Developer immediately after any inspection, which bill will be payable within sixty (60) days following Master Developer's receipt thereof.
- B. Master Developer will pay Advance Amounts (as defined in the SFPUC Rules and Regulations) in accordance with Section XV.F of the SFPUC Rules and Regulations.
- C. SFPUC will provide refunds in the form of **Commercial Allowances** and/or **Residential Allowances** or Distribution or Service Line Extensions, as applicable, to Master Developer for load that is Permanent Load (as defined in the SFPUC Rules and Regulations) in accordance with Section XV.G of the SFPUC Rules and Regulations; provided, however, that in no event will SFPUC offer Master Developer a capital refund structure that does not have comparable business terms to what is available in the prevailing market in San Francisco, California. Allowances will be calculated as set forth in Section XV.G of the SFPUC Rules and Regulations, and the SFPUC shall not alter the Cost-of-Service Factor (as defined in the SFPUC Rules and Regulations) or calculation of Net Revenue (as defined in the SFPUC Rules and Regulations) as to Master Developer except as may be provided in the SFPUC Rules and Regulations.

- D. The cost allocation for any Special Facilities (as defined in the SFPUC Rules and Regulations) required by Master Developer in connection with an Application for Electric Service will be as set forth in Section XVI.A of the SFPUC Rules and Regulations. This provision applies to Interim Conforming Electrical Improvements used to provide Interim Permanent Power.

## 11. UTILITY FACILITY ACCEPTANCE

- A. SFPUC acknowledges that Master Developer may seek City's acceptance of certain Substructures in advance of the completion of the street segments where those Substructures are located ("**Utility Facility Acceptance**").
- B. The Parties agree that entering into a separate agreement with SFPUC, Master Developer or other City agencies (in any such case, the "**Operating Agreement**") to address Utility Facility Acceptance is a material part of the consideration for the Parties entering into this Agreement. Among other things, the Operating Agreement will address, the rights and obligations of the Parties for the construction, ownership, operation, maintenance and acceptance of Substructures prior to the completion of street segments. Without limitation, the Operating Agreement will require SFPUC to accept responsibility for, but not necessarily all costs of, the operation, maintenance and repair of the applicable Substructures to service active customers.

## 12. MEDIATION OF SELECT DISPUTES

If a dispute arises out of or related to this Agreement, or the breach hereof, then either Party shall have the right to initiate non-binding mediation as follows:

- A. The Party may request the non-binding mediation by delivering a written request for mediation ("**Mediation Request**") to the other Party. The Mediation Request must include a summary of the issue in dispute and the reasons why the requesting Party believes that the other Party is acting unreasonably or is not entitled to prevail in the dispute, together with any backup information or documentation it elects to provide. Within fifteen (15) days after receipt of the Mediation Request, the responding Party may agree to meet and confer promptly with the requesting Party to attempt to resolve the matter. In the absence of such agreement, or if the "meet and confer" does not resolve the matter promptly, the Party who submitted the Mediation Request may submit the matter for mediation (the "**Mediation Submission**") to the American Arbitration Association ("AAA") under its Commercial Mediation Procedures (although the Parties will not be required to choose a mediator from AAA).
- B. The Parties will cooperate with AAA and with one another in selecting a mediator and in scheduling the mediation proceedings as quickly as feasible and, in any event, any such

mediation shall occur within thirty (30) days after the date of the applicable Mediation Submission. The Parties agree to participate in the mediation in good faith. Neither Party may commence or if commenced, continue, a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session.

- C. The Parties will each pay their own costs and expenses in connection with the mediation and will share the costs and fees of the mediator. Without limiting the foregoing, the provisions of sections 1115 through 1128 of the California Evidence Code, inclusive, will apply in connection with any mediation. The provisions of sections 1152 and 1154 of the California Evidence Code will apply to all settlement communications and offers to compromise made during the mediation or arbitration.
- D. Neither Party shall be required to comply with Sections 12.A-B to the extent that doing so would cause immediate harm to such Party.

### **13. TERM AND TERMINATION**

- A. This Agreement will become effective upon execution by the Parties.
- B. This Agreement will remain in effect so long as the Master Developer is pursuing or receiving electric service from the City at the Project or until terminated pursuant to Sections 12.C or 13.
- C. Where authorized by the SFPUC Rules and Regulations in effect as of the date first written above, SFPUC may discontinue electric service to the Project and terminate this Agreement.

### **14. DEFAULT**

- A. The Parties agree to use their best efforts to meet milestones for the design, construction, installation, and testing of the equipment necessary to interconnect and provide electric service to the Project. Master Developer will timely notify SFPUC of changes to the Project schedule and the Parties will agree to commensurate changes to the schedule for provision of electric service.
- B. In the event SFPUC fails to timely meet its obligations under the terms of the Agreement, the following shall apply:
  - i. SFPUC will notify Master Developer as soon as practicable, but no later than eight months prior to the date identified in the Application for the commencement of construction power service, that it will be unable to provide construction power to the

- Project. If SFPUC is unable to provide construction power to the Project by such date, Master Developer shall be entitled to arrange for alternate construction power to the Project, and to demand indemnification from SFPUC consistent with Section 13.B.iii of this Agreement.
- ii. SFPUC will notify Master Developer as soon as practicable, but no later than eight months prior to the date identified in the Application for commencement of permanent electric service, that it will be unable to provide permanent electric service to the Project. If SFPUC is unable to provide permanent electric service to the Project by such date, Master Developer shall be entitled to arrange for alternate permanent power to the Project and to demand indemnification from SFPUC consistent with Section 13.B.iii of this Agreement.
  - iii. If SFPUC fails to perform under this Agreement for any reason other than Uncontrollable Forces, SFPUC will indemnify Master Developer from any costs, reasonable attorneys' fees or damages arising from such failure. This indemnity will include any costs to Master Developer associated with SFPUC's failure to deliver construction power or permanent power by the date referenced in the subject Application. To seek indemnity under this section, Master Developer will deliver to SFPUC a Notice of Request for Indemnity.
  - iv. Notwithstanding the foregoing, any indemnity to be paid by SFPUC hereunder shall be proportionately reduced to the extent that SFPUC's failure to perform was caused in whole or in part by Master Developer or its contractors as described in a Notice of Default. For elimination of doubt, SFPUC will not be responsible for any costs incurred by Master Developer as a result of Master Developer's inability to accept construction or permanent power, as applicable, by the date described in the Application.
  - v. Within a reasonable time of issuing a Notice of Request for Indemnity, Master Developer will provide SFPUC with a written, itemized estimate of the total costs that Master Developer claims are eligible for indemnity by SFPUC under Section 13.B.iii of this Agreement.
  - vi. Notwithstanding the foregoing, SFPUC's liability under Section 13.B.iii of this Agreement shall not exceed One Million Dollars (\$1,000,000) unless otherwise agreed to in writing by SFPUC. SFPUC will then notify Master Developer in writing whether SFPUC will indemnify Master Developer for any eligible amounts in excess of One Million Dollars (\$1,000,000). SFPUC will use best efforts to provide the notice within thirty (30) days after receipt of notice from Master Developer, or sooner if possible, and will in any event provide the notice within sixty (60) days.

- vii. If SFPUC does not agree to indemnify Master Developer for amounts in excess of One Million Dollars (\$1,000,000), or fails to respond within the sixty (60) day period, then Master Developer: (a) may terminate this Agreement by giving written notice to SFPUC within thirty (30) days after receipt of SFPUC's notice or failure to respond; (b) seek service from an alternative energy supplier, and (c) will no longer have any obligations under this Agreement.
  - viii. Notwithstanding the foregoing, SFPUC may invoke mediation under Section 10 of this Agreement to dispute the reasonableness of the costs, reasonable attorneys' fees or damages Master Developer claims are subject to indemnity under this Section 13.B.
- C. If Master Developer terminates this Agreement under Section 14.B.vii of this Agreement, in lieu of the indemnity required under Section 14.B, SFPUC will be liable to Master Developer as follows:
- i. SFPUC will be liable to Master Developer for up to Three Million Dollars (\$3,000,000) for: (a) Master Developer's actual and incidental damages resulting from Master Developer changing service providers and obtaining replacement electric service; and (b) Master Developer's consequential damages caused from delays in obtaining electric service or disruptions in electric service associated with changing service providers or obtaining replacement energy, which sum will be reduced by the amount of SFPUC's Unrecovered Costs (if any).
  - ii. Under no circumstances, however, will Master Developer's actual, incidental, or consequential damages include lost energy efficiency incentives or costs resulting from increased rates or charges from a new provider, including costs charged to Master Developer by a provider to cover the income tax consequences of equipment constructed for service to the Project.
  - iii. Notwithstanding the foregoing, SFPUC's liability hereunder shall be reduced proportionately to the extent that SFPUC's failure to perform was caused in part by Master Developer or its contractors. For elimination of doubt, SFPUC will not be responsible for any actual, incidental or consequential damages to the extent Master Developer's termination of this Agreement resulted from Master Developer's inability to accept construction or permanent power, as applicable, by the date described in the Application. SFPUC's liability hereunder will also be reduced to the extent of any indemnity SFPUC paid to Master Developer pursuant to Section 13.B.
  - iv. Notwithstanding the foregoing, SFPUC may invoke mediation under Section 10 of this Agreement to dispute any actual, incidental or consequential damages Master Developer claims are subject to liability under Section 14.C.

- D. If Master Developer terminates this Agreement under Section 14.B.vii of this Agreement, and if Master Developer determines that Distribution or Service Line Extensions installed by SFPUC, or Distribution Upgrade installed by PG&E at SFPUC's expense, are necessary or useful for providing electric service to the Project, Master Developer may: (i) purchase from SFPUC the Distribution or Service Line Extensions by paying SFPUC the costs of those facilities; and/or (ii) purchase from SFPUC the Distribution Upgrade paid for by SFPUC by reimbursing the SFPUC for its Distribution Upgrade Costs.
- E. In the event of default by either Party, both Parties shall be obligated to take reasonable commercial steps to mitigate losses.
- F. If any Distribution or Service Line Extensions are transferred to Master Developer as a result of SFPUC's default, the facilities will be transferred without warranty in as-is condition and SFPUC shall bear no responsibility for the subsequent ownership, operation, or use of the equipment, except that SFPUC shall continue to bear liability for any negligent design or construction of the equipment.
- G. This Section does not apply to any default caused by Uncontrollable Forces.

**15. NOTICES TO THE PARTIES**

Unless otherwise indicated elsewhere in this Agreement, all notices or communications must be in writing and will be sent by hand delivery, registered or certified U.S. mail (return receipt requested), a nationally recognized overnight courier, or fax, and will be addressed as follows:

To the City:	Deputy General Manager, Power San Francisco Public Utilities Commission 525 Golden Gate Avenue San Francisco, CA 94102 Email: bhale@sfgwater.org
with copies to:	Office of the City Attorney Energy and Telecommunications Team Leader City Hall, Room 234 One Dr. Carlton B. Goodlett Place San Francisco, CA 94102 Email: theresa.mueller@sfcityatty.org

To Master Developer: FC Pier 70, LLC  
c/o Brookfield Properties  
Attn: Jack Sylvan  
875 Howard Street, Suite 330  
San Francisco, CA 94103  
Fax: (415) 836-5988  
Email: jack.sylvan@brookfieldpropertiesdevelopment.com

with a copy to: Brookfield Properties Development LLC  
127 Public Square, Suite 3100  
Cleveland, Ohio 44114  
Attn: General Counsel

and to: Gibson Dunn & Crutcher  
555 Mission Street, Suite 3000  
San Francisco, CA 94105  
Attn: Neil Sekhri, Esq.  
Email: NSekhri@gibsondunn.com

## **16. NONDISCRIMINATION**

Master Developer will comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Contractor will incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and will require all subcontractors to comply with such provisions. Master Developer is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

## **17. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT**

Master Developer will comply with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

## **18. PRESERVATIVE-TREATED WOOD PRODUCTS**

Master Developer will comply with the provisions of San Francisco Environment Code Chapter 13, which requires that each contractor purchasing preservative-treated wood products on behalf of the City, will only purchase such products from the list of alternatives adopted by the Department of the Environment pursuant to Section 1302 of Chapter 13, unless otherwise granted an exemption by the terms of that Chapter.

## **19. MODIFICATION OF AGREEMENT**

This Agreement may not be modified except by written instrument executed by Master Developer and the City, provided that the General Manager of the SFPUC may enter into an Amendment behalf of the City to modify the timelines established under this Agreement.

## **20. AGREEMENT MADE IN CALIFORNIA; VENUE**

The formation, interpretation and performance of this Agreement will be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement will be in San Francisco.

## **21. CONSTRUCTION**

All paragraph captions are for reference only and will not be considered in construing this Agreement.

## **22. ENTIRE AGREEMENT**

This Agreement, the SFPUC Rules and Regulations and the SFPUC Rate Schedules where applicable, set forth the entire agreement between City and Master Developer and merge and supersede all other oral or written statements or representations between them with respect to the subject matter hereof.

## **23. COMPLIANCE WITH LAWS**

Master Developer will keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

## **24. SEVERABILITY**

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement will not be affected or impaired thereby, and (b) such provision will be enforced to the maximum extent possible so as to give effect to the intent of the Parties and will be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.



## 25. CONFLICT OF INTEREST

Through its execution of this Agreement, Master Developer certifies that it does not know of any fact which constitutes a violation of section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 et seq.), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 et seq.), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

## 26. NONDISCLOSURE OF PRIVATE, PROPRIETARY OR CONFIDENTIAL INFORMATION

- A. The Parties understand and agree that, in the performance of this Agreement or in contemplation thereof, each of them may have access to private or confidential information which may be owned or controlled by the other and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to one or more of the Parties. The Parties agree that all information of a proprietary or confidential nature disclosed between them will be held in confidence to the extent permitted by law and used only in performance of the Agreement. The Parties agree to exercise the same standard of care to protect such information as a reasonably prudent person would use to protect its own proprietary data, provided that the Party disclosing the confidential information ("**Disclosing Party**") provides notice to the Party receiving the confidential information ("**Recipient**") in writing that any information it is providing to the Recipient is confidential.
- B. If during the course of Agreement City discloses "Private Information" to Master Developer within the meaning of San Francisco Administrative Code Chapter 12M, Master Developer will use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Master Developer is subject to the enforcement and penalty provisions in Chapter 12M.
- C. In the event that a Recipient or its representatives are requested or required (by deposition, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or other similar process or by other applicable laws or regulations (including, without limitation, the rules of any stock exchange or other regulatory or self-regulatory body)) to disclose any of the confidential information, Recipient shall have the right to make such disclosure(s) as long as, to the extent permitted by applicable law or legal process, provided Recipient promptly notifies Disclosing Party in writing, of the existence, terms and circumstances of any such request

or requirement so that Disclosing Party can, at its option, seek a protective order or other appropriate remedy. Recipient shall cooperate with Disclosing Party in the event that Disclosing Party elects to seek any such protective order or other appropriate remedy. If, in the absence of a protective order or other remedy or the receipt of a waiver from Disclosing Party, Recipient is nonetheless legally required to disclose confidential information, Recipient may, without liability hereunder, disclose only that portion of the confidential information that Recipient is legally required to disclose.

- D. Each Party acknowledges that a breach of obligations under this Section 24 may cause irreparable harm to the Parties and that there may be no adequate remedy at law available by reason of such breach. Accordingly, each Party shall be entitled to injunctive relief to restrain any such breach, whether threatened or actual.

## **27. SUNSHINE ORDINANCE**

Except as provided in Section 24, Master Developer acknowledges that this Agreement and all records related to its formation and performance are subject to the California Public Records Act, (California Government Code § 6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

## **28. SUCCESSORS AND ASSIGNS**

- A. This Agreement shall be binding upon and inure to the benefit of the respective permitted successors and assignees of the Parties. Each Party shall notify the other Party in writing within sixty (60) days following any assignment of this Agreement by such Party. SFPUC shall not assign its interest in this Agreement without the prior written approval of Master Developer.
- B. To the extent permitted under the DDA, Master Developer may assign this Agreement, without obtaining any approval from SFPUC, in whole or in part to any assignee of its interest in the DDA, and to a Vertical Developer (as defined in the DDA), but will not otherwise assign this Agreement without SFPUC's prior written approval. Upon any such assignment by Master Developer, Master Developer shall automatically be released from any obligations or liabilities to the City under this Agreement to the extent of such assignment and the City will thereafter have recourse only against such assignee for the obligations and liabilities so assumed. Notwithstanding the foregoing, nothing in this Section 27 shall prevent Master Developer from issuing a collateral assignment for financing purposes without the prior consent of any other Party.

- C. In the event of any assignment of any portion of this Agreement, Master Developer and any assignee shall have obligations under this Agreement solely with respect to those portions of the Project for which Master Developer or the assignee have obligations under the DDA or any Vertical DDA (as defined in the DDA).

## **29. VERTICAL DEVELOPERS**

- A. In the event Master Developer sells or otherwise transfers development rights of a parcel(s) at the Project to a Vertical Developer, Master Developer will provide in its agreement with the Vertical Developer that, to the extent such Vertical Developer would have rights and obligations under the terms of this Agreement with respect to such parcel and any improvements on it if the Vertical Developer was a Party, then Master Developer may transfer or assign such rights and obligations to such Vertical Developer.
- B. Master Developer will require each Vertical Developer that purchases or otherwise acquires development rights as to real property in the Project from Master Developer to execute at the time of sale or other transfer, in a form reasonably acceptable to the City, an agreement under which such Vertical Developer assumes certain rights and obligations under this Agreement applicable to such Vertical Developer and the portion of the Project to be developed by such Vertical Developer (a “**Vertical Coordination Agreement**”).
- C. Such Vertical Coordination Agreement may include a provision that Master Developer will be released from any obligations or liabilities to the City under this Agreement to the extent assumed by such Vertical Developer under the Vertical Coordination Agreement and the City will thereafter have recourse only against such Vertical Developer for the obligations and liabilities so assumed.

## **30. TROPICAL HARDWOOD AND VIRGIN REDWOOD BAN**

Pursuant to San Francisco Environment Code section 804(b), the City urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

## **31. MACBRIDE PRINCIPLES -- NORTHERN IRELAND**

The provisions of San Francisco Administrative Code section 12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Master Developer confirms that Master Developer has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by

the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

### **32. COUNTERPARTS**

This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument.

### **33. UNCONTROLLABLE FORCES**

- A. Neither Party will be considered to be in default in the performance of any obligations under this Agreement (other than an obligation to make payment of bills rendered pursuant to this Agreement) when a failure of performance will be the result of Uncontrollable Forces.
  
- B. Nothing contained in this Section will be construed as requiring a Party to settle any strike, lockout, or labor dispute in which it may be involved, or to accept any permit, certificate or other authorization, or enter into other contracts or commit to financing arrangements, which contain conditions or terms that the Party determines are unduly burdensome. Nothing in this Section will be interpreted to excuse the negligence or lack of due diligence by the Party unable to perform its obligation.

### **36. DEFINITIONS**

Capitalized terms shall have the meanings set forth below unless otherwise defined in the preceding sections.

**“Adequate Security”** means security provided by Master Developer in accordance with this Agreement that: (i) secures the payment of the obligation secured thereby; (ii) provides that the maximum liability of the obligor thereunder shall be equal to the Secured Amount plus the costs of enforcing such Adequate Security; and (iii) is in the form of a letter of credit, certificate of deposit or such other form approved by SFPUC.

**“Application for Electric Service”** or **“Application”** has the meaning contained in the SFPUC Rules and Regulations.

**“Commercial Allowances”** has the meaning contained in the SFPUC Rules and Regulations.

**“Construction Permit”** has the meaning set forth in Section 3.C.

“**DDA**” means the Disposition and Development Agreement between the City and County of San Francisco, acting by and through the San Francisco Port Commission, and FC Pier 70 LLC, with a reference date of May 2, 2018.

“**Demand**” has the meaning contained in SFPUC Rules and Regulations.

“**Development Phase**” has the meaning set forth in the Recitals to this Agreement.

“**Disclosing Party**” has the meaning set forth in Section 26.A.

“**Distribution and Service Line Extension Agreement**” has the meaning contained in the SFPUC Rules and Regulations.

“**Distribution Facilities Upgrade**” means those distribution facilities located outside of the Project area that will be used to deliver power to the points of interconnection between the SFPUC’s distribution system from SFPUC vaults located east of Illinois Street on 20th Street and 22nd Street.

“**Distribution Facilities Upgrade Cost**” means the costs incurred by SFPUC for a Distribution Facilities Upgrade to provide electric service to the Project.

“**Distribution Facilities Upgrade Cost Agreement**” has the meaning set forth in Section 8.A.

“**Distribution Line Extension**” has the meaning contained in the SFPUC Rules and Regulations.

“**Facilities Study**” has the meaning set forth in PG&E Tariff.

“**Interim Conforming Electrical Infrastructure**” means temporary electric facilities installed by Master Developer for the purpose of providing Interim Permanent Power.

“**Interim Permanent Power**” means power to customers residing at the Project, or other customers at the Project that may need power, only until such time as the undergrounded facilities to be constructed by Master Developer, and owned, operated, and maintained by the SFPUC, have been completed and are ready to be used to provide power to those customers.

“**Master Developer**” has the meaning set forth in the preamble to this Agreement.

“**Mediation Request**” has the meaning set forth in Section 12.A.

“**Mediation Submission**” has the meaning set forth in Section 12.A.

“**MEIP**” as the meaning set forth in Section 3.A.

“**Notice of Approval**” has the meaning set forth in Section 3.E.

“**Notice of Default**” has the meaning set forth in Section 14.B.iv.

“**Occupancy Risk**” has the meaning set forth in Section 8.B.i.

“**Operating Agreement**” has the meaning set forth in Section 11.B.

“**Parties**” means Master Developer and the City.

“**PG&E**” means Pacific Gas and Electric Company.

“**PG&E Tariff**” means the Pacific Gas and Electric Company Wholesale Distribution Tariff, FERC Electric Tariff Volume No. 4, effective October 1, 2014.

“**Phasing Plan**” shall refer to Exhibit B1 to the DDA as amended from time to time.

“**Project**” has the meaning set forth in the Recitals to this Agreement.

“**Recipient**” has the meaning set forth in Section 26.A.

“**Refundable**” has the meaning contained in the SFPUC Rules and Regulations.

“**Residential Allowances**” has the meaning contained in the SFPUC Rules and Regulations.

“**Secured Amount**” means the amount of the obligation to pay money that is secured by Adequate Security to be further described in the Distribution Cost Upgrade Agreement.

“**Service Initiation Fee**” means the fee required by PG&E to reserve capacity and initiate distribution service under the WDSA.

“**Service Line Extension**” has the meaning contained in the SFPUC Rules and Regulations.

“**SFPUC Electric Service Guidelines**” means SFPUC’s Electric Service Guidelines as may be amended from time-to-time.

**“SFPUC Rates Schedules”** means SFPUC Rates Schedules & Fees for Water, Power and Sewer Service as adopted by the SFPUC and as may be amended from time-to-time.

**SFPUC Rules and Regulations”** means the SFPUC Rules and Regulations Governing Electric Service as adopted by the SFPUC and as may be amended from time-to-time.

**“Specifications for Distribution Service”** means an exhibit to the WDSA that is required for City to interconnect the Project to the Distribution System.

**“Subdivision Code”** has the meaning set forth in Section 3.C.

**“Substructures”** has the meaning contained in the SFPUC Rules and Regulations.

**“System Impact Study”** has the meaning set forth in the PG&E Tariff.

**“Uncontrollable Forces”** means any 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 or other cause beyond the reasonable control of a Party that could not be avoided through the exercise of commercially reasonable efforts.

**“Unrecovered costs”** means the sum of: (A) all costs associated with SFPUC fulfilling its obligations under this Agreement that were previously incurred by SFPUC, or committed to by contract, and that SFPUC will no longer be able to recover in electric rates; and (B) any penalties, fees, or liabilities SFPUC may have to pay to any third party as a result of termination of the Agreement. In avoidance of doubt, “Unrecovered Costs” shall not include either of the following: (i) any costs incurred by SFPUC in connection with the use of the Bay Corridor Transmission and Distribution (“BCTD”) project that will provide, in the long-term, electric service to the Project; or (ii) any costs incurred by SFPUC relating to a given Development Phase in the event that SFPUC elects not to provide the notice described in Section 5.A.i.

**“Utility Facility Acceptance”** has the meaning set forth in Section 11.A.

**“Vertical DDA”** has the meaning set forth in the DDA.

**“Vertical Developer”** has the meaning set forth in the DDA.

**“WDSA”** means the existing Wholesale Distribution Service Agreement between City and PG&E.







The SFPUC and Master Developer have executed this Agreement as of the date last written below.

**SFPUC:**

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

By: \_\_\_\_\_  
Harlan L. Kelly, Jr.  
General Manager

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

**MASTER DEVELOPER:**

FC PIER 70 LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_

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

APPROVED AS TO FORM:

DENNIS J. HERRERA  
City Attorney

By: \_\_\_\_\_  
William K. Sanders  
Deputy City Attorney